

# POLICIES & POLLING ON REDUCING EXCESSIVE PRISON TERMS



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# EXECUTIVE SUMMARY

The U.S. is a world-leader in incarceration, and the unprecedented number of people serving decades-long and life sentences is a major reason for America’s outlier status. In recent years, despite an emerging bipartisan consensus around the need for criminal justice reform, there has been insufficient action to address people serving lengthy sentences who no longer pose a serious risk to public safety. To gauge popular support for policies that provide opportunities for people serving long prison terms to seek release and return to their communities, we conducted a national survey of American voters.

Our results indicate that such policies have overwhelming support among American voters, regardless of ideology or party affiliation. Voters believe that sentencing policies and practices should be closely connected to public safety—and that people who can be safely returned to their communities should not be warehoused because of excessive prison terms that waste taxpayer dollars and fail to reflect current values. Voters believe that people deserve a second chance, and they support sentence-review policies that can provide it.

On the whole, voters believe that reviewing and reducing lengthy sentences serves a variety of important policy goals, including: bringing U.S. sentencing more in line with international standards, addressing racial disparities, reducing costs, correcting older excessive sentences that are out of step with current practices, and ensuring that people who pose little risk of committing crimes are not growing old behind bars, separated from their families and communities.

We sought public sentiment on two policies for sentence review that are gaining increased attention and that are the subject of a new policy brief, “[Revisiting Past Extreme Sentences: Sentencing Review and Second Chances](#),” released today by [Fair and Just Prosecution](#). Those mechanisms include “second-look” legislation (see Appendix A) and sentence review by elected prosecutors (see Appendix B). The survey results found strong support for both of these reforms:

- ▶ Overall, **69% of voters support “second look” legislation** that allows for “the re-examination of old sentences to provide a second chance for people who have been in prison for more than ten years and who can be safely returned to the community.”
- ▶ **Support for these reforms is bipartisan and cuts across geography and ideology.** Support among “very conservative” voters for second-look legislation is 63% while support among “very liberal” voters is 82%. These numbers track support along party lines, with 81% of Democrats and 64% of Republicans supporting.
- ▶ Similarly, **two-thirds (67%) of voters support “elected prosecutors reexamining past sentences** to provide a second chance to people who have been in prison for ten years or longer and who can be safely returned to the community.”
- ▶ Strong support for prosecutors’ sentence review also **cut across political lines** with 69% of “very conservative” and 73% of “very liberal” voters supporting, respectively.

# INTRODUCTION

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Today, recreational marijuana is legal in Michigan. But in 1996, a judge sentenced Michael Thompson to serve 40–60 years in prison for selling three pounds of marijuana to an undercover informant. According to the Detroit Free Press, Thompson’s sentence was especially harsh because he had prior convictions for non-violent drug offenses and was found with guns that, because of those convictions, he wasn’t allowed to have. That made him a “habitual offender” under Michigan law and exposed him to a de facto life sentence.

Thompson has served 25 years and is now 68 years old, a fact that by itself makes him an exceedingly low risk to commit future crimes. Even Genesee County Prosecutor David Leyton agrees that Thompson’s sentence is excessive by today’s standards. “Forty to 60 years is a harsh sentence even in a second-degree murder case,” he said.

But Thompson is not eligible for parole for well over a decade, when he will be in his late 80s. He hopes for clemency, but lives in fear of dying in prison.

“I can’t die in here,” he said. “For what? Some marijuana and some guns in a locked closet?”

Thompson’s case speaks to the critical need for “second-look” legislation: A law that would allow a court to reduce his sentence because he poses no threat to community safety. His sentence, though extreme, is not an outlier. It reflects the excess that was common during the “tough-on-crime” era when lawmakers and prosecutors used the war on drugs and draconian sentencing laws to disproportionately target Black men and drive America’s prison population to record levels.

