

**JOINT STATEMENT  
ON SENTENCING SECOND CHANCES AND  
ADDRESSING PAST EXTREME SENTENCES**  
*April 2021*

As current and former elected prosecutors and law enforcement leaders from across the country, we know that we will not end mass incarceration until we address the substantial number of individuals serving lengthy sentences who pose little or no risk to public safety. We call on all other leaders, lawmakers, and policymakers to take action and address our nation's bloated prison populations. And we urge our state legislatures and the federal government to adopt measures permitting prosecutors and judges to review and reduce extreme prison sentences imposed decades ago and in cases where returning the individual to the community is consistent with public safety and the interests of justice. Finally, we call on our colleagues to join us in adopting more humane and evidence-based sentencing and release policies and practices. Sentencing review and compassionate release mechanisms allow us to put into practice forty years of empirical research underscoring the wisdom of a second look, acknowledge that all individuals are capable of growth and change, and are sound fiscal policies.

Over the past forty years, America's criminal legal system has strayed from sound public safety and fiscally prudent objectives. We continue to incarcerate hundreds of thousands of individuals who currently pose little to no risk to community safety, including many elderly people who cost the United States over [\\$16 billion a year](#) for care. Mandatory sentences that require people to serve a set minimum number of years for a given crime, notwithstanding their unique circumstances or safety risk, have also needlessly incarcerated people past the point of any public safety benefit. Our country currently has [more people serving life sentences](#) than the *total number* of people who were incarcerated in 1970. And we have the dubious distinction of an [incarceration rate](#) second to no other country.

Although the role of incarceration is primarily to protect public safety, our criminal legal system currently has few mechanisms to ensure that *only* those who still pose a serious safety risk remain behind bars. Indeed, many jurisdictions have [severely restricted or entirely eliminated parole](#) or other opportunities for early release, preventing even those who have demonstrated strong evidence of their rehabilitation from returning to their family and community. This failed starting point has produced massively overcrowded prisons and bloated corrections budgets. It has robbed our communities of resources needed to fund schools, parks, after-school programs, treatment and prevention programs, health care, and housing. Money that we spend on incarceration is money taken from initiatives that could *enhance* community safety and well-being. This tradeoff is particularly stark amid the current COVID-19 pandemic, which has strained already-tight local budgets, created significant individual trauma and economic pressures, and devastated families' resources.

Empirical research has found that harsh sentences are *not* effective at promoting public safety. While legislatures, politicians, and prosecutors in the 1990s generally claimed that [severe](#),

[lengthy sentences](#) would both deter crime and promote public safety, a robust body of research conducted over the past several decades has disproven those assumptions. Thirty years of deterrence studies have shown [no evidence](#) that the threat or imposition of harsher sentences deters crime. Moreover, research shows it is often unnecessary to incarcerate individuals who commit harm in their youth into and past middle age. Data confirms that the majority of individuals, including those who commit serious crimes, do so only within a [5 to 10 year](#) window of the original offense, and even those with the highest rates of reoffending have [recidivism rates approaching zero](#) by the time they reach the age of 40.

These studies and lessons must inform not simply how we address the cases of the many individuals who have been behind bars for decades, but also our proactive approach to *future* sentencing. Many of us have taken concrete steps to end the use of needlessly lengthy sentences in our offices, including by limiting the use of mandatory minimum or other excessive sentencing enhancements, or by creating internal policies requiring prosecutors who pursue sentences over a certain length (such as 15 or 20 years) to seek high-level review and approval. But without adequate mechanisms to address prior lengthy sentences—which were imposed in the context of less robust empirical research and corresponding flawed assumptions—we cannot meaningfully utilize these lessons to address our current mass incarceration crisis.

The long-term imprisonment of people whose freedom poses little or no danger to our communities is also a humanitarian concern. While prosecutors and judges of decades past may have pursued and imposed harsh sentences with the misguided belief that certain individuals were incapable of rehabilitation, there is simply no justification for maintaining those sentences when a person demonstrates that the opposite is, in fact, true. There are [countless examples](#) of individuals who have transformed their lives while behind bars, including [some](#) who committed serious offenses in their youth. There is no reason to conclude that the commission of a crime—no matter the offense—must define a person forever. Furthermore, states throughout the country have enacted sentencing reforms that apply prospectively, but have resulted in individuals continuing to serve previously imposed sentences that have since been repudiated by elected state leaders. By creating avenues for prosecutors and judges to address and redress the now-disproportionate sentences of those who have dramatically changed while incarcerated, lawmakers can take a dramatic step towards making our states, and indeed our society, more humane.

With all of these considerations in mind, *now* is the time when change is needed, and achievable. After a tumultuous year when our nation has been struggling with the consequences of a global pandemic and is grappling with the dire need to reckon with systemic racism, and with new federal leadership in place, we must come together as criminal justice leaders and experts to address these issues and chart a new pathway forward.

Therefore, we are committing to supporting, promoting and implementing the changes noted below, and calling on others to join us in this critical moment in time in advancing the following reforms:

- 1. Vehicles for Sentencing Review:** We call on lawmakers to create vehicles for sentencing review (in those states where no mechanisms exist) that recognize people can grow and change. These processes should enable the many middle aged and elderly individuals who have served a significant period of time behind bars (perhaps 15 years or more) to be considered for sentence modification.

The vast majority of individuals who meet these criteria are extremely unlikely to pose a danger to public safety if released and will have been held accountable through an already lengthy period of incarceration. As such, these individuals should have the ability to petition the court for a new sentence when research, societal norms, the laws, and their demonstrated rehabilitation while incarcerated show that they pose no danger to others and a sentence reduction would serve the interests of justice. We do not ask that all such persons be automatically released from custody. We ask only that there be an *opportunity*, where justice requires it, to modify sentences that no longer promote justice or public safety.

**2. Creating Sentencing Review Units and Processes:** We also urge our prosecutor colleagues to add their voices to this call for change and to create [sentencing review units](#) or other processes within their offices whereby cases can be identified for reconsideration and modification of past decades-long sentences.

**3. Expanded Use of Compassionate Release:** We urge elected officials, criminal justice leaders (including judges, prosecutors and corrections leaders), and others to pursue and promote pathways to compassionate release for incarcerated individuals who are eligible for such relief, including people who are elderly or terminally ill, have a disability, or who have qualifying family circumstances. Even where these mechanisms exist, [few people](#) are granted compassionate release [due to obstacles and barriers](#) that permeate the process. We recommend states expand compassionate release and work to eliminate barriers built into the application process and encourage prosecutors, judges and others to support these vehicles for individuals who no longer pose a risk to the community to return home.

**4. High Level Approval Before Prosecutors Recommend Decades-Long Sentences:** Finally, we urge our prosecutor colleagues to create policies in their offices whereby no prosecutor is permitted to seek a lengthy sentence above a certain number of years (for example 15 or 20 years) absent permission from a supervisor or the elected prosecutor. Changing presumptions in this way and making clear that these sentences should be reserved for the *unusual and extraordinary* case can have a significant impact moving forward by aligning the U.S. with the starting point around sentence length in place in [other countries](#), and also move us away from the ramp up of mass incarceration seen over past decades.

Prosecutors and law enforcement leaders have all been elected or sworn to pursue justice in their communities. Daily, they endeavor to do so in all cases they handle. But they cannot fulfill this mandate without the capacity to also address extreme and disproportionate sentences that were sought and imposed in past decades, but are now recognized as excessive and counterproductive to public safety.

We have come together to urge an end, once and for all, to these failed practices. And we also urge other leaders, lawmakers, and policymakers to join us in this quest for just approaches and solutions.

Respectfully,

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