

A Way Out

**ABOLISHING
DEATH BY INCARCERATION
IN PENNSYLVANIA**

**A Report on
Life-Without-Parole
Sentences**



**ABOLITIONIST
LAW
CENTER**

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Abolitionist Law Center

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To the Amistad Law Project – our movement-lawyering family – you hold us down and push us forward, giving us inexhaustible reasons to come to Philadelphia. Kris Henderson, Nikki Grant, Kempis Ghani Songster, and Sean Damon, your comradeship and selfless commitment to justice and liberation are stronger than any obstacle in our path.

The movement organizations that we are a part of and accountable to – the Coalition to Abolish Death By Incarceration, Lets Get Free-Women and Trans Prisoner Defense Committee, Human Rights Coalition, Fight for Lifers, Decarcerate PA, Right to Redemption – we offer this report as a modest contribution toward a new paradigm of justice, toward parole eligibility for all lifers, and in service of those family members and friends of the incarcerated who will fight with every last breath to bring their loved ones home.

Vital Projects Fund provided generous support for this work, believes in a future where life-without-parole is a relic of the past, and has shown a commitment to justice that is deep, informed, and strategic. We thank you for that.



DEDICATION

To the more than 5,300 people serving life-without-parole sentences in Pennsylvania, condemned to “death-by-incarceration”, who survive a daily assault upon your humanity: you are not forgotten. Whether you have committed yourself to building the movement for justice and liberation or are still finding your way there, accept this report as a humble offering – building off the work of lifers and their families – to help in a collective endeavor to do nothing less than totally transform ourselves and our society.

To those who have suffered the immeasurable grief and pain of losing a loved one to violence: we seek a change that will address the root causes of such devastation. We gently offer this work as an alternative to those who pursue a perpetual condemnation that all too often stands in the way of healing. Community, justice, and healing require us to give all of ourselves and aspire to be more – individually and collectively – than we have yet become. We are committed to walking this path with you.

To those who have experienced both sides of this painful dynamic, those who have harmed and been harmed, who have persevered and won a hard-earned wisdom, and who believe in second-chances and redemption more than ever: may your example light the way ahead.

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NOTE ON TERMINOLOGY

Throughout this report we use the term Death By Incarceration (DBI) when referring to life-without-parole (LWOP) sentences. We do this for several reasons. First, it is the preferential term selected by incarcerated people that we work with who are serving these sentences, and we are a movement-lawyering organization that is accountable to the movements we work with. Second, it focuses on the ultimate fact of the sentence, which is that the only way it ends, barring extraordinary relief from a court or the Board of Pardons, is with death. Third, DBI

invokes the social death experienced by the incarcerated, as they are subject to degraded legal status, diminished rights, excluded from social and political life, tracked with an “inmate number” like a piece of inventory, and warehoused for decades in this subjugated status. Finally, although DBI in this report is used to refer to LWOP sentences, the DBI label indicates that our concern is not merely with LWOP sentences, but inclusive of other term-of-years sentences that condemn a person to die in prison.

LIFE SENTENCE

A man serving a life sentence dies at an average of 10 years after the penitentiary gates clang behind him. So claims Warden Whitman of Joliet (Ill.) prison.

He predicts: "If Leopold and Loeb are alive 20 years from now, they will have accomplished the miraculous."

How many readers would prefer the death penalty to life imprisonment? Monotony is about the worst thing in life. The worst loss of liberty. That is, on the basis of physical predicaments, not including catastrophes of the emotions.

The tiger in his circus menagerie cage has it easy compared with the cell inmate who has no hope of release.

Unlike the tiger, the man has the power to think, which intensifies the incarceration.

Days in the prison workshop, nights in a cramped, barred cell. This is not life. It is a living death.

People who are against capital punishment put forward many convincing arguments

It is, admittedly, barbaric for the government to take human life. An interesting debate could be arranged, as to whether it isn't even more barbaric and cruel to lock a man up until death releases him.

Small wonder, the average life of a "lifer" is only ten years. Existence is monotonous enough, at times, even when we have our freedom. On the other hand, there is no such thing as real freedom.

We are all prisoners serving a life sentence imposed by customs, regulations, the system of economics and the inexorable laws of nature.

The problem of getting enough to eat and to clothe, warm and shelter ourselves is a life sentence in itself for the average person.

We boast of freedom. But the only liberty we have is political. Industry, customs and superstition still have us jailed. Their slave master power is, fortunately, slipping, though very slowly.

EXECUTIVE SUMMARY

Decarceration Through Redemption:

Ending Permanent Punishment in Pennsylvania

Death-by-incarceration sentences are perhaps the most distinctive and emblematic feature of the United States' system of mass incarceration, with Pennsylvania staking a claim as a national leader in the practice of condemning people to die in prison and exhibiting its most pernicious features. Philadelphia is the DBI capital of the world. Pennsylvania itself is an international and national leader in DBI sentencing. The racial disparities in DBI sentencing in the state are stark evidence of systemic discrimination. DBI sentences are overwhelmingly imposed on teenagers and young adults, but increasingly are being served by aging and elderly prisoners still being punished for acts committed decades ago. The legal framework is unforgiving, allowing for no mitigation, no lesser sentence, and no hope of release short of commutation, which has become increasingly rare just as it has become increasingly necessary to address the extraordinary number of rehabilitated people serving a DBI sentence. The inadequate policy justifications for this state of affairs renders this a punishment lacking in legitimacy, one that we need to bring to an end.

Pennsylvania in Context

Over the last 25 years, the number of people serving life-without-parole, or death-by-incarceration (DBI), sentences in the United States has exploded from 12,453 people in 1992¹ to over 53,000 people today²—10% of whom are incarcerated in Pennsylvania.³ With over 5,300 people sentenced to DBI and one of the highest per capita DBI-sentencing rates in the country, Pennsylvania stakes a strong claim as the U.S. and world leader in this distinctively harsh form of punishment and permanent exclusion of its citizens. Philadelphia, with nearly 2,700 people serving DBI sentences, is the world's leading jurisdiction in sentencing people to die in prison—more than any county or parish in the United States⁴ and far more than any individual country in the world.⁵

In 1974, fewer than 500 people were serving DBI sentences in Pennsylvania. As of September 2017, 5,346 people are serving death-by-incarceration sentences in Pennsylvania.

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Despite a 21% decline in violent crime between 2003 and 2015, Pennsylvania's population of people sentenced to DBI has risen by 40% between 2003 and 2016.⁶ Pennsylvania ranks near the top of every measure of DBI sentences across the country.

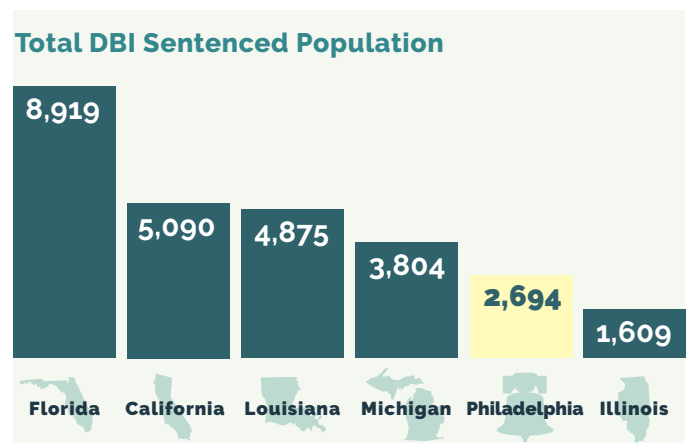
More than 1 in 10 people serving DBI sentences in the United States are in Pennsylvania, and Pennsylvania has two-and-a-half times the rate of people serving DBI than the aggregate national rate

(42 DBI sentences per 100,000 people in Pennsylvania vs. 17 per 100,000 nationally).⁷ Only Florida—with twice the population and twice as many people incarcerated as Pennsylvania—has more people serving DBI sentences.

Philadelphia

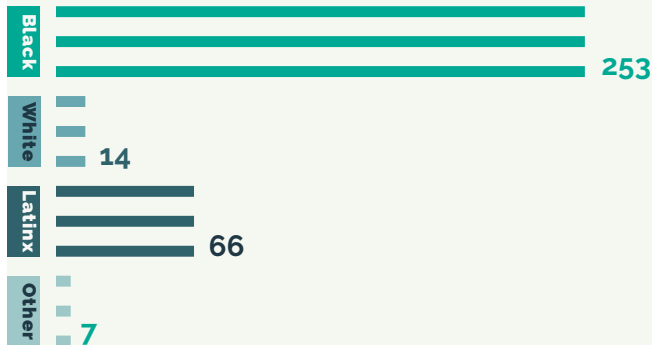
Philadelphia County alone has 2,694 people sentenced to death-by-incarceration, which comprises just over 50% of those sentenced to DBI in Pennsylvania and is the highest total of any county or parish in the country. More people serving DBI sentences were convicted in Philadelphia than 45 states in the U.S.

Death-By-Incarceration Capital of the World



A Question of Racial Justice

Racial Disparity: DBI Sentences Per 100,000 People



Like most measures of the criminal legal system, death-by-incarceration sentences disproportionately impact communities of color.

Black Pennsylvanians are serving death-by-incarceration sentences at a rate more than 18-times higher than that of White Pennsylvanians.

Latinx Pennsylvanians are serving DBI sentences at a rate 5-times higher than White Pennsylvanians. Racial disparities in DBI sentences are even more pronounced than among the overall Pennsylvania prison population, in which 47% of those incarcerated are Black, compared to 11% of the state's population. Of those serving DBI sentences, however, 65% are Black while 25% are White.

In Philadelphia, one of every 294 Black residents is serving a sentence of death-by-incarceration (340 per 100,000 people).

Philadelphia sentences Black people to death-by-incarceration at a rate higher than the overall incarceration rates of 90% countries and territories in the world.⁸

In Allegheny County, 13% of the county's residents are Black, but 76% of those serving DBI sentences are Black (253 per 100,000). White residents make up 80% of Allegheny County's population, but 24% of people sentenced to DBI from the county (13 per 100,000).

Racial disparities persist in counties with relatively homogenous racial compositions. In Fayette County, for example, only 5% of the population is Black, but 38% of people serving DBI sentences are Black (253 per 100,000), while 93% of the population is White and 62% of people sentenced to DBI are White (21 per 100,000). Similarly, in Mercer County, 6% of the population is Black, but 47% of people sentenced to DBI are Black (134 per 100,000), while 91% of the population is White and 53% of people serving DBI are White (10 per 100,000).

Women Sentenced to Die in Prison

Pennsylvania has 201 women incarcerated under death-by-incarceration sentences, representing almost 4% of those serving DBI sentences in the state. Although racial disparities are less stark among women serving DBI

sentences, they are still pronounced. Out of 201 women sentenced to DBI, 43% are Black, 49% are White, 5% are Latina, and 2.5% are of other races.

Sentencing the Young and Incarcerating the Aging

Consistent with data on most criminal offenses,⁹ most people serving DBI sentences in the Pennsylvania Department of Corrections (DOC) were convicted and sentenced when they were 25 years-old or younger.¹⁰ 25% of those serving DBI entered the DOC between the ages of 18 and 21. The age of entry into the DOC among people serving DBI steadily decreases after the age of 25. Roughly 20% were between the ages of 26 and 30, while only 18% were between the ages of 31 and 40.

The average current age of people serving DBI sentences is 48 years old. Today, the average person serving DBI in Pennsylvania is 15 years older than the average person serving DBI in 1980. Over 70% of those currently serving DBI sentences are at least 40 years old and 45% are at least 50 years old. 21% of people serving DBI are 60 or older. In Pennsylvania, only 2.5% of people who were released after their life sentences were commuted between 1933-2005 were ever reincarcerated for a new criminal conviction.¹¹ For those whose sentences were commuted when they were at least 50 years old, only one out of 99 was reincarcerated for any reason.¹²

Costs of DBI Sentences

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Incarceration is costly. In Pennsylvania, the cost of DOC operations increased from \$94 million in 1980 to \$1.7 billion in 2010.¹³ With people serving DBI sentences growing increasingly older and spending decades in prison, the economic costs of DBI sentences will only continue to rise. Due primarily to increased healthcare costs associated with age, it costs between two- and three-times more to incarcerate an elderly person than the average person in prison.¹⁴ Using an estimate of \$47,680 for the annual cost to incarcerate a person in Pennsylvania, assuming 2% annual

inflation and adjusting for age-related cost increases, the total cost of incarcerating a person who began serving a DBI sentence in 2015 at age 25 (the median age of commitment to the DOC) until their death will be over \$3.6 million.¹⁵ Between 2010 and 2016, an average of 128 people per year began serving sentences in the DOC. If an average of 128 people sentenced to DBI are committed to the DOC per year, every year Pennsylvania commits to spend roughly \$460 million to ensure that those sentenced to DBI die in prison.

No Way Out

Aside from having a conviction overturned or death itself, commutation is currently the only avenue by which a person serving death-by-incarceration may be released from prison in Pennsylvania. While commutation was used somewhat regularly through the 1970s and steadily declined in the 1980s, its use has been virtually non-existent since the 1990s. During the entire 1970s, 203 people had their life sentences commuted and were released—an average of over 20 per year.

The False Hope of Commutation

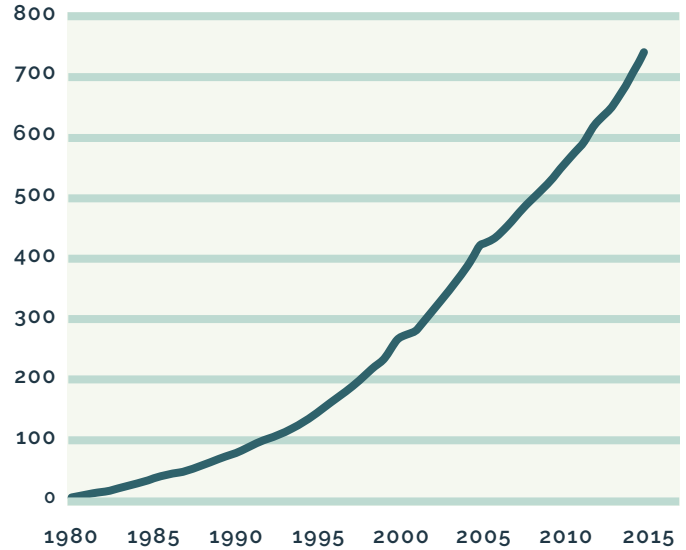
Since Tom Ridge took office as governor in 1995, only 8 DBI sentences have been commuted. Ridge granted zero. During Governor Corbett's term in office from 2011-2014, the Board of Pardons did not even recommend that a single DBI sentence be commuted. Even among ostensibly liberal regimes, commutation has been rare, especially considering the ever-increasing population of people serving DBI. During Ed Rendell's 8 years in office, only 5 DBI sentences were commuted. Since entering office in 2015, Governor Wolf has only granted two commutations.

The Rising Death Toll

Meanwhile, the number of people who have died while serving a DBI sentence is growing rapidly. In the 1980s, an average of 6.8 people per year died serving a DBI sentence. During the 1990s, that number had risen to 16.4 deaths per year, and in the 2000s an average of 28.9 people died per year. Between 2010-2016, an average of 38 people per year have died serving a DBI sentence. In all, 787 people died serving a DBI sentence between 1980-2016.

Decade	Deaths	Per Year
1980s	68	6.8
1990s	164	16.4
2000s	289	28.9
2010-2016	266	38
Total	787	21.3

Deaths of People Serving DBI in PA



The Case for Parole Eligibility

Closing off parole eligibility for the entirety of a person's natural life is a failed policy predicated upon the fallacy that the trajectory of a person's life – including their capacity for rehabilitation, transformation, and redemption – can be accurately predicted at the time of sentencing. In Pennsylvania, the prediction that a person convicted of first or second degree murder should never be released from prison is not even made at sentencing. Instead, it is set in stone by statute and imposed mandatorily based on the conviction without regard to any mitigating circumstances, the individual's role in the offense, or their prospects for change.

As demonstrated in Section III of this report, narratives of maturity and transformation are common among the more than 5,300 serving DBI sentences in Pennsylvania. By disregarding this basic reality, the mandatory sentencing scheme for imposition of DBI sentences in Pennsylvania has led to a situation where increasing numbers of aging and

elderly prisoners who present virtually no public safety risk languish in prisons at tremendous social and fiscal expense.

The case for parole eligibility for people serving DBI sentences is supported by unassailable policy justifications. DBI is a failed policy on its own terms, and the alternative – parole eligibility – possesses well-established merits. DBI sentences are unnecessary and harmful, particularly in the following ways:

- **DBI is not necessary to ensure or increase public safety.** Research has consistently shown that the strongest predictor for whether a person will commit future criminal offenses is age. As people age and mature they are less likely to re-offend and they are especially unlikely to commit a further homicide offense. Aging and elderly incarcerated people – an increasingly large cohort in Pennsylvania – pose little risk to public safety if released.

- **DBI is a waste of resources.** The costs of incarcerating a permanent, ever-growing number of people sentenced to DBI is a waste of resources, putting strain on the state budget by needlessly wasting money to confine people who are no longer a risk to the public. This money could instead be spent on public education, medical and mental health services, housing, and other social services that are necessary for creating safe and healthy communities.
- **DBI does not serve victims.** The permanent retribution of DBI sentences, while an understandable response to the devastating loss wrought by homicide, does not help victims heal. Further, victim attitudes are not as punitive as they are often portrayed to be. Many support policy responses that emphasize preventing re-offending and addressing the causes of crime and violence over increased punishment. And a growing number of people who have lost loved ones to violence are raising their voices in support of second chances and restorative justice.
- **DBI harms the incarcerated, their families, and their communities.** By permanently removing people from their communities, DBI sentences deprive them and their families of hope and fail to provide incentives for rehabilitation and transformation. Family members pay a high emotional and economic cost in supporting their loved ones behind bars. The communities most targeted by violence lose out on the experience and guidance of rehabilitated elders who are prevented from returning to their communities where many would be incredible assets with invaluable life experiences and a commitment to making amends for harms they have caused.
- **Parole eligibility is the smart policy.** Ending DBI allows the parole board to do what it was created to do: assess whether an incarcerated person is ready for release. The determination that a person will never be capable of release cannot be realistically made at the time of sentencing; allowing for parole eligibility remedies this deficiency by creating the potential for eventual release subject to the safeguards of the parole system.

The Way Forward

While politicians and prosecutors frequently trumpet the narrative that harsh sentences like DBI are both desired by victims' families and best serve victims, victims themselves generally desire to see more rehabilitative and preventative services for those who commit harm rather than harsh punishments,¹⁶ and a criminal legal system that focuses primarily on retribution and punishing the offender does not address what survivors and families need to heal from the trauma they experience.¹⁷

DBI sentences, by permanently banishing the person who committed the homicide from social life and restoration to the community, foreclose the possibility of the meaningful atonement and redemption that embodies recognition of the harm caused. Many victims' family members want precisely this: that the person who took their loved one's life recognize the immensity of the loss and change their own life to serve others and be a force for positive change in the world.

Redemption and Restoration to the Community

From the perspective of those like Lorraine Haw, who is a member of the Coalition to Abolish Death by Incarceration and has lost family members to both homicide and death-by-incarceration, the retributive logic of DBI sentences is not simply wrong because it is applied unfairly or too broadly; instead, it is wrong because retribution and punishment are morally inferior and less desirable than redemption and healing. In her own words:

If the courts had honored my wishes initially, the person who murdered my brother would be dead. But I'm glad he isn't. Today, I'd like to have a dialogue with the person who took my brother's life. I want justice that recognizes the possibility of transformation and healing; not just for those who have committed harm, but for those of us who have been harmed, who have survived violence, or lost our loved ones to violence.¹⁸

The system of mass incarceration, with DBI sentences as its exemplar and anchor, both fails on its own terms and is totally refuted by the lived experience of redemption and transformation by those subjected to permanent exclusion.

Speaking for Themselves

To end DBI sentences we need to recognize that the fundamental fallacy of such punishment is the negation of the humanity of the person who has committed harm. The perpetual criminalization, the permanent stigma, the fear and degradation that are attached to those serving DBI sentences are not rooted in the complex lives and personalities of those who have committed serious harm, including murder.

The transformation proposed in this report is rooted in the lived experiences of those who have walked the walk and transformed their lives in spite of a DBI sentence that “forswear[s] altogether the rehabilitative ideal.”¹⁹ Transitioning to a criminal legal system that centers redemption and restoration to the community requires involving the incarcerated as full participants in asserting their humanity, developing their capabilities and talents, and being permitted to serve their families and communities.

For that reason, the heart of this report – the longest and most important section – is Section III, constructed from the words of those serving DBI sentences. It demands to be read – and re-read – in full. The hard-earned insight and vision expressed in this section animates this report and the goals of the movement to end DBI.

Some excerpts:

Malakki Bolden described how those who are currently serving DBI sentences are well-suited to carry out the work of building communities and serving as positive influences: *“Some of the best help and/or support for those right now struggling...is us. We have lived lives similar to them – we are them – and our examples of how to manage life’s ups and downs can reach them like nothing else.”*

to social death. Rehabilitation, redemption, restoration to the community, identifying and addressing the root causes of violence and harm – these are the ways forward.

Many others expressed their desire to make their wrongs “more right” and attempt to atone for harms that they caused. Oscar Cintora wrote: *“There are many people serving this sentence (DBI) that are truly sorry and have changed their lives, that only ask for one more chance to demonstrate our changes, and that we could be assets to our communities, could make amends, or try to make amends, in better ways from the outside.”* Changa Asa Ramu expressed similar thoughts: *“We understand that we have a debt to pay to society and are willing to take that responsibility. Our communities and families need our presence!”* Kristin Edmundson wrote: *“I cannot change what happen although I really wish I could, but I can try to make up for my mistakes and the hurt I’ve caused. I would like people to know that I will continue to strive and make myself a better person.”*

Sheena King expressed similar thoughts:

DBI does not fix what’s broken in people or communities... You lock people up until they die and how does that bring back a loved one, or cause a person to see the error of their ways and change? How does it help a victim’s family to heal? People serving DBI have hurt entire communities – we need to be held accountable to help to fix it. We can’t in a cell.

Felix Rosado also wrote about others serving DBI sentences, writing that they are *among the kindest, most caring, selfless, resilient human beings I’ve ever known. They’ve been making a positive difference in the lives of countless people for decades to little fanfare, not for credit, not to impress a parole board—but just because it’s the right thing to do. It’s about character and purpose, and a higher sense of self that transcends walls, bars, labels and the dehumanization inherent in prisons—despite prison.*

Many people focused on the particular ability of those serving DBI sentences to inspire and produce positive change for their communities on the outside if given the opportunity. Phillip Ocampo wrote: *"A lot of us serving these sentences could do more good on the outside than in here and should be given the chance to show that we could make a difference in life on a positive level."* David Lee, who maintains his innocence of the crime for which he was convicted, wrote: *"I have spent over half of my life in prison for a crime I did not commit, and all I want to do is positive work within and beyond my community."* He continued:

I also talk to many DBI prisoners who have committed the acts they're incarcerated for, and they just want an opportunity to redeem themselves. This is why the "Restorative Justice" concept is so vital, and something

desperately needed in this state. Healing and repair is needed, not excessive punishment.

Saadq Palmer summarized many of the sentiments expressed by other people serving DBI sentences:

Life without parole is not a deterrent and it's inhuman to keep somebody locked away for decades that has been rehabilitated. It's cost effective to grant us parole. And most of all we are the least likely to reoffend out of all offenses.. less than 1% of men and women serving DBI...reoffend after release... Myself and the many men that I work with will be agents for change. Changing the lives and direction of our youth is paramount for all of us. We've lost children, family and friends in our time inside. We care, we're sorry for the harms we've caused.

Abolishing Death By Incarceration in Pennsylvania

Death-By-Incarceration is more than a failed policy or a well-meaning yet excessive response to violence. Instead,

DBI is central to the system of mass incarceration in Pennsylvania; a material, institutional, and ideological pillar of a regime of state violence that systematically targets the poor and communities of color. DBI sentencing exemplifies the logic of fear, vengeance, and social death that underlie and sustain the institutions of policing and prisons in this country.

The final section of this report, Section IV, discusses a multi-strategy, movement-building approach to ending DBI sentences and establishing parole eligibility for all in Pennsylvania that includes legislation, litigation, commutation reform, and organizing.

Identical legislation introduced by State Representative Jason Dawkins (HB 135) and State Senator Sharif Street (SB 942) would end life-without-parole in Pennsylvania by establishing parole eligibility for all those serving DBI after 15 years of incarceration. While this legislation is the optimal approach to ending DBI sentences in Pennsylvania, its passage will take years of patient, methodical, and strategic organizing.

The situation of permanent imprisonment for more than 5,300 people in Pennsylvania is untenable. It does not have to be this way. In the vast majority of the world, it is not. Even within the U.S., Pennsylvania is an outlier, both in terms of the absolute numbers of incarcerated people serving DBI sentences and the proportion of people in state custody serving DBI sentences.

The consequences of DBI sentencing extend far beyond the prison walls. The total absence of redemptive opportunity hardens punitive attitudes in society by legitimating the most destructive and divisive impulses within people: fear, vengeance, racism, and cruelty. Ultimately, the fight to abolish DBI sentences is a fight over what type of society we want to live in, whether we will organize around values of restoration and redemption and healing or continue down the path of fear and stigma and vengeance.

¹ Ashley Nellis, The Sentencing Project, *Life Goes On: The Historic Rise in Life Sentences in America* 13 fig. 3 (2013).

² Ashley Nellis, The Sentencing Project, *Still Life: America's Increasing Use of Life and Long-Term Sentences* 10 (2017).

³ Unless otherwise indicated, all data pertaining to DBI sentences in Pennsylvania was obtained from the Pennsylvania Department of Corrections.

⁴ Inquiries directed to or data obtained from the Department of Corrections of each state that holds more people serving DBI than Philadelphia confirmed that no individual county or parish was responsible for more people serving DBI sentences than Philadelphia. Orleans Parish, Louisiana has a higher per capita rate at 274 DBI sentences per 100,000 people.

⁵ William W. Berry, Life-Without-Hope Sentencing: The Argument for Replacing Life-Without-Parole Sentences with Presumptive Life Sentences, 76 Ohio St. L.J. 1051 (2015). The three countries outside of the U.S. with the most DBI sentences have fewer than 150 people serving DBI sentences combined.

⁶ Nellis, *Still Life*, *supra* n. 2 at 21 Table 8.

⁷ Unless otherwise indicated, all data pertaining to DBI in jurisdictions other than Pennsylvania was obtained from Nellis, *Still Life*, *supra* n. 2.

⁸ World Prison Brief, Institute for Criminal Policy Research http://www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=All

⁹ See Jeffrey T. Ulmer and Darrell Steffensmeier, *The Age and Crime Relationship: Social Variation, Social Explanations*, in *The Nurture versus Biosocial Debate in Criminology* 377 (K. Beaver, B. Boutwell, and J.C. Barnes eds. 2014).

¹⁰ Data from the Department of Corrections reflects the age at which an individual entered DOC, rather than their age at the time of the offense for which they were convicted. Given the time between when a person is arrested until they are ultimately convicted, most people were likely at least one year younger at the time of their offense than when they were committed to DOC custody.

¹¹ Advisory Committee on Geriatric and Seriously Ill Inmates, Joint State Government Committee of the General Assembly of the Commonwealth of Pennsylvania, A Report of the Advisory Committee on Geriatric and Seriously Ill Inmates (2005).

¹² Advisory Committee on Geriatric and Seriously Ill Inmates, Joint State Government Committee of the General Assembly of the Commonwealth of Pennsylvania, A Report of the Advisory Committee on Geriatric and Seriously Ill Inmates (2005).

¹³ Pennsylvania Department of Corrections, Costs & Population 2 (2011). Available at: <http://www.cor.pa.gov/About%20Us/Statistics/Documents/Budget%20Documents/2011%20Cost%20and%20Population.pdf>

¹⁴ The American Friends Service Committee, *Aging in Prison*, 4 (2017).

¹⁵ M. Kay Harris, The Price of Life Sentences.

¹⁶ Alliance for Safety and Justice, *Crime Survivors Speak* 16 (2016).

¹⁷ Danielle Sered, Vera Institute of Justice, *Accounting for Violence: How to Increase Safety and Break Our Failed Reliance on Mass Incarceration* 11-14 (2017).

¹⁸ Lorraine Haw, *My Brother's Killer was sentenced to death, but I hope he is allowed to live*, Philadelphia Inquirer (April 4, 2018).

¹⁹ *Graham v. Florida*, 560 U.S. 48, 74 (2010).

I. THE RISE OF CAPTIVITY UNTIL DEATH

Sample of Life Sentences in Europe¹: Maximum Sentence Before Consideration for Release

Time Served	Country
No Life Sentences*	Norway, Spain, Portugal
10 years	Belgium
15 years	Austria, Germany, Luxembourg, Switzerland
20 years	Czech Republic, Romania
25 years	Poland, Russia, Slovakia
26 years	Lithuania
30 years	Estonia
DBI Possible	England and Wales, the Netherlands

* Includes sentences of life with the possibility of parole

In 1992, 12,453 people were sentenced to death-by-incarceration in the United States.² Today, over 53,000 people are sentenced to death-by-incarceration—almost 4% of the total incarcerated population serving sentences in state or federal custody.³ Given the rapid growth and prevalence of death-by-incarceration sentences in the United States and a growing global consensus that DBI sentences are inhumane, DBI sentences may be “the distinctive American punishment.”⁴ Though the U.S. holds 20% of the world’s incarcerated population⁵ but only 4% of the world’s overall population⁶ and is one of

Overview of Death-By-Incarceration Sentences in Pennsylvania

a shrinking number of countries to continue the use of capital punishment,⁷ “what distinguishes the American criminal justice system and brands it as distinctively harsh... is the frequency with which it banishes its own citizens to cages for the duration of their lives.”⁸ With over 5,300 people sentenced to DBI and one of the highest per capita DBI-sentencing rates in the country, Pennsylvania stakes a strong claim as the U.S. leader in this “distinctively harsh” form of punishment and permanent exclusion of its citizens. Philadelphia, with nearly 2,700 people serving DBI sentences, is the world’s leading jurisdiction in sentencing people to die in prison—more than any county or parish in the United States and far more than any individual country in the world.⁹ Since 1980, roughly 800 people have died serving death-by-incarceration sentences in Pennsylvania prisons. That is roughly 800 more deaths than the number of executions in Pennsylvania – 3 – over the same time period.¹⁰

A global consensus against the imposition of DBI sentences has emerged. 155 out of 193 United Nations member states prohibit DBI sentences.¹¹ Aside from the U.S., which has more than 53,000 people serving DBI sentences and more than 5,300 in Pennsylvania alone, the three countries with the most people serving DBI sentences have less than 150 people sentenced to DBI combined.¹² The Rome Statute of the International Criminal Court (ICC), whose jurisdiction typically includes genocide, war crimes, and crimes against humanity, bans DBI sentences and mandates that all life sentences are reviewed after 25 years.¹³ In Europe,

courts in Germany, France, and Italy found DBI sentences unconstitutional.¹⁴ Austria, Germany, Luxemburg, and Switzerland require individuals with life sentences to be considered for release after serving 15 years, while Belgium requires consideration for release after 10 years.¹⁵ Portugal banned all life sentences (including those with the possibility of parole) in 1976 and Spain followed suit in 1978.¹⁶ Norway

Pennsylvania

Pennsylvania is among only seven states in the U.S. that have sentenced people to death-by-incarceration since before the 1970s.²¹ Today, every state except Alaska has a DBI sentence on the books.²² In 1941, Pennsylvania's legislature created a state-wide parole board with the exclusive power to grant parole to individuals sentenced to terms of imprisonment. However, the legislature excluded those sentenced to life imprisonment from being considered for parole, ensuring that all life sentences are DBI sentences.²³ Thus, aside from those sentenced to a maximum term of life imprisonment for offenses committed while they were juveniles,²⁴ all people serving life terms are serving death-by-incarceration sentences.

