



A LIVING DEATH

Life without Parole for Nonviolent Offenses



A Living Death: Life without Parole for Nonviolent Offenses in Louisiana

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I. Introduction

“There’s an answer to this without being so extreme. But we’re still-living-20-years-ago extreme. Throw the human away. He’s worthless. Boom: up the river. And yet, he didn’t even kill anybody. He didn’t do anything, but he just had an addiction he couldn’t control and he was trying to support it robbing. That’s terrible to rob people—I’ve been robbed, I hate it...I want something done to him. But not all his life...That’s extreme. That’s cruel and unusual punishment to me.”ⁱ

—Burl Cain, Warden, Louisiana State Penitentiary at Angola

“We talk about the costs to incarcerate someone who’s not gonna hurt you again, who just hurts himself, you know, the nonviolent criminal...But let’s talk about the costs once we rehabilitate him and he’s good to go. We’re gonna still spend like 60 to 90 dollars a day, depending on what area of the country he’s in... Look at all the costs. I’m flowing out the seams...And so, it’s ridiculous. I mean, we should just have the [parole] hearings so we can just cut back the ones that you don’t need to do all that for...It’s just costs, costs, costs, costs...there’s no end to it...till death do us part.”ⁱⁱ

—Burl Cain, Warden, Louisiana State Penitentiary at Angola

Life in prison without a chance of parole is, short of execution, the harshest imaginable punishment.ⁱⁱⁱ Life without parole (LWOP) is means permanent removal from society with no chance of reentry, no hope of freedom. One should expect the American criminal justice system to condemn someone to die in prison only for the most serious offenses.

Yet in Louisiana, hundreds of people are serving life sentences without the possibility of parole for nonviolent crimes. In their cruelty and harshness, these sentences defy common sense. They are grotesquely out of proportion to the conduct they seek to punish. They offend the principles that the punishment should fit the crime and that all people have the right to be treated with humanity and respect for their inherent dignity. These sentences serve no societal purpose.

This state-specific Louisiana report, derived from the ACLU’s national report of the same name,^{iv} documents the hundreds of lives ruined and families destroyed by sentencing people to die behind bars for nonviolent offenses, and includes detailed case studies of eight people serving this sentence. In Louisiana, there are **429 documented prisoners** serving LWOP for nonviolent offenses. As set forth in the national report, we conservatively estimate that Louisiana would save at least \$183 million by reforming the sentences to conform to what these defendants would have received had they not been sentenced to LWOP.

The data in this report is from the Louisiana Department of Corrections, obtained pursuant to open records requests filed by the ACLU. Our research is also based on telephone interviews conducted by the ACLU with prisoners, their lawyers, and family members; correspondence with prisoners serving life without parole for nonviolent offenses; individual surveys of 187 prisoners serving life without parole for nonviolent offenses; and

media and court records searches.

II. Findings

A. The numbers

As documented in its national report, the ACLU requested data from 22 states where LWOP is available as a sentence for nonviolent crimes, as well as from the federal government. Three of these states, Nevada, Virginia, and Maryland, refused to provide data. Ten states reported no prisoners serving LWOP for nonviolent crimes. Of the nine states that reported prisoners serving this sentence, Louisiana had by far the most, with **429 prisoners**. Other states with high numbers, though nowhere near as high as Louisiana, were Florida (270), Alabama (244), Mississippi (93), South Carolina (88), and Oklahoma (49). Louisiana prisoners constitute 36% of the total 1,204 documented state prisoners serving this sentence.

Of the 1,204 state prisoners across the United States serving LWOP for nonviolent offenses, 49 percent (589 prisoners) are serving LWOP for nonviolent drug offenses. By contract, in Louisiana, 86 percent of the 429 are serving LWOP for nonviolent drug offenses. Moreover, 26 of the 429 had no prior offenses at conviction.