Today, hundreds of thousands of people who pose little to no threat to public safety are stuck behind bars serving lengthy prison terms, according to the Brennan Center for Justice.

In many cases, as with marijuana convictions, laws change and today it is widely recognized that certain prison terms are both unnecessary and profoundly unjust. People change, too, but lengthy sentences ignore this reality and foreclose the possibility of redemption and second chances after rehabilitation. In either case, the result is that people who can be safely returned to their families and communities are instead growing old in prison.

In response to this problem, sentence review policies have started to gain traction. Last year, Senator Cory Booker introduced a bill that would allow people in federal prison to petition for release after serving 10 years and would presume that anyone over age 50 should be released. In some places, like Philadelphia and several counties in California, prosecutors have assumed the mantle of sentence review, examining old convictions to identify sentences that are excessive and should be reconsidered “in the interests of justice,” whether because of changing norms or because a person once thought dangerous has grown and changed. In 2018, California passed a law to grant prosecutors this discretion.

These policies are popular across ideological, party, and geographic lines, and are supported by a wide array of policy justifications. And whether sentence review happens through legislation, prosecutorial discretion, or both, it is clear that America cannot fully address the mass-incarceration crisis unless it considers those who have already been ensnared by it.

## THE PROBLEM

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Over the last 40 years, the U.S. prison population exploded, growing by almost 500 percent. The United States now has the world's highest incarceration rate — imprisoning people at five times the rate of other industrialized countries — with a total incarcerated population of about 2.2 million people.

These numbers are trending downward, but not at nearly the pace required to match the scale of the problem: At the current rate of decarceration, it will take 75 years to cut the U.S. prison population in half.

There are many reasons why the American prison population grew so rapidly and has remained so large. But one key driver has been the use of excessive sentences and the failure to do anything about them. In the 1980s, lawmakers across the country started to increase the length of prison terms with draconian policies like mandatory minimums, “habitual offender” and “three strikes” sentence enhancements, and truth-in-sentencing laws that require people to complete 85 percent of their sentences before any chance of release. Prosecutors then aggressively used these laws through charging decisions, plea bargaining, and demands for enhancements at sentencing.

As a result, even as the United States begins to rely less on incarceration going forward, there remain hundreds of thousands of people warehoused in prison serving long sentences. The city of Philadelphia alone has more people sentenced to life without the possibility of parole than any other country in the world. In California, over 30,000 people are serving a life sentence, and 31 percent of the state's prison population has a sentence enhanced by California's “three strikes”

law. According to the Sentencing Project, there are currently more people serving life sentences than were locked up in prison at all during the 1970s, and nearly half of those people are Black.

These sentences are excessive by any measure. They are wasteful, discriminatory, unfair, outdated, and fail to advance public safety.

Research shows that lengthy prison terms do little to deter crime; a 2016 report from the Brennan Center for Justice concluded that longer prison terms at best provide diminishing returns for public safety. This is in part because many people in prison have “aged out” of criminal behavior. By the time people reach their thirties, their odds of committing future crimes drop precipitously, in part due to cognitive development that continues until around age 26 (arrest rates for violent crimes peak during people's late teens). Propensity for criminal behavior continues to decline with age, with people aged 50–64 having a recidivism rate far lower than the national average (seven percent compared to 43.3 percent). People aged 60 or older account for less than two percent of all arrests.

An aging prison population is both low risk and high cost. As Sarah Lustbader and James Forman wrote recently in The New York Times, “the explosion in sentence length has turned some prison wings into de facto nursing homes, with prisons responsible for providing costly medical care to a growing elderly population.” In federal prison, nearly one in five people is age 50 or older and more than half are over 36. Since 1990, the share of California prisoners aged 50 or older has jumped to 23 percent from 4 percent, and New York's over-50 prison population has doubled since 1999. If we continue at current rates, in ten years one in three people in American state prisons will be over 50.