In 1974, fewer than 500 people were serving DBI sentences in Pennsylvania. By 1990, the number of people serving DBI sentences increased to more than 2,139. As of September 2017, 5,346 people are serving death-by-incarceration sentences in Pennsylvania. Despite a 21% decline in violent crime between 2003 and 2015, Pennsylvania's population of people sentenced to DBI has risen by 40% between 2003 and 2016.²⁵ People sentenced to DBI account for approximately 11% of Pennsylvania's total prison population. Relative to the overall population of Pennsylvania, 42 people per 100,000 are condemned to die in prison under a DBI sentence. Pennsylvania ranks near the top of every measure of DBI sentences across the country.

More than 1 in 10 people serving DBI sentences in the United States are in Pennsylvania, and Pennsylvania has two-and-a-half times the rate of people

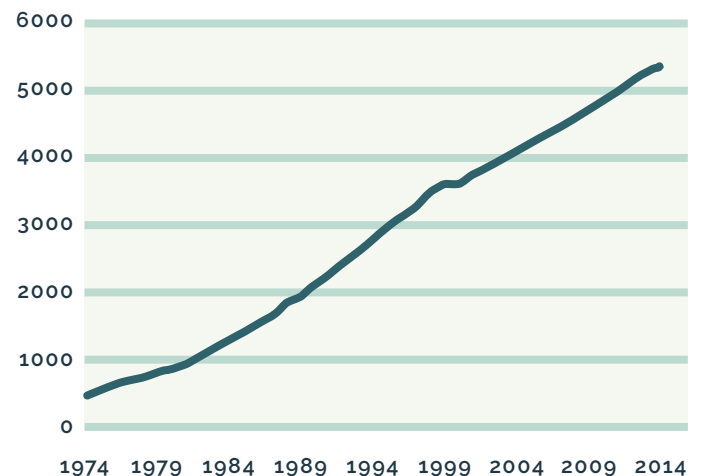
also prohibits any form of life sentence.¹⁷ DBI sentences are permitted, but extremely rare, in the Netherlands and the United Kingdom (England and Wales).¹⁸ In the rest of the Americas, DBI sentences and life-with-parole sentences are widely regarded as incompatible with human rights ideals.¹⁹ Brazil, Costa Rica, Colombia, El Salvador, Peru, and Mexico have banned all forms of life sentences.²⁰

A National Leader in Death-By-Incarceration

serving DBI than the aggregate national rate of 17 per 100,000.²⁶ Only Florida—with twice

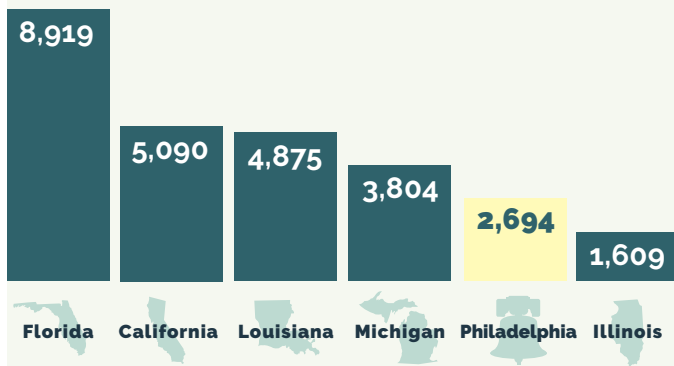
the population and twice as many people incarcerated as Pennsylvania—has more people serving DBI sentences. While 3.6% of the overall U.S. prison population is serving DBI, 10.5% of people incarcerated in Pennsylvania are serving DBI sentences. Only Louisiana, Massachusetts, and Delaware have a greater portion of their prison population serving DBI, and Pennsylvania has sentenced the fifth-highest proportion of people serving DBI sentences relative to the overall state population. Illinois and Ohio—states similar to Pennsylvania in terms of both number of people in prison and overall state residents—have 1,609 and 560 people serving DBI sentences, respectively. Put another way, Pennsylvania has both a greater total and a greater portion of its prison population serving DBI sentences than states with higher incarceration rates, including Texas, Arizona, Alabama, Mississippi, Georgia, Oklahoma, Virginia, and Ohio.²⁷

Increase in DBI Sentences in PA Number of People Serving DBI at year end



Philadelphia

Total DBI Sentenced Population



Philadelphia County alone has 2,694 people sentenced to death-by-incarceration, which comprises just over 50% of those sentenced to DBI in Pennsylvania and is the highest total of any county or parish in the country. More people serving DBI sentences were convicted in Philadelphia than 45 states in the U.S., and Philadelphia has more people sentenced to DBI than the 24 states with the smallest populations of people serving DBI combined (2,694 people from Philadelphia compared to 2,435 combined from the lowest 24 states). More people are serving DBI sentences from Philadelphia than the entire prison populations of 83 different countries and territories.²⁸ Finland, with a population more than four-times that of Philadelphia, has only 500 more people incarcerated under any sentence than Philadelphia has serving death-by-incarceration.²⁹

Philadelphia has 177 people serving DBI sentences per 100,000 residents—a number significantly higher than Louisiana’s U.S.-leading rate of 108 people per 100,000. In 1977, Philadelphia had approximately 400 fewer people incarcerated under any sentence than it has incarcerated under a DBI sentence today. Philadelphia’s overall incarceration rate in 1977 was also significantly lower than the rate of people serving DBI today (115 per 100,000 in 1977 vs. 177 per 100,000 in 2017).³⁰ Philadelphia currently has roughly the same proportion of its population incarcerated under a death-by-incarceration sentence as Venezuela has incarcerated under any sentence (177 DBI sentences per 100,000 people in Philadelphia compared to 173 incarcerated people per 100,000 in Venezuela).³¹

World’s Leading Jurisdiction in Imposing Death-By-Incarceration Sentences

Philadelphia’s per capita rate of 177 DBI sentences per 100,000 is also higher than the overall incarceration rates of 140 countries, including Mexico (169 per 100,000), the United Kingdom (England and Wales) (146), Spain (130), China (135), Kenya (114), and Germany (77).³²

Philadelphia County is the engine that drives Pennsylvania’s death-by-incarceration machine, but several other counties contribute substantially. Out of 67 Pennsylvania counties, 34 counties have higher rates of people serving DBI sentences than the national rate of 17 per 100,000. Allegheny County, with 541 DBI sentences—the second-highest among Pennsylvania counties and 10% of the state total—has more people serving DBI sentences than 28 states in the U.S. Fifteen Pennsylvania counties account for almost 90% of the people serving DBI sentences in the state, correlating closely with the state’s largest communities of color. The counties comprising the Philadelphia Metro Area³³—Philadelphia, Delaware, Montgomery, Bucks, and Chester—have 3,216 people sentenced to DBI, or 60% of the total DBI-sentenced population in Pennsylvania. Dauphin County, which contains the state capital of Harrisburg, accounts for the fourth-most people serving DBI with 178 (3.33% of the total) and the second-highest per capita rate at 66 per 100,000 residents.

Rank	County	DBI Sentences	% Of Total	Per 100K
1	Philadelphia	2,694	50.39%	176.54
2	Allegheny	541	10.12%	44.22
3	Delaware	193	3.61%	34.53
4	Dauphin	178	3.33%	66.39
5	Montgomery	136	2.54%	17.00
6	Berks	119	2.23%	28.92
7	Lancaster	119	2.23%	22.91
8	Bucks	113	2.11%	18.07
9	York	108	2.02%	24.83
10	Lehigh	94	1.76%	26.90
11	Erie	81	1.52%	28.87
12	Chester	80	1.50%	16.04
13	Luzerne	71	1.33%	22.1
14	Northampton	69	1.29%	23.17
15	Westmoreland	56	1.05%	15.34
Total (Top 15)		4,652	87.02%	54.86
Others (<1% each)		694	12.98%	16.44

The Legal Framework of Permanent Captivity

In Pennsylvania, death-by-incarceration is a mandatory sentence for first and second-degree murder. It is also mandatory in cases of third-degree murder if the individual has previously been convicted of murder or voluntary manslaughter. DBI is a potential or mandatory sentence for several other crimes, though in practice those sentences are rarely doled out—less than half a percent of people serving DBI sentences were convicted of a non-homicide offense.

Pennsylvania has three types of criminal homicide³⁴ offenses: murder, voluntary manslaughter, and involuntary manslaughter.³⁵ Murder is further broken down into three degrees of guilt. First-degree murder is an "intentional killing" that is "willful, deliberate, and premeditated."³⁶ For individuals who were 18 or older at the time of the offense, the sentence for a first-degree murder conviction is either death-by-execution or death-by-incarceration.³⁷ Second-degree murder, also known as felony-murder, occurs when a homicide is committed "in the perpetration of a felony."³⁸ A person can be convicted of felony-murder if a homicide occurs while she is committing, attempting to commit, fleeing after committing or attempting to commit, or acting as an accomplice in robbery, rape, deviate sexual intercourse by force, arson, burglary, or kidnapping.³⁹ For people 18 or older at the time of the offense, death-by-incarceration is the mandatory sentence for second-degree murder.⁴⁰ Third-degree murder is simply defined as "all other kinds of murder."⁴¹ Third-degree murder convictions typically carry a maximum sentence of 40 years.⁴² If, however, a person has previously been convicted of murder or voluntary manslaughter, death-by-incarceration is the mandatory sentence.⁴³

After the U.S. Supreme Court banned mandatory DBI sentences for homicide offenses committed by juveniles in 2012,⁴⁴ the Pennsylvania legislature amended the sentencing statute for individuals who were younger than 18 at the time of the offense and convicted after June 24, 2012 to provide mandatory minimum terms of imprisonment. If a juvenile receives a sentence that permits release on parole, those who are eventually released must serve the remainder of their lives under parole supervision.

For those convicted of first-degree murder, the legislature permits judges to impose any sentence above the minimum, including death-by-incarceration. The Pennsylvania Supreme Court, in line with the U.S. Supreme Court's guidance that DBI sentences for young defendants may only be imposed in the rarest of circumstances, later clarified that DBI sentences for young people may only be imposed if the prosecution proves beyond a reasonable doubt that the person is "incorrigible" or "beyond rehabilitation."⁴⁵ After 2012, for those who were between 15 and 17 years old, the minimum sentence that a judge can impose is 35 years to life imprisonment. For those younger than 15, the minimum sentence is 25 years to life imprisonment. Adolescents between 15 and 17 years old at the time of the offense who are convicted of second-degree murder must be sentenced to a minimum term of 30 years to life, while those who were younger than 15 must be sentenced to at least 20 years to life imprisonment.

In 2016, the U.S. Supreme Court issued a decision in *Montgomery v. Louisiana*, ruling that *Miller v. Alabama* applies retroactively to young people sentenced to mandatory death-by-incarceration before 2012⁴⁶—an outcome that was ardently resisted by Pennsylvania district attorneys, courts, and legislators. In Pennsylvania, over 500 people were serving death-by-incarceration for offenses committed when they were younger than 18, all of whom were immediately entitled to a new sentencing proceeding. As of April 17, 2018, fewer than half—231 people—have been re-sentenced. 111 people who were previously serving DBI sentences were re-sentenced and released on parole. During the delay between the decision in *Montgomery v. Louisiana* and their re-sentencing proceeding, 3 people died still serving an unconstitutional death-by-incarceration sentence.⁴⁷

Most people serving DBI in Pennsylvania were convicted of first-degree murder (68%). Less than 1%—40 people total—of people sentenced to DBI were convicted of third-degree murder. Nine-percent of people sentenced to death-by-incarceration were convicted of an unspecified criminal homicide or murder. Of those convicted of non-homicide

DBI Sentences by Offense

Offense	Lifers	% of Lifers
First-degree Murder	3,628	67.86%
Second-degree Murder	1,169	21.87%
Third-degree Murder	40	0.75%
Criminal Homicide⁴⁸	480	8.98%
Sexual Offense	12	0.22%
Other Offenses	17	0.32%
Total	5,346	100%

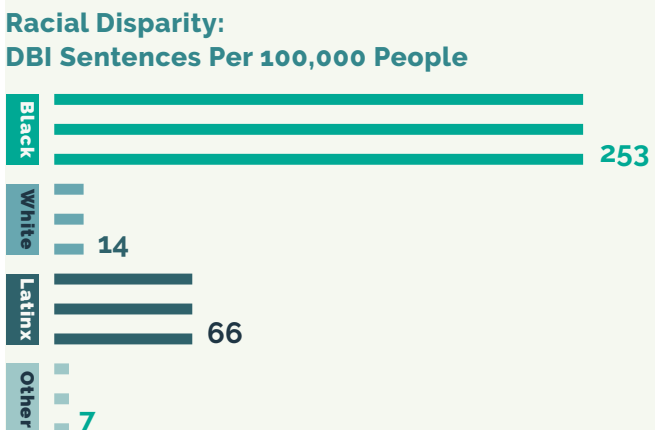
offenses, 12 (0.22%) were convicted of sexual offenses and 17 (0.32%) were convicted of other offenses, such as robbery, arson, or aggravated assault.

A figure that will surprise those unfamiliar with the subject is that almost a quarter of people—1,169 total—serving death-by-incarceration sentences in Pennsylvania were convicted of second-degree murder, or felony-murder, meaning they did not possess any intention to take a life. To be convicted of felony-murder, a person does not need to cause a death, intend to kill, or know that their accomplice intends to kill, so long as they participated in the underlying felony that

ended in another person's death. Regardless of the extent of their participation in the underlying felony or the homicide, a person convicted of felony-murder is automatically sentenced to die in prison. Thus, contrary to any stereotype that only incorrigible murderers and career criminals end up serving death-by-incarceration sentences, Pennsylvania prisons are filled with lifers who never committed any offense with an intent to take a life, do not have extensive criminal records, and who have spent decades in prison because of the unintended consequences of a decision they made or because of the actions of a co-defendant that they had no control over.

There is no other penalty for non-capital first-degree murder or second-degree murder – the minimum is the maximum, the floor is the ceiling.⁴⁹ This feature of the non-capital first-degree murder and second-degree murder sentencing makes these penalties outliers in the state's criminal code, as they and the handful of other offenses that mandate imposition of a life sentence are the only criminal offenses on the books in Pennsylvania where there is no individualized consideration and opportunity for a lesser sentence given to the defendant when a sentence is being imposed.

The Demographics of Permanent Captivity



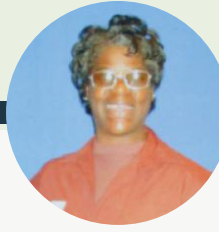
Like most measures of the criminal legal system,

death-by-incarceration sentences disproportionately impact communities of color, particularly

Black Pennsylvanians, who are serving death-by-incarceration sentences at a rate more than 18-times higher than that of White Pennsylvanians.

Latinx Pennsylvanians are serving DBI sentences at a rate 5-times that of White Pennsylvanians. While only 11% of Pennsylvania's residents are Black, 65% of people sentenced to DBI are Black for a rate of 253 people per 100,000 Black Pennsylvania residents. Latinx people comprise approximately 6% of Pennsylvania's overall population, but 9% of its DBI population and a rate of 66 per 100,000. Conversely, over 76% of Pennsylvania's residents are White, but only 25% of people sentenced to DBI are White, with

CASE PROFILE



Avis Lee

Avis has been totally misconduct free for more than a quarter-century.

The reality of a life sentence is ugly; it's brutal, barbaric, and unending torture of the psyche for sure. Add to that the fact that you're not the killer and it's just pure HELL."⁵⁰

Avis Lee lives her life with a relentless and undefeatable spirit of optimism despite being in the 38th year of her DBI sentence for a second-degree "felony-murder" conviction. On March 9, 2018, Avis received news from the Pennsylvania Superior Court that further fueled her optimism: the Court granted her *en banc* petition to hear her argument that *Miller v. Alabama* applies in her case since she was 18 years old at the time of the offense and possessed the characteristics of youth that the U.S. Supreme Court recognized create a risk of disproportionate punishment in the context of mandatory life without parole sentences.

An *en banc* review means a panel of at least 9 judges will consider whether the Superior Court should overrule its earlier precedent on *Miller* claims brought by individuals who were 18 at the time of the offense.

Avis' childhood was marked by poverty, housing insecurity, violence in her home and among her peer group, alcoholism and drug abuse, and sexual violence. To this day Avis has vivid memories from the ages of 4-6 of seeing her mother's blood on the floor, furniture, and walls of their home from the daily beatings of the man she lived with. Alcohol was a constant in the house, as were drugs such as heroin. When she was 5 or 6

years old Avis was sexually molested on multiple occasions by an older cousin. When she was 8 years old, Avis began using alcohol. Drinking and drug use increased as she entered her second decade in life. Until age 14, Avis' family moved from house to house, living in homes infested with roaches, mice, and rats, unable to pay heating bills and forced to huddle around the oven in the winter for warmth. When she was 16, Avis was attacked by a man who put a knife to her throat, dragged her into a storm cellar, and raped her. To block out the trauma, Avis' use of drugs and alcohol increased, with this pattern intensifying after her mother died when she was 17 until the night of the events that led to her incarceration.

On November 2, 1979, when Avis was 18 years old, she accompanied her brother and a friend to the Oakland neighborhood in Pittsburgh. Her brother was going to commit a robbery with a handgun. He told his sister to be the lookout and tell him if anybody was coming. When the intended victim attempted to strike her brother,

however, he pulled the trigger, shooting and killing Robert Walker. Avis' brother and friend ran from the scene. **Avis flagged down a bus and told the driver a man had been injured and needed help. An ambulance was called.** Avis went home. Six months later a co-defendant identified her to the police and she confessed to her role in the plan to commit the robbery. She was sentenced to DBI.

Avis works with the LifeLines Project, Let's Get Free-Women and Trans Prisoner Defense Committee, the Coalition to Abolish Death By Incarceration.

During her time in prison Avis has never had one write-up for violence, and has been totally misconduct free for more than a quarter-century. She has completed numerous rehabilitation programs, and engaged in a number of service and volunteer projects, including being a braille transcriber since 1999. A play co-written about her life and her case, "Chin to the Sky," won an Honorable Mention in the Drama Category for PEN America's Prison Writing Awards in 2015-16.⁵¹

When asked about the impact she hopes "Chin to the Sky" will have Avis replied,

"I hope that youths hear my story and don't make the same or similar mistakes like I have and find themselves in this situation. I hope that those in the legislature can hear it and change a law."⁵²

a rate of 14 per 100,000. Slightly more than 1% of people sentenced to DBI are of other races. Racial disparities in DBI sentences are more pronounced than among the overall prison population. Pennsylvania had 49,301 people incarcerated in the state prison system as of December 31, 2016.⁵³ Of those incarcerated, 47% were Black, 42% were White, 10% were Latinx, and 1% were of other races.⁵⁴

DBI in Philadelphia

Likelihood of serving a DBI sentence in Philly if you are...

Black	1 in 294
Latinx	1 in 722
White	1 in 2,867

Philadelphia Sentences Black People to Death-By-Incarceration at a Rate that Exceeds Most Nations' General Incarceration Rate

Out of Philadelphia's 2,694 people sentenced to DBI, 84% (2,250 people) are Black, while 43% of Philadelphia's residents are Black. 42% of people serving DBI in Pennsylvania are Black Philadelphians. One of every 294 Black Philadelphia residents is serving a sentence of death-by-incarceration (340 per 100,000). Only 153 (6%) people sentenced to DBI in Philadelphia are White, compared to 29% of Philadelphia's overall population, for a rate of 35 per 100,000. Latinx people are serving DBI at a rate of 139 per 100,000, with 260 (10% of Philadelphia's total) serving DBI compared to 12% of Philadelphia's population.

Philadelphia sentences Black people to death-by-incarceration at a rate higher than the overall incarceration rates of all but 23 world countries and territories, including Brazil (318 per 100,000), South Africa (291 per 100,000), Israel (265 per 100,000), Saudi Arabia (161 per 100,000).⁵⁵ In Allegheny County, 13% of the county's residents are Black, but 76% (409 people) serving DBI sentences are Black for a rate of 253 per 100,000. White residents make up 80% of Allegheny County's population, but 24% (128 people) of people sentenced to DBI from the county (13 per 100,000).

Racial disparities persist in counties with relatively homogenous racial compositions. In Fayette County, for example, only 5% of the population is Black, but 38% of people serving DBI sentences (16 people) are Black (253 per 100,000), while 93% of the population is White and 62% of people sentenced to DBI (26 people) are White (21 per 100,000). In Lackawanna County, 2.5% of the population is

Black, but 39% of people serving DBI sentences (14 people) are Black (258 per 100,000), while 87% of the population is White and 50% of those serving DBI (18 people) are White (9.6 per 100,000). Similarly, in Mercer County, 6% of the population is Black, but 47% of people sentenced to DBI are Black (134 per 100,000), while 91% of the population is White and 53% of people serving DBI are White (10 per 100,000).

Pennsylvania has 201 women incarcerated under death-by-incarceration sentences, representing almost 4% of those serving DBI sentences in the state. Although racial disparities are less stark among women serving DBI sentences, they are still pronounced. Out of 201 women sentenced to DBI, 87 (43%) are Black, 99 (49%) are White, 10 (5%) are Latina, and 5 (2.5%) are of other races. Like the overall DBI-sentenced population, most women—74%—were convicted of first-degree murder, while 20% of women serving DBI sentences were convicted of felony-murder. A higher proportion of Black women were convicted of felony-murder, with 25% of Black women serving DBI sentences under a second-degree murder conviction.

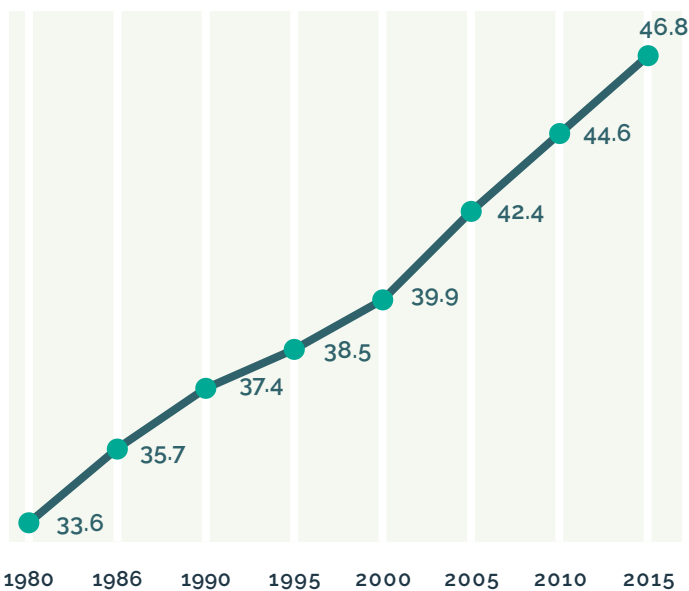
Consistent with data on most criminal offenses,⁵⁶ most people serving DBI sentences in Pennsylvania were convicted and sentenced when they were 25 years-old or younger. Data from the Department of Corrections reflects the age at which an individual entered DOC, rather than their age at the time of the offense for which they were convicted. Given the time between when a person is arrested until they are ultimately convicted, most people were likely at least

one year younger at the time of their offense than when they were committed to DOC custody. Approximately 51% (2,723 people) of those serving DBI sentences entered Department of Corrections custody between the ages of 18 and 25. 25% of those serving DBI (1,329 people) entered the DOC between the ages of 18 and 21. An additional two-percent (118 people) were 17 or younger, with the youngest entering the DOC at the age of 15. The age of entry into the DOC among people serving DBI steadily decreases after the age of 25. Roughly 20% (1,065 people) were between the ages of 26 and 30, while only 18% (969 people) were between the ages of 31 and 40. Six-percent (337 people) of those serving DBI sentences were between 41 and 50, and two-percent (102 people) were between 51 and 60. Approximately half-a-percent (32 people) of those serving DBI sentences were 61 or older upon entry to the DOC, with the oldest being 74 years-old. The median age of people serving DBI sentences upon entering the DOC is 25.

Racial disparities, particularly between Black and White persons, are higher among those who began serving death-by-incarceration sentences in the DOC when they were young. While 15% of those serving DBI who entered the DOC between the ages of 18 and 21 are White—compared to 25% of the overall DBI-sentenced population—73% are Black—compared to 65% of the DBI-sentenced population. For those aged 22 to 25 when they entered the DOC, 72% are Black and 19% are White. Nearly 40% (2,046 people) of all people incarcerated under a DBI sentence are Black and were 25 or younger when they entered the DOC. As the age at time of entry to the DOC increases, racial disparities begin to decrease. Among people serving DBI who were between the ages of 26 and 30, 64% (679 people) are Black and 25% (270 people) are White. For those who were aged 31 to 40, 57% (551 people) are Black and 33% (323 people) are White. For people sentenced to DBI who were between ages 41 and 50, 45% (150 people) are Black and 46% (155 people) are White.

34 An Aging and Elderly Population of Lifers

Average Age of People Serving DBI Sentences

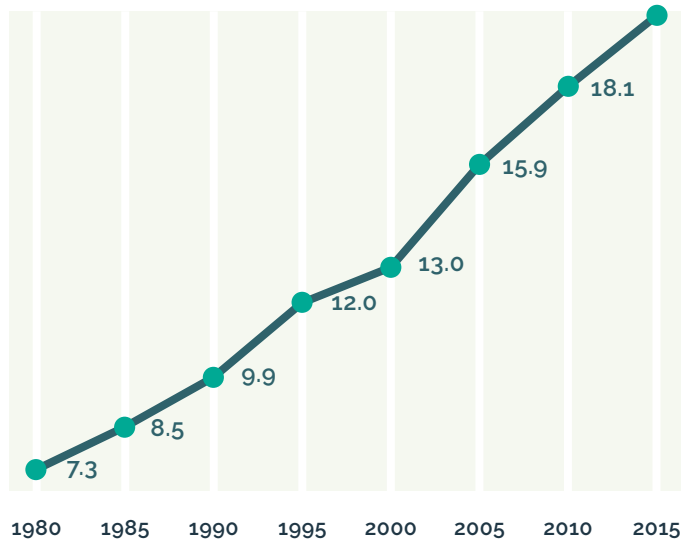


While research shows that the likelihood of a person engaging in criminal conduct or harmful behavior drops precipitously with age and maturity (discussed in detail in the subsequent section), the population of people serving

DBI sentences in Pennsylvania is growing increasingly older. The average current age of people serving DBI sentences is 48.4 years old. Today the average person serving DBI in Pennsylvania is about 15 years older than the average person serving DBI in 1980. Over 70% (3,770 people) of those currently serving DBI sentences are at least 40 years old and 45% (2,377 people) are at least 50 years old. Over 21% (1,148 people) of those serving DBI are 60 or older and five percent (281 people) are 70 or older. Recidivism rates are measured in a variety of ways,⁵⁷ but across all measures, recidivism for people released from prison at an older age—including those sentenced to life imprisonment—are low.⁵⁸ In Pennsylvania, of people who were 50 or older when they were released from prison in 2003, only 1.4% were convicted of any new crime within 22 months of their release.⁵⁹

The average length of time people sentenced to DBI have served in the DOC is 20.5 years. Like most other measures of death-by-incarceration sentences, this number has increased steadily and dramatically in recent decades. In 1980, the average time served in the DOC by people serving DBI was 7.3 years.

Average Time Served of DBI-Sentenced Population by Year



Currently, two-thirds of people sentenced to DBI have served 15 years or more in the DOC (3,436 people). Almost a quarter (1,196 people) have served more than 30 years, and

six percent (303 people) have served more than 40 years. Nine people have served more than half a century under a death-by-incarceration sentence. 169 people have been incarcerated under a DBI sentence since the Fall of Saigon in 1975 and the end of the U.S. military's campaign in Vietnam.

Time Served by People Sentenced to DBI

Years	DBI Sentences	% of Lifers
50+	9	0.17%
45+	79	1.48%
40+	303	5.67%
35+	635	11.88%
30+	1196	22.37%
25+	1950	36.48%
20+	2742	51.29%
15+	3436	64.27%
10+	4121	77.09%
5+	4807	89.92%
0+	5346	100.00%

Cost of DBI Sentences

Incarceration is costly. In Pennsylvania, the cost of DOC operations increased from \$94 million in 1980 to \$1.7 billion in 2010.⁶⁰ The prevalence of death-by-incarceration sentences is an integral component of the rise in costs associated with incarceration. With people serving DBI sentences growing increasingly older and spending decades in prison, the economic costs of DBI sentences will only continue to rise. Because the typical range of physical ailments associated with aging are compounded or accelerated by incarceration, age 55 is usually regarded as delineating the elderly population in prisons.⁶¹ Due primarily to increased healthcare costs associated with age, it costs between two- and three-times more to incarcerate an elderly person than the average person in prison.⁶² M. Kay Harris, an Associate Professor Emerita at Temple University's Department of Criminal Justice, estimated that the actual annual cost of incarcerating a person in the Pennsylvania Department of Corrections for the 2015-16 fiscal year was \$47,680. Assuming 2% annual inflation and adjusting for age-related cost increases, Professor Harris estimated the

average total cost of incarcerating a person who began serving a DBI sentence in 2015 at age 25 until their death to be over \$3.6 million.⁶³ Between 2010 and 2016, an average of 128 people per year began serving sentences in the DOC. If an average of 128 people sentenced to DBI are committed to the DOC per year and the state spends approximately \$3.6 million to incarcerate each person sentenced to DBI over their lifetime, every year Pennsylvania commits to spend roughly \$460 million to ensure that those sentenced to DBI die in prison. In Philadelphia alone, with an average of 56 people sentenced to DBI committed to the DOC per year between 2010 and 2016, Pennsylvania will ultimately spend over \$200 million for each annual cohort of people sentenced to DBI from Philadelphia. Furthermore, 1,811 people serving DBI sentences in Pennsylvania are 55 or older (34% of people serving DBI sentences). Using Professor Harris's calculations, Pennsylvania currently spends \$86 million per year to incarcerate elderly people serving DBI sentences.