B. Crimes Triggering LWOP Sentences

Some of the sentences for nonviolent crimes documented by the ACLU were for possession of a substantial amount of drugs, based on convictions that occurred before 2001. However, a significant proportion of LWOP sentences for nonviolent offenses in Louisiana were for low-level nonviolent felonies. Many of these long sentences were mandated by the state's habitual offender law, discussed further below. Others are hold overs from before the 2001 reforms.

For example, the ACLU documented cases in Louisiana in which people were sentenced to LWOP for *simple possession* of the following drugs or drug paraphernalia: a single crack pipe; a trace, unweighable amount of heroin in a bottle cap;^v less than half a gram of cocaine;^{vi} a single, small crack rock at home;^{vii} two rocks of crack cocaine;^{viii} and a small amount of heroin in tin foil.^{ix} Marijuana crimes that resulted in LWOP sentences include possession of 32 grams,^x 130 grams,^{xi} or two pounds^{xii} with intent to distribute; acting as a go-between in the sale of \$10 of marijuana to an undercover officer;^{xiii} and serving as a middleman in a sale of \$20 worth of marijuana to an undercover officer.^{xiv}

Other drug crimes that have resulted in LWOP sentences include selling a single crack rock; verbally negotiating another man's sale of two small pieces of fake crack to an undercover officer;^{xv} and other crimes of possession, sale, or distribution of marijuana, methamphetamine, crack and powder cocaine, heroin, or other drugs.

In cases documented by the ACLU, nonviolent property crimes that resulted in life-without-parole sentences include a junk-dealer's possession of stolen junk metal (10 valves and one elbow pipe);^{xvi} possession of stolen wrenches;^{xvii} possession of a few pieces of stolen jewelry, a cordless telephone, and an amplifier;^{xviii} stealing tools from a tool shed and a welding machine from a yard;^{xix} shoplifting three belts from a department store;^{xx}

shoplifting several digital cameras;^{xxi} shoplifting two jerseys from an athletic store;^{xxii} shoplifting a jacket worth \$159 from a department store;^{xxiii} slashing tires in the lot of a used car dealer;^{xxiv} breaking into a parked car and stealing a bag containing a woman's lunch;^{xxv} stealing a car radio;^{xxvi} taking a television, circular saw, and a power converter from a vacant house;^{xxvii} possession of a stolen car;^{xxviii} and borrowing a co-worker's truck without permission.^{xxix}

Other nonviolent crimes that resulted in life-without-parole sentences include making a drunken threat to a police officer while handcuffed in the back of a patrol car;^{xxx} damaging a police patrol car while trying to flee after shoplifting soap and Alka-Seltzer from a grocery store;^{xxxi} and colliding with two patrol cars while being chased by police trying to carry out a traffic stop.^{xxxii}

C. Who is Serving LWOP for Nonviolent Offenses?

The vast majority of people serving LWOP for nonviolent offenses come from poor families and did not graduate from high school. Most are black, and in some cases the circumstances of their stop, search, and subsequent arrests appear to have involved racial profiling. Some are mentally ill and imprisoned for behavior directly related to their mental illnesses. Others spiraled into drug addiction when they could not find work, and some began selling drugs to pay the bills after they lost their jobs or to pay off medical debts incurred when they were uninsured.

Most of the nonviolent crimes for which these prisoners are serving life without parole could be more appropriately addressed outside of the criminal justice system altogether, using community-based drug treatment and mental health resources. In many of the cases documented by the ACLU, people committed crimes because of drug addictions and had never been offered state-sponsored drug treatment, even during previous brief stints in jail and despite their willingness to enter treatment. Some inmates told the ACLU they asked for treatment after previous drug arrests but were denied. When they were arrested again for a drug crime, they were locked up for the rest of their lives.

D. Racial Disparity in Life-without-Parole Sentencing

There is a staggering racial disparity in life-without-parole sentencing for nonviolent offenses. Although the Louisiana Department of Corrections did not provide offense-specific race data in response to an open records request filed by the ACLU, our documentation of almost half of the state's population of prisoners serving LWOP for nonviolent offenses reveals that 91.4 percent of such prisoners are black, a higher proportion than any other state for which data was available. Calculating with this same survey data, the ACLU finds that black people are 23 times more likely than whites to be sentenced to LWOP for a nonviolent crime in Louisiana. By comparison, the racial disparities documented in other states range from 18-to-1 in Oklahoma, 8-to-1 in Florida, and 6-to-1 in Mississippi.