To house and care for this population, the United States currently pays about \$16 billion per year — money that could be invested in schools, parks, hospitals, and healthcare, but is instead spent on imprisoning people who pose little to no threat to community safety.

Long prison terms — especially life without parole sentences — also undermine the supposed rehabilitative purpose of incarceration and ignore people’s capacity to change. People can and often do change in prison, demonstrating that they deserve a second chance. This is especially true of people who commit violent crimes. As explained in a recent report from the Square One Project, “‘violent’ rarely describes a type of person” or a personality trait, and those who commit violence are often victims of violence themselves. Overall, according to the report, people who have committed violent offenses have lower recidivism rates, and, as with other crimes, “‘mature out’ of violent offending.” They can change in positive ways, if given the chance. Yet without real opportunity for release, people lose hope and lack incentive to do the work of rehabilitation and take positive steps toward re-entering the community.

Finally, like Michael Thompson in Michigan, many people are serving prison terms that grossly exceed what they would receive today. As legislators, governors, and a growing contingent of more progressive, decarceral prosecutors recognize the harm of needless incarceration, lengthy prison terms, especially for certain offenses, are less common. For example, the crack/powder cocaine disparity, prison sentences for marijuana possession, life sentences for drug offenses, and

felony murder charges against those who did not intend to kill or participate in killing someone have been the subject of recent reforms in various jurisdictions. Yet people still languish in prison under out-of-date sentencing practices we know to be faulty and unjust.

## POLICIES & POLLING DATA

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To assess current levels of popular support for providing people serving decades-long and life sentences with a meaningful opportunity for release, we conducted a national survey focused on two policy solutions: “second-look” legislation and “sentence review” by elected prosecutors. The survey was fielded to 2400 likely voters between the dates of 2/7/2020 and 2/10/2020. We found both policy solutions to be overwhelmingly popular among voters, including across party and ideological lines.

In July 2019, Sen. Cory Booker (D-NJ) and Rep. Karen Bass (D-CA) introduced the Second Look Act, which would make opportunities to petition a judge for resentencing available to anyone in federal prison who has served at least ten years. It would also create a presumption in favor of release for anyone 50 years or older. The bill does not exclude people convicted of violent crimes from consideration. Both lawmakers said they hoped the legislation could serve as a model for states to emulate — a prospect that our results show to be immensely popular.

We found that 69% of voters support “states adopting laws that allow for the re-examination of old sentences to provide a second chance for people who have been in prison for more than ten years and who can be safely returned to the community.” Support among “very conservative” voters is 63%, while support among “very liberal” voters is 82%. Those numbers track support along party lines, with 64% of Republicans and 81% of Democrats supporting.

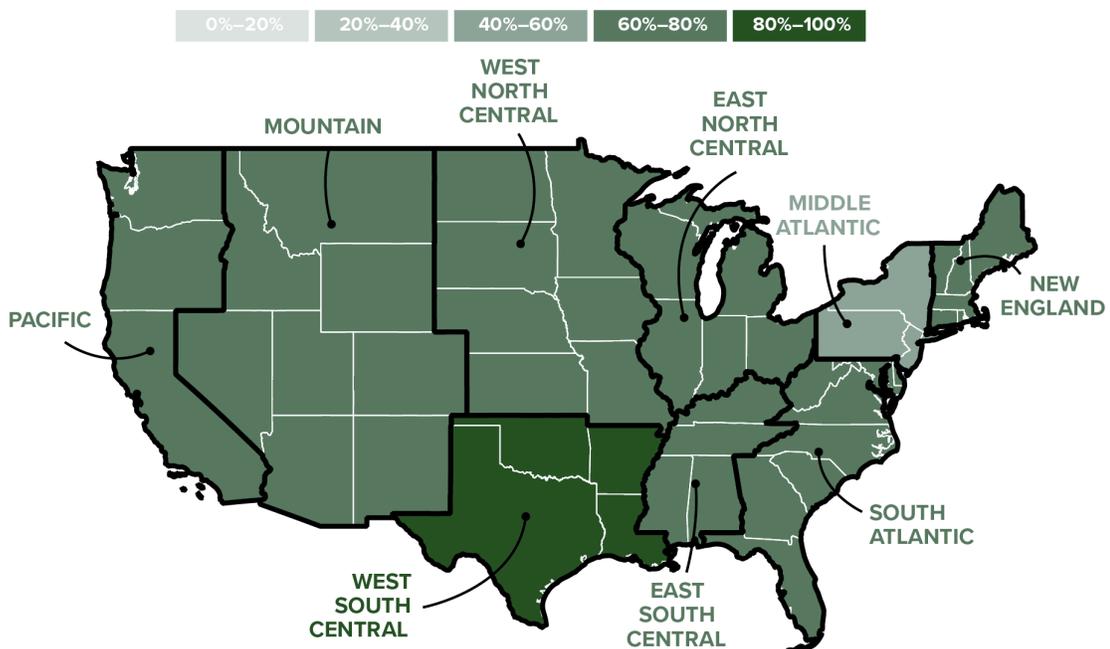
Voters also support sentence review by prosecutors.