CASE PROFILE



Arthur “Cetewayo” Johnson

Two months after Arthur “Cetewayo” Johnson turned 18 in 1970, he was arrested by Philadelphia police and questioned about a homicide. Although Cetewayo could not read and had scored in the intellectual disability range on IQ tests administered at ages 8 and 14, the Philadelphia police department alleged that he knowingly signed a written “confession” to the homicide. Cetewayo was questioned or left in isolation while handcuffed to a piece of furniture for approximately 6 hours. After telling the police repeatedly that he was at home with his family the evening of the homicide, **he was told that the statement he was signing declared that he had no involvement in the killing and was at home – instead, it was a falsified confession.**

This tainted confession was the *only evidence* used to convict Cetewayo and sentence him to DBI.

This tainted confession was the only evidence used to convict Cetewayo and sentence him to DBI.

During his time in prison, the nightmare became profoundly worse. Accused of escape attempts by prison officials, **he was placed in solitary confinement in December 1979 – and there he remained until a federal court ordered his release to the general population 37 years later**

in 2016. Despite not being accused of committing any serious rule violations in approximately 30 years, prison officials refused to allow Cetewayo, then in his 60s, a chance to reintegrate with the general prison population.

Ordering prison officials to release Cetewayo from decades-long perpetual solitary confinement, Chief Judge for the Middle District of Pennsylvania, Christopher Conner, wrote that “it is difficult to conjure up a more compelling case for reintegration to the general prison population. After thirty-six years of isolation, Mr. Johnson deserves the opportunity to shake hands with someone other than his attorneys.”⁶⁴

In late December 2016, Cetewayo re-entered the general prison population. Since that time he has worked with advocates inside and outside the prison to advance parole opportunities for lifers and end DBI sentencing, co-founding The Unity Group [T.U.G.] at SCI Greene for this purpose. He currently has an appeal pending based on the argument that the right established in *Miller v. Alabama* preventing juveniles from the disproportionate imposition of a mandatory life-without-parole sentence applies to 18-year-olds such as himself factually, scientifically, and legally.



No Way Out

Aside from having a conviction overturned or death itself, commutation is currently the only avenue by which a person serving death-by-incarceration may be released from prison in Pennsylvania. While commutation was used somewhat regularly through the 1970s, its use declined in the 1980s and essentially ceased altogether in the 1990s. In 1971, 38 people who had their DBI sentences commuted were released from Pennsylvania prisons. That figure represented nearly 8% of the total population of people serving DBI sentences at the time in Pennsylvania.⁶⁵ Over the course of the 1970s, an average of 769 people were serving DBI sentences in Pennsylvania, and 203 people who had their life sentences commuted were released. In the 1980s, as the number of people serving increased to an average of 1,786 for the decade, only 36 people were released after having their DBI sentences commuted. Under Governor Dick Thornburgh, only seven DBI sentences were commuted between 1979-1986.

Governor Robert Casey's second term of office marked the effective end of commutation in Pennsylvania. Between 1987-1994, Governor Casey commuted the DBI sentences of 27 people, including Reginald McFadden, who was released in 1994. One member of the Board of Pardons voted against commuting McFadden's DBI sentence, while four members recommended commutation, including Lieutenant Governor Mark Singel. McFadden had received favorable recommendations for commutation after serving as an informant following an uprising at SCI Camp Hill in 1989.⁶⁶ In July of 1994, shortly after his release, McFadden raped and killed several people in New York. News of his arrest and suspicions of McFadden's involvement in these crimes had a substantial impact in the ongoing gubernatorial election campaigns in Pennsylvania. One of the candidates was Lieutenant Governor Singel, who had voted to recommend McFadden for commutation. His opponent was Tom Ridge, who immediately ran a series of attack ads on Singel highlighting this commutation. Ridge turned an 8-percent polling deficit into a 7-percent lead within days after McFadden's arrest, and went on to defeat Singel in the

The Politics of Commutation

gubernatorial election.⁶⁷ Subsequently, a 1997 amendment to the Pennsylvania Constitution made obtaining a commutation for a DBI sentence significantly more difficult.

McFadden's commutation and the resulting 1997 amendments virtually ended any possibility of a functioning and robust system of commutation in Pennsylvania. The 1997 amendments required a unanimous Board of Pardons vote to recommend commutation to the governor, rather than the vote of a simple majority. Additionally, the amendments mandated that several positions on the Board of Pardons be occupied by people in positions that increased the chances they would be opposed to granting commutation applications.⁶⁸ During Ridge's time as governor, the Board of Pardons only recommended 4 commutations. Ridge granted 0. Since Ridge left office in 2001, only 8 DBI sentences have been commuted. During Governor Corbett's term in office from 2011-2014, the Board of Pardons did not even recommend that a single DBI sentence be commuted.

Even among ostensibly liberal regimes, commutation has been rare, especially considering the ever-increasing population of people serving DBI. During Ed Rendell's 8 years in office, only 5 DBI sentences were commuted. Since entering office in 2015, Governor Wolf has only granted two commutations. Attorney General Josh Shapiro, who ran for office on a reform platform, has been one of the primary roadblocks in granting commutation to people serving DBI in the current administration. In December of 2016, Shapiro was the only Board of Pardons member to vote against recommending commutation for William "Smitty" Smith. Smitty, now approaching his late 70s, is serving DBI for his role as an accomplice in the 1968 death of Charles Ticktin. Smitty was unanimously recommended for commutation in 1992, but his application was not granted by Governor Casey before Reginald McFadden's arrest became public.⁶⁹ Following critical coverage in the press and pressure from advocates, the decision to deny commutation to Smitty was reversed in June 2018. His favorable recommendation now awaits a decision by Governor Wolf.⁷⁰

The decline in use of commutation in death-by-incarceration sentences is consistent with national trends. Between 1995-2003, most states commuted fewer than 100 non-capital sentences, while 34 states, including Pennsylvania, commuted 20 or fewer sentences.⁷¹

Meanwhile, the number of people who have died while serving a DBI sentence is growing rapidly. In the 1980s, an average of 6.8 people per year died serving a DBI sentence. During the 1990s, that number had risen to 16.4 deaths per year, and in the 2000s an average of 28.9 people died per year. Between 2010-2016, an average of 38 people per year have died serving a DBI sentence. In all, 787 people have died serving a DBI sentence since 1980.

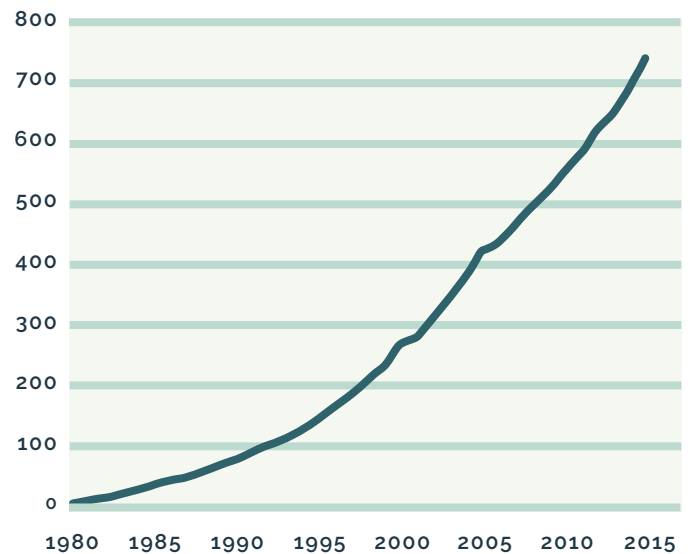
Decade	Deaths	Per Year
1980s	68	6.8
1990s	164	16.4
2000s	289	28.9
2010-2016	266	38
Total	787	21.3

38

The data on DBI sentencing in Pennsylvania lead to inescapable conclusions. Philadelphia is the DBI capital of the world. Pennsylvania itself is an international and national leader in DBI sentencing. The racial disparities in DBI sentencing in the state are stark evidence of systemic

discrimination. DBI sentences are overwhelmingly imposed on teenagers and young adults, but increasingly are being served by aging and elderly prisoners still being punished for acts committed decades ago. The legal framework is unforgiving, allowing for no mitigation, no lesser sentence, and no hope of release short of commutation, which has become increasingly rare just as it has become increasingly necessary to address the extraordinary number of rehabilitated people serving a DBI sentence. As will be further explored in the following section, the inadequate policy justifications for this state of affairs renders this a punishment lacking in legitimacy.

Deaths of People Serving DBI in PA



II. ILLEGITIMATE

DBI'S BANKRUPT POLICY JUSTIFICATIONS

The Case for Parole Eligibility

Closing off parole eligibility for the entirety of a person's natural life is a failed policy predicated upon the fallacy that the trajectory of a person's life – including their capacity for rehabilitation, transformation, and redemption – can be accurately predicted at the time of sentencing. In Pennsylvania, the prediction that a person convicted of first or second degree murder should never be released from prison is not even made at sentencing. Instead, it is set in stone by statute and imposed mandatorily based on the conviction without regard to any mitigating circumstances, the individual's role in the offense, or their prospects for change.

As demonstrated in the following section, narratives of maturity and transformation are common among the more than 5,300 serving DBI sentences in Pennsylvania. By disregarding this basic reality, the mandatory sentencing scheme for imposition of DBI sentences in Pennsylvania has led to a situation where increasing numbers of aging and elderly prisoners who present virtually no public safety risk languish in prisons at tremendous social and fiscal expense.

The case for parole eligibility for people serving DBI sentences is supported by unassailable policy justifications. DBI is a failed policy on its own terms, and the alternative – parole eligibility – possesses well-established merits. As elaborated on in this section, DBI sentences are unnecessary and harmful, particularly in the following ways:

- **DBI is not necessary to ensure or increase public safety.** Research has consistently shown that the strongest predictor for whether a person will commit

future criminal offenses is age. As people age and mature they are less likely to re-offend and they are especially unlikely to commit a further homicide offense. Aging and elderly incarcerated people – an increasingly large cohort in Pennsylvania – pose little risk to public safety if released.

- **DBI is a waste of resources.** The costs of incarcerating a permanent, ever-growing number of people sentenced to DBI is a waste of resources, putting strain on the state budget by needlessly wasting money to confine people who are no longer a risk to the public. This money could instead be spent on public education, medical and mental health services, housing, and other social services that are necessary for creating safe and healthy communities.
- **DBI does not serve victims.** The retributive impetus inherent in DBI sentences, while an understandable response to the devastating loss wrought by homicide, does not help victims heal. Further, victim attitudes are not as punitive as they are often portrayed to be. Many support policy responses that emphasize preventing re-offending and addressing the causes of crime and violence over increased punishment. And a growing number of people who have lost loved ones to violence are raising their voices in support of second chances and restorative justice.
- **DBI harms the incarcerated, their families, and their communities.** By permanently removing people from their communities, DBI sentences deprive them and

their families of hope and fail to provide incentives for rehabilitation and transformation. Family members pay a high emotional and economic cost in supporting their loved ones behind bars. The communities most targeted by violence lose out on the experience and guidance of rehabilitated elders who are prevented from returning to their communities where many would be incredible assets with invaluable life experiences and a commitment to making amends for harms they have caused.

- **Parole eligibility is the smart policy.** Ending DBI allows the parole board to do what it was created to do: assess whether an incarcerated person is ready for

release. The determination that a person will never be capable of release cannot be realistically made at the time of sentencing; allowing for parole eligibility remedies this deficiency by creating the potential for eventual release subject to the safeguards of the parole system.

But DBI does not persist because it supports rational or humane or justifiable policy aims. It persists because of politics; more specifically, the punitive politics that rests upon an implicit and false premise that sending more people to prison for longer periods of time – even until they die – will result in increased public safety. This is not true; the justifications for DBI sentences cannot withstand scrutiny.

Failing On its Own Terms

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Death-by-incarceration advocates justify this sentence of permanent punishment because it allegedly furthers one or more of three goals: deterrence, retribution, and incapacitation.

Deterrence is nothing more than the instrumentalization of fear, based on the idea that punishment will sufficiently terrorize the punished or others so that they will be too afraid to commit the same offense.

Retribution is the idea that those who cause harm should have harm done unto them; it is the ethic of vengeance.

Incapacitation is a term denoting how prison removes the convicted from society and thus prevents further criminal conduct outside of prison walls during the period of incarceration.

Essentially, the incarcerated are subject to social death, excluded and banished from their community, and considered less than fully human from the vantage points of the law and the broader society.

Deterrence, Retribution, and Incapacitation

Terror, vengeance, and social death. These are the ideological and political underpinnings of death-by-incarceration sentences as well as the system of mass incarceration more generally. Deployment of these punitive, stigmatizing, and harmful measures, institutionalizing them via the system of criminal prosecution and mass imprisonment, however, cannot be justified by assessing whether they achieve their stated goals. This is because, as discussed in this section, DBI sentences fail to achieve any of the purported goals used to justify them.

The system of mass incarceration, with DBI sentences as its exemplar and anchor, both fails on its own terms and is totally refuted by the lived experience of redemption and transformation by those subjected to permanent exclusion, to social death. Rehabilitation, redemption, restoration to the community, identifying and addressing the root causes of violence and harm – these are the ways forward, not emotive calls for punitive responses to violence that consistently fail to deliver on their promises.

Deterrence

Deterrence has long been a primary goal in imposing punishments. Crafting punishments like DBI sentences to deter potential future offenses is premised on three assumptions: 1) potential offenders must have actual knowledge that their conduct is a crime and the punishment for that crime; 2) this knowledge must play a role in a person's choice to either commit the crime or refrain from committing the crime; and 3) the perceived costs of committing the crime must outweigh the perceived benefits such that potential offenders will comply with the law.⁷² The idea that punishments deter is based on a "rational actor" paradigm of antisocial behavior, the idea that the would-be murderer makes a cold calculation about the costs and benefits of killing before deciding on the fate of their would-be victim(s). In other words, in Pennsylvania, those who may commit murders must weigh the costs of being apprehended, convicted, and serving a sentence of death-by-incarceration against the benefit of committing a murder. Superficially, the cost of serving a DBI sentence seems to outweigh the benefit of committing a murder.

As a general matter, however, criminal law's deterrent effect on people is dubious, at best.⁷³ In the case of particularly long or harsh sentences, however, there is nothing doubtful about the consensus among experts that harsh sentences do not deter.⁷⁴ Studies generally show that lengthy sentences do not have a deterrent effect on crime.⁷⁵ The "rational actor" paradigm and the assumptions upon which deterrence theory is premised are divorced from the actual causes of violence and the thought processes of those who commit crimes punishable by DBI in Pennsylvania. Most violence is not driven by individual pathology or the cold rational calculus assumed by deterrence theory, but by poverty, inequity, lack of opportunity, shame and isolation, and violence itself.⁷⁶

Most people do not have actual knowledge of criminal punishments and many people who are convicted of crimes do not even consider the punishment before committing

Safety Through Terror

the act for which they were convicted⁷⁷—both of which are required for a punishment to have a deterrent effect. One recent study found that only 22% of people convicted of felonies knew what the potential punishment for their conduct would be, while 55% of those convicted of homicide offenses did not even consider the potential punishment before acting.⁷⁸ Most people who commit crimes are present-oriented, thus the length of punishment does not have an effect on their actions.⁷⁹

DBI sentences are particularly unlikely to deter many of those sentenced to DBI in Pennsylvania. Almost a quarter of those sentenced to DBI in Pennsylvania were convicted of felony-murder. It is especially doubtful that people sentenced to DBI for participating in a robbery (or other similar felony) that ended in death realize that they can be sentenced to die in prison for their actions when they do not intend or anticipate that someone will be killed.⁸⁰

Furthermore, half of the people sentenced to DBI were 25 or younger when they entered the DOC in Pennsylvania. Recent social- and neuroscientific developments show that most people do not fully develop the ability to appreciate risks and consequences and conform their actions to those risks and consequences until they are in their early to mid-twenties.⁸¹ Not only do most people lack the knowledge of the potential punishments for criminal conduct and therefore do not consider those punishments when acting, but many of those sentenced to DBI are socially and neurologically less capable of even engaging in and acting on the rational calculus required for DBI sentences to have a deterrent effect.

None of the foregoing is intended to disavow that the possibility of incarceration for committing a homicide has some effect, however difficult to measure, on individual behavior and across society. That the consequences for committing murder are severe is not a secret, and this undoubtedly seeps into peoples' consciousness and

disincentivizes such violence. What the above discussion suggests, however, is that the specific gradation of severity – be it 15 or 20 or 25 or 50 years in prison or life without the possibility of parole – has no identifiable deterrent impact. As has long been recognized, the swiftness and certainty of a punishment, and not its severity, are the most relevant factors in effective deterrence.

Retribution

44 Unlike other traditional goals of punishment, retribution is not intended to achieve a desired result. Deterrence, for example, seeks to reduce future criminal offenses. Retribution, on the other hand, holds up punishment as a valuable goal in itself.⁸² The purpose of punishment is to communicate that a particular action is wrong, while the severity of punishment is an expression of the severity of the wrong.⁸³ Central to retributive theory is that a punishment is imposed that is proportionate to the level of wrongdoing.⁸⁴ Murder is typically regarded as the worst harm a person can visit on another, so under a retributive theory of justice, the harshest punishments ought to be imposed on those convicted of murder.

Far from a principled imposition of the harshest punishment on those who commit the most heinous crimes, however, over 99% of DBI sentences in Pennsylvania are imposed mandatorily—that is, without any consideration of the individual circumstances of each case. Mandatory DBI sentences risk ensuring that many DBI sentences are imposed on defendants who decline to testify against others or exercise their constitutional rights to a trial rather than accepting a plea deal for a lesser charge and therefore lesser sentence. This risk is especially great for defendants who are innocent, those who were less involved in the offense and therefore have little information to offer prosecutors in exchange for a plea deal, and those who simply opt to exercise their constitutional right to a jury trial.⁸⁵ For defendants charged with first-degree murder—where

As a justification for DBI, deterrence fails. Instead, the continued growth of DBI sentences is best understood in light of the emotional salience of homicide offenses and the reflexive response by politicians to unleash ever-increasing punitive measures on communities where poverty and violence have been structurally imposed. Deterrence fails as a legitimate justification for DBI sentences, instead serving as a convenient means for avoiding examination and treatment of the social and political origins of violence.

The Ethic of Vengeance

the sentence is either death-by-execution or mandatory death-by-incarceration—prosecutors can also pressure defendants to accept a mandatory DBI sentence in exchange for the prosecution declining to pursue a death-by-execution sentence. For some defendants, the chance of receiving a death-by-execution sentence is perceived as too great a risk to leave in the hands of a jury.⁸⁶ Kenneth Hartmann, who is serving a DBI sentence in California and is a founder of The Other Death Penalty Project,⁸⁷ echoes the sentiment that those sentenced to DBI are typically not the “worst of the worst” or “the irredeemables” that popular opinion makes them out to be: “being sentenced to [DBI] is much less a consequence of the severity of the crime than one’s ability to procure adequate representation, his or her socioeconomic status, and the color of his or her skin.”⁸⁸

While politicians and prosecutors frequently trumpet the narrative that harsh sentences like DBI are desired by victims’ families and best serve victims, victims themselves are far from monolithic in their desire to see the person convicted for killing their loved one imprisoned until death, and a criminal legal system that focuses primarily on retribution and punishing the offender does not address what survivors and families need to heal from the trauma they experience.⁸⁹ What constitutes popularly accepted punishment for harmful behavior is a social construct that varies widely across time and place and is largely based upon mechanisms or options that are already in place.⁹⁰ A few centuries ago, execution alone was an insufficient

punishment for many crimes and public torture or mutilation was common.⁹¹ A 2016 survey from the Alliance for Safety and Justice found that 61% of crime victims prefer shorter prison sentences that focus on rehabilitation and increased spending on preventing crime rather than sentences that keep people incarcerated longer.⁹² Many survivors or victims of crimes feel re-traumatized by a criminal legal system that seeks retributive sentences—which they often feel are focused primarily on the defendant—while services like mental health treatment and counseling for victims and their families are virtually non-existent.⁹³ Many victims who initially seek retribution through punishment are ultimately disappointed in the criminal legal system's inability to make them feel safer or provide the anticipated healing they require.⁹⁴

A recent op-ed in the Philadelphia Inquirer poignantly and powerfully expresses the transformation of one woman, Coalition Against Death by Incarceration (CADBI) member Lorraine Haw, from supporting the death penalty for the man who killed her brother to becoming an advocate against both the death penalty and life without the possibility of parole:

Many years ago, my brother was senselessly ripped from this world. I was furious at the man who took his life, and I wanted him to suffer the same fate my brother had. I wanted him to be put to death and was relieved when he received the death penalty at trial.

But over time, my perspective has changed. I now believe that the death penalty is morally wrong and that we must support sentencing that allows those who perpetrate harm to learn and change.

The media often talk about those who are sentenced to die in prison and the families of victims as though they are distinct and opposing groups. But the reality is that many families have lost loved ones both to gun violence and to death by incarceration.

A few years after my brother was killed, my son was arrested. His co-defendant killed someone during a burglary of a drug house – a burglary that went terribly

wrong when the people who owned the house came home. My son is incarcerated under the felony murder rule. He didn't kill anyone, but he is sentenced to life in prison without the possibility of parole for committing a crime alongside someone who took another's life.

Though I had already begun to question my stance on the death penalty before my son was convicted, now that I have a loved one in prison, I fully realize that people can and do change – and that we need to leave room for that possibility at the time of sentencing.

Today, I fight for a second chance not only for my son but also for the people who killed my brother.⁹⁵

Ms. Haw is not unique in having lost a loved one to violence and having a family member sentenced to DBI. The same communities that are often most impacted by DBI sentences are also often the most impacted by violence. The experience is common among many members of CADBI, a statewide organization founded in Philadelphia to end DBI. Similarly, those who have been incarcerated or those who interact with incarcerated people will readily attest to the frequency with which they meet people who have been both victims and perpetrators of harm, including losing loved ones to homicide and committing homicide.

In a powerful Amicus Curiae brief submitted to the U.S. Supreme Court on behalf of "Certain Family Members of Victims Killed by Youths in Support of Petitioner" in support of parole eligibility for juveniles sentenced to DBI, the inadequacy of a DBI sentence to do justice to the memory of the victims and their families is expressed cogently:

Life without the possibility of parole is permanent retribution – an "eye-for-an-eye" punishment that belies everything Amici's loved ones stood for: mercy, fairness, and redemption. Failing to apply Miller retroactively forecloses the possibility that these children can grow into mature adults who recognize the value of the lives they took, express true remorse for their actions, and prove themselves capable of returning to society and doing the good the murder victims can no longer do.⁹⁶

CASE PROFILE



Phillip “Photo” Ocampo

When Phillip Ocampo, known as Photo, was 18 years-old he participated in a robbery gone horribly wrong in Philadelphia. Photo shot and wounded one person, and his co-defendant shot and killed another. Convicted of second-degree homicide and sentenced to DBI 22 years ago, Photo is a transformed person today. **He was recently selected to be a mentor to a group of adolescents and has worked as an aide in the prison’s Special Needs Unit, assisting men with mental health conditions. Photo also volunteers at the hospice at SCI Smithfield, assisting incarcerated people with terminal illnesses, and trains puppies for people with disabilities.**

Photo is a transformed person today.

Photo is not the only one in his family who has been profoundly transformed by this experience. His mother, Lorraine Haw, affectionately known as Mrs. DeeDee in the Philadelphia social justice community, has become a tireless advocate and leader for a complete overhaul of the criminal legal system. She began organizing with the Coalition to Abolish Death By Incarceration (CADBI) in 2016. In 2017 she also became a leading voice in the Coalition for a Just DA, a powerful formation of grassroots organizations that pushed the candidates for Philadelphia District Attorney to adopt a decarceration platform.

Although inspired and motivated in part by her longing to see Photo walk out of prison, Mrs. DeeDee’s commitment to ending DBI is radically inclusive of all who are serving DBI – even the man who killed her own brother.

Though I had already begun to question my stance on the death penalty before my son was convicted, now that I have a loved one in prison, I fully realize that people can and do change – and that we need to leave room for that possibility at the time of sentencing. Today, I fight for a second chance not only for my son but also for the people who killed my brother.⁹⁷

Photo and Mrs. DeeDee are an example of how families do the time together – and build the movement for justice together.

Hundreds of families with members inside and outside the prisons have labored mightily in building CADBI: holding meetings, preparing meals for conferences, organizing marches and rallies, carpooling to faraway prisons, sharing information and hope over 15-minute phone calls, putting down commissary money, meeting with legislators, protesting Seth Williams, and so much more. Family and community, in all their forms, are at the heart of this movement and exemplified by the likes of Photo and Mrs. DeeDee.

The remainder of the brief features stories that "begin with heartbreak and conclude with reconciliation, redemption, and rejuvenation."⁹⁸ While such stories of transformation and redemption cannot be prescribed to anybody who has suffered the loss of a loved one, they certainly should not be foreclosed. DBI sentences, by permanently banishing the person who committed the homicide from social life and restoration to the community, forecloses the possibility of the meaningful atonement and redemption that embodies recognition of the harm caused. Many victims' family members want precisely this: that the person who took their loved one's life recognizes the immensity of the loss and changes their own life to serve others and be a force for positive change in the world.

From the perspective of those like Ms. Haw, the retributive logic of DBI sentences is not simply wrong because it is applied unfairly or too broadly; instead, it is wrong because retribution and punishment are morally inferior and in every way less desirable than redemption and healing. In her own words:

If the courts had honored my wishes initially, the person who murdered my brother would be dead. But I'm glad he isn't. Today, I'd like to have a dialogue with the person who took my brother's life. I want justice that recognizes the possibility of transformation and healing; not just for those who have committed harm, but for those of us who have been harmed, who have survived violence, or lost our loved ones to violence.

I believe that society should set a limit on the kind of punishment it can dish out. Once upon a time, we tortured people to punish them, but then we decided that was wrong. Today, if someone said at trial, "I'd like you to torture the person who killed my brother," we would say: "We are sorry for your loss, and you are right to be furious, but we cannot do that." . . .

The death penalty is morally wrong.

Just as we should not torture people, we should not kill them, and we should not lock them away forever. We should give people the tools and the opportunity to change for the better, and have them try to make up for the harm they caused. We call it the Department of Corrections rather than the Department of Revenge for a reason.⁹⁹

Distinct from the alleged utilitarian objective of deterrence theory, the retributive case for DBI persists independent of its impact on the punished individual or the broader community, including victims. Other responses to homicide, including policies that direct material resources, programmatic responses, and medical and mental health services to impacted individuals and communities, are eschewed in favor of an ethic of vengeance that ultimately increases the power of prosecutors and institutions of policing and punishment at the expense of those communities already impoverished, disenfranchised, marginalized, and disproportionately impacted by homicide. That the ethic of vengeance may be an understandable human response to a murder, especially when somebody loses their own loved one, does not suffice to elevate this emotion to a position of enlightened public policy. Instead, the instrumentalization of the ethic of vengeance by politicians and prosecutors should be recognized as the evil that it is, empowering the powerful and afflicting the afflicted, claiming a moral superiority it does not possess, arrogating to itself an exclusive primacy in responding to an epidemic of violence that retribution is incapable of curing.

Incapacitation

Along with the retribution rationale, DBI sentences are perhaps most often justified by proponents as a means of protecting public safety by incapacitating a dangerous person. The rationale for this justification is that those who are sentenced to DBI are likely to kill or harm people if they are ever released, so by placing them in prison, where they are only likely to harm other incarcerated people, the general public is better protected. In this analysis, individuals who commit violence are perceived as an infectious agent within the larger social body who are put in prison as a form of quarantine designed to prevent further spread of the contagion. DBI imposes a form of social death that permanently renders those serving this sentence to a degraded legal, social, and political status, never able to regain and exercise the full panoply of human rights. Incapacitation theory assumes, without proof or often any inquiry into the subject, that people sentenced to DBI are irredeemable or incapable of refraining from harming others for the rest of their lives, so it is better to remove the possibility of release for everyone given a life sentence.¹⁰⁰ In postulating a justification for incarceration as a place of quarantine and social death these proponents negate the profoundly social determinants of crime and violence, again deflecting attention from analyses, policies, and reforms that implicate the existing distribution of social, economic, and political power.

Like the deterrence rationale, incapacitation arguments assume that a primary cause of violence is the individual pathology of those who engage in harmful acts, rather than treating violence as a collective problem with roots embedded in social and economic issues. In truth, releasing or providing a meaningful prospect of release to those sentenced to DBI poses little risk to public safety. Engaging in violent and harmful antisocial behavior is strongly correlated with youth. Studies conclusively show that the risk of people harming others diminishes greatly as people age,¹⁰¹ and begins dropping dramatically in late adolescence and early adulthood.¹⁰² For people involved in

Prison as a Place of Quarantine and Social Death

homicides, the age of involvement peaks between ages 20 and 24, sharply and steadily declining thereafter, such that only approximately 5% of people involved in homicides are between ages 45 and 49.¹⁰³ One recent study found that among people who were previously convicted of a crime, those who are older than 55 are ten times less likely to commit another crime than 23 year olds.¹⁰⁴

Recidivism rates are also low for people convicted of homicide offenses and those released from prison who were sentenced to some form of life sentence. Across the country, people released from a life sentence in 1994 were less than one-third as likely to be rearrested within three years of their release compared to the overall rearrest rate within that time span.¹⁰⁵ In Pennsylvania, only 2.5% of people who were released after their life sentences were commuted between 1933-2005 were ever reincarcerated for a new criminal conviction.¹⁰⁶ For those whose sentences were commuted when they were at least 50 years old, only one out of 99 was reincarcerated for any reason.¹⁰⁷ More recently in Pennsylvania, out of 111 people released from prison who were initially sentenced to DBI for homicide offenses committed when they were juveniles, only one has been rearrested or reincarcerated as of April 27, 2018.¹⁰⁸ A study of 368 people convicted of murder in New York found that none were incarcerated for a new violent offense within three years of their release from prison.¹⁰⁹ In California, out of 860 people who were paroled between 1995-2011 after being convicted of murder, less than one percent were reincarcerated for a new felony conviction, and none were convicted of crimes eligible for a life sentence.¹¹⁰ After the Supreme Court temporarily issued a moratorium on death sentences in 1974,¹¹¹ many people who were sentenced to death-by-execution had these sentences commuted. Only 5% of those whose death sentences were vacated and were subsequently released on parole committed another violent offense, while only one person out of 239 was convicted of murder after being paroled.¹¹²

Theory vs. Reality

In a system that focuses almost exclusively on inflicting maximum harm on those convicted of criminal offenses and functions primarily as a tool to exclude those deemed undesirable or unworthy from participation in mainstream society, death-by-incarceration is the ideal form of punishment. Although the exclusionary effects of any duration of incarceration extend beyond prison walls, condemning a person to die in prison is “the most obvious and expeditious way to effect permanent exclusion.”¹¹³ DBI sentences express the message that those suffering this sentence are beyond redemption, unfit to live in society, and that society itself is indifferent to their fate—we do not care whether someone sentenced to death-by-incarceration pursues education or vocational training, undergoes tremendous personal growth, or constantly engages in pro-social community work because no matter what, their life is forfeit. In these ways, DBI sentences are akin to the ancient punishment of banishment. Rather than banishing people to spend the rest of their lives outside of our borders, we banish them to prisons, where they by and large become “faceless and numbered and forgotten” to most of society.¹¹⁴ The U.S. Supreme Court forbade a more modern form banishment—stripping a U.S. citizen of citizenship—in 1958 because it constituted cruel and unusual punishment.¹¹⁵ Such a punishment, the Court wrote, is an affront to a person’s dignity because it represents “the total destruction of the individual’s status in organized society” and is “more primitive than torture.”¹¹⁶ Yet, another modern form of banishment—death-by-incarceration—is being imposed with astounding frequency, particularly upon people of color and poor communities.¹¹⁷

The effects of this permanent exclusion function of DBI are not only experienced by the people serving these sentences. People sentenced to DBI are frequently depicted as subhuman and incapable of experiencing remorse, sympathy or other basic human emotions, and hopelessly incapable of personal change or redemption.¹¹⁸ Given the groups of people most likely to be serving DBI sentences—those who are incarcerated under any sentence are disproportionately people with mental health conditions, indigent, dependent on drugs and/or people of color¹¹⁹—the prevalence of DBI sentences brand offenders

The Practical Functions of DBI

from these communities as “distinctly irredeemable.”¹²⁰ The costs of incarceration on these communities are often of the type that are difficult to measure—disrupted familial and social relationships, lost wages and employment, medical and mental health problems incidental to incarceration, excessive costs imposed by courts and prison phone and commissary vendors, discrimination in labor markets and educational opportunities post-release—but are real and harmful. DBI sentences in particular exacerbate these costs by virtue of the permanent nature of the exclusion from these communities and the outsized proportion of people serving DBI sentences who are Black, even in relation to the already disproportionate overall incarceration rates.