III. How Did We Get Here?

The prevalence of LWOP sentences for nonviolent offenses is a symptom of a system overwhelmed by extreme sentencing. From 1930 to 1970, Louisiana saw only modest growth in its prison population, generally corresponding to the growth of the state's overall population. Louisiana's prison population grew from 2,440

people in 1930 to 4,196 in 1970. Between 1970 and 2012, however, the number of people grew almost ten-fold to 41,248, resulting in a 2012 incarceration rate of 1,179 per 100,000 adults in the population—the highest incarceration rate in America by far.^{xxxiii}

What changed? This growth cannot be explained away by increasing crime rates; although crime rose in the late 1960s, it did not rise enough to explain the extreme spike in the incarceration rate, and in the 1990s crime began to drop. Rather, Louisiana got to this point as a direct result of punitive laws and policies. Moreover, while steady growth in the number of people sentenced to prison each year can account for a large portion of this explosive growth, the prison population grew far faster and far higher than the number of people sentenced to prison. Over the same period, sentencing in Louisiana became much harsher, and much more extreme, guaranteeing that no matter how many people were sent to prison and for what offenses, they were going to stay there longer.

In 2001, a key law reform began to change this dynamic. Senate Bill 239 (Act 403) eliminated numerous mandatory minimums throughout the criminal code and fundamentally altered drug sentencing. Before 2001, distribution and manufacture of certain Schedule I and II substances carried LWOP sentences even for first offenses. SB 239 repealed those LWOP sentences. SB 239 also limited the applicability of the habitual offender law, which before 2001 could result in LWOP sentences in even more cases than it can today. While this legislation was a good first step, two significant problems remain.^{xxxiv} First, many prisoners remain in the system who were convicted under these older laws. Second, under the current habitual offender law, defendants can still be sentenced to LWOP for drug and property felonies, even if they are low-level.

A. Habitual Offender Law

Under the habitual offender law, a sentence of life without parole is mandatory where a prosecutor charges a defendant as having two prior felonies, plus a felony currently before the court, if the felonies rise above a certain low threshold.^{xxxv} In the prosecution's calculation, neither the triggering felony offense nor the past offenses need involve any violence or be particularly serious to merit a habitual offender charge. Repeated qualifying felonies are enough, regardless of the circumstances. In these cases, the sentencing judge has no discretion to take individual circumstances into account. In numerous cases reviewed by the ACLU, the sentencing judge said on the record that he or she opposed the mandatory LWOP sentence as too severe but had no discretion to take individual circumstances into account or override the prosecutor's charging decision. In Louisiana, it is possible to see the sentences that judges would have chosen, had they not been forced by the prosecutor's decision to impose LWOP. In case after case, the ACLU found that judges would have chosen sentences of less than 10 years.

IV. The Immense Physical and Psychological Toll of Serving Life without Parole

Life without parole is essentially a sentence to die in prison: prisoners are not released. They are categorically ineligible for parole, and once their post-conviction appeals are exhausted, their only chance for release is rarely-granted commutation or clemency by the president or governor of their state or similarly infrequent compassionate release shortly before they die.

Due to their finality, LWOP sentences have profound, negative psychological impact on prisoners. Prisoners report feelings of unremitting hopelessness, loneliness, anxiety, depression, fear, isolation from family and their community, and suicidal thoughts. Many expressed the wish for death so that their suffering would end, and some reported contemplating or attempting suicide because of the hopelessness of their sentences.