Prosecutors have been among those responsible for the proliferation of lengthy prison sentences, both in advocating harsh sentencing policy in statehouses and in asking for those sentences in court. More recently, advocates have asked prosecutors to use their discretion to reduce excessive sentencing through sentence review. In 2018, California passed a law allowing prosecutors

**Support for states adopting laws that allow for the re-examination of old sentences to provide a second chance for people who have been in prison for more than ten years and who can be safely returned to the community**



**Share of respondents by Census Bureau Division who somewhat or strongly support states adopting laws that allow for the re-examination of old sentences to provide a second chance for people who have been in prison for more than ten years and who can be safely returned to the community.**



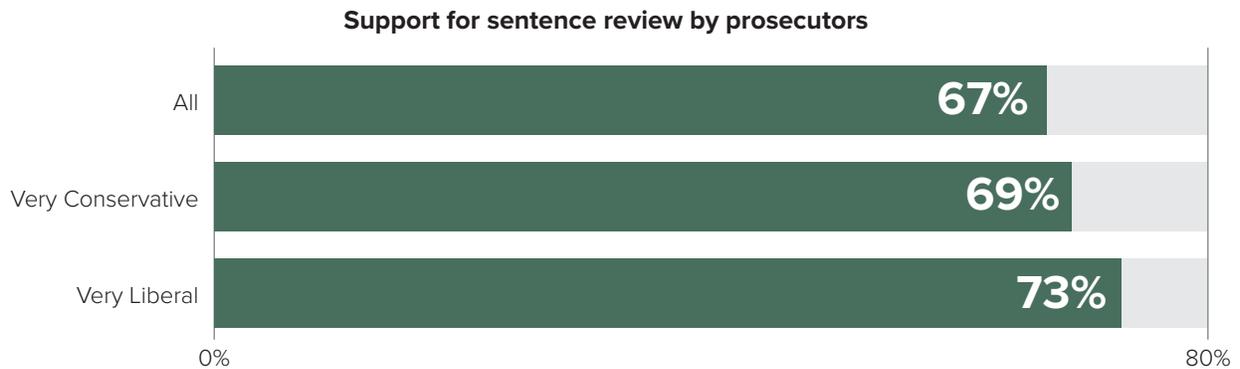
Map courtesy of New York University

to recommend reducing sentences “in the interests of justice.” Last year, New York State Senator Zellnor Myrie introduced a similar bill that would allow prosecutors to petition a judge to set aside a sentence, in most cases, after a person has served 15 years. Sen. Myrie’s bill specifically allows for a new sentence that is below any mandatory minimum for the offense.