Banishing such a large number of people to prisons for the rest of their lives also deprives these communities of the influence and guidance of those who, contrary to the societal brand imposed upon them, have proven themselves to be redeemable and adept at facilitating the redemption of others.

Even without any meaningful prospect of release from their living tombs, many people serving DBI “doggedly seek purpose in their lives,”¹²¹ focusing on volunteer and mentor work, religion, and remaining free of disciplinary issues in prison.¹²² People serving life sentences are often among the least likely to commit rules infractions in prisons—particularly those involving violence,¹²³ despite an often oppressive and violent environment.¹²⁴

The conditions of prisons also contradict the idea that incarceration under a DBI sentence is intended to meaningfully contribute to justice, the well-being of either the incarcerated person or those they have harmed, or even respect for basic human dignity. Prisons are characterized

by a lack of substantial educational or vocational options, inadequate medical and mental health treatment, close authoritarian control of every aspect of daily life, overcrowding and absence of personal space, pervasive use of solitary confinement, a constant possibility of violence from fellow incarcerated people and guards, and an expectation of hypermasculinity in male prisons.¹²⁵ A lifetime of incarceration, especially under these conditions, can be like “a death in slow motion.”¹²⁶ Prison also fails to promote accountability for those who have harmed others or facilitate necessary healing processes.¹²⁷ People incarcerated for the rest of their lives are unable to fully acknowledge responsibility for the harm, acknowledge the impact of their actions on others, express genuine remorse, take measures to repair the harm as much as possible, or demonstrate a commitment to refraining from causing similar harm.¹²⁸ By simply removing someone to prison—especially for the rest of their life—we deprive them of the opportunity to deal face-to-face with the impact of their actions and to begin the difficult work of atoning for them.¹²⁹ Prison conditions that provide for little more than “bare biological life” for those sentenced to death-by-incarceration¹³⁰ and a lack

of accountability or mechanisms for facilitating justice for both survivors and offenders are consistent with the notion that death-by-incarceration sentences function primarily to exclude, disenfranchise, and inflict maximal harm.¹³¹

Subjecting people to such conditions until death is also consistent with the notion that DBI sentences deny basic human dignity to those sentenced to DBI—they are not regarded as “fellow citizens and fellow human beings.”¹³² The concept of dignity—recognizing the intrinsic value of a person—is largely absent from U.S. legal standards regarding punishment. In many other jurisdictions around the world, however, dignity functions as a fundamental constraint on punishment and as a basic component of human rights.¹³³ Death-by-incarceration sentences are widely regarded as denials of human dignity and are therefore prohibited in much of the rest of the world.¹³⁴ Even without prison conditions that belie any professed commitment to reintegration into society, DBI sentences impose a judgment that a person’s life no longer has any value. Like death-by-execution sentences, DBI sentences deny any possibility of redemption and any meaningful hope of release from prison.

Toward Redemption and Restorative Justice

Absent from the traditional justifications for imposing criminal punishments in the DBI context is rehabilitation. The 1970s marked a noticeable shift in political rhetoric and points of emphasis around the criminal legal system. Discussion of prisons as places of rehabilitation was replaced with commitments to punish as harshly as possible and as frequently as possible. Although prisons never actually functioned as rehabilitative facilities, there was nonetheless a rhetorical commitment to the notion that society’s interests were best served if incarcerated people were given the tools and treatment necessary to be able to avoid future conduct that violated the law. Furthermore, “commitment to the rehabilitative ideal at least signaled a recognition...that penal subjects were fellow human beings...thought to be capable of change and growth.”¹³⁵ Death-by-incarceration sentences, however, “forswear altogether the rehabilitative ideal”¹³⁶ and reflect the judgment that a person is never fit to rejoin their communities and their families outside of prison.

To end DBI sentences we need to recognize that the fundamental fallacy of all the justifications discussed above is the negation of the humanity of the person who has committed harm. The perpetual criminalization, the permanent stigma, the fear and degradation that are attached to those serving DBI sentences are not rooted in the complex lives and personalities of those who have committed serious harm, including murder. The transformation proposed at the end of this report is rooted in the lived experiences of those who have walked the walk and transformed their lives in spite of a DBI sentence that forswears altogether the rehabilitative ideal. Transitioning to a criminal legal system that centers redemption and restoration to the community requires involving incarcerated people as full participants in asserting their humanity, developing their capabilities and talents, and being permitted to serve their families and communities.

CASE PROFILE



Felix “Phill” Rosado

Originally from Reading, PA, I have been fighting a death by incarceration sentence at Graterford State Prison since 1995 and age 18. At one time a straight-A student and deemed gifted, in my teen years I got sucked into the streets and was never able to pull myself out. Once in prison, I learned that a “life” sentence means death and then spent the first few years trying everything I could to avoid thinking about the possibility of growing old and dying behind bars. I got into some trouble here and there—and then in my mid-20s “woke up.” I rediscovered the Catholic Faith of my upbringing and shifted my focus from myself to helping others. I wrote and self-published a short autobiography to warn the youth in my community of the real consequences of street life, began talking with boys from a nearby juvenile hall who were brought into the prison, and **enrolled in both a bachelor's degree program through Villanova University and the Inside Out Prison Exchange Program through Temple University. I also cofounded Let's Circle Up, a restorative justice project, and began facilitating and co-coordinating the Alternatives to Violence Project. In 2016 I earned my Bachelor of Interdisciplinary Studies degree, summa cum laude.**

I came to realize that my individual struggle for freedom is inextricably tied to the collective liberation of all people

At some point throughout my transformation I came to realize that my individual struggle for freedom is inextricably tied to the collective liberation of all people and became a founding member of Right 2 Redemption, a committee that seeks to end the practice of caging humans without the possibility of ever being worthy of life outside prison walls. My vision is of a world where the dignity of all is recognized and valued—without exception.”

Phill is a leader in the restorative justice movement, a practitioner in a location where the obstacles to accountability and healing are daunting, yet the results of every breakthrough are potentially revolutionary. As a co-founder of the restorative justice project Let's Circle Up, Phill has facilitated more than 1,000 men through restorative justice education workshops since its inception. He has done this without pay, without anybody asking him to, without the incentive of parole eligibility. **Motivated by the recognition that personal and social transformation are inextricably linked and a commitment to making his wrongs “more right”, he has dedicated himself to service, education, and advocacy for justice.**

III. IN THEIR OWN WORDS

In constructing this report, we sent questionnaires to approximately 100 people serving death by incarceration sentences in Pennsylvania. The questionnaire included 22 open-ended questions covering the respondents' lives before they were incarcerated, their experiences serving DBI sentences, their feelings about the sentence, and what they felt was most important to them. Many of the responses of those serving DBI sentences in Pennsylvania echo the research and statistics detailed above. Unless otherwise indicated, the quotations below are taken verbatim from the responses provided. More than 40 people responded to the survey.

Childhood/Early Life

Most of those who responded to the questionnaire were 25 years old or younger when the offense for which they were convicted occurred. Many described childhood environments characterized by poverty, normalized violence, or negative peer or familial influences. Changa Asa Ramu wrote that he feels *"it's truly cruel and harsh to be condemned for being fearful for my own life. Whether it was realistic fear or imagined, at 19 years old you're controlled by your understanding and environment. When all you see are friends getting shot and killed, those threats will supersede your rationale."* Zechariah Thompson described his childhood as "very dysfunctional." He continued, *"I lost my father at age 14. I grew up in a drug atmosphere, mother an addict, father died from a heart failure from cocaine. I took care of my infant sister, my mom would be gone for weeks at a time... I never had a permanent home, I was in 7 foster homes."*

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Nicole Newell wrote: *"Growing up in the projects was filled with drugs and drive bys. My mother did the best she could through her addiction. She made sure we had a roof over our heads, clothes on our backs, and food on the table. When she couldn't get what drug she wanted she became very abusive towards me. It started off being once a week then as I got older it was very often. I was a very lost child that was raising a daughter."*

David Lee described the feelings and effects associated with growing up in these conditions:

I grew up in a North Philly community, and although I had both parents at home throughout my childhood we were very poor, and I had dreams of obtaining wealth and power in order to change our condition... Police brutality was a consistent theme in my youth because they had a view-point that criminalized Black youth...

Gang wars were also a regular theme in my youth, I was not old enough to participate in those actions, but they were a part of my thinking because my older brother was connected to the local gang. Fear of early death, of being hungry, or just not being seen as a human being touched my thoughts in a profound manner.

The police, and white folks in general, had a way of making us feel powerless, degraded, less human, and there was a constant feeling of rebellion dancing in my soul because the desire for self-empowerment was powerful. The pain associated with a reality full of powerlessness goes beyond verbal expression, and for me the anguish of my youth was very deep.

Some of those who responded to the questionnaire described a slow descent into antisocial behavior, often beginning during their early teenage years. Kevin Kelly wrote that he and his siblings were separated and placed in different institutions due to his stepfather's abuse of his mother. After his family was separated, Kevin wrote, *"I have spent most of my life in and out of juvenile and adult prisons where I have pleaded guilty to crimes that I have committed... accepting responsibility and doing my time. I have also taken and accepted responsibility for crimes I didn't do because I was unable to pay for proper representation and wanted to get out and try and acclimate myself back in society only to wind up committing crime again just to survive."* Changa Asa Ramu wrote, *"I was a impoverish youth who learnt how to make ends meet by hustling in the street. These hustles were innocent in the beginning, then grew into petty criminal activity which led to juvenile detention and became a cycle all the way into my adult years... The street life and criminal culture molded my values and principles."*

Haddrick Byrd wrote that his family was forced to move to a different neighborhood when he was 16 years old because his mother could no longer afford the home where they were living. After moving, he wrote that *"my life took a drastic change. Because I was going to a school in another neighborhood I was confronted with violence by an opposing gang. So that lead me to start hanging out with the gang I joined, and eventually I stopped going to school and started getting into trouble."* Zechariah Thompson wrote, *"I used to think I could do what I wanted because I was left alone, so I got into trouble, getting high, stealing, fighting. I always used my hardships as an excuse to do things that were wrong. I had my first child at 16, I was also an addict at this time, all I wanted to do is feel numb."* One person serving DBI who

wished to remain anonymous wrote, *"before my incarceration I had succumb to some of the same negative things I once witness as a child. I've sold drugs off and on since the age of twelve, and indulged in some of the same acts of drug abuse and violence until I got involved in this case that brought me to prison."*

Phillip Ocampo wrote that he began caring much more about the opinions of his peers as he got into his teenage years, and began emulating what he saw from others:

I started to break rules that my grandmother set for me... I would not come home until the next day, hanging out with the thugs and hustlers on the block. I wanted what they had, so I began to get involved in the drug game. First as a lookout for the cops, then as a hustler selling the drugs. I was out of control, so eventually I started to stay out in the streets, not wanting to cause my grandmom stress, not knowing at the time, that's exactly what I was doing... I was around 15 years old at the time. I eventually started to carry a gun, not wanting to get rob by stick up kids... I ended up falling in love with a girl who would eventually become the mother of my first child... [My daughter's birth] was the happiest day of my life at 17 years old. But not even her birth could pull me away from the street life. I got to only be in her life for 1 year before I got a life sentence."

Felix Rosado described losing interest in school during his early teenage years after his family moved to a neighborhood that they believed was safer, but was near a busy drug trafficking area:

Much more captivating [than school] was who I saw on the way to and from school—the cars, clothes, girls, women. At some point I started shoplifting, then breaking into cars, then stealing cars, then making my first cocaine sale... It all happened fairly quickly, from my first drug sale at age 14-15 to murder at 18. I disappointed a lot of people who had high hopes for me—family, teachers, neighbors, even probation officers. I didn't know at the time that Reading was among the most impoverished cities in the US, that I was part of a larger social narrative that was playing out in inner cities across the country. I got sucked into a merciless lifestyle that then tossed me into a merciless system, where over 2 decades later I'm still stuck."

Many women who responded to the questionnaire were subjected to pervasive abuse and trauma during their childhoods and early lives. Char Pfender wrote:

I grew up idolizing my father, until he lost his job from a back injury...Because his life went in the wrong direction, the only thing he could control was his family. When he needed to feel control he beat my mother, sister, and myself...When I got older I started to resist, take beatings for my sister, interfere in my mother's beatings and learned to turn off pain so that he couldn't even make me cry no matter how much he beat me. That threatened his control, so he began to molest me.

Henrietta Harris described the effect that abusive relationships had on her well-being: *"My life before my incarceration was a troubled one. I was in and out of abusive relationships, I used alcohol and other drugs to forget my problems and to help fill a void I'd felt most of my life. I felt worthless, unlovable, confused, broken."*

Kristin Edmundson wrote that she was emotionally and physically abused by a family member during her childhood, with whom she has since reconciled. She continued:

Growing up in a small town and being openly Gay did not help much with my emotional well being nor my mental well being... I was not only 'picked on' by my fellow peers but teachers as well... A few months after [high school] graduation I embarked on my new life, which basically led me into an abusive relationship. Those were the two years where my life went into a downward spiral which led me to make horrendous decisions and choices.

Sheena King also wrote about the effects of abuse and trauma inflicted from a young age:

I am/was the oldest of 3 siblings... I was the protector and when I was molested repeatedly by the stepfather from ages 9-12, my protection of my sisters became much more intense/extreme. Because of the abuse in my home and my mother working 2-3 jobs, I withdrew into myself. I had no self-esteem or self-worth. I was basically consumed with anger, shame, and guilt. I didn't have a life before incarceration, I was just existing."

Beginning of Sentence

After being sentenced to death-by-incarceration, most of those who responded to the questionnaire described a difficult adjustment period to serving their sentence in the Department of Corrections. Because so many began serving the sentences at young ages, they described the struggles associated with being forced to grow up in prison. Many expressed feelings of denial, shame or guilt, and depression, and often acted out or became withdrawn.

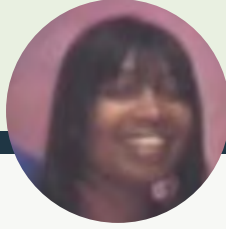
Phillip Ocampo wrote: *"I was still in a denial phase and not believing that I was going to spend the rest of my life in prison. I tried to just ignore the reality of my sentence... I had to learn the do's and don't's of prison life, which was another world in itself... It was definitely frightening for a teenager."* Haddrick Byrd expressed similar sentiments: *"When I first started serving my sentence, I was in a state of disbelief that I had been given a IDBI sentence. Because I was only 21 years of age, and so my life hadn't really started to begin due to my immaturity and lack of social skills."* Nicole Newell wrote: *"When I first started serving my sentence I was very angry, bitter, had this I don't care attitude... I made the beginning of my time hard. I was 20 when I came to Muncy, being a follower, doing dumb things to get myself in trouble."* Char Pfender experienced a similar adjustment period: *"When I first started doing this time, I was angry, confused, resentful... I acted out and got in trouble a lot for about a year."* Changa Asa Ramu wrote: *"I became rebellious and miserable, breaking prison rules and ending up in disciplinary confinement and cell restriction a lot."*

Kristin Edmundson wrote that she felt a lack of hope and that life had no point at the beginning of her sentence. She continued, *"I was just trying to adjust to everything. The realization of what I had done, how many peoples lives*

I destroyed, I couldn't even begin to comprehend it all...After a while I had given up on myself pretty much completely." Sheena King described similar feelings: *"I felt fear that I tried to hide behind a tough girl exterior but more than anything, I felt so much shame and guilt from what I had done. I really didn't have a desire to live."* Felix Rosado described the difficulty in confronting the consequences of his actions and his sentence: *"After discovering that my sentence was indeed a death sentence, I regretted pleading guilty and resented my trial attorney for convincing me that I'd be eligible for release after some years. This made me bitter and as a result I wasn't able to focus on the harm I'd caused and what I needed to do to improve myself and grow as a human being."*

Many of the people who responded to the questionnaire also expressed feelings of depression at the beginning of their sentences. Zechariah Thompson wrote: *"I felt like my life was over, I became severely depressed, scared, and lost interest in most things very quickly. I wished I could just sleep forever and wish I'd wake up and it would be a dream."* Oscar Cintora recalled similar feelings: *"I felt like my whole life was over...sometimes I even thought that it was better to switch places with our victim, it would have saved a lot of grief to many people, his family and my family, yes my family would have suffered my death, but after a while they would continue their lives."* Henrietta Harris felt *"numb, angry, sad"* at the beginning of her sentence. She continued: *"When I arrived at SCI Muncy to begin this sentence, I was 7 ½ months pregnant with my third son. I cried a lot, was depressed... I started to feel hopeless."* Paula Johnson went through similar experiences: *"I was extremely depressed at first and for a while. I was in the Mental Health Unit off and on... While I was at the M.H.U. I was put on depression medicine."*

CASE PROFILE



Sheena King

With my passion for and knowledge and experience of surviving sexual abuse and domestic violence, I am certain that I would be an asset in helping others to overcome the traumas of childhood incest and abuse."

Many of those serving DBI sentences have transformed their lives and become exemplary leaders, teachers, educators. Sheena King, president of the Inmate Organization at SCI Muncy, is one of them.

Sexual molestation, rape and violence at the hands of her step-father began when Sheena was 9 years old. The devastating trauma visited upon her countless times set her on a course where she was vulnerable to emotional manipulation and threats of violence, particularly from abusive men. When she was 18 years old, Sheena was ordered to commit a murder by the man she was seeing under threat of harm to her mother and child. Sheena sincerely believed the choice was between her family or this unknown victim. The man who ordered Sheena to commit the homicide was never prosecuted, even though Sheena was successfully prosecuted for conspiring with him to commit murder by the Philadelphia District Attorney's Office.

Upon arrest Sheena confessed and has felt profound remorse ever since, seeking to atone through a life of service.

If given the opportunity to be released, Sheena will continue her amazing, necessary, life-saving work with survivors.

Sheena has gone through intensive therapy during her incarceration, grappling with the trauma she experienced as a child, and becoming a leader and mentor to countless other women who survived childhood sexual abuse. As a peer counselor in the House of Hope program for survivors of sexual violence she has conducted client interviews; designed and produced exposure therapy exercises; counseled individuals and provided group services; conducted record reviews and participated in client evaluation with other professionals; assisted clients in identifying and solving problems and achieving personal, family, and marital development; trained and managed 16 graduates in their becoming program counselors; assisted individuals in understanding and overcoming social, sexual, and emotional problems; and much more.

An accomplished writer, Sheena has been published in six poetry anthologies and published two books. In 2014, Sheena completed her memoir, *Submerged*. In the introduction she writes:

"The number of children that have been sexually abused is staggering. The long-term effects of child molestation and abuse on children is devastatingly depressing. We cannot pretend that it doesn't happen or close our eyes to the truth. You may have suffered at the hands of an adult in the past or you may be living through that nightmare right now. You're not alone. Perhaps you love someone who is now trying to cope with the debilitating effects of trauma. You don't know how to help. Your mind can't conceive of what she or he has been through. You're not alone. . . . If it happened to you, this story is for you. If it happened to someone you love, this story is for you. If you want to help yourself or someone else, this story is for you."

Never minimizing or losing sight of the crime that she committed, Sheena has accepted responsibility, dealt with her traumatic past, shown exponential personal growth and become a woman that anyone (incarcerated or not) could look up to as a role model. If given the opportunity to be released, Sheena will continue her amazing, necessary, life-saving work with survivors.

Maturity

After the initial adjustment period, most respondents described a period of maturity, transformation, and tremendous personal growth. Paula Johnson wrote that she received a number of misconducts during her first 8 or 9 months in prison. Since then, she wrote that she has been *"misconduct free now 17 ½ years."* Zechariah Thompson wrote: *"Today, I think as a man instead of an immature person. I thought I knew everything, had everything figured out. Today, I listen instead of 'hear'. I take heed of any criticism, I don't even have the same way of thinking. If I were to be released today, I know I would never return to prison."* Haddrick Byrd described his transformation: *"I had to look closely at the way I was living, and come to grips with the fact that I was functioning only to satisfy my desires, and to look good in the eyes of other people in order to maintain a false image. Therefore, it became clear to me that I had to make a change in my life, and by the Grace and Mercy of Allah (God), I no longer portray the person or act the way that I once did."*

Kevin Kelly wrote that he now values life and living, but when he was younger *"I was reckless and uncaring in my actions and way of seeing things in life. I'm more patient and I evaluate things better before acting."* Similarly, Malakki Bolden wrote: *"My respect for the sanctity of life has blossomed in me to harvest a non-violent way of being. I share this energy with others and I insist to them that taking a life and hurting others does more to hurt yourself and your loved ones than you can fathom."*

Many respondents wrote that, as they've matured, they take more time to think about their actions and their outlook. Many also describe being more selfless and thinking about themselves as part of a larger community.

Nicole Newell said: *"I don't think destructively or in a harmful manner any more. It's not 'if a person do something to me get them back', it's now, if a person do something to me I'll give it a few days then talk to that person to get a understanding and do something different (positive). It's not worth holding on to bitterness, hatred, or anger... I'm just at peace with my demons. I learned how to forgive and move on."* One person who wished to remain anonymous wrote: *"I am more of a*

thinker not so fast to react." Another expressed similar growth: *"I've matured a lot over the years. I am more poised. I no longer think in the same ways I use to. I've learned to put my priorities in order."*

Saadid Palmer wrote: *"I've become more aware and conscious of other people's feeling. I've developed a level of selflessness that I don't think I would have ever been able to reach. I've changed in so many ways because I was forced to see life through a different set of lenses. Maturing on the inside is a whole lot different from maturing on the outside."* Similarly, Phillip Ocampo wrote: *"I went from an immature teenager that only worried about himself, not caring about what others thought or their opinions. I didn't care about other peoples feelings only my own. I realized that my actions not only hurt myself, but also others as well, especially those that love me... I had to change my thought process and realize that I had to treat others the way that I would like to be treated. I had to learn that in order to get respect, you must give it."*

Sheena King wrote that she initially felt like she deserved to die in prison. She continued: *"When I matured and began to live with purpose after doing intensive work on myself, I felt like I had so much to offer and I wanted a chance to make my life count."* Felix Rosado wrote, *"at age 27, I woke up—to put it mildly."* He partially attributes his transformation to an encounter with a childhood friend while Felix was serving time in solitary confinement. Felix's friend, who was incarcerated in permanent solitary confinement on death row, said that *"he'd do anything to just hug and kiss his 5 sons and father, come out of his cell every morning, uncuffed, and in his own word, 'breathe'—which he'd be able to do if he were in my situation."* Felix wrote that this encounter *"shifted my perspective and pushed me to take advantage of the opportunities I had... And at some point, I concluded that my individual fight is inextricably tied to a much larger struggle."*

Respondents attributed their personal growth and maturity to a number of different factors, often in combination. Some recognized their growth as a natural product of growing older. Many of those serving DBI, particularly women, stressed that their ability to confront and heal from past

trauma and the development of identity and self-worth were critical to their growth and ability to deal with problems in healthy ways. Nicole Newell cited programs that addressed dealing with anger, violence prevention, and abuse as facilitating healing and growth: *"I didn't know how to control my anger, or deal with the pain of my child/teen years. I now use the tools to help others cope that's dealing with the same or similar issues I was dealing with years ago."*

Char Pfender described a "metamorphosis" in dealing with the effects of childhood abuse: *"It really shaped me growing up. As I went through abuse programs and learned it wasn't my fault and reasons abuse happens, I was able to start to love myself and not feel shame all the time. I began having trusting relationships, growing closer to my family. I am able to forgive and give love freely to others. Finding salvation was the icing on the cake and beginning and ending my day in the right frame of mind helps me cope with whatever the day brings. That has helped me tremendously in facing my problems head on."*

Henrietta Harris described a substantial change in how she processes and deals with life issues: *"I can relate to others in a different way now that I've addressed issues that caused my pain and hurt... I understand now [that] back then I was coping the best I knew how. I've learned new ways of coping and these new ways are positive and I feel better when I'm being positive. I've learned forgiveness is for me and not the other person. I know I changed because it was change or die slowly daily. I've learned to appreciate life."* Sheena King described overcoming the "self-loathing" she felt when she was younger: *"I found my voice, my purpose for living and I have no fears where I was shy, afraid of everything especially trying, and didn't think I had anything to offer except sex. I know that I changed because I didn't like what I saw when I really looked at myself and I needed to be somebody better for my children. I needed them to be proud of me not disappointed."*

David Lee wrote: *"It took many years of healing and soul searching to create a healthy mental outlook on life, and most of those years were spent in isolation inside of a state operated cage... As a young person, I truly did not love myself because I had absolutely no clue about who I really was; I had no purpose in life, and no direction."* Now, however, David says, *"I've learned a great deal from past mistakes and successes,*

and I use all of those lessons as I move forward in the pursuit of justice, collective empowerment, and liberation in American society." Zechariah Thompson wrote: *"I learned how to deal with pain without drugs; and I'm kind of religious about walking the way a man should."*

Some respondents also attributed their growth to strong relationships with mentors in prison, development of religious or spiritual beliefs, education, or various programs.

Char Pfender described the effect of having a mentor. Char wrote that she regularly got into trouble during the first year of her incarceration, *"until I got into school and an apprenticeship and learned I was smart and had skills with my hands. I started creating furniture and was experiencing pride in myself. My boss...would talk me through my feelings of anger, hopelessness, fear, not knowing how to be an adult in an adult facility... He changed how I approached all of life."*

Kristin Edmundson wrote that through some of the programs she has participated in, *"I have learned to be able to love myself, to work on my insecurities and deal with problems in a productive and healthy manner."* Henrietta Harris also found substantial value in some of the programs she completed: *"My most important programs were Violence Prevention, The Abuse Program, and [Alcohol and Other Drugs]. Those three programs are helpful to me daily. I think before I speak, I no longer expect people to hurt me... I participated in the Anger Management Program because I no longer wanted to be angry, I'd been that for most of my life."* Stacey Newkirk wrote that one program *"helped me to see the abusive relationships I was in and why I choose to get into those relationships. I also learned that 'hurt people hurt people.' So if someone is doing something hurtful to me it is because they are hurting. I took a self-esteem group. I was really hard on myself. I had to find out why and change the way that I felt."*

Felix Rosado described the impact of becoming involved in a program in which incarcerated people spoke to youth from a juvenile detention center: *"The first time I did was when I discovered that, despite being behind a wall fighting a DBI sentence, I can have a positive impact on people's lives. That evening I discovered my purpose in life—to use my story and gifts to help prevent some of the same hurt and loss I caused and experienced."* Felix also obtained a Bachelor's Degree in Interdisciplinary Studies from Villanova University while

incarcerated. On his experience at Villanova, Felix wrote that it *"helped me develop a social imagination, increased my empathy for other cultures and people, and gave me a historical context in which to place my individual experience, among other things."*

One person who wished to remain anonymous wrote: *"I'm not nearly as self-absorbed as I used to be. I'm not as materialistic. I live my life by a set of spiritual principles – I had no spiritual belief system before I came to prison. I'm much more disciplined, kind, honest, and responsible than I used to be."* Changa Asa Ramu said: *"[The most important things to me are] my ideas of spirituality, political and social reality. I don't see myself as one individual who received a raw deal. I see myself as one of a collective who seek political, social and economical justice. Internally, I grew into a beautiful person with ideas of world peace, spiritual enlightenment, and self-mastery."*

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Many respondents cited relationships with family and friends as both a major catalyst in their growth and as providing necessary support to do so. Family and outside support were frequently among the most important things to those who responded to the questionnaire, but many noted that it is difficult to maintain these relationships due to distance, cost, and the passage of time, among other factors.

Saadiq Palmer, for example, wrote: *"It can be taxing at times, but I feel it's important to maintain outside relationships in order to not become institutionalized and lost in the system."* George Greenlee wrote: *"Sometimes you go through feeling like I need and want to do right to show everyone who's in your life that you have changed. You become a better man, father, friend, and all around person when you have time to sit and think about your actions and realize it's time to make a change for the better."* Zechariah Thompson wrote: *"All I do now is correspond with my daughters, I try to be the best father I can be, and I reunited with my mother and made amends. She apologized and told me the ways in which she loves me... I feel like [my daughters] are my reason to strive and stay alive and alert."*

Henrietta Harris wrote: *"[My children were my reason for getting out of bed, holding on to what life I did have, I needed them to know they were very, very important to me. I worked*

hard encouraging them to be the best they could be, stay in school, and not let my coming to prison be a reason for them not to live up to their full potential. I needed them to know they are loved."

Oscar Cintora wrote: *"After more than 23 years behind bars, all my friends on the outside are gone, they continued with their lives and forgotten about me, which I don't blame them, I probably would have done the same. Only my family is still there for me. I call them and write to them often, it is hard to see them because of the distance, but I still get one or two visits from some of my family members per year."* The late Khalifa Diggs, who died in December 2017 while in DOC custody, where he had been incarcerated for more than 40 years, wrote: *"You write, call, send cards, look for familiar faces on the news station, ask how so and so is doing. Then after years of outside death stories, you start pinching yourself, in many cases kissin ass to get a letter. Life moves on except-you're not amongst the livin. Now the struggle begins."*

One person who wished to remain anonymous wrote: *"Visits are few and far between. My parents are old and the strain of the long car ride is too much for them. I work hard to maintain relationships with people on the outside because knowing that people out there love me has a tremendous positive impact on my mental well-being."*

Many of those who responded said that lifers had a strong (but not universal) commitment to atone for harm they have caused, and feel deep remorse.