Prisoners describe the anguish of being separated from family, being unable to effectively to parent their children or support aging and ailing parents, missing funerals of parents and siblings who died during their incarceration, being forgotten by friends and family, watching their marriages fall apart, and facing the prospect of growing old and dying in prison without any hope for release. Libert Roland said of his LWOP sentence for cocaine possession,

It feels like you have been sentence[d] to death.... The pain never go[es] away. It feels like you have lost your purpose in life, your reason to live. It feels like someone or something is suffocating the life out of you slowly.... The pain and suffering will be there till the day you die. You feel the only relief you have left, the only hope, is to die [a] fast death.^{xxxvi}

Kerry Orgeron, who is serving LWOP for purse-snatching, says his sentence means, “I will die without a chance to be human. It is more of a punishment than the death penalty.”^{xxxvii} Alonzo Jason, a 43-year-old diagnosed schizophrenic, also serving LWOP for attempted purse-snatching, told the ACLU that being sentenced to LWOP is “like being in the bottom of a lake trap waiting to die with no chance of ever getting out alive...I’m so sorry and afraid of dying in this place.”^{xxxviii}

Ricky Carthan, who has served more than 15 years of his LWOP sentence for possession of stolen junk metal, says of being separated from his mother and three children, “It is [the] most lonely feeling I [have] ever felt, only being around strangers.”^{xxxix} Of being separated from family, Alonzo Jason said, “I guess if I had to describe it, it will be like waking up in the morning knowing that you got the wrong leg cut off at the hospital.”^{xl}

A life-without-parole sentence means society has given up on a person, regardless of whether he or she exhibits any capacity for growth or change. It robs these prisoners of hope. Without a date on which they know they will be set free, prisoners wake up each day facing a lifetime of imprisonment with no hope of release. They grow old, fall ill, and eventually die behind bars. The sentence turns prisons into geriatric wards where ailing, aging prisoners who no longer pose any risk to society are warehoused until their deaths. And when the prisoner serving LWOP is there for a nonviolent offense, the punishment truly doesn't fit the crime.

V. The Road to Redemption

Life without parole for nonviolent crimes disregards the capacity for personal growth and rehabilitation and yields minimal, if any, public safety gains. Studies show that rates of recidivism decline precipitously with age.^{xli} Moreover, studies show that lifers who are released are very unlikely to commit new crimes.^{xlii}

Louisiana State Penitentiary Warden Burl Cain said he thinks it is “ridiculous” to foreclose the possibility of rehabilitation:

I really think it's ridiculous because the name of our business is "corrections," but everybody forgets what corrections means. It means to correct deviant behavior, so if I'm a successful warden and I do my job and we correct the deviant behavior, then we should have a [parole] hearing... If this person can go back and be a productive citizen and not commit crimes again, these nonviolent crimes, then why are we keeping them here, spending all this money?^{xliii}

I need to keep predators in these big old prisons, not dying old men... So it's ridiculous to have someone here that... committed a nonviolent crime, all the way to the point that I'm spending \$400 a day on medicine for him when he can be out back in the community and have health care there.^{xliv}

I'm real passionate about this because I've been a warden 32 years... I have seen this. I know this business. I know we can change lives. I know we can change people.^{xlv}

Burl Cain is not alone in his opposition to extreme sentences. In August 2013, the American Correctional Association passed a resolution supporting the elimination of mandatory minimum sentencing policies, a watershed moment in American corrections. Prison officials and policymakers around the country are beginning to realize that there is another, better way. Providing determinate sentences with the possibility of parole is a far better solution.

VI. Recommendations

The waste of human life and taxpayer dollars and the destruction of families and communities due to life-without-parole sentences for nonviolent crimes is just the beginning. There are thousands more prisoners in Louisiana serving extremely long sentences for nonviolent crimes. But this can be changed. Louisiana can reduce prison sentences and costs while holding people accountable in a manner commensurate with the crime and without harming public safety.