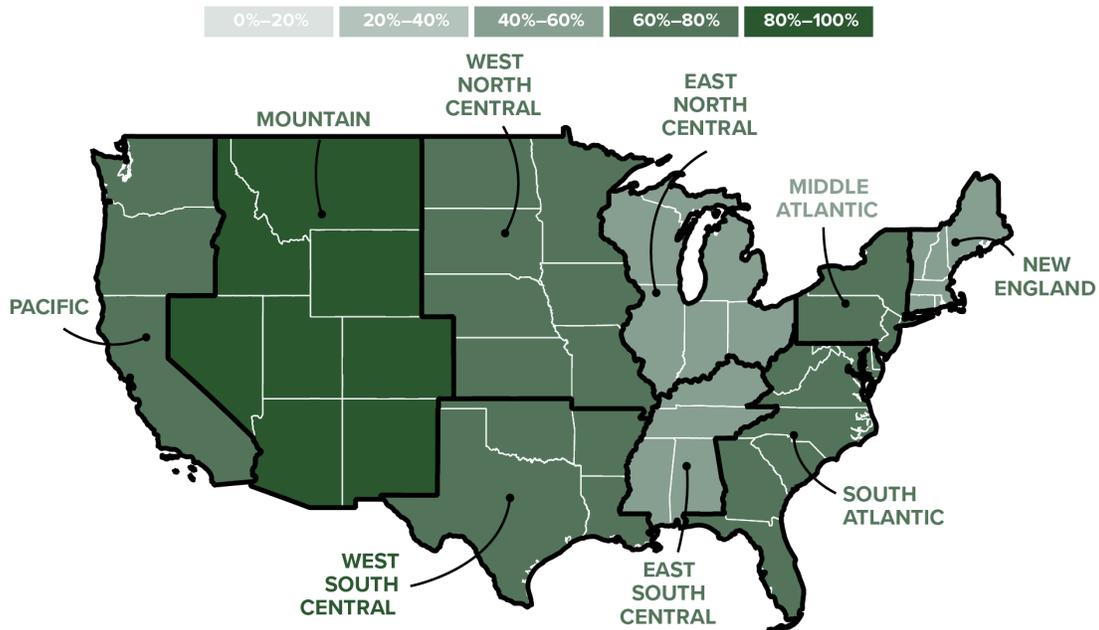
In some jurisdictions, like Philadelphia and King County, WA (home to Seattle), prosecutors have started the process of sentence review even without a specific legal mechanism to do

so. Fair and Just Prosecution’s Issue Brief on “Revisiting Past Extreme Sentences” recounts how elected prosecutors are increasingly looking for mechanisms to address these concerns, and also delineates examples of where reform is occurring, along with specific policies prosecutors can implement to advance sentencing review and second chances.

As with “second-look” legislation, we found wide support for sentence review by prosecutors. Overall, 67% of voters support “elected prosecutors reexamining past sentences to



**Share of respondents by Census Bureau Division who somewhat or strongly support elected prosecutors reviewing sentences to provide a second chance for people who have been in prison for more than ten years and who can be safely returned to the community**



Map courtesy of New York University

provide a second chance to people who have been in prison for ten years or longer and who can be safely returned to the community.” Strong support also cut across ideological lines with 69% of “very conservative” and 73% of “very liberal” voters and supporting, respectively.

Finally, we found that support for reviewing and reducing excessive prison terms is animated by a wide variety of factors. Voters want to review lengthy prison sentences because sentencing in the United States is extreme by international standards, long sentences are racially discriminatory and costly, older people are unlikely to commit future crimes, and older sentences are unfairly out of step with current

policies and practices. At least 70% of voters found each of these factors to be “extremely,” “very,” or “moderately” important.

## METHODOLOGY

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Between February 7 and February 10, 2020, Data for Progress conducted a survey of 2400 likely voters nationally using web panel respondents. The sample was weighted to be representative of likely voters by age, gender, education, urbanicity, race, and voting history. The survey was conducted in English. The margin of error is  $\pm 2$  percent.