Char Pfender wrote: *"I feel deep pain and remorse for ending a life...No one should ever get killed...I look around at other lifers and see the pain in them too. A lot of people think we only think of ourselves and how to get out. That is just a stereotype... We search for ways to right that wrong in all we do, behind these walls."* Malakki Bolden wrote: *"We are not a monolith. Some, like me, daily grieve [for victims] and others don't care. We are not all the same. But the media perpetuates the myth that having remorse is weak, while it is the true strength of a person and it can open the door to a higher purpose."*

Bruce Murray maintains his innocence in the crime for which he was convicted, but wrote: *"I've lived with these men who have killed, and have first hand knowledge th[ey're] remorseful;*

this is why a lot of them head in-house organizations wanting to help any and all people, who have been a victim... [E]ven though I did not do the crime I still would like to show my sympathy not only for the victim in my case but all victims." Saadiq Palmer also spoke of his experiences with other people serving death by incarceration: "Everybody shows their feelings differently. If you really want to know how somebody feels, talk to them and you'll be surprised by their response. 95% of individuals I know have a great deal of remorse for the life they're responsible for taking."

George Greenlee wrote: "All I know is that I'm sorry for what I done. If I could do it all over again I know I would be taking a right instead of a left that's for sure. Prisoners can change. I know I have. I would never want to see this place again." Oscar Cintora expressed a similar sentiment: "If I could change anything to avoid this situation or if I could switch places with the victim I would do it in a heart beat." Sheena King wrote: "If there are people who feel no remorse for homicide...they don't represent the mass majority of us. Because my victim is a mother, I think about her and her children as much as I think of my own and that is the one time that I hate myself."

Phillip Ocampo, who was sentenced to DBI as a result of his felony-murder conviction for his role in a robbery during which someone was killed, emphasized that many who are serving DBI sentences have also experienced the pain of losing a loved one to violence:

I believe that those of us serving DBI sentences has experienced losing someone we care about to violence, so we know the hurt... I personally had an uncle killed violently... I felt the hurt of losing him, as well as my entire family. So I can sympathize with my homicide victim and his loved ones... It hurts even more that I personally knew the victim and his loved ones... When I found out that he was the victim in my case, God as my witness, I cried... I hurt every day about his death because he always treated me good... I pray every day that his family could find it in their heart to forgive me for me being involved in his death.

Felix Rosado attributed part of the perceived lack of remorse or sympathy toward victims that many believe exists among those serving DBI sentences to the adversarial nature and harsh punishments of the criminal legal system:

I believe the system is designed to promote a certain degree of, at least, indifference on the part of people who've offended toward the people they've harmed. It's hard to feel remorse or sympathy when we're fighting for our freedom and in some cases, lives. But whatever seems to be true based on one's exterior shouldn't be confused with what's deep in someone's heart... In the restorative justice workshops I facilitate, I've witnessed hundreds of men break down in tears when we watch a Victim-Offender Dialogue between a man and the daughter of the girlfriend he murdered. In the workshop, we create a safe enough space where such vulnerability can be expressed. Unfortunately such spaces don't exist in police stations, courtrooms, prisons, or any other stops along the criminal legal system process.

Accomplishments

Many of those who responded to the questionnaire completed numerous programs and attained educational and vocational achievements during their time in prison, despite difficulty in accessing these programs due to their sentence. Many also have served as leaders of various programs and described the role of those serving DBI sentences in positively influencing other incarcerated people.

Oscar Cintora wrote: *"When you are a 'lifer' you are limited to many programs or activities, but I've done violence prevention, stress and anger, Day of Responsibility, Inside Out, sociology college class, tutor training, and worked as a teacher's aide for over 15 years, helped many students obtain their GED, and also learned English, which was one of my biggest personal achievements."* Paula Johnson wrote: *"I have done a lot of schooling here, a lot of different groups, etc. I got 69 certificates over the years...I participated in a lot because I wanted to learn as much as possible."*

David Lee described the most meaningful programs to him and the role of those serving DBI in helping others who are incarcerated:

The most germane programs for me are the ones created by prisoners because they are the most realistic, and they are culturally attuned with various backgrounds of prisoners. We started one program called Dare-2-Care, which is a youth development program that not only mentors our youth, but provides meaning for older prisoners. I use the skills that I've developed in here to mentor youth on the outside now, and they often express the value of being able to engage in honest and open conversations with someone who has spent decades in prison, but used the time to grow and continuously develop... We also started an educational program called "One Hood United" geared toward providing our youth with cultural, political, and economic enlightenment.

Phillip Ocampo listed numerous completed programs, academic achievements, and vocational experiences. In addition, *"I've volunteered at the hospice here helping the terminally ill... I also worked as a S.N.U. (Special Needs Unit) Aide... I was also certified by the Board of Health to be a H.I.V. Peer Educator... I also was a volunteer puppy trainer for the puppy program here... The puppies are trained for people with disabilities. I trained 8 puppies successfully. I would have to say that the puppy program was one of the most important programs to me because it allowed me to help someone in need..."*

Malakki Bolden also described a number of academic and vocational certifications that he's attained over the course of his incarceration:

I have also taken enough college classes to have a degree (if inmates could get accredited) and participated in Inside-Out classes as well and help establish a think tank (Elsinore-Bennu) that did the first Inside-Out Police Training course. My self study in math has covered Algebra, Trig, and Calculus as well as Binary and Hexadecimal math. In creative writing I am a published poet, completed a few novels and I have won awards through the PEN American Writing Center (pen.org/prisonwriting). Everything I have studied or accomplished was to better myself so this became who I am now. And this better person is who I will bring to the outside world once I am released.

Malakki also wrote that he served as a peer facilitator for some programs, a tutor, and a Certified Peer Specialist, who provides assistance to other incarcerated people dealing with mental health issues.

Haddrick Byrd wrote: *"Upon beginning my sentence in prison, I knew that I had to work towards bettering myself. Therefore, I enrolled in school and got my GED, and went on to accumulate 49 ½ credits towards my associate degree in business management, while working at the same time."* Char Pfender obtained a GED and enrolled in college courses. She wrote:

Growing up I was always led to believe I was not smart enough...I didn't expect to pass a GED... Somehow I managed to score the second highest score ever at Muncy. Then without studying, passed an SAT above average... I wish I would have believed this of myself so much sooner in life. I went on to take many college courses that changed my values, morals, viewpoints, and connected me to the world. I always felt disconnected because of my past. Education changed that.

Many people also expressed that it was difficult for those serving DBI to access programs and activities due to their sentence, but that they had a strong desire to do so.

Changa Asa Ramu wrote: *"I attained my GED here and there has not been anything else available for me here. I been on waiting list for other programs that never seem to become open. It's frustrating because I witness others get into these programs before me when I been waiting longer."* Zechariah Thompson expressed similar sentiments: *"All they have told me is that people with parole minimums are first on the list [for program enrollment]. Basically, lifers are on the backburner,*

we go last. I have still yet to be selected from the list. But I really want to do the school program, because as a child, I was taken out of every school program. I just really want to have the opportunity to get a diploma." Kevin Kelly echoed these thoughts: *"I've done different programs which were educational just to self improve myself, plus the institutions which I've spent time in doesn't permit us to get in programs because they are placing people with short time in them."*

Henrietta Harris wrote: *"We're placed at the bottom of program lists because of this sentence. It's the same as being told, 'You're never going any place to use these skills.' This alone is disheartening... How can we prove to society that we are changed, worth a second chance when we're not ever given the opportunity to work and put it into action? Some speak of rehabilitation, give me the opportunity to show society what that word really mean."* Over the course of her incarceration, Henrietta has nevertheless participated in vocational programs and, among other programs, she wrote: *"I am presently a tutor in our Business/Computer classes. I completed an Outpatient [Alcohol and Other Drugs] Group and became a Peer Assistant in the program."*

CASE PROFILE



Dawud

On September 1, 1987, when he was 22 years-old, David Lee, now known as Dawud, accompanied an acquaintance to another person's home and waited in the street while he knocked on the door. Without warning to Dawud, his acquaintance – who became his co-defendant – pulled out a handgun and killed the man who opened the door. Months later, after Dawud refused to take a plea deal to third-degree homicide, which at that time carried a maximum sentence of 20 years, **the prosecution procured false testimony implicating him in the shooting**, and Dawud was sentenced to DBI.

Dawud has been incarcerated for over 30 years. Early on he realized the importance of taking control of his own education:

"The first and most difficult thing was to look inside of myself and understand what type of things needed to change in my own life. That initial look in the mirror was horrifying for me because there was so much that needed to change. My level of underdevelopment was unspeakable. There were many flaws. For one, I had to stop smoking and getting high. I was functionally illiterate so I had to begin to educate myself. I used to spend 8

I used to spend 8 or more hours a day just studying and trying to make up for lost time.

*or more hours a day just studying and trying to make up for lost time. History, politics, social science, culture, legal issues, and just life in general were all issues I studied. Of course with different degrees of success. I wanted to know all the things which were never taught to me in school. I learned about the true meaning of capitalism, socialism, and other concepts which play a major role in our lives. For the first time in my life, I felt empowered, so I wanted to test myself and went to take the G.E.D. test. I was able to pass the test the first time around. The prison administration at Dallas thought that I cheated on the test because I never went to any of their classes. Also just one year earlier **I was told during my pre-sentence diagnostic test that I had the mentality of a fourth grader and that I was incapable of learning. That lit a fire inside of me***

***that still burns to this day.** They ended up having my counselor interview me to determine if I was mentally capable of passing the test. She was impressed with the hour-long conversation we had and stated that I was mentally capable."³⁷*

Dawud is a beloved member of multiple advocacy organizations and educational projects such as the Coalition to Abolish Death by Incarceration, Decarcerate PA, Lifelines. **Dawud co-founded a youth development program called Dare-2-Care through which he and other incarcerated people mentor youth. Dawud also co-founded One Hood United, a youth education program.** He has been instrumental in shaping the curriculum and mission of Address This!, an education and empowerment project that provides innovative correspondence courses to individuals incarcerated in Pennsylvania, with a special focus on the participation of prisoners in solitary confinement or maximum security conditions.

With legal representation and vast community and family support, Dawud is hopeful for the opportunity to continue his commitment to social justice and transformation outside the prison walls.

Outlook

Many of those who responded to the questionnaire acknowledged that DBI is a “slow death sentence,” but stressed the importance of maintaining a sense of hope as a source of motivation. For some, the sentence itself as well as the conditions in prison made it difficult to remain hopeful, while others expressed a strong belief that they would one day be able to return to their families and communities. Most people expressed some combination of these feelings.

Sheena King wrote that legal developments such as the U.S. Supreme Court’s decision in *Miller v. Alabama* provide a glimmer of hope that those serving DBI may have a chance of freedom. But, she continued, *“serving DBI is like having a life-threatening debilitating disease. You know you’re going to die a slow painful process and a large part of you wishes your body would just succumb to this disease so the pain will end.”* Saadiq Palmer also expressed that recent social and political movements have given those serving DBI hope that their prospects are changing: *“You see so much loss on both sides of the wall and it’s easy for that to affect your sense of hope. But with all that’s going on now some of that hope is coming back for many of us that have or were starting to give up!”*

Khalifa Diggs wrote: *“I am every wakeful moment remorseful, I still can’t wrap my mind around life [without parole], death is death, slow or sudden, pull a trigger, use a knife, or a ball point pen...We don’t have a Death Date, so we fantasize about some reverse miracle, locked in the past – because there really is no future. What’s difficult is holding on to hope to live.”* Not long after penning these words, Khalifa passed away at age 67.

Paula Johnson wrote: *“It is not difficult for me to maintain a sense of hope. I will never lose hope as long as I live... Serving DBI is a slow death sentence. It’s not fun, but when you don’t have a choice, you just have to make the best of it, and that’s exactly what I do.”* Nicole Newell also wrote: *“As long as I have breath in my lungs and believe that I will get a second chance, I will always have hope.”* Similarly, Phillip Ocampo wrote: *“So as long as there is breath in me, I’ll always have hope until I get out or go home to heaven.”* David Lee expressed that it is difficult to maintain hope in the negative environment

of prison, *“but without a strong sense of hope we [have] absolutely no chance making it back to our families and communities.”*

One person who wished to remain anonymous wrote:

Getting sentenced to DBI was a wake up call to me that forced me to look at how I was living my life and the person that I’d become. It made me realize that my life is valuable and I have to make the most of it, even in prison. I’ve never felt hopeless because I do believe that one day I will get out of prison. I believe every day I’m preparing myself for that eventual release. I want to be ready so I can do my part to help alleviate suffering in the world and reduce the number of people, particularly women, coming to prison. I try not to think of the enormity of the sentence because that can feel like all the air is being sucked out of your lungs – I try to live one day at a time. That does not mean that I don’t have an occasional emotional breakdown. I allow myself that, then I get back to work.

Char Pfender described how her experience serving a DBI sentence changed over time:

The first five years of prison was brutal, but I found a mentor in a teacher. He kept me from acting out and led me to apply myself... I always had something to finish or look forward to. Before you knew it 10-15-20 years went by... After 20 years it started getting harder. I still had unfulfilled dreams...that were not going to happen. I became less involved with the inside and more involved with the outside, such as charities, prison society programs, restorative justice... I kept hope alive in my heart. I never just give up. I believe things will change. Now that I am saved, I pray for God to do his will in me and if that even means staying longer to fulfill his purpose for me, then that is what I will deal with...I truly believe that hope is your belief in seeing a wonderful end no matter how bad the middle looks, and growing from horrible beginnings. You cannot rise like a phoenix from the ashes without walking through the fire first. I want to rise, not be consumed.

Kristin Edmundson also wrote that her perception of her sentence changed over time: *"It's not only the physical lockup, but your mental and emotional punishment you give to yourself. The emotional and mental punishment you put yourself through is an agonizing pain... Now that I'm older and have more knowledge it's harder because realizing the severity of it all is actually more challenging but it makes me work harder for freedom."*

Some people wrote that the commutation process seems intended to give people a sense of false hope, when in reality it offers no meaningful prospect of release.

Oscar Cintora wrote: *"Sometimes I even believe that [the commutation process] exists just to say to people, yes, there is a way to release people from those types of unjust sentences, but everyone is being turned down."* Changa Asa Ramu described the difficulty of receiving commutation for those who had a difficult transition into their lives in prison: *"Historically commutation has only been given to exceptional prisoners who maintained a trouble free prison record, who became accepted and approved by guards, staff and administrators as a honor inmate. For many of us who had a bad adjustment to doing a life sentence...commutation does not appear realistically an option."*

For some, family, friends, and other supporters are a primary source of strength and motivation to continue striving for freedom. Oscar Cintora wrote: *"[Serving a DBI sentence] is very hard, some days you feel like giving up. Like you don't matter,*

that you are just wasting space and oxygen, that it's better off getting the death penalty. But your family, friends, and God give me strength and encouragement to keep going and keep fighting, but it's not easy."

Kevin Kelly expressed similar feelings: *"My attitude is up and down at times because I am forced to live in this environment... where I am just trying to maintain and keep my sanity in my environment where I wake everyday knowing that I will never get out... It is very much difficult to maintain a sense of hope but I do it because I have to try and live for them—my family."*

Malakki Bolden also wrote: *"At [the beginning of my sentence], hope was less than zero. But through the love of family and friends and a recommitment of religion, I am now the living personification of HOPE."*

Phillip Ocampo frequently cited his mother as a great source of strength and inspiration, including in relation to his feelings about his DBI sentence:

It's because of my family, especially my mother, that I know that I'm not alone in this fight for my freedom and I'm not alone in any sense of the word... I would be lost in this place without my mother. I watch so many guys in here that has no family support and they are so lost and have no hope. I'm blessed to have the mother that I have. She inspires me to this very day... Her strength, her fight, her never surrender attitude, I get all of that from her.

Goals, Hopes, Dreams

Most of the people who responded to the questionnaire expressed strong desires to help others, particularly youth, upon their release from prison. Many described numerous ways in which they have already been doing this work while incarcerated. As Khalifa Diggs wrote, most *"wish to be a good spoke in the wheel of changing lives."*

Malakki Bolden described how those who are currently serving DBI sentences are well-suited to carry out the work of building communities and serving as positive influences:

"Some of the best help and/or support for those right now struggling (with addiction, mental health, those living in crime-ridden areas, etc.) is us. We have lived lives similar to them – we are them – and our examples of how to manage life's ups and downs can reach them like nothing else. Rehabilitated prisoners are the help society is looking for."

Bruce Murray described his goals upon reentering society:

I want to go back to vocational school to upgrade my carpentry skills.[.] [T]his way, all those old homes in the hood;

I can...teach the youth on the street how to do the trade and then once a group learn it we can do low income work right in the hood to help keep the home liveable, while still training another group and branching out to other trade skills and areas. I also want to continue Peer Training and spend as much time with grandchildren, nieces and nephews, etc.

Kevin Kelly wrote: *"I hope to get out and try and work with young people to educate them on what can happen if they decided to live the street life involving themselves in any illegal activities."* Sheena King wrote that she completed a program called House of Hope In-Patient Therapeutic Community for Survivors of Abuse while she was incarcerated. She continued: *"when I worked at the House of Hope as a Peer Counselor years after completing [the program], I learned much more about myself. I found my passion in helping others heal from abuse and I would absolutely take those lessons outside of prison."* Nicole Newell also expressed her desire to help young people: *"My goals are...to find a way to mentor teens, to see if I can have resources to open up a home for troubled pregnant teens. Now I know there's places out there but be ran by someone that's been there (in their shoes)."* Saadiq Palmer wrote of similar goals: *"I want to work and advocate for the less fortunate. Spend as much time as I can with my family and work with the kids to try to deter them from falling into the same trappings that I got caught up in."*

Felix Rosado described numerous programs and organizations that he has led and participated in—work that he wants to continue outside of prison. He discussed the importance of the concept of restorative justice in addressing harm:

In 2008 I [started] a restorative justice project later named Let's Circle Up that I continue to coordinate today. My introduction to restorative justice came through a photoessay book of people who've been victimized... I had 12 years in at the time and for the first time I was face-to-face with the fact that I had caused the same pain I was reading about to a family with a story and faces of their own... I'd been conditioned to confine my concept of justice to cops, courts, and prison cells. Here I was reading about a way of doing justice that attempts to heal by involving the people directly affected by the crime(s)—including those who

caused it. It made sense. It gave me hope that I can actually do something to put my wrongs "more right." My interest in restorative justice quickly became a passion and soon after I met my mentor and friend Charles. We developed restorative justice education workshops and to date have served almost 1,000 men here at Graterford... In 2008 I also participated in the Alternatives to Violence Project. I took all 3 levels of the workshops and then became a facilitator, facilitation trainer, and co-coordinator, which I still am today. Since I committed an act of violence that can never be undone, it's especially crucial to me to now live a nonviolent life and help as many others as possible do the same.

Many others expressed their desire to make their wrongs "more right" and attempt to atone for harms that they caused. Oscar Cintora wrote: *"There are many people serving this sentence (DBI) that are truly sorry and have changed their lives, that only ask for one more chance to demonstrate our changes, and that we could be assets to our communities, could make amends, or try to make amends, in better ways from the outside."* Changa Asa Ramu expressed similar thoughts: *"We understand that we have a debt to pay to society and are willing to take that responsibility. Our communities and families need our presence!"* Kristin Edmundson wrote: *"I cannot change what happen although I really wish I could, but I can try to make up for my mistakes and the hurt I've caused. I would like people to know that I will continue to strive and make myself a better person."*

In addition to helping others, many people strive to be positive role models, build family relationships, and experience things they were never able to before their incarceration.

One person who wished to remain anonymous wrote: *"I want to reconnect with my family. Take care of my aging parents, and build a better relationship with my children, and use some of the knowledge I've learned through reading to start my own business, find a church to attend, and find time to help with some youth groups."* Henrietta Harris wrote that she wants *"to be united with my remaining family members, find a job, get my own place, get involved with my community, hopefully become a motivational speaker, be an active member in my church, get involved with volunteer organizations, be involved with Prison Society."*

Phillip Ocampo wrote:

The most important thing to me first is getting home to my family and being able to be involved in my children and grandchildren lives. Other important things that are important to me is doing some mentoring to our youth and trying to steer them away from prison... My goal is to go home and be a better father to my children, a better grandfather, a better grandson, a better son, and a better man than when I came in. A man that made a mistake as a teenager and not only show, but prove to society that

a person can change for the better and be a productive member of society.

Nicole Newell also expressed that family was her primary focus: *"There's no other place I rather be then surrounded with my siblings, daughter, and grand kids."* Stacey Newkirk expressed similar desires: *"I would love to get a job to support myself. I would like to become a home owner again. I would like to spend time with my children and grandchildren. I would like to take care of my mother and sister. I would like to offer housing and support for women getting out of prison who have no one."*

Ending DBI

Many of those who responded to the questionnaire offered their reasons for supporting an end to DBI sentences. They wrote about how they and others they know would be assets to their communities if released, the importance of affording second chances and opportunities for redemption, upholding human dignity, and the costs of sentencing people to die in prison.

Char Pfender synthesized many of these sentiments in her responses:

Punishment should not be confused with vengeance. As a believer in God, we must forgive in order to be healed. Once I forgave my father [for his abuse], I knew I was ready to ask for forgiveness. We should not be characterized by the worst mistake of our life for the rest of our life. People change, people work to restore the harm they've done. Some were children when they made the mistake, and were too immature to be held completely responsible. We deserve a second chance at some point.

Oscar Cintora also expressed similar sentiments: *"I believe that everyone should deserve a second chance, an opportunity to rehabilitate themselves to make amends and show that people can change."* Oscar also added that releasing some people who are serving DBI sentences *"could save the state lots of money that can be used for other more important needs and we can contribute to our communities in many ways."*

Speaking against the attitude and intention behind DBI sentences, Khalifa Diggs wrote: *"Laws are controlling sentences uttered from the mouths of class status seekers without concern of the Husband, Brother, Mother, Daughter, Son—they kill with their support of a broken system. Dining on words like 'he's a predator, not redeemable, throw away the key.'" Changa Asa Ramu also wrote of redemption: "Prisoners should be given the opportunity to redeem ourselves. Human nature is to error and as a society we're supposed to correct errant behavior, not condemn it for life."*

One person who wished to remain anonymous wrote: *"Most of us are changed and have learned from our mistakes and would desperately love a second chance... Tax dollars could go toward not just housing people waiting to die, and use it to rehabilitate and introduce the rehabilitated back into society, so they can become tax paying productive members of their communities."* Bruce Murray also wrote: *"We ask for another chance to help after a time of growth and reflection, our community needs us, our family needs us, our victims need us for we owe a debt to them."*

Nicole Newell wrote: *"Most of us have change for the better, we have grown and realize that we hurt others and we want a second chance to prove that we are better women... We help young ones that come through these gates, we tell them our story so they won't come back. So far three of them that I shared my story with haven't come back."* Kristin Edmundson

wrote about the maturity of those serving DBI sentences and the unlikelihood that they will return to prison: *"[A] majority of people [serving DBI] would become productive members of society if they were released. We have learned to survive and overcome many obstacles and with those tools of knowledge we can make better choices with our lives. We also know what it's like to lose everything."*

Malakki Bolden wrote about the causes of violence and how DBI sentences do not solve the problems that need to be addressed or respect the dignity of those serving these sentences:

It is hurt people who turn around and begin to hurt other people. Some of us have issues and challenges we did not know how to solve and this led us to anti-social behavior. But we are still human. To shut us down from receiving basic care and concern and isolating us from society makes it easier for the worst within someone to fester and evolve them into a shadow – a walking corpse. And for those who found a ray of hope in this oblivion and have even managed to better themselves, would not a second chance give them a reward for their astounding feat, as well as give some incentive to the desolate that hope hasn't died? If not so then maybe it isn't just some of the incarcerated who have lost touch with what it means to be human.

Sheena King expressed similar thoughts:

We are not what we've done... DBI does not fix what's broken in people or communities... DBI sentences serve no real purpose. You lock people up until they die and how does that bring back a loved one, or cause a person to see the error of their ways and change? How does it help a victim's family to heal? People serving DBI have hurt entire communities – we need to be held accountable to help to fix it. We can't in a cell.

Many people wrote that those serving DBI sentences seek to be kind, community-oriented, and positive influences, despite the seeming impossibility of being released. Stacey Newkirk wrote:

Keeping someone locked up forever is not accomplishing anything. If it did crime would have stopped... If you commit

a crime and get a life sentence it doesn't matter what you do after that because you will never be set free. Yet people [serving DBI] still do the right thing. Why? Because they are good people who made a bad choice that cost them the rest of their life. Still they changed, for no one, but themselves.

Felix Rosado also wrote about others serving DBI sentences, writing that they are among *the kindest, most caring, selfless, resilient human beings I've ever known. They've been making a positive difference in the lives of countless people for decades to little fanfare, not for credit, not to impress a parole board—but just because it's the right thing to do. It's about character and purpose, and a higher sense of self that transcends walls, bars, labels and the dehumanization inherent in prisons—despite prison... We weren't created to be trapped in a moment of time, to be prevented from reaching something higher.*

Felix also wrote that his experience in restorative justice work has taught him that victims and survivors also do not want to be reduced to a single act or moment in time. But, *"DBI doesn't allow families to move forward. Everyone involved...is forced to forever stay stuck in one devastating moment in time."*

Many people focused on the particular ability of those serving DBI sentences to inspire and produce positive change for their communities on the outside if given the opportunity. Phillip Ocampo wrote: *"A lot of us serving these sentences could do more good on the outside than in here and should be given the chance to show that we could make a difference in life on a positive level."* David Lee, who maintains his innocence of the crime for which he was convicted, wrote: *"I have spent over half of my life in prison for a crime I did not commit, and all I want to do is positive work within and beyond my community."* He continued:

I also talk to many DBI prisoners who have committed the acts they're incarcerated for, and they just want an opportunity to redeem themselves. This is why the "Restorative Justice" concept is so vital, and something desperately needed in this state. Healing and repair is needed, not excessive punishment.

Saadq Palmer summarized many of the sentiments expressed by other people serving DBI sentences:

Life without parole is not a deterrent and it's inhuman to keep somebody locked away for decades that has been rehabilitated. It's cost effective to grant us parole. And most of all we are the least likely to reoffend out of all offenses.. less than 1% of men and women serving DBI released on parole, pardon or commutation reoffend after release. Allow us to use our experience serving DBI as a prescription for

change. Myself and the many men that I work with will be agents for change. Changing the lives and direction of our youth is paramount for all of us. We've lost children, family and friends in our time inside. We care, we're sorry for the harms we've caused. Let us lead by example, let us show the world that change and transformation is possible!"

IV. ABOLITIONIST HORIZONS

STRATEGIES AND RECOMMENDATIONS FOR ABOLISHING DEATH BY INCARCERATION

I. Building the Movement to Abolish DBI

As this report has demonstrated, Death-By-Incarceration is more than a failed policy or a well-meaning yet excessive response to violence.

Instead, DBI is central to the system of mass incarceration in Pennsylvania; a material, institutional, and ideological pillar of a regime of state violence that systematically targets the poor and communities of color. DBI sentencing exemplifies the logic of fear, vengeance, and social death that underlie and sustain the institutions of policing and prisons in this country.

The staggering racial disparities are indicative of the ongoing reality of white supremacy and anti-Blackness that relentlessly deprives people of color of their rights and their liberty. To speak plainly, in its application and function DBI is racist, targeting communities of color that are subject to conditions of imposed poverty and deprivation with policies of state violence rather than social support, services, and uplift, demonizing and traumatizing them with policies of permanent punishment under the insidious pretext of providing protection and safety, neither of which ever materialize.

DBI is not an effective deterrent to crime. In Pennsylvania, DBI sentences do not even offer the pretext of identifying

individuals who will pose a public safety threat for the rest of their lives, as they are imposed pursuant to a mandatory scheme that never allows for a less severe punishment. The practice of sending people to serve decades in prison without any prospect of release until they die has been conducted for decades without so much as a review by any legislative or executive official as to its efficacy, purpose, effect, or inhumanity.

The consequences are too pervasive and pernicious to ignore. The voices of those on the inside insisting on recognition of their full humanity and the rights that should accompany that recognition are growing louder by the day. As an increasingly elderly population, aging lifers in Pennsylvania prisons who have already served substantial time not only pose an extremely low risk of reoffending for any offense, but scores of them have invaluable life experiences, wisdom, skills, insight, and leadership to share with their communities and the society at large, earned through hard decades of maturation, reflection, dedication, and transformation.

In summary, DBI is an abomination—a human rights crisis demanding urgent attention and prompt abolition. As illustrated in the heart of this report—the words of lifers themselves—those serving these sentences do not need us to speak for them. They are more than capable of doing that for themselves.

Instead, they need people to fight *with* them for their freedom, for a new paradigm of justice rooted in community restoration and accountability, transformation rather than retribution, one where a preferential option for rehabilitation

is *always* taken and the right to redemption becomes a reality.

In furtherance of that fight, we conclude with a synopsis of strategies for the rollback and ultimate abolition of DBI. Our approach is founded on the following principles:

- **Movement-based approach:** A movement-based approach rooted in organizing specific and diverse constituencies in support of the common goal of ending DBI, providing second chances for those sentenced to DBI, and supporting a new paradigm of justice. This requires more than just shaping or changing public opinion – it means inspiring and planning *political action* in support of our common goal.
- **Leadership of Most Impacted:** Centering the leadership of those most impacted – those serving DBI, their families, and communities most impacted by violence – in our movement-building work.
- **Multi-Strategy:** We support a multi-strategy, movement-building approach that includes public education, community organizing and mobilization,

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II. Legislation

The most direct and comprehensive route to ending DBI is through the legislature. After years of inattention by state lawmakers, a newly-elected state representative, Jason Dawkins, introduced a bill in 2016 that would provide parole eligibility for everybody serving a life sentence after 15 years. The legislation includes a retroactive application provision, meaning that it would apply to all those currently serving a sentence of DBI. Representative Dawkins re-introduced the legislation in the 2017 legislative session.¹³⁸ Currently, HB135 has 23 sponsors.¹³⁹ In the legislative memoranda accompanying reintroduction of the legislation, Representative Dawkins framed the problem of DBI:

Few other nations authorize life without parole (LWOP). Only three European nations have laws permitting life sentences for which the only mechanism for release is executive clemency. There may be as few as 100 inmates serving

litigation, legislative reform, and pursuing relief in individual appeals or through the commutation process. Each individual initiative supports the larger movement to abolish DBI, and any individual defeat is merely a setback to learn from and an obstacle to overcome.