The ACLU makes the following three recommendations:

- (1) Committing to sensible and fair sentencing practices, respect for human dignity, and the preservation of family ties, we recommend that Louisiana amend the habitual offender law such that it no longer encompasses nonviolent crimes.
- (2) All existing sentences of life without parole for persons convicted of nonviolent crimes should be automatically commuted to a term consistent with what would have been imposed had LWOP not been available, unless the prosecution seeks a special review of the case with a burden to show the public safety need to continue a longer sentence.
- (3) Louisiana should amend its definition of what constitutes a "violent" crime to one commensurate with the public's understanding of violence: harm to another person. A model state for this approach is Arizona, which simply defines violent crimes as any criminal act that results in death or physical injury or any criminal use of a deadly weapon or dangerous instrument.^{xlvi} Arkansas' statute is substantially similar.^{xlvii}

Case Studies: stories of Eight People Sentenced to Die in Louisiana Prisons for Nonviolent Crimes

1. Patrick W. Matthews is serving LWOP for stealing tools from a tool shed and a welding machine from a yard when he was 22 years old.

A father of two, Matthews worked for a historical restoration company, but after construction work dried up he says he could not find employment and spiraled into drug addiction. Despite his addiction to methamphetamine and heroin, Matthews reports he never received any substance abuse evaluation or treatment after his first conviction at age 18 or before he was sentenced to die in prison at age 22.

According to prosecutors, in April 2009, Mr. Matthews stole tools from the tool shed on a property in Slidell, Louisiana, with a co-defendant.^{xlviii} They also allegedly stole a welding machine and generator from the yards of two other houses in Slidell.^{xlix} The property was recovered and returned. Matthews was arrested while riding in the truck of a friend who pawned the tools.¹

In November 2009, Mr. Matthews was convicted of one count of simple burglary, for stealing the tools, and two counts of theft, for stealing the welding machine and generator. Prior to convicting him, the jury asked whether he could instead be convicted of accessory to burglary after the fact, but the court said no. Mr. Matthews was originally sentenced to 10 years on the burglary count and seven years on each of the theft counts. He was resentenced to life without parole for the burglary charge as a fifth-time habitual offender and to 20 years on one of the theft charges. Mr. Matthews had no violent criminal history and had never served a single day in a Department of Corrections facility. His co-defendant also had prior convictions but received a five-year suspended drug court sentence.

Mr. Matthews's prior convictions were four simple burglary convictions stemming from a single incident in 2005 when he was 17 years old; he burglarized a pawn shop and fruit stand with friends. Mr. Matthews pleaded guilty to three counts of simple burglary and received a five-year suspended sentence. He was then rearrested on a fourth simple burglary charge that was supposed to be dropped due to the plea agreement and was convicted of the fourth charge in 2007, making him a four-time offender even though the charge had stemmed from the same incident in 2005, his first conviction. He received an additional two years of probation. In denying Mr. Matthews's appeal, Judge Page McClendon wrote in a concurring opinion, "I do not believe that the ends of justice are met by a mandatory sentence for this 22-year-old defendant, who did not invade any homes and whose past criminal history was limited to nonviolent crimes. Thus, I am constrained to follow the mandate of the legislature... However, I am compelled to note that the imposition of a life sentence for this particular defendant forever closes the door of hope, negates any chance of the defendant becoming a contributing member of society, and imposes an undue burden on the taxpayer, who is required to feed, house, and clothe him for life."^{li}

Now 25, Matthews has earned his GED in prison and participates in Narcotics Anonymous and Alcoholics Anonymous. He desperately misses his two young children, Blayton and Hayley, who are eight and six years old, respectively. He says of his sentence, "It feels like you are dead to the world, empty inside and stripped of

your children's life... Stripped from the world, who treats you as if you are dead, in the tomb."^{lii} He told the ACLU that he wishes for another chance to raise his children and be a law-abiding citizen. "I pray I get another shot at life," he said.^{liii}

2. Timothy Jackson is serving LWOP for shoplifting a jacket from a department store in New Orleans when he was 36 years old.^{liv} The jacket cost \$159.