- **Unity and Support for All People Sentenced to DBI:** Although some strategies may be limited in rolling back DBI, applying only to individual cases or sub-categories of those sentenced to DBI, such as juveniles, those aged 18-21, or those convicted of 2nd degree homicide, we understand these as components of a long-term effort to undermine the legitimacy of DBI in all instances. When advocating for individuals or specific categories of lifers, therefore, we *always* emphasize the need to end DBI for everybody, to support all lifers, and not to adopt rhetoric or strategies that pit lifers against each other or suggest – implicitly or explicitly – that a DBI sentence is justified for some individuals.

What follows is a brief summary of initiatives already underway or recommendations for reforms that contribute to the abolition of DBI.

LWOP in Europe. Additionally, many countries in Latin America and Asia do not have LWOP as part of their penal code. Even among those countries that do impose LWOP, the United States does so far more often than any other. Pennsylvania had the second highest LWOP population in the nation as of 2008.

All life sentences in Pennsylvania are imposed without the possibility of parole. This means that individuals sentenced to life imprisonment may not be considered for parole, no matter how much they have reformed themselves and no matter how unlikely they are to reoffend. Those sentenced to LWOP in Pennsylvania also have no chance at release when they grow so ill or elderly they pose little to no risk to the public. Not only does this represent an injustice to an individual who is a model inmate despite having no chance at life outside of prison, but it also creates an avoidable

expense for the corrections system – and the taxpayers who fund it – by incarcerating individuals longer than necessary.¹⁴⁰

In October 2017, newly-elected state senator Sharif Street introduced a companion bill, SB942, which is identical to Representative Dawkins' bill.¹⁴¹ This legislation currently has 4 sponsors in the Pennsylvania Senate.¹⁴²

The legislation has been actively supported by the Coalition to Abolish Death By Incarceration (CADBI), an organization formed in 2014 by the grassroots organizations Decarcerate PA, Fight for Lifers, Human Rights Coalition, and Reconstruction, Inc, and Right to Redemption, a lifers group at SCI Graterford. In October 2016, CADBI organized a rally and lobbying day in support of Dawkins' legislation at the state capitol in Harrisburg. The following year, CADBI was joined by the newly-formed CADBI-West, based in Pittsburgh, for another day of support. Each year saw more than 200 people call for an end DBI in the halls of the legislature that initiated and continues to perpetuate the injustice of DBI. Most of those who attended were family members of lifers and many were formerly incarcerated themselves. Over the last 3 years CADBI has seen a surge in membership, built support for HB135 and SB942, and seen the creation of CADBI chapters in Pittsburgh and Harrisburg.

While this legislation is the most direct and comprehensive approach to ending DBI sentences in Pennsylvania, its passage will take years of patient, methodical, and strategic organizing. There are 50 senators and 203 representatives in the state of Pennsylvania, the majority of whom have not shown any initiative in reducing mass incarceration. CADBI and its allies will have to continue to develop organizational capacity, build a statewide coalition that shapes the policies of candidates for the legislature, and hold elected legislators accountable to decarcerating Pennsylvania and ending DBI."

Some other recommendations for the legislature or those advocating for legislation around ending DBI include:

- **Maximum-Minimums:** As a companion to Dawkins' and Streets' legislation that sets a minimum sentence of 15 years before lifers would become parole eligible, the legislature and sentencing reform advocates should push for a law that sets 15 years as the maximum that anybody can consecutively serve before being parole eligible. This means that individuals serving sentences for multiple convictions or for offenses other than first or second-degree homicide should also have their minimums recalibrated accordingly so that the new paradigm for all sentencing in the state is no more than 15 years before the parole board is permitted to consider a person for release. Such a reform is an essential component of reorienting the system away from a punitive and retributive function toward one where rehabilitation, restoration to the community, and redemption are unambiguously the objectives of the criminal legal system.
- **Maximum sentences, elimination of "life-tails":** The presumption of the criminal legal process should be that every person subjected to it will be released from prison and eventually be released from any form of state control such as probation or parole. While this initiative should be pursued after parole eligibility for lifers has been established, it is a natural corollary of abolishing DBI sentences as it directly challenges the presumption that public safety is furthered by the permanent surveillance and control of people who have committed harm. Setting affirmative limits on state violence is an essential aspect of decarceration, both as a concrete means for allowing greater freedom and as a means of correcting the harmful, stigmatizing, counter-productive ideas and practices sustaining the current system of permanent punishment.
- **Community Reinvestment:** The legislature should fully invest in funding programmatic opportunities inside and outside the prison to prepare lifers for re-entry to the community. Decarceration means more than emptying prison beds; it requires funding social services, employment opportunities, vocational training, educational programs, and other initiatives that will enable successful re-entry and address inequality through redistributive social and economic programs.

CASE PROFILE



Marie “Mechie” Scott

My name is Marie Scott. My friends call me Mechie. I nicknamed myself after my best friend, Peachie, whose real name is Sharon Wiggins. She is deceased now, but as a teenager I always wanted to grow up to be like her. Because of Peachie, today I am proud to be who I am. I have two children, a son and a daughter. In 2008, I lost my son to a motorcycle accident. I thought I could lose my mind because we always thought that I would be released one day to share time with both of my children. My daughter's name is Gretta.

I was born in Harlem, New York. Growing up I was constantly molested and raped until I was fifteen. Behind it I became severely codependent. The kind who could not say “no.” I felt if a man took me to a movie, that he was in love with me, so if he took me to dinner afterwards, he wanted to marry me. Love had been distorted in my childhood.

Codependence is a disease that brought most women to prison.

Codependence is a disease that brought most women to prison. Because codependency is a disease, I had to treat it as such. It is what cause me not to be able to say “no” to a guy who saved my life during a robbery that took place at the store I was employed at. I felt I owed my life to this guy after saving mine. How could I say no to a request to be a lookout in a robbery?¹⁴³

Poverty, homelessness, and drug addiction were added to the horror of sexual violence that Mechie suffered as a child.

In 1973, while in the midst of a relapse and at the instigation of her co-defendant, Mechie accompanied a 16-year-old boy on a robbery in Philadelphia. She was only 19. Although she was the lookout and did not kill nor intend to kill the victim, she ended up with a mandatory DBI sentence. Her co-defendant has since been re-sentenced and is now parole eligible as a result of recent U.S. Supreme Court decisions.

During her 45 years of incarceration, Mechie has completed paralegal training, taken courses through Bucknell and Bloomsburg University, received an Associate Degree from Penn State University, and completed numerous rehabilitative programs. She is the founder and editor of the newsletter C.O.P.I.N.G. – Children of Parent Inmates Needing Guidance, a project that assists the children of incarcerated parents in Philadelphia.¹⁴⁴

Mechie has collaborated with the author and restorative justice advocate Howard Zehr, and been featured in his books *Doing Life: Reflections of Men and Women Serving Life Sentences* and *What Will Happen to Me*, the latter dealing with the children of incarcerated parents and featuring Mechie and her daughter, Hope. Mechie is also a participant in *Lifelines: Voices Against the Other Death Penalty*, a media cultural project involving long-term collaboration with eight people serving DBI sentences in Pennsylvania.

III. Decarcerate DA

As innocence projects have proliferated around the country to address the systemic reality of the criminal legal system's conviction and incarceration of innocent people, some district attorney offices have been pressured to adopt conviction review units to review innocence claims. A corollary to these efforts is an innovation being pushed in Philadelphia – the expansion of conviction review to include cases of excessive sentencing, with a specific focus on DBI sentences. If successful, it can and should serve as a model to other jurisdictions in Pennsylvania and across the country.¹⁴⁵

Injustice does not only occur when the innocent are punished, but also when those who have committed criminal offenses are punished in excess of their culpability, or punished in excess of what public safety requires. To foreclose the possibility of redemption and restoration to one's family and community is an injustice and a denial of basic human dignity. Many incarcerated people have spent decades in prison, developing into leaders, transforming themselves and those around them. They are ready to return home. Our communities can benefit from their experience and leadership, and district attorney offices have an instrumental role to play in ensuring that these excessive sentences are corrected and the right to redemption is recognized as central to efforts to end mass incarceration.

Serious efforts to reduce mass incarceration, enact policies and practices of restorative and transformative justice, and redistribute power and resources to those communities most devastated by poverty, violence, and

IV. Commutation

The commutation process, as discussed in this report, has become virtually inoperable in Pennsylvania. At the same time the need for a meaningful mechanism for releasing aging lifers who pose little to no risk of committing any offense – let alone homicide – upon release is greater than ever.

On the Prosecutorial Obligations to Drastically Curtail Incarceration

mass incarceration necessitate directly confronting violent offenses and challenging the core assumptions and most draconian, permanent punishments of the system of mass incarceration. As is being shown in Philadelphia and other jurisdictions where prosecutor races have become increasingly politicized, one strategy for doing this is to mobilize in support of district attorney candidates who will implement policies aimed at reducing incarceration, eschewing a punitive ethos, and supporting more restorative efforts to address violence and interpersonal harm. Integrating proposals that will limit or undo DBI sentences with these efforts is another strategy for exposing and challenging such sentences while building organizational capacity to fight for larger victories and winning release in individual cases.

As Larry Krasner emerged as the front-runner to become the next District Attorney of Philadelphia on a campaign of rolling back mass incarceration, members of the Coalition to Abolish Death by Incarceration working through the multi-organizational, city-wide Coalition for a Just DA began developing a policy proposal for a sentence review component to the existing conviction review. The proposed policy is both a corollary to innocence projects and conviction review and representative of an emerging recognition that if we are to see any potential for significantly reducing incarceration in Pennsylvania or anywhere else it means addressing violent offenses; it means we have to fight to free more than the innocent, we also have to fight to free those who committed the offense that they are incarcerated for.

Adopting a Policy of Presumptive Commutation

Commutation reform, however, is an especially difficult task in the legislature. The Board of Pardons must give a unanimous recommendation for a lifer to be considered for commutation by the Governor as a result of the change to the state constitution following the series of rapes and murders committed by commuted lifer Reginal McFadden

in 1994. Further, commutation is by its very nature an act of executive grace, and improving the efficiency or fairness of the system does not guarantee increased consideration or release of deserving lifers.

One demand that advocates can advance that does not entail going through the legislature is to target the Board of Pardons itself and demand that it adopt transparent and definite criteria for considering lifers for commutation and releasing those who satisfy those criteria. Toward this end advocates should push the Board of Pardons to adopt a policy of presumptive commutation that will allow the commutation of any DBI sentence when certain criteria are satisfied.

In addition to this representing an effort to facilitate the release of those serving DBI sentences, as a demand it is supported by strong data on the low risk posed by aging and elderly lifers, and it resonates with the legislative and sentence review strategies in that it is centered around the promise of redemption and the presumption that aging and rehabilitated people must be given a fair chance to return to their families and communities. In the absence of a parole option for lifers, the Board of Pardons should be pressured to treat commutation as akin to a parole proceeding and their decisions should be politicized such that if a Board member makes a decision to veto a commutation recommendation that is wholly unexplained and unjustifiable, they will face criticism and public pressure to explain and reverse themselves. For example, in December of 2017, Attorney General Josh Shapiro cast the sole votes in opposition to commutation for two people serving DBI sentences: 76-year-old William H. Smith and 57-year-old Edward Printup.¹⁴⁶ These decisions resulted in rare press attention to commutation decisions, including critical pushback from the chair of the Board of Pardons, Lieutenant Governor Mike Stack, who said that Shapiro's votes were "a stunning disappointment that left me, and many other advocates for criminal justice

reform, wondering whether we had lost the momentum toward change and were heading backward."¹⁴⁷ Added Kathleen Brown, a University of Pennsylvania professor who has been assisting lifers with commutation applications, "Surprise doesn't quite hit it[.] Nobody seems to know what the reasons are. Am I making an assumption it's political? Yes." On May 7, a group of advocacy organizations including the ACLU of Pennsylvania, Amistad Law Project, Reclaim Philadelphia, Decarcerate PA, Abolitionist Law Center and other organizations and individuals issued a public letter to Attorney General Shapiro:

As a result, we now call on Mr. Shapiro to realign his approach to commutation with the values of rehabilitation that the "tough-on-crime" era overlooked and suppressed. At a time when progressive reformers in office throughout the state are working to minimize the damage these policies have done to communities, Mr. Shapiro's opposition to commutation makes him a champion of the old, failed approach and a direct roadblock to more positive and community-minded reforms. Commutation cases offer a direct and obvious way for Mr. Shapiro to demonstrate his commitment to the more constructive criminal justice practices his peers have been deploying, and we ask that he start right away by voting for Mr. Smith's release as well as that of other rehabilitated and redeemed lifers.¹⁴⁸

The pressure worked: Smitty was granted a re-hearing and subsequently obtained a unanimous recommendation from the Board to commute his sentence.¹⁴⁹

By politicizing individual commutation decisions within the broader critique of the failures of mass incarceration and DBI sentencing cases such as William Smith's can be utilized to raise the political consequences for adhering to the status quo and push for presumptive commutation for aging and rehabilitated lifers.

V. Litigation Strategies

The recommendations for lawyers, especially the criminal defense bar, can be stated succinctly:

- Professional organizations, whether it is a sole law firm, advocacy organization, or bar association, should adopt position statements against DBI on human rights grounds, recognizing that such sentencing schemes do not further their purported aims and exclude prosocial values of rehabilitation, restoration, and redemption from being actualized. The legal profession needs to commit itself to accepting responsibility for its substantial role in allowing this injustice to metastasize, and adopt a corresponding commitment to eliminate the use of DBI sentences.
- Litigate cases that seek to expand upon recent U.S. Supreme Court jurisprudence striking down mandatory life-without-parole sentences for juveniles to other categories of defendants that the Court has previously recognized as having diminished culpability, including those with intellectual disability and those who lacked any intent to kill, such as those convicted of 2nd degree ("felony murder") homicide in Pennsylvania.
- Litigate cases based on more recent neuroscience showing that adolescents between the ages of 18-21 have the same neurological characteristics that the U.S. Supreme Court found relevant when excluding adolescents younger than 18 from the death penalty and mandatory life-without-parole sentences. We should expand the age limits to reflect what the law already recognizes in a number of instances, which is that human adolescence continues into the early 20s, and legal protections based on this recognition should reflect that.
- Do not implicitly or explicitly sanction the imposition of an LWOP or DBI sentence for one class of individuals when advocating for another class. For instance, do not go out of the way to tell the courts that DBI sentences are justifiable for those older than 21 years of age when arguing that those aged 18-21 should be granted parole eligibility. It is sufficient to recognize that existing jurisprudence will not recognize a prohibition on DBI sentences, but the legal profession should not internalize or replicate this deficiency in our own strategic thinking.
- Similarly, LWOP/DBI sentences should not be held out as a humane alternative to the death penalty. These extreme punishments should be consistently attacked together on a shared affinity for reorienting the paradigm of justice and fighting the political and legal battles according to what is right and not what is expedient.
- Support the incarcerated and formerly incarcerated, their families and communities, by acting in radical solidarity and empathy, listening intently to the what they need from movement lawyers, and acting *with* them in the pursuit of liberation.

VI. Conclusion

In articulating this multi-strategy, movement-building framework for abolishing DBI in Pennsylvania we lay no claim to innovation. Rather, what is sketched above is a reflection of the organizing already underway, some of it decades in the making, and always with its origins inside the prisons, led by the incarcerated and formerly incarcerated, their families and communities. Our task is to organize, build power, and attain political victories that position us to end DBI sentences, meaning both life-without-parole sentences and term-of-years sentences that extend to or beyond the end of one's natural life.

The situation of permanent imprisonment for more than 5,300 people in Pennsylvania is untenable. It does not have to be this way. In the vast majority of the world, it is not. DBI sentences are another peculiarly U.S.-based phenomenon. Around much of the world such sentences are not permitted, and where they are they are not imposed at anywhere near the levels that they are imposed in this country. The racial demographics of DBI sentences are a scandal and a human rights travesty.

Toward Abolition

Even within the U.S., Pennsylvania is an outlier, both in terms of the absolute numbers of incarcerated people serving DBI sentences and the proportion of people in state custody serving DBI sentences.

The consequences of DBI sentencing extend far beyond the prison walls. The total absence of redemptive opportunity hardens punitive attitudes in society by legitimating the most destructive and divisive impulses within people: fear, vengeance, racism, and cruelty. Ultimately, the fight to abolish DBI sentences is a fight over what type of society we want to live in, whether we will organize around values of restoration and redemption and healing or continue down the path of fear and stigma and vengeance. The fight is about how much injustice people will tolerate from the government.

As it stands now, the situation is intolerable. It doesn't have to remain this way, however, and the growing numbers of people getting organized to put an end to DBI once and for all are shining a bright lamp on the path forward.

CASE PROFILE



Ralph “Malakki” Bolden

To know Ralph “Malakki” Bolden is to love him. Everyone from family members, friends, academics, community activists, prison staff and prisoners sing his praises. And while it is unfair to reduce anyone to the worst act of their lives, it is true that good people do bad things. A combination of factors found Malakki in a state of mental turmoil when he was 27 years old in 1994. **His family suffered emotional and physical abuse in the home. He experienced the tragic loss of his second stepfather. When he enlisted in the U.S. military he experienced intense racial discrimination.** His community back in Pittsburgh was being ravaged with crack cocaine. And in February 1994, he had just been released from a psychiatric hospitalization.

Malakki says, “When I turned to the streets, I was dealing with anxiety. The street life was negative but it provided me with validation and affirmation. It made me feel good, even though I knew it was bad.”

He made the fateful decision to rob a gun store. He became nervous, panicked, shot and killed the owner and then wounded another man. In 1996 he was sentenced to death. He spent 5 years in solitary confinement on death row before his death sentence was reversed and a sentence of DBI imposed.

Malakki has dedicated his life to serving others.

Throughout his 24 years of incarceration Malakki has dedicated his life to serving others. Malakki has attempted to atone for the life he took by living his life in a way that honors that sense of remorse. He is a published poet, has earned enough college credits to qualify for a degree, and is tireless in mentoring others. He has also been recognized by the prestigious writer’s organization PEN in its Prison Writing awards in 2015-16, winning the Dawson Prize for fiction and receiving an honorable mention for his essay “Living Grave,” about DBI sentences.

He also suffers from a serious and worsening case of Multiple Sclerosis. In the past year his condition has deteriorated so much that he now requires the use of a wheelchair. At times his symptoms have flared up and led to his losing the ability to speak. Cognitive difficulties, diminished mobility, and pain have all grown worse.

In another essay, “Behind Bars,” Malakki writes:

*“I am a rehabilitated prisoner who received a life sentence, 22 years ago. Eight years ago, I contracted Multiple Sclerosis and I now need a cane to walk. When I was still a young man, the way I approached my rehabilitation was through education. Then I became a tutor. After 15 years of working the prison’s education department I have helped hundreds of men receive their GEDs. Just recently, I received the training to become a Certified Peer Specialist and I now work with those who have mental challenges. . . . By current Pennsylvania law, a life sentence means that I will stay in prison until I die. With no second chances being considered for a Lifer, what is actually taking place is that even though I have been through the process of reforming – and also even assist others who want to change – the oppression of incarceration moves forward without the motive that first secured it, and lacks the requisite cause of the money being spent to sustain it (it costs taxpayers roughly \$40,000 per inmate according to the Vera Institute of Justice). This cost escalates when a prisoner like myself has a chronic illness. . . . **Keeping] a rehabilitated, senior, physically handicapped Lifer behind the wall for “public safety” is an untruth that must be challenged.”***

- ¹ Craig S. Lerner, *Life Without Parole as a Conflicted Punishment*, 48 *Wake Forest L. Rev.* 1101, 1112-14 (2013).
- ² Ashley Nellis, The Sentencing Project, *Life Goes On: The Historic Rise in Life Sentences in America* 13 fig. 3 (2013).
- ³ Ashley Nellis, The Sentencing Project, *Still Life: America's Increasing Use of Life and Long-Term Sentences* 10 (2017).
- ⁴ Lerner, *supra* n. 1 at 1102.
- ⁵ http://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=All
- ⁶ <https://www.census.gov/popclock/>
- ⁷ <https://deathpenaltyinfo.org/abolitionist-and-retentionist-countries?scid=30&pid=140>
- ⁸ Lerner, *supra* n. 1 at 1103.
- ⁹ Inquiries directed to or data obtained from the Department of Corrections of each state that holds more people serving DBI than Philadelphia confirmed that no individual county or parish was responsible for more people serving DBI sentences than Philadelphia. Orleans Parish, Louisiana has a higher per capita rate at 274 DBI sentences per 100,000 people. See Marcus M. Kondkar, *Incarceration in Louisiana: Sentencing Patterns in America's Prison Capital*. A Report for Vital Projects Fund. (October 14, 2016).
- ¹⁰ Historical death-by-incarceration statistics were obtained from Pennsylvania Department of Corrections historical Annual Statistical Reports unless otherwise indicated. Historical reports are available at: <http://www.cor.pa.gov/About%20Us/Statistics/Pages/Old-Statistical-Reports.aspx>
- ¹¹ William W. Berry, *Life-With-Hope Sentencing: The Argument for Replacing Life-Without-Parole Sentences with Presumptive Life Sentences*, 76 *Ohio St. L.J.* 1051 (2015).
- ¹² Berry, *supra* n. 11 at 1076. These three countries are Australia, the Netherlands, and the United Kingdom (England and Wales).
- ¹³ Rome Statute of the International Criminal Court art. 110(3), adopted July 1, 2002, 2187 U.N.T.S. 3.
- ¹⁴ Jessica S. Henry, *Death-in-Prison Sentences: Overutilized and Underscrutinized, in Life-Without-Parole: America's New Death Penalty?* 66, 78 (Charles J. Ogletree, Jr. and Austin Sarat eds. 2012).
- ¹⁵ Henry, *supra* n. 14 at 78.
- ¹⁶ Lerner, *supra* n. 1 at 1112-1114.
- ¹⁷ Henry, *supra* n. 14 at 78.
- ¹⁸ Henry, *supra* n. 14 at 78.
- ¹⁹ Henry, *supra* n. 14 at 79.
- ²⁰ Henry, *supra* n. 14 at 79.
- ²¹ Nellis, *Life Goes On*, *supra* n. 2 at 3. The list includes Massachusetts, Michigan, Mississippi, Montana, Pennsylvania, South Dakota, and West Virginia.
- ²² Nellis, *Still Life*, *supra* n. 3 at 9.
- ²³ 61 Pa.C.S. § 6137(a)(1). This section grants the Board of Probation and Parole the authority to "release on parole any inmate to whom the power to parole is granted to the board by this chapter, except an inmate condemned to death or serving life imprisonment[.]"
- ²⁴ In 2012, the U.S. Supreme Court ruled that mandatory DBI sentences were unconstitutional when imposed on people who were juveniles at the time of the offense. The Pennsylvania legislature subsequently amended the homicide sentencing statute for those under the age of 18 at the time of the offense convicted after 2012 to provide for sentences other than life-without-parole.
- ²⁵ Nellis, *Still Life*, *supra* n. 3 at 21 Table 8.
- ²⁶ Unless otherwise indicated, all data pertaining to DBI in other jurisdictions was obtained from: Nellis, *Still Life*, *supra* n. 3 (2017).
- ²⁷ E. Ann Carson, Bureau of Justice Statistics, *Prisoners in 2016* 9 Table 7 (January 2018).
- ²⁸ World Prison Brief, Institute for Criminal Policy Research http://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=All
- ²⁹ World Prison Brief, Institute for Criminal Policy Research <http://www.prisonstudies.org/country/finland>
- ³⁰ Pennsylvania Department of Justice, Bureau of Correction, Annual Statistical Report 10 Table D (1977). Available at: <http://www.cor.pa.gov/About%20Us/Statistics/Documents/Old%20Statistical%20Reports/1977%20Annual%20Statistical%20Report.pdf>
- ³¹ World Prison Brief, Institute for Criminal Policy Research http://www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=All
- ³² World Prison Brief, Institute for Criminal Policy Research http://www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=All
- ³³ https://www2.census.gov/geo/maps/metroarea/stcbsa_pg/Feb2013/cbsa2013_PA.pdf
- ³⁴ 18 Pa.C.S. § 2501(a). Criminal homicide occurs where a person "intentionally, knowingly, recklessly or negligently causes the death of another human being."
- ³⁵ 18 Pa.C.S. § 2501(b).
- ³⁶ 18 Pa.C.S. § 2502(a).
- ³⁷ 18 Pa.C.S. § 1102(a).
- ³⁸ 18 Pa.C.S. § 2502(b).
- ³⁹ 18 Pa.C.S. § 2502(d).
- ⁴⁰ 18 Pa.C.S. § 1102(b).
- ⁴¹ 18 Pa.C.S. § 2502(c).
- ⁴² 18 Pa.C.S. § 1102(d).
- ⁴³ 42 Pa.C.S. § 9715(a).
- ⁴⁴ *Miller v. Alabama*, 567 U.S. 460 (2012).
- ⁴⁵ *Commonwealth v. Batts*, 163 A.3d 410 (Pa. 2017).
- ⁴⁶ *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016).
- ⁴⁷ <http://www.cor.pa.gov/About%20Us/Initiatives/Pages/Juvenile-Lifers-Information.aspx> (last accessed June 4, 2018).
- ⁴⁸ Includes offenses categorized as simply "murder" or "criminal homicide" with no designation of degree and one conviction for voluntary manslaughter.
- ⁴⁹ First-degree homicide does allow for individualized consideration when the prosecution is seeking the death penalty. In those cases, a DBI sentence is the minimum penalty. See 42 Pa.C.S. § 9711.
- ⁵⁰ Quote from Lifelines interview: <http://lifelines-project.org/2016/01/24/avis-lee-interview-1/>.
- ⁵¹ See Women Lifers Resume Project page on Avis Lee for more information on her accomplishments: http://docs.wixstatic.com/ugd/161764_540d396b19ce417d8cb4c755d4fd13bd.pdf.
- ⁵² Quoted in Lifelines interview: <http://lifelines-project.org/2016/01/24/avis-lee-interview-3/>.
- ⁵³ Pennsylvania Department of Corrections, Inmate Statistics as of December 31 2016. Available at: <http://www.cor.pa.gov/About%20Us/Statistics/Documents/Budget%20Documents/2016%20Inmate%20Profile.pdf>
- ⁵⁴ Pennsylvania Department of Corrections, Inmate Statistics as of December 31 2016. Available at: <http://www.cor.pa.gov/About%20Us/Statistics/Documents/Budget%20Documents/2016%20Inmate%20Profile.pdf>
- ⁵⁵ World Prison Brief, Institute for Criminal Policy Research http://www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=All
- ⁵⁶ See Jeffrey T. Ulmer and Darrell Steffensmeier, *The Age and Crime Relationship: Social Variation, Social Explanations*, in *The Nurture versus Biosocial Debate in Criminology* 377 (K. Beaver, B. Boutwell, and J.C. Barnes eds. 2014).
- ⁵⁷ Typical measures include rearrest rate (proportion of people released who were arrested within the specified time frame, regardless of whether the arrest led to new criminal charges or a conviction), reconviction rate (proportion of people convicted of a new crime within the specified time frame), and reincarceration rate (proportion of people released who were reincarcerated after their release for any reason, typically either a parole violation or a new criminal conviction).
- ⁵⁸ Ashley Nellis, *Throwing Away The Key*, 23(1) *Fed. Sent. R.* 27, 28 (2010).
- ⁵⁹ Advisory Committee on Geriatric and Seriously Ill Inmates, Joint State Government Committee of the General Assembly of the Commonwealth of Pennsylvania, *A Report of the Advisory Committee on Geriatric and Seriously Ill Inmates* (2005).

- ⁶⁰ Pennsylvania Department of Corrections, Costs & Population 2 (2011). Available at: <http://www.cor.pa.gov/About%20Us/Statistics/Documents/Budget%20Documents/2011%20Cost%20and%20Population.pdf>
- ⁶¹ The American Friends Service Committee, *Aging in Prison* 4 (2017).
- ⁶² The American Friends Service Committee, *supra* n. 51 at 4.
- ⁶³ M. Kay Harris, *The Price of Life Sentences*.
- ⁶⁴ *Johnson v. Wetzel*, 209 F.Supp.3d 766, 782 (M.D.Pa. 2016)
- ⁶⁵ Historical commutation statistics were obtained from Pennsylvania Department of Corrections historical Annual Statistical Reports unless otherwise indicated. Historical reports are available at: <http://www.cor.pa.gov/About%20Us/Statistics/Pages/Old-Statistical-Reports.aspx>
- ⁶⁶ Mark Singel, *America The Jesuit Review, I pardoned a convict who killed again. Here's why I still believe in mercy* (July 24, 2017). Available at: <https://www.americamagazine.org/pardon>
- ⁶⁷ Singel, *supra* n. 66.
- ⁶⁸ *Pa. Prison Soc'y v. Commonwealth*, 776 A.2d 971 (2001).
- ⁶⁹ Daniel Denvir, *The Appeal, Pennsylvania Democratic Attorney General Shuts Down Bids for Freedom* (March 13, 2018). Available at: <https://theappeal.org/pennsylvania-democratic-attorney-general-shuts-down-bids-for-freedom-4d75e56447d1/>
- ⁷⁰ Samantha Melamed, *Sisters begged the Board of Pardons to free their brother's killer. The board said "no"*, Philadelphia Inquirer (June 28, 2018).
- ⁷¹ Marie Gottschalk, *No Way Out?*, in *Life-Without-Parole: America's New Death Penalty?*, in *Life-Without-Parole: America's New Death Penalty?* 227, 254 (Charles J. Ogletree, Jr. and Austin Sarat eds. 2012).
- ⁷² Paul H. Robinson and John M. Darley, *Does Criminal Law Deter?* A Behavioural Science Investigation, 24(2) *Oxford J. of Legal Studies* 173, 175 (2004).
- ⁷³ Robinson and Darley, *supra* n. 72 at 173.
- ⁷⁴ Gottschalk, *supra* n. 71 at 235.
- ⁷⁵ James Austin and Lauren-Brooke Eisen, *Brennan Institute for Justice, How Many Americans are Unnecessarily Incarcerated?* 36 (2016).
- ⁷⁶ Danielle Sered, *Vera Institute of Justice, Accounting for Violence: How to Increase Safety and Break Our Failed Reliance on Mass Incarceration* 4-5 (2017).
- ⁷⁷ Robinson and Darley, *supra* n. 72 at 175-76.
- ⁷⁸ Austin and Eisen, *supra* n. 75 at 36-37.
- ⁷⁹ Gottschalk, *supra* n. 71 at 235.
- ⁸⁰ Paul H. Robinson, *Life Without Parole Under Modern Theories of Punishment*, in *Life-Without-Parole: America's New Death Penalty?* 138, 140 (Charles J. Ogletree, Jr. and Austin Sarat eds. 2012).
- ⁸¹ See e.g. Cohen, Alexandra O., et al., *When is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts*, 27 *Psychological Science* 549, 559 (2016).
- ⁸² Dan Markel, *State, Be Not Proud: A Retributive Defense of the Commutation of Death Row and the Abolition of the Death Penalty*, 40 *Harv. C.R.-C.L. L. Rev.* 407, 435 (2005).
- ⁸³ Markel, *supra* n. 82 at 436.
- ⁸⁴ Markel, *supra* n. 82 at 438.
- ⁸⁵ Josh Bowers, *Mandatory Life and the Death of Equitable Discretion*, in *Life Without Parole: American's New Death Penalty?* 25, 38 (Charles J. Ogletree, Jr. and Austin Sarat eds. 2012).
- ⁸⁶ This is not without good reason. Jurors who morally or philosophically oppose death-by-execution sentences are typically disqualified from serving in capital cases, so juries are by nature predisposed to imposing death-by-execution sentences. The risk for many people sentenced to DBI in Pennsylvania was even greater, especially in Philadelphia, where prosecutors, such as Lynne Abraham—who was once dubbed America's Deadliest DA—have zealously pursued death-by-execution sentences, despite Pennsylvania only actually carrying out three executions since the 1970s.
- ⁸⁷ <https://www.theotherdeathpenalty.org/>
- ⁸⁸ Kenneth Hartmann, *University of Oxford Faculty of Law, Centre for Criminology Blog, America's Other Death Penalty Problem* (March 30, 2015). Available at: <https://www.law.ox.ac.uk/centres-institutes/centre-criminology/blog/2015/03/america%E2%80%99s-other-death-penalty-problem>
- ⁸⁹ Sered, *supra* n. 76 at 11-14.
- ⁹⁰ See Gottschalk, *supra* n. 71 at 251-52.
- ⁹¹ Gottschalk, *supra* n. 71 at 235.
- ⁹² Alliance for Safety and Justice, *Crime Survivors Speak* 16 (2016).
- ⁹³ Sered, *supra* n. 76 at 11.
- ⁹⁴ Sered, *supra* n. 76 at 13.
- ⁹⁵ Lorraine Haw, *My Brother's Killer was sentenced to death, but I hope he is allowed to live*, Philadelphia Inquirer (April 4, 2018).
- ⁹⁶ Brief of *Amici Curiae* of Certain Family Members of Victims Killed by Youths In Support of Petitioner 2, *Montgomery v. Louisiana*, Docket No. 14-280, Supreme Court of the United States. Accessed at: http://www.scotusblog.com/wp-content/uploads/2015/08/Montgomery_Victims-Family-Members-Amicus.pdf
- ⁹⁷ Haw, *supra* n. 95.
- ⁹⁸ Brief of *Amici Curiae* of Certain Family Members of Victims Killed by Youths In Support of Petitioner 3, *Montgomery v. Louisiana*, Docket No. 14-280, Supreme Court of the United States. Accessed at: http://www.scotusblog.com/wp-content/uploads/2015/08/Montgomery_Victims-Family-Members-Amicus.pdf
- ⁹⁹ Haw, *supra* n. 95.
- ¹⁰⁰ Nellis, *Throwing Away The Key*, *supra* n. 58 at 28.
- ¹⁰¹ Sered, *supra* n. 76 at 20.
- ¹⁰² Gottschalk, *supra* n. 71 at 235.
- ¹⁰³ Ulmer and Steffensmeier, *supra* n. 56 at 382 fig. 23.1.
- ¹⁰⁴ Austin and Eisen, *supra* n. 75 at 36.
- ¹⁰⁵ Nellis, *Throwing Away The Key*, *supra* n. 58 at 28.
- ¹⁰⁶ Advisory Committee on Geriatric and Seriously Ill Inmates, *Joint State Government Committee of the General Assembly of the Commonwealth of Pennsylvania, A Report of the Advisory Committee on Geriatric and Seriously Ill Inmates* (2005).
- ¹⁰⁷ Advisory Committee on Geriatric and Seriously Ill Inmates, *Joint State Government Committee of the General Assembly of the Commonwealth of Pennsylvania, A Report of the Advisory Committee on Geriatric and Seriously Ill Inmates* (2005).
- ¹⁰⁸ Samantha Melamed, *35 Years in prison, then 150 days of freedom: Philly's first juvenile lifer back in jail*, Philadelphia Inquirer (April 27, 2018).
- ¹⁰⁹ Marie Gottschalk, *Days Without End: Life Sentences and Penal Reform*, *Prison Legal News* (January 15, 2012).
- ¹¹⁰ Nazhol Ghandnoosh, *The Sentencing Project, Delaying a Second Chance: The Declining Prospects for Parole on Life Sentences* 29 (2017).
- ¹¹¹ *Furman v. Georgia*, 408 U.S. 238 (1972).
- ¹¹² Gottschalk, *supra* n. 71 at 255.
- ¹¹³ Sharon Dolovich, *Creating the Permanent Prisoner*, in *Life-Without-Parole: America's New Death Penalty?* 96, 99 (Charles J. Ogletree, Jr. and Austin Sarat eds. 2012).
- ¹¹⁴ I. Bennett Capers, *Defending Life*, in *Life-Without-Parole: America's New Death Penalty?* 167, 179-80 (Charles J. Ogletree, Jr. and Austin Sarat eds. 2012).
- ¹¹⁵ *Trop v. Dulles*, 356 U.S. 86 (1958).
- ¹¹⁶ *Trop*, 356 U.S. at 101.
- ¹¹⁷ Capers, *supra* n. 114 at 179-80.
- ¹¹⁸ Lerner, *supra* n. 1 at 1137.
- ¹¹⁹ Dolovich, *supra* n. 113 at 98.
- ¹²⁰ Charles J. Ogletree, Jr. and Austin Sarat, *Introduction: Lives on the Line: From Capital Punishment to Life without Parole*, in *Life-Without-Parole: America's New Death Penalty?* 1, 8 (Charles J. Ogletree, Jr. and Austin Sarat eds. 2012).
- ¹²¹ Gottschalk, *supra* n. 71 at 234.
- ¹²² Gottschalk, *supra* n. 71 at 234.
- ¹²³ Nellis, *Throwing Away The Key*, *supra* n. 58 at 29.
- ¹²⁴ Dolovich, *supra* n. 113 at 105-08.
- ¹²⁵ Dolovich, *supra* n. 113 at 105-08; Henry, *supra* n. 14 at 75.
- ¹²⁶ Gottschalk, *supra* n. 71 at 234.
- ¹²⁷ Sered, *supra* n. 76 at 17.
- ¹²⁸ Sered, *supra* n. 76 at 17.
- ¹²⁹ Sered, *supra* n. 76 at 18.
- ¹³⁰ Dolovich, *supra* n. 113 at 109.
- ¹³¹ Dolovich, *supra* n. 113 at 108.

¹³² Dolovich, *supra* n. 113 at 109.

¹³³ Jonathan Simon, *Dignity and Risk: The Long Road from Graham v. Florida to Abolition of Life Without Parole*, in *Life-Without-Parole: America's New Death Penalty?* 282, 283-84 (Charles J. Ogletree, Jr. and Austin Sarat eds. 2012).

¹³⁴ Simon, *supra* n. 133 at 283-84.

¹³⁵ Dolovich, *supra* n. 113 at 102.

¹³⁶ *Graham v. Florida*, 560 U.S. 48, 74 (2010).

¹³⁷ Quoted from Lifelines, <http://lifelines-project.org/2016/01/23/dawud-lee-interview-2/>

¹³⁸ For text of the legislation and other information visit

<http://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2017&slnd=0&body=H&type=B&bn=135>

¹³⁹ http://www.legis.state.pa.us/cfdocs/billInfo/bill_history.cfm?sYear=2017&slnd=0&body=H&type=B&bn=135

¹⁴⁰ For text of the legislation and other information visit:

<http://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=H&SPick=20170&cosponId=21420>

¹⁴¹ <http://www.legis.state.pa.us/cfdocs/billInfo/BillInfo.cfm?sYear=2017&slnd=0&body=S&type=B&bn=942>

¹⁴² http://www.legis.state.pa.us/cfdocs/billInfo/bill_history.cfm?sYear=2017&slnd=0&body=S&type=B&bn=942. The sponsors in addition to Senator Street are senators Daylin Leach, Bob Mensch, and Art Haywood.

¹⁴³ Quoted from Lifelines: Voices Against the Other Death Penalty, accessed at <http://lifelines-project.org/mechie-scott/>

¹⁴⁴ These and other accomplishments found at Women Lifers Resume Project, accessed at http://docs.wixstatic.com/ugd/161764_65f18d89d1414fe6be8e26f9d936e0b5.pdf

¹⁴⁵ See Appendix for Model Sentence Review Policy, outlining the purpose of the policy and a non-exhaustive articulation of factors to consider when reviewing the appropriateness of a sentence.

¹⁴⁶ Samantha Melamed and Chris Palmer, *Philly lifers' clemency plea hits a roadblock in Attorney General Josh Shapiro*, Philadelphia Inquirer (February 28, 2018).

¹⁴⁷ Melamed and Palmer, *supra* n. 146.

¹⁴⁸ <https://decarceratepa.info/content/open-letter-attorney-general-joshshapiro>

¹⁴⁹ Samantha Melamed, Sisters begged the Board of Pardons to free their brother's killer. The board said "no", Philadelphia Inquirer (June 28, 2018).

APPENDIX

COUNTY	DBI SENTENCES	% OF TOTAL	COUNTY POPULATION*	PER 100K
Adams	15	0.28%	101,407	14.79
Allegheny	541	10.12%	1,223,348	44.22
Armstrong	7	0.13%	68,941	10.15
Beaver	33	0.62%	170,539	19.35
Bedford	7	0.13%	49,762	14.07
Berks	119	2.23%	411,442	28.92
Blair	23	0.43%	127,089	18.10
Bradford	11	0.21%	62,622	17.57
Bucks	113	2.11%	625,249	18.07
Butler	19	0.36%	183,862	10.33
Cambria	17	0.32%	143,679	11.83
Cameron	0	0.00%	5,085	0.00
Carbon	11	0.21%	65,249	16.86
Centre	16	0.30%	153,990	10.39
Chester	80	1.50%	498,886	16.04
Clarion	4	0.07%	39,988	10.00
Clearfield	18	0.34%	81,642	22.05
Clinton	5	0.09%	39,238	12.74
Columbia	5	0.09%	67,295	7.43
Crawford	19	0.36%	88,765	21.40
Cumberland	34	0.64%	235,406	14.44
Dauphin	178	3.33%	268,100	66.39
Delaware	193	3.61%	558,979	34.53
Elk	4	0.07%	31,946	12.52
Erie	81	1.52%	280,566	28.87
Fayette	42	0.79%	136,606	30.75
Forest	4	0.07%	7,716	51.84
Franklin	27	0.51%	149,618	18.05
Fulton	0	0.00%	14,845	0.00
Greene	8	0.15%	38,686	20.68
Huntingdon	10	0.19%	45,913	21.78
Indiana	14	0.26%	88,880	15.75
Jefferson	9	0.17%	45,200	19.91
Juniata	5	0.09%	24,636	20.30
Lackawanna	36	0.67%	214,437	16.79
Lancaster	119	2.23%	519,445	22.91
Lawrence	14	0.26%	91,108	15.37
Lebanon	28	0.52%	133,568	20.96
Lehigh	94	1.76%	349,497	26.90
Luzerne	71	1.33%	320,918	22.12
Lycoming	18	0.34%	116,111	15.50
McKean	8	0.15%	43,450	18.41
Mercer	19	0.36%	116,638	16.29
Mifflin	2	0.04%	46,682	4.28
Monroe	40	0.75%	169,842	23.55
Montgomery	136	2.54%	799,874	17.00
Montour	1	0.02%	18,267	5.47
Northampton	69	1.29%	297,735	23.17

Northumberland	15	0.28%	94,528	15.87
Out of State	10	0.19%	N/A	N/A
Perry	5	0.09%	45,969	10.88
Philadelphia	2,694	50.39%	1,526,006	176.54
Pike	9	0.17%	57,369	15.69
Potter	5	0.09%	17,457	28.64
Schuylkill	27	0.51%	148,289	18.21
Snyder	3	0.06%	39,702	7.56
Somerset	6	0.11%	77,742	7.72
Sullivan	1	0.02%	6,428	15.56
Susquehanna	3	0.06%	43,356	6.92
Tioga	7	0.13%	41,981	16.67
Union	2	0.04%	44,947	4.45
Venango	10	0.19%	54,984	18.19
Warren	7	0.13%	41,815	16.74
Washington	37	0.69%	207,820	17.80
Wayne	10	0.19%	52,822	18.93
Westmoreland	56	1.05%	365,169	15.34
Wyoming	4	0.07%	28,276	14.15
York	108	2.02%	434,972	24.83
Total	5,346	100.00%	12,702,379	42.09

*County population based on 2016 census estimates:
<https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmm>

PEOPLE SENTENCED TO DBI WHO ARE ...

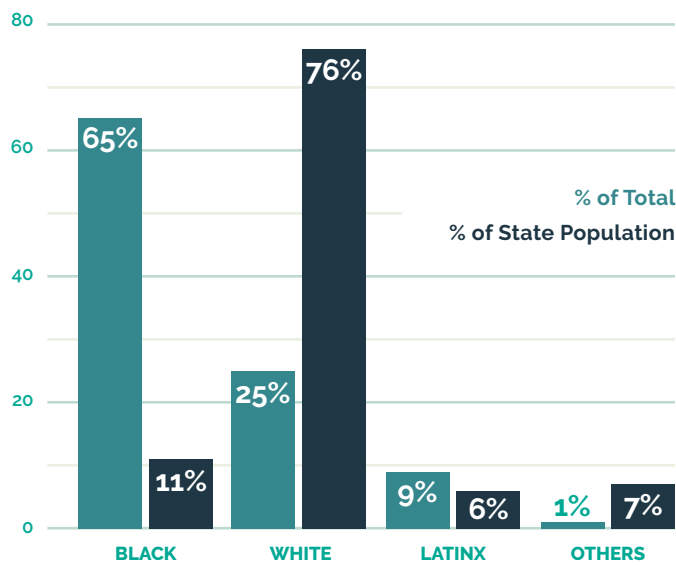
AGE	DBI SENTENCES	% OF TOTAL
80+	40	0.75%
75+	116	2.17%
70+	281	5.26%
65+	628	11.75%
60+	1148	21.47%
55+	1766	33.03%
50+	2377	44.46%
45+	3045	56.96%
40+	3770	70.52%
35+	4430	82.87%
30+	4906	91.77%
25+	5263	98.45%
20+	5343	99.94%
19+	5346	100.00%

DBI SENTENCES BY CURRENT AGE RANGE

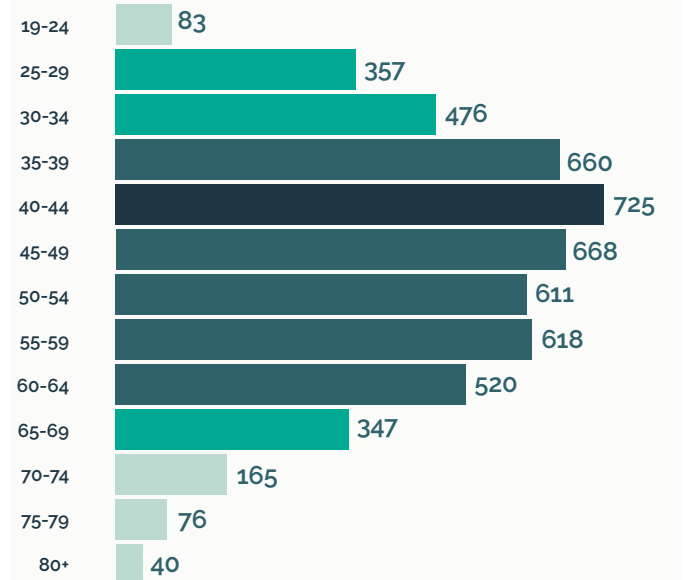
AGE	DBI SENTENCES	% OF TOTAL
19-24	83	1.55%
25-29	357	6.68%
30-34	476	8.90%
35-39	660	12.35%
40-44	725	13.56%
45-49	668	12.50%
50-54	611	11.43%
55-59	618	11.56%
60-64	520	9.73%
65-69	347	6.49%
70-74	165	3.09%
75-79	76	1.42%
80+	40	0.75%
TOTAL	5,346	100.00%

RACIAL DISPARITIES IN DBI SENTENCES

90



AGE: DBI SENTENCES:



DBI SENTENCES BY RACE

RACE	DBI SENTENCES	% OF TOTAL	STATE POPULATION	% OF STATE POPULATION	PER 100K
Black	3,483	65.15%	1,377,689	10.85%	252.81
White	1,323	24.75%	9,686,628	76.26%	13.66
Latinx	477	8.92%	719,660	5.67%	66.28
Asian	34	0.64%	352,741	2.78%	9.64
Indigenous	11	0.21%	26,843	0.21%	40.98
Other	18	0.34%	538,818	4.24%	3.34
Total	5,346	100.00%	12,702,379	100.00%	42.09

PEOPLE SENTENCED TO DBI WHO ARE ...

AGE	DBI SENTENCES	% OF TOTAL
>18	118	2.21%
21 or younger	1,447	27.07%
25 or younger	2,841	53.14%
30 or younger	3,906	73.06%
35 or younger	4,510	84.36%
40 or younger	4,875	91.19%
45 or younger	5,085	95.12%
50 or younger	5,212	97.49%
55 or younger	5,284	98.84%
60 or younger	5,314	99.40%
65 or younger	5,332	99.74%
70 or younger	5,340	99.89%
74 or younger	5,346	100.00%

DBI SENTENCES - AGE RANGE AT COMMITMENT

AGE	DBI SENTENCES	% OF TOTAL
>18	118	2.21%
18-21	1,329	24.86%
22-25	1,394	26.08%
26-30	1,065	19.92%
31-35	604	11.30%
36-40	365	6.83%
41-45	210	3.93%
46-50	127	2.38%
51-55	72	1.35%
56-60	30	0.56%
61-65	18	0.34%
66-70	8	0.15%
71-74	6	0.11%
Total	5,346	100.00%

DBI SENTENCES BY TIME SERVED

TIME SERVED	DBI SENTENCES	% OF TOTAL
0-4	539	10.08%
5-9	686	12.83%
10-14	685	12.81%
15-19	694	12.98%
20-24	792	14.81%
25-29	754	14.10%
30-34	561	10.49%
35-39	332	6.21%
40-44	224	4.19%
45-49	70	1.31%
50-55	9	0.17%
Total	5,346	100.00%

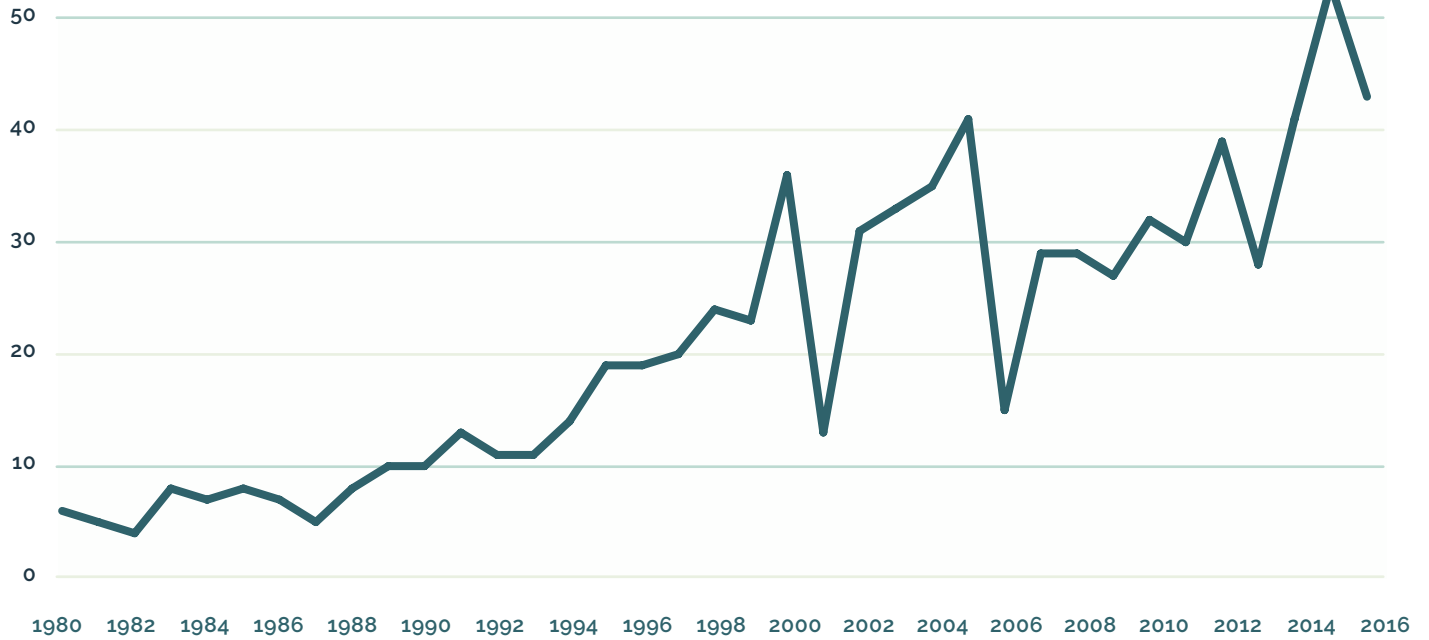
DBI SENTENCES BY TIME SERVED

YEARS IN DOC	DBI SENTENCES	% OF TOTAL
50+	9	0.17%
45+	79	1.48%
40+	303	5.67%
35+	635	11.88%
30+	1196	22.37%
25+	1950	36.48%
20+	2742	51.29%
15+	3436	64.27%
10+	4121	77.09%
5+	4807	89.92%
0+	5346	100.00%

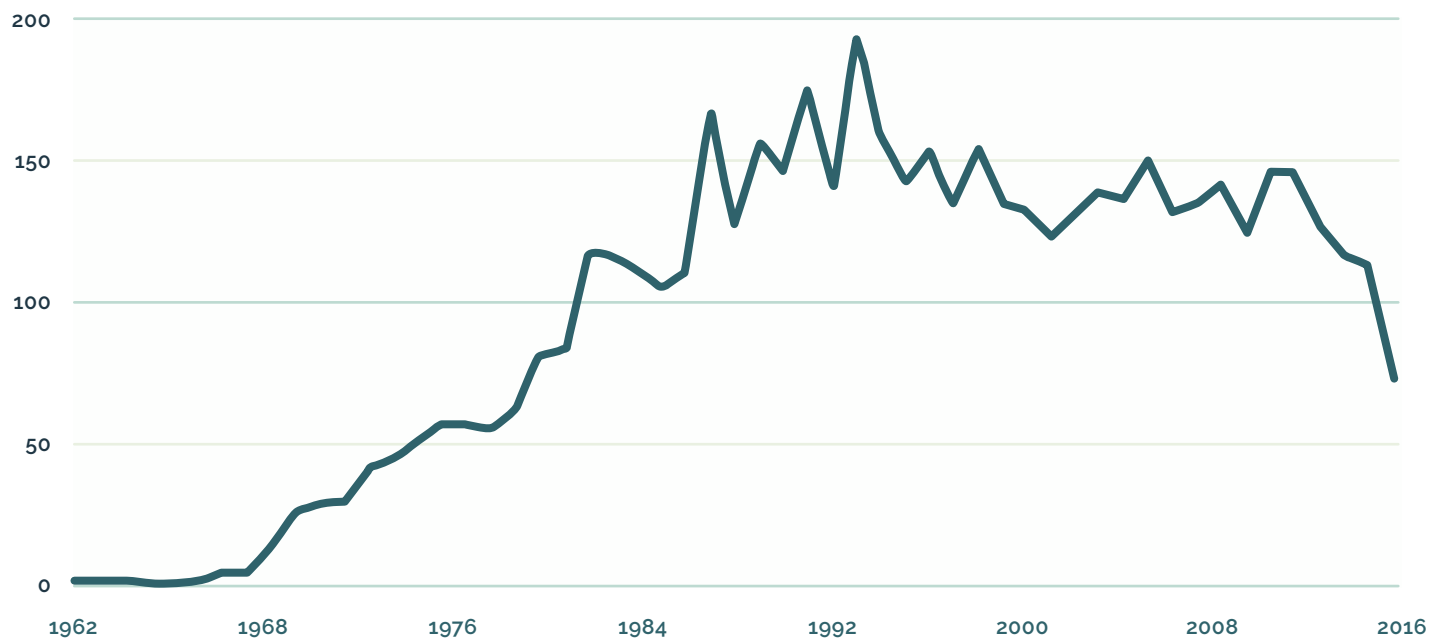
DBI SENTENCES BY GENDER

RACE	DBI SENTENCES	% OF TOTAL	STATE POPULATION	PER 100K
Men	5,145	96.24%	6,261,194	82.17
Women	201	3.76%	6,523,033	3.08
Total	5,346	100.00%	12,784,227	41.82

DBI SENTENCES – YEAR OF COMMITMENT TO DOC



DBI SENTENCES IN PENNSYLVANIA: DEATHS PER YEAR



PEOPLE SERVING DBI SENTENCES AT YEAR END

YEAR	DBI SENTENCES
1974	498
1975	572
1976	650
1977	707
1978	756
1979	826
1980	878
1981	962
1982	1074
1983	1195
1984	1311
1985	1429
1986	1544
1987	1674
1988	1858
1989	1964
1990	2139
1991	2291
1992	2459
1993	2614
1994	2806
1995	2973
1996	3128
1997	3283
1998	3495
1999	3616
2000	3627
2001	3752
2002	3859
2003	3984
2004	4091
2005	4216
2006	4340
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2011	4971
2012	5121
2013	5254
2014	5352
2015	5431
2016	5478

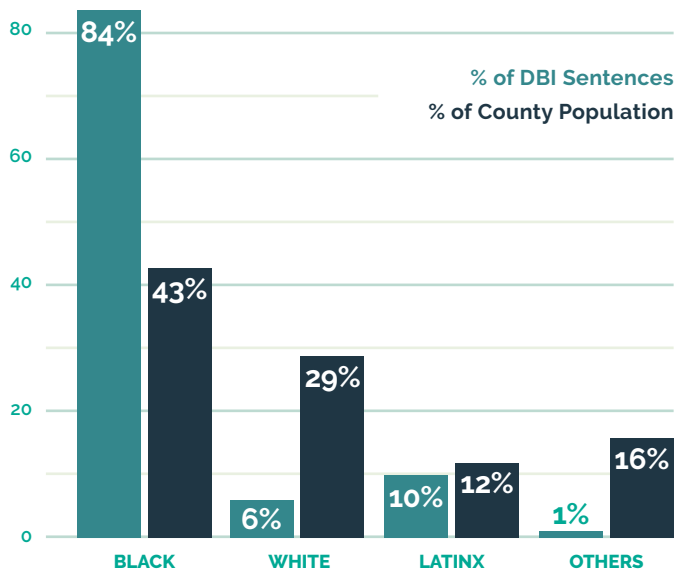
DEATHS OF PEOPLE SERVING DBI SENTENCES

YEAR	DBI SENTENCES	DEATHS	CUMULATIVE TOTAL DEATHS
1980	878	6	6
1981	962	5	11
1982	1074	4	15
1983	1195	8	23
1984	1311	7	30
1985	1429	8	38
1986	1544	7	45
1987	1674	5	50
1988	1858	8	58
1989	1964	10	68
1990	2139	10	78
1991	2291	13	91
1992	2459	11	102
1993	2614	11	113
1994	2806	14	127
1995	2973	19	146
1996	3128	19	165
1997	3283	20	185
1998	3495	24	209
1999	3616	23	232
2000	3627	36	268
2001	3752	13	281
2002	3859	31	312
2003	3984	33	345
2004	4091	35	380
2005	4216	41	421
2006	4340	15	436
2007	4451	29	465
2008	4574	29	494
2009	4706	27	521
2010	4829	32	553
2011	4971	30	583
2012	5121	39	622
2013	5254	28	650
2014	5352	41	691
2015	5431	53	744
2016	5478	43	787

DBI SENTENCES BY RACE

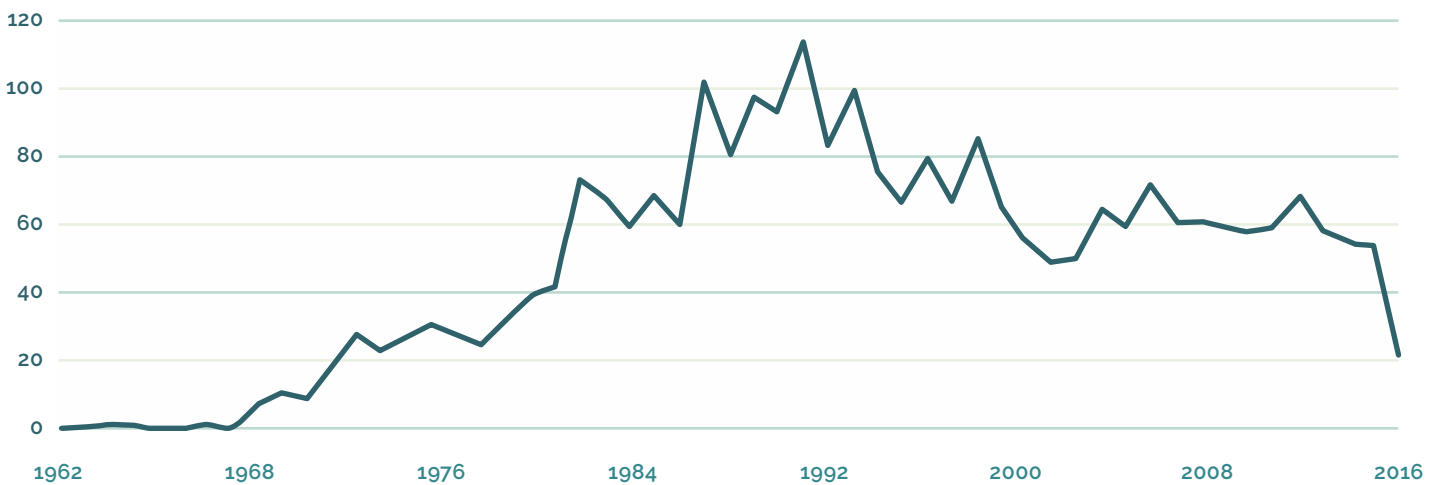
RACE	DBI SENTENCES	% OF COUNTY TOTAL	% OF STATE TOTAL	COUNTY POPULATION	% OF COUNTY POPULATION	PER 100K
Black	2,250	83.52%	42.09%	661,839	43.37%	339.96
White	153	5.68%	2.86%	438,610	28.74%	34.88
Latinx	260	9.65%	4.86%	187,611	12.29%	138.58
Other	31	1.15%	0.58%	237,946	15.59%	13.03
Total	2,694	100.00%	50.39%	1,526,006	100.00%	176.54

RACIAL DISPARITIES IN DBI SENTENCES



94

DBI SENTENCES BY YEAR



PEOPLE SENTENCED TO DBI WHO ARE ...

AGE	DBI SENTENCES	% OF TOTAL
80+	16	0.59%
75+	55	2.04%
70+	119	4.42%
65+	270	10.02%
60+	566	21.01%
55+	876	32.52%
50+	1190	44.17%
45+	1580	58.65%
40+	1923	71.38%
35+	2252	83.59%
30+	2488	92.35%
25+	2660	98.74%
20+	2694	100.00%

AGE RANGE AT COMMITMENT

AGE	DBI SENTENCES	% OF TOTAL
>18	50	1.86%
18-21	738	27.39%
22-25	756	28.06%
26-30	564	20.94%
31-35	273	10.13%
36-40	149	5.53%
41-45	80	2.97%
46-50	44	1.63%
51-55	24	0.89%
56-60	8	0.30%
61-65	5	0.19%
66-70	1	0.04%
71-74	2	0.07%
TOTAL	2,694	100.00%

PEOPLE SERVING DBI WHO STARTED SENTENCE AT ...

AGE	DBI SENTENCES	% OF TOTAL
>18	50	1.86%
21 or younger	788	29.25%
25 or younger	1,544	57.31%
30 or younger	2,108	78.25%
35 or younger	2,381	88.38%
40 or younger	2,530	93.91%
45 or younger	2,610	96.88%
50 or younger	2,654	98.52%
55 or younger	2,678	99.41%
60 or younger	2,686	99.70%
65 or younger	2,691	99.89%
70 or younger	2,692	99.93%
74 or younger	2,694	100.00%

DBI SENTENCES BY TIME SERVED

AGE	DBI SENTENCES	% OF TOTAL
50+	2	0.07%
45+	27	1.00%
40+	151	5.61%
35+	310	11.51%
30+	641	23.79%
25+	1114	41.35%
20+	1524	56.57%
15+	1854	68.82%
10+	2158	80.10%
5+	2468	91.61%
0+	2694	100.00%

DBI SENTENCES IN PHILADELPHIA BY OFFENSE

OFFENSE	DBI SENTENCES	% OF COUNTY TOTAL	% OF STATE TOTAL
1st Deg. Murder	1,859	69.01%	34.77%
2nd Deg. Murder	612	22.72%	11.45%
3rd Deg. Murder	28	1.04%	0.52%
Murder/ Criminal Homicide	189	7.02%	3.54%
Sexual Offenses	1	0.04%	0.02%
Other Offenses	5	0.19%	0.09%
TOTAL	2,694	100.00%	50.39%

DBI SENTENCES BY RACE

RACE	DBI SENTENCES	% OF TOTAL	COUNTY POPULATION	% OF COUNTY POPULATION	PER 100K
Black	409	75.60%	161,861	13.23%	252.69
White	128	23.66%	978,225	79.96%	13.08
Latinx	1	0.18%	19,070	1.56%	5.24
Other	3	0.55%	64,192	5.25%	4.67
TOTAL	541	100.00%	1,223,348	100.00%	44.22

DBI SENTENCES BY CURRENT AGE RANGE

AGE	DBI SENTENCES	% OF TOTAL
19-24	7	1.29%
25-29	48	8.87%
30-34	59	10.91%
35-39	57	10.54%
40-44	91	16.82%
45-49	60	11.09%
50-54	65	12.01%
55-59	45	8.32%
60-64	45	8.32%
65-69	39	7.21%
70-74	20	3.70%
75-79	2	0.37%
80+	3	0.55%
TOTAL	541	100.00%

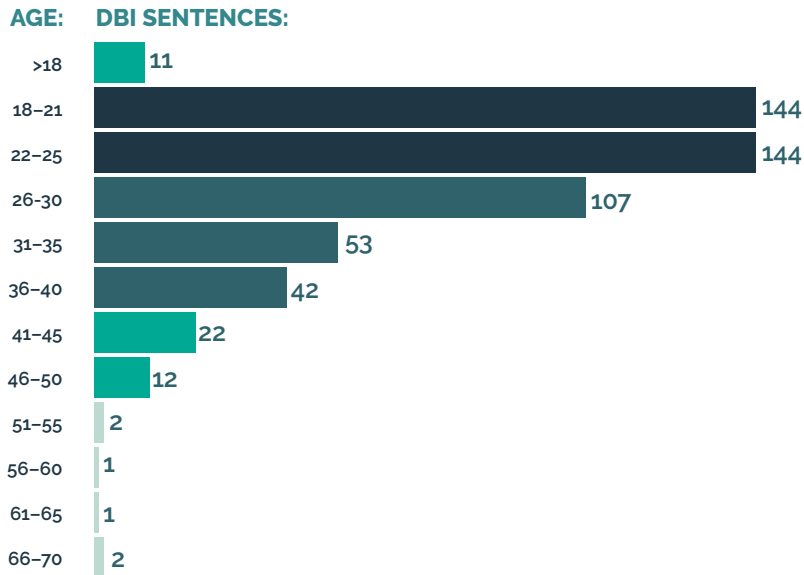
PEOPLE SENTENCED TO DBI WHO ARE ...

AGE	DBI SENTENCES	% OF TOTAL
80+	3	0.55%
75+	5	0.92%
70+	25	4.62%
65+	64	11.83%
60+	109	20.15%
55+	154	28.47%
50+	219	40.48%
45+	279	51.57%
40+	370	68.39%
35+	427	78.93%
30+	486	89.83%
25+	534	98.71%
20+	541	100.00%
19+	541	100.00%

PEOPLE SERVING DBI WHO STARTED SENTENCE AT ...

AGE	DBI SENTENCES	% OF TOTAL
>18	11	2.03%
21 or younger	155	28.65%
25 or younger	299	55.27%
30 or younger	406	75.05%
35 or younger	459	84.84%
40 or younger	501	92.61%
45 or younger	523	96.67%
50 or younger	535	98.89%
55 or younger	537	99.26%
60 or younger	538	99.45%
65 or younger	539	99.63%
70 or younger	541	100.00%

DBI SENTENCES BY AGE AT COMMITMENT



DBI SENTENCES BY OFFENSE

OFFENSE	DBI SENTENCES	% OF TOTAL
1st Deg. Murder	352	65.06%
2nd Deg. Murder	135	24.95%
3rd Deg. Murder	5	0.92%
Murder/ Criminal Homicide	48	8.87%
Sexual Offense	1	0.18%
Other Offense	0	0.00%
TOTAL	541	100.00%

DBI SENTENCES BY TIME SERVED

AGE	DBI SENTENCES	% OF TOTAL
50+	1	0.18%
45+	15	2.77%
40+	29	5.36%
35+	63	11.65%
30+	116	21.44%
25+	175	32.35%
20+	258	47.69%
15+	333	61.55%
10+	408	75.42%
5+	495	91.50%
0+	541	100.00%

DBI SENTENCES BY RACE

RACE	DBI SENTENCES	% OF TOTAL	COUNTY POPULATION	% OF COUNTY POPULATION	PER 100K
Black	131	67.88%	110,260	19.73%	118.81
White	44	22.80%	388,696	69.54%	11.32
Latinx	13	6.74%	16,537	2.96%	78.61
Other	5	2.59%	43,486	7.78%	11.50
Total	193	100.00%	558,979	100.00%	34.53

PEOPLE SENTENCED TO DBI WHO ARE ...

AGE	DBI SENTENCES	% OF TOTAL
80+	4	2.07%
75+	5	2.59%
70+	9	4.66%
65+	30	15.54%
60+	43	22.28%
55+	66	34.20%
50+	83	43.01%
45+	101	52.33%
40+	127	65.80%
35+	152	78.76%
30+	172	89.12%
25+	190	98.45%
20+	193	100.00%

AGE RANGE AT COMMITMENT

AGE	DBI SENTENCES	% OF TOTAL
>18	9	4.66%
18-21	46	23.83%
22-25	55	28.50%
26-30	39	20.21%
31-35	15	7.77%
36-40	12	6.22%
41-45	6	3.11%
46-50	6	3.11%
51-55	3	1.55%
56-60	1	0.52%
61-65	0	0.00%
66-70	0	0.00%
71-74	1	0.52%
TOTAL	193	100.00%

PEOPLE SERVING DBI WHO STARTED SENTENCE AT ...

AGE	DBI SENTENCES	% OF TOTAL
>18	9	4.66%
21 or younger	55	28.50%
25 or younger	110	56.99%
30 or younger	149	77.20%
35 or younger	164	84.97%
40 or younger	176	91.19%
45 or younger	182	94.30%
50 or younger	188	97.41%
55 or younger	191	98.96%
60 or younger	192	99.48%
65 or younger	192	99.48%
70 or younger	192	99.48%
74 or younger	193	100.00%

DBI SENTENCES BY TIME SERVED

YEARS IN DOC	DBI SENTENCES	% OF TOTAL
45+	2	1.04%
40+	14	7.25%
35+	31	16.06%
30+	48	24.87%
25+	62	32.12%
20+	97	50.26%
15+	127	65.80%
10+	156	80.83%
5+	174	90.16%
0+	193	100.00%

DBI SENTENCES IN BY OFFENSE

OFFENSE	DBI SENTENCES	% OF TOTAL
1st Deg. Murder	115	59.59%
2nd Deg. Murder	63	32.64%
3rd Deg. Murder	3	1.55%
Murder/ Criminal Homicide	11	5.70%
Sexual Offense	0	0.00%
Other Offense	1	0.52%
TOTAL	193	100.00%

DBI SENTENCES BY RACE

RACE	DBI SENTENCES	% OF TOTAL	COUNTY POPULATION	% OF COUNTY POPULATION	PER 100K
Black	92	67.65%	69,351	8.67%	132.66
White	35	25.74%	614,788	76.86%	5.69
Latinx	8	5.88%	34,233	4.28%	23.37
Other	1	0.74%	81,502	10.19%	1.23
Total	136	100.00%	799,874	100.00%	17.00

PEOPLE SENTENCED TO DBI WHO ARE ...

AGE	DBI SENTENCES	% OF TOTAL
75+	2	1.47%
70+	8	5.88%
65+	15	11.03%
60+	22	16.18%
55+	37	27.21%
50+	52	38.24%
45+	62	45.59%
40+	80	58.82%
35+	100	73.53%
30+	120	88.24%
25+	131	96.32%
20+	136	100.00%

AGE RANGE AT COMMITMENT

AGE	DBI SENTENCES	% OF TOTAL
>18	1	0.74%
18-21	35	25.74%
22-25	37	27.21%
26-30	26	19.12%
31-35	17	12.50%
36-40	8	5.88%
41-45	6	4.41%
46-50	2	1.47%
51-55	1	0.74%
56-60	1	0.74%
61-65	0	0.00%
66-70	0	0.00%
71-74	2	1.47%
TOTAL	136	100.00%

PEOPLE SERVING DBI WHO STARTED SENTENCE AT ...

AGE	DBI SENTENCES	% OF TOTAL
>18	1	0.74%
21 or younger	36	26.47%
25 or younger	73	53.68%
30 or younger	99	72.79%
35 or younger	116	85.29%
40 or younger	124	91.18%
45 or younger	130	95.59%
50 or younger	132	97.06%
55 or younger	133	97.79%
60 or younger	134	98.53%
65 or younger	134	98.53%
70 or younger	134	98.53%
74 or younger	136	100.00%

DBI SENTENCES BY TIME SERVED

YEARS IN DOC	DBI SENTENCES	% OF TOTAL
45+	5	3.68%
40+	7	5.15%
35+	11	8.09%
30+	18	13.24%
25+	31	22.79%
20+	52	38.24%
15+	70	51.47%
10+	96	70.59%
5+	117	86.03%
0+	136	100.00%

DBI SENTENCES IN BY OFFENSE

OFFENSE	DBI SENTENCES	% OF TOTAL
1st Deg. Murder	94	69.12%
2nd Deg. Murder	30	22.06%
3rd Deg. Murder	0	0.00%
Murder/ Criminal Homicide	10	7.35%
Sexual Offense	1	0.74%
Other Offense	1	0.74%
TOTAL	136	100.00%

DBI SENTENCES BY RACE

RACE	DBI SENTENCES	% OF TOTAL	COUNTY POPULATION	% OF COUNTY POPULATION	PER 100K
Black	37	32.74%	22,376	3.58%	165.36
White	70	61.95%	530,865	84.90%	13.19
Latinx	3	2.65%	26,782	4.28%	11.20
Other	3	2.65%	45,226	7.23%	6.63
Total	113	100.00%	625,249	100.00%	18.07

PEOPLE SENTENCED TO DBI WHO ARE ...

AGE	DBI SENTENCES	% OF TOTAL
80+	0	0.00%
75+	5	4.42%
70+	8	7.08%
65+	15	13.27%
60+	31	27.43%
55+	53	46.90%
50+	68	60.18%
45+	78	69.03%
40+	90	79.65%
35+	102	90.27%
30+	109	96.46%
25+	113	100.00%

AGE RANGE AT COMMITMENT

AGE	DBI SENTENCES	% OF TOTAL
>18	4	3.54%
18-21	18	15.93%
22-25	29	25.66%
26-30	24	21.24%
31-35	13	11.50%
36-40	10	8.85%
41-45	5	4.42%
46-50	3	2.65%
51-55	4	3.54%
56-60	2	1.77%
61-65	0	0.00%
66-70	1	0.88%
TOTAL	136	100.00%

PEOPLE SERVING DBI WHO STARTED SENTENCE AT ...

AGE	DBI SENTENCES	% OF TOTAL
>18	4	3.54%
21 or younger	22	19.47%
25 or younger	51	45.13%
30 or younger	75	66.37%
35 or younger	88	77.88%
40 or younger	98	86.73%
45 or younger	103	91.15%
50 or younger	106	93.81%
55 or younger	110	97.35%
60 or younger	112	99.12%
65 or younger	112	99.12%
70 or younger	113	100.00%

DBI SENTENCES BY TIME SERVED

YEARS IN DOC	DBI SENTENCES	% OF TOTAL
50+	1	0.88%
45+	2	1.77%
40+	10	8.85%
35+	24	21.24%
30+	37	32.74%
25+	52	46.02%
20+	63	55.75%
15+	72	63.72%
10+	90	79.65%
5+	99	87.61%
0+	113	100.00%

DBI SENTENCES IN BY OFFENSE

OFFENSE	DBI SENTENCES	% OF TOTAL
1st Deg. Murder	83	73.45%
2nd Deg. Murder	18	15.93%
3rd Deg. Murder	0	0.00%
Murder/ Criminal Homicide	8	7.08%
Sexual Offense	2	1.77%
Other Offense	2	1.77%
TOTAL	113	100.00%

DBI SENTENCES BY RACE

RACE	DBI SENTENCES	% OF TOTAL	COUNTY POPULATION	% OF COUNTY POPULATION	PER 100K
Black	43	53.75%	30,623	6.14%	140.42
White	27	33.75%	394,204	79.02%	6.85
Hispanic	9	11.25%	32,503	6.52%	27.69
Others	1	1.25%	41,556	8.33%	2.41
Total	80	100.00%	498,886	100.00%	16.04

PEOPLE SENTENCED TO DBI WHO ARE ...

AGE	DBI SENTENCES	% OF TOTAL
80+	0	0.00%
75+	2	2.50%
70+	6	7.50%
65+	12	15.00%
60+	18	22.50%
55+	27	33.75%
50+	33	41.25%
45+	41	51.25%
40+	57	71.25%
35+	68	85.00%
30+	72	90.00%
25+	78	97.50%
20+	80	100.00%

AGE RANGE AT COMMITMENT

AGE	DBI SENTENCES	% OF TOTAL
>18	1	1.25%
18-21	17	21.25%
22-25	22	27.50%
26-30	13	16.25%
31-35	13	16.25%
36-40	6	7.50%
41-45	4	5.00%
46-50	1	1.25%
51-55	2	2.50%
56-60	1	1.25%
TOTAL	80	100.00%

PEOPLE SERVING DBI WHO STARTED SENTENCE AT ...

AGE	DBI SENTENCES	% OF TOTAL
>18	1	1.25%
21 or younger	18	22.50%
25 or younger	40	50.00%
30 or younger	53	66.25%
35 or younger	66	82.50%
40 or younger	72	90.00%
45 or younger	76	95.00%
50 or younger	77	96.25%
55 or younger	79	98.75%
60 or younger	80	100.00%

DBI SENTENCES BY TIME SERVED

YEARS IN DOC	DBI SENTENCES	% OF TOTAL
40+	2	2.50%
35+	13	16.25%
30+	19	23.75%
25+	27	33.75%
20+	34	42.50%
15+	46	57.50%
10+	60	75.00%
5+	68	85.00%
0+	80	100.00%

DBI SENTENCES IN BY OFFENSE

OFFENSE	DBI SENTENCES	% OF TOTAL
1st Deg. Murder	47	58.75%
2nd Deg. Murder	24	30.00%
3rd Deg. Murder	0	0.00%
Murder/ Criminal Homicide	9	11.25%
Sexual Offense	0	0.00%
Other Offense	0	0.00%
TOTAL	80	100.00%

DBI SENTENCES BY RACE

RACE	DBI SENTENCES	% OF TOTAL	COUNTY POPULATION	% OF COUNTY POPULATION	PER 100K
Black	124	69.66%	48,386	18.05%	256.27
White	35	19.66%	176,115	65.69%	19.87
Latinx	17	9.55%	18,795	7.01%	90.45
Others	2	1.12%	24,804	9.25%	8.06
Total	178	100.00%	268,100	100.00%	66.39

PEOPLE SENTENCED TO DBI WHO ARE ...

AGE	DBI SENTENCES	% OF TOTAL
80+	1	0.56%
75+	2	1.12%
70+	11	6.18%
65+	25	14.04%
60+	38	21.35%
55+	57	32.02%
50+	72	40.45%
45+	89	50.00%
40+	110	61.80%
35+	129	72.47%
30+	155	87.08%
25+	169	94.94%
20+	176	98.88%
19+	178	100.00%

AGE RANGE AT COMMITMENT

AGE	DBI SENTENCES	% OF TOTAL
>18	8	4.49%
18-21	49	27.53%
22-25	42	23.60%
26-30	31	17.42%
31-35	24	13.48%
36-40	13	7.30%
41-45	3	1.69%
46-50	2	1.12%
51-55	3	1.69%
56-60	1	0.56%
61-65	2	1.12%
TOTAL	178	100.00%

PEOPLE SERVING DBI WHO STARTED SENTENCE AT ...

AGE	DBI SENTENCES	% OF TOTAL
>18	8	4.49%
21 or younger	57	32.02%
25 or younger	99	55.62%
30 or younger	130	73.03%
35 or younger	154	86.52%
40 or younger	167	93.82%
45 or younger	170	95.51%
50 or younger	172	96.63%
55 or younger	175	98.31%
60 or younger	176	98.88%
65 or younger	178	100.00%

DBI SENTENCES BY TIME SERVED

YEARS IN DOC	DBI SENTENCES	% OF TOTAL
45+	5	2.81%
40+	18	10.11%
35+	28	15.73%
30+	44	24.72%
25+	56	31.46%
20+	83	46.63%
15+	95	53.37%
10+	117	65.73%
5+	148	83.15%
0+	178	100.00%

DBI SENTENCES IN BY OFFENSE

OFFENSE	DBI SENTENCES	% OF TOTAL
1st Deg. Murder	108	60.67%
2nd Deg. Murder	27	15.17%
3rd Deg. Murder	0	0.00%
Murder/ Criminal Homicide	40	22.47%
Sexual Offense	3	1.69%
Other Offense	0	0.00%
TOTAL	80	100.00%

DBI SENTENCES BY RACE

RACE	DBI SENTENCES	% OF TOTAL	COUNTY POPULATION	% OF COUNTY POPULATION	PER 100K
Black	32	26.89%	20,143	4.90%	158.86
White	37	31.09%	274,813	66.79%	13.46
Latinx	49	41.18%	67,335	16.37%	72.77
Others	1	0.84%	49,151	11.95%	2.03
TOTAL	119	100.00%	411,442	100.00%	28.92

PEOPLE SENTENCED TO DBI WHO ARE ...

AGE	DBI SENTENCES	% OF TOTAL
80+	2	1.68%
75+	2	1.68%
70+	7	5.88%
65+	11	9.24%
60+	20	16.81%
55+	29	24.37%
50+	40	33.61%
45+	54	45.38%
40+	73	61.34%
35+	98	82.35%
30+	112	94.12%
25+	117	98.32%
20+	119	100.00%

AGE RANGE AT COMMITMENT

AGE	DBI SENTENCES	% OF TOTAL
>18	2	1.68%
18-21	29	24.37%
22-25	30	25.21%
26-30	21	17.65%
31-35	20	16.81%
36-40	9	7.56%
41-45	5	4.20%
46-50	0	0.00%
51-55	1	0.84%
56-60	0	0.00%
61-65	2	1.68%
TOTAL	178	100.00%

PEOPLE SERVING DBI WHO STARTED SENTENCE AT ...

AGE	DBI SENTENCES	% OF TOTAL
>18	2	1.68%
21 or younger	31	26.05%
25 or younger	61	51.26%
30 or younger	82	68.91%
35 or younger	102	85.71%
40 or younger	111	93.28%
45 or younger	116	97.48%
50 or younger	116	97.48%
55 or younger	117	98.32%
60 or younger	117	98.32%
65 or younger	119	100.00%

DBI SENTENCES BY TIME SERVED

YEARS IN DOC	DBI SENTENCES	% OF TOTAL
50+	1	0.84%
45+	3	2.52%
40+	5	4.20%
35+	9	7.56%
30+	18	15.13%
25+	30	25.21%
20+	45	37.82%
15+	63	52.94%
10+	89	74.79%
5+	107	89.92%
0+	119	100.00%

DBI SENTENCES IN BY OFFENSE

OFFENSE	DBI SENTENCES	% OF TOTAL
1st Deg. Murder	82	68.91%
2nd Deg. Murder	27	22.69%
3rd Deg. Murder	0	0.00%
Murder/ Criminal Homicide	8	6.72%
Sexual Offense	0	0.00%
Other Offense	2	1.68%
TOTAL	80	100.00%

DBI SENTENCES BY RACE

RACE	DBI SENTENCES	% OF TOTAL	COUNTY POPULATION	% OF COUNTY POPULATION	PER 100K
Black	38	31.93%	19,035	3.66%	199.63
White	48	40.34%	415,241	79.94%	11.56
Latinx	29	24.37%	44,930	8.65%	64.54
Others	4	3.36%	40,239	7.75%	9.94
TOTAL	119	100.00%	519,445	100.00%	22.91

PEOPLE SENTENCED TO DBI WHO ARE ...

AGE	DBI SENTENCES	% OF TOTAL
80+	2	1.68%
75+	3	2.52%
70+	6	5.04%
65+	12	10.08%
60+	20	16.81%
55+	31	26.05%
50+	42	35.29%
45+	56	47.06%
40+	74	62.18%
35+	93	78.15%
30+	106	89.08%
25+	117	98.32%
20+	119	100.00%

AGE RANGE AT COMMITMENT

AGE	DBI SENTENCES	% OF TOTAL
>18	8	6.72%
18-21	21	17.65%
22-25	37	31.09%
26-30	21	17.65%
31-35	12	10.08%
36-40	7	5.88%
41-45	5	4.20%
46-50	2	1.68%
51-55	4	3.36%
56-60	1	0.84%
61-65	0	0.00%
66-70	0	0.00%
71-74	1	0.84%
TOTAL	119	100.00%

PEOPLE SERVING DBI WHO STARTED SENTENCE AT ...

AGE	DBI SENTENCES	% OF TOTAL
>18	8	6.72%
21 or younger	29	24.37%
25 or younger	66	55.46%
30 or younger	87	73.11%
35 or younger	99	83.19%
40 or younger	106	89.08%
45 or younger	111	93.28%
50 or younger	113	94.96%
55 or younger	117	98.32%
60 or younger	118	99.16%
65 or younger	118	99.16%
70 or younger	118	99.16%
74 or younger	119	100.00%

DBI SENTENCES BY TIME SERVED

YEARS IN DOC	DBI SENTENCES	% OF TOTAL
50+	0	0.00%
45+	2	1.68%
40+	5	4.20%
35+	10	8.40%
30+	16	13.45%
25+	28	23.53%
20+	50	42.02%
15+	68	57.14%
10+	85	71.43%
5+	99	83.19%
0+	119	100.00%

DBI SENTENCES IN BY OFFENSE

OFFENSE	DBI SENTENCES	% OF TOTAL
1st Deg. Murder	88	73.95%
2nd Deg. Murder	25	21.01%
3rd Deg. Murder	0	0.00%
Murder/ Criminal Homicide	5	4.20%
Sexual Offense	1	0.84%
Other Offense	0	0.00%
TOTAL	119	100.00%

DBI SENTENCES BY RACE

RACE	DBI SENTENCES	% OF TOTAL	COUNTY POPULATION	% OF COUNTY POPULATION	PER 100K
Black	44	40.74%	24,344	5.60%	180.74
White	46	42.59%	360,738	82.93%	12.75
Hispanic	18	16.67%	24,397	5.61%	73.78
Other	0	0.00%	25,493	5.86%	0.00
TOTAL	108	100.00%	434,972	100.00%	24.83

PEOPLE SENTENCED TO DBI WHO ARE ...

AGE	DBI SENTENCES	% OF TOTAL
80+	1	0.93%
75+	3	2.78%
70+	9	8.33%
65+	14	12.96%
60+	22	20.37%
55+	43	39.81%
50+	54	50.00%
45+	62	57.41%
40+	74	68.52%
35+	84	77.78%
30+	91	84.26%
25+	102	94.44%
20+	108	100.00%

AGE RANGE AT COMMITMENT

AGE	DBI SENTENCES	% OF TOTAL
>18	2	1.85%
18-21	26	24.07%
22-25	32	29.63%
26-30	15	13.89%
31-35	13	12.04%
36-40	8	7.41%
41-45	4	3.70%
46-50	5	4.63%
51-55	3	2.78%
TOTAL	108	100.00%

PEOPLE SERVING DBI WHO STARTED SENTENCE AT ...

AGE	DBI SENTENCES	% OF TOTAL
>18	2	1.85%
21 or younger	28	25.93%
25 or younger	60	55.56%
30 or younger	75	69.44%
35 or younger	88	81.48%
40 or younger	96	88.89%
45 or younger	100	92.59%
50 or younger	105	97.22%
55 or younger	108	100.00%

DBI SENTENCES BY TIME SERVED

YEARS IN DOC	DBI SENTENCES	% OF TOTAL
50+	0	0.00%
45+	0	0.00%
40+	10	9.26%
35+	19	17.59%
30+	28	25.93%
25+	43	39.81%
20+	50	46.30%
15+	60	55.56%
10+	77	71.30%
5+	86	79.63%
0+	108	100.00%

DBI SENTENCES IN BY OFFENSE

OFFENSE	DBI SENTENCES	% OF TOTAL
1st Deg. Murder	75	69.44%
2nd Deg. Murder	24	22.22%
3rd Deg. Murder	0	0.00%
Murder/ Criminal Homicide	9	8.33%
Sexual Offense	0	0.00%
Other Offense	0	0.00%
TOTAL	108	100.00%

APPENDIX L

Model Sentence Review Policy

In any appeal filed by a defendant serving a life-without-parole sentence or in a submission presented to the District Attorney's Office (DAO) that raises a claim of arguable merit challenging the conviction or sentence the Sentence Review Unit will agree to vacate the conviction and enter into an agreement to accept a plea to third degree homicide or other appropriate charge when the equities of the case, including but not limited to any mitigating evidence presented to the DAO, circumstances of and the defendant's role in the offense, and behavior and rehabilitation during incarceration warrant the imposition of a sentence that allows for release from prison.

In cases submitted to the DAO, either before or after the filing of an appeal, that make a prima facie showing of an excessive sentence, the DAO will initiate a comprehensive review and reconsideration of the charging and sentencing outcome. When the facts and circumstances of the case warrant it the DAO will pursue a negotiated re-sentencing by means of a Vacate-and-Plea agreement, wherein the defendant shall file an appeal and the DAO will agree to concede relief based on the claim(s) of the appeal contingent on the defendant accepting a plea to a lesser offense that permits release from prison.

The policy will be implemented in similar fashion and parallel to the review of innocence claims. Here the focus is not on wrongful convictions, but instead on excessive sentences. A task force, committee, or staff within the Conviction Review Unit should be commissioned to review cases submitted to the DAO directly or via a PCRA or other appellate filing. This task force should also create guidelines for review of such cases based on input from advocacy organizations and according to the criteria suggested in the implementation section of this memo.

Case Review: Cases will be reviewed based on all relevant information, whether it was admitted at trial or not, and whether it would be admissible or not. The review should include any mitigation information provided, including information about the defendant's childhood and adolescence and evidence of rehabilitation during incarceration. The following is a non-exclusive list of criteria that must be considered in relevant cases, and any one of these may, in the appropriate case, justify the imposition of a sentence less than LWOP:

- **18-25 year olds:** Recent U.S. Supreme Court jurisprudence has recognized that the age-related characteristics of youth render juveniles less culpable than adults and therefore has prohibited the mandatory imposition of DBI. These cases have been predicated on neuro- and social science that has established that adolescent brain development continues into the mid-20s. These age-related characteristics of youth must be taken into account in reviewing the total circumstances of a DBI case.
- **Felony-Murder/Second Degree Convictions:** These are convictions based on participation in the underlying felony that resulted in a homicide. These offenses do not require the defendant to have had any intent to kill, and frequently ensnare people who did not have such an intent. Almost all instances of second-degree homicide will be prima facie excessive and deserving of relief.
- **Intellectual Disability:** This is another category of diminished culpability recognized by the U.S. Supreme Court as sufficient to prohibit the imposition of the death penalty. It should be recognized as sufficient to prohibit a death-by-incarceration LWOP sentence as well.

- Childhood/Adolescent trauma: Criminal offenses are often committed after the failures of many systems and institutions from the familial to the societal levels. How these impact a child or adolescent have severe consequences and the extent to which an individual's life trajectory was shaped by trauma, abuse, poverty, neglect, etc. must be considered when assessing the injustice of a DBI sentence.
- Evidence of rehabilitation during incarceration: This information is important in assessing whether re-sentencing is appropriate as the DAO should be assessing the conviction and sentence in light of its continuing public safety validity. Rehabilitated individuals and those who pose no appreciable risk to public safety are strong candidates for re-entry to the community. Their records should be assessed as part of the balance of equities by the DAO.

Re-sentencing: In those cases where the DAO decides that the balance of equities justifies a lesser sentence then the DAO will seek a lesser sentence through a vacate-and-plea agreement entered into between the defendant and the DAO. The "balance of equities" in the context of this policy refers to the fundamental fairness and justification of a criminal penalty. The appeal filed with the court shall raise arguable legal claims that are case-specific and that support a claim for relief, and the DAO will forego procedural defenses to meritorious claims in the interest of pursuing justice through a fair and just re-assessment of the appropriate penalty for the offense(s) at issue.