Mr. Jackson, who worked as a restaurant cook and had only a sixth-grade education, was addicted to drugs and reports that he was on drugs when he took a jacket from a store without paying for it in January 1996.^{lv} At the time, Mr. Jackson's crime carried a two-year sentence; it now carries a six-month sentence. However, because the prosecution charged him as a habitual offender, the court was required to sentence him to mandatory life without parole, using a two-decades-old juvenile conviction for simple robbery (from 1979, when he was 17) and two simple car-burglary convictions (from 1986 and 1991) to sentence him as a fourth-strike offender.^{lvi} The Louisiana Fourth Circuit Court of Appeal initially decreased the sentence, calling it "excessive," "inappropriate," and "a prime example of an unjust result."^{lvii} Stating that Mr. Jackson "is a petty thief, but he has not shown himself to be a violent criminal," the court noted that he had not used a weapon when he committed the 1979 robbery, during which he took \$216.^{lviii}

However, the Louisiana Supreme Court ruled that judges may not depart from life sentences mandated by the habitual offender law except in rare instances. The life sentence was reinstated despite the objections of Judge Bernette Johnson, who wrote, "This sentence is constitutionally excessive in that it is grossly out of proportion to the seriousness of the offense."^{lix}

"I'm locked up like I killed someone. They've got people who killed people got less time than I did," Mr. Jackson said. "A \$159 jacket."^{lx} His sister, Loretta Lumar, recalls of his sentencing, "When I heard 'life,' only thing I was thinking, [was] 'death.' And I just broke down crying and just ran out of the courtroom... to me, that's death."^{lxi}

Mr. Jackson has served 16 years in prison. He is 52 years old and suffers from various health problems, including diabetes, high blood pressure, and blackouts. He has learned woodworking in prison and makes rocking chairs, dining sets, and grandfather clocks, all of which are sold at the Angola prison rodeo. He has earned his GED and has also participated in Alcoholics Anonymous and other self-improvement programs. Mr. Jackson reports he has an excellent disciplinary record and has achieved trustee status at Louisiana State Penitentiary, a classification granted to prisoners who have served at least 10 years with good conduct and are trusted to work outside the prison's secure perimeters.

"I am much older and... I am a changed man," Mr. Jackson says.^{lxii} "I would like to get out of prison at an age that I could be able to work and help myself and others."^{lxiii}

3. Rayvell Finch is serving LWOP for simple possession of heroin at age 22.

Mr. Finch, who is black, was arrested in 1997 for trespassing while sitting with a friend on the steps of an abandoned residence next door to his grandmother and aunt's house in February 1997.^{lxivlxv} The officers

searched Mr. Finch, a self-described heroin addict, and found eight aluminum foil packets in his sock that tested positive for heroin.^{lxvi} A dissenting appellate judge concluded that Mr. Finch’s arrest “is more than suspect,” noting that Finch “was not issued a summons for this questionable municipal violation, because to do so would not allow arresting officers to empty his pockets.”^{lxvii}

Mr. Finch was charged with heroin possession and^{lxviii} sentenced to mandatory LWOP as a third-strike offender because of his prior convictions for possession of stolen property worth over \$500 in 1993 and possession with intent to distribute 24 rocks of crack cocaine in 1994.^{lxix} He was 19 years old at the time of his first conviction and only 23 years old when he was sentenced to die in prison. In dissenting to the affirmation of Mr. Finch’s LWOP sentence, appellate Judge William H. Byrnes declared the sentence “clearly excessive, and designed to cause needless suffering.”^{lxx}

Now 39, Mr. Finch has been incarcerated for 16 years. In prison he has completed four levels of substance abuse treatment, as well as anger management, literary, and Christian ministry programs. He remains close with his mother, aunt, uncle, and cousins, and says that being separated from family “feel[s] like my soul has been pierced and assaulted.”^{lxxi}

4. Quierza Lewis is serving LWOP for possession of crack cocaine when he was 25 years old.

Mr. Lewis was arrested with two others during a drug bust in February 2005. Acting on a tip, police were conducting surveillance of a residence. Police saw Lewis, his girlfriend, and a friend leave the residence and followed them as they drove to Mr. Lewis’s parents’ house in two cars. There, police searched the girlfriend’s car, in which they found scales and 350 grams of crack cocaine zipped inside her purse.^{lxxii} No drugs or paraphernalia were found on Mr. Lewis or in his home.^{lxxiii} Police returned to the residence that had been under surveillance, where they found a plastic bag containing cocaine residue and items prosecutors said could be used in the manufacturing of crack cocaine (a Pyrex dish, a box of baking soda, and a whisk).^{lxxiv} Mr. Lewis chose to go to trial to fight the charges against him. His three co-defendants—including his girlfriend—testified against him in exchange for dismissal of the charges against them or reduced sentences. Mr. Lewis was convicted at trial of distribution of more than 28 grams but less than 200 grams of cocaine.^{lxxv}

Mr. Lewis was originally sentenced to 20 years in prison, but he was subsequently sentenced to mandatory LWOP as a third-strike offender because of two prior convictions for selling \$20 worth of cocaine to undercover agents in 1997, when he was 17 years old, and again in 1998, when he was 19 years old; he was convicted of these offenses in 1998 and 2000.^{lxxvi}

Now 34, Mr. Lewis has been incarcerated for eight years. “Words can’t explain the pain I endure here daily... It’s like staring death directly in the eyes every day,” he says.^{lxxvii} Lewis, who dropped out of school after completing the eighth grade, is studying for his GED and has completed substance abuse, anger management, and Bible study courses in prison. He calls his family every other day, and says he is deeply pained by the prospect of never reuniting with them outside prison walls.^{lxxviii}

His mother, DeLoice Lewis, said that she has been so devastated by her son’s sentence that it has driven her to contemplate suicide. She said, “At one time, I say, I wish I could just drive into a river. And it would take it away, the hurt that I was having. The hurt that it was doing to me. I just wanted to drown at one time... I was

really ready to commit suicide. That's the only thing I could think of, 'cause I couldn't help my child."^{lxxxix} She says that holidays, family birthdays, and Mother's Day are extraordinarily difficult. "Those are days I break. I break. I just have to fall down and start praying and crying and telling God to give me the strength to make it through that day," she said.^{lxxx} The stress of her son's incarceration and sentence has caused her to lose nearly 100 pounds.

Mr. Lewis's 72-year-old father told the ACLU, "It's been hard. Old man like me, you know, have to take something like that...I stay awake most nights just thinking, thinking, thinking...It done took its toll a while."^{lxxxxi} Mr. Lewis, Sr., cries every time he visits his son, and he sobs when he talks about him. "I go down there and see him. I can't hardly stand it, leaving, but I know I have to go," he said.^{lxxxii}

5. Alexander Surry, a grandfather, is serving LWOP for possession of a single crack rock.

Surry married his high school sweetheart, with whom he has three children. To support his family, he consistently worked as a professional painter, roofer, and asphalt paver. Though he had never been a smoker or a drinker, Mr. Surry says he became addicted to crack and gradually progressed from using the drug to selling it in order to support his own habit, leading to two convictions for cocaine distribution. On January 9, 2001, when Mr. Surry was on parole for his second drug charge, his parole officer found that Mr. Surry was carrying a small crack cocaine rock.^{lxxxiii}

Mr. Surry was convicted of cocaine possession. Although the offense ordinarily carries a maximum sentence of five years, he was adjudicated as a third-strike felony offender and sentenced to a mandatory term of life in prison without parole in April 2002 because of his prior convictions for drug distribution in 1993 and 1998.^{lxxxiv}

"Everything he did was to hurt himself, not others," his wife, Sarlower Surry, told the ACLU. "I think that the system could have did something to help [with his drug use] instead of putting him away for life. I think they should have had a program that would help rehabilitate him...A life sentence is no way to deal with a drug addiction at all."^{lxxxv} She said it has been difficult raising their three children without their father, adding, "He always was there as a father to take care of us. He just made some mistakes. He just made some wrong turns. And the system just like threw him away, like it doesn't matter."^{lxxxvi}

Now 49 years old, Mr. Surry has been imprisoned for 13 years and has five grandchildren. He talks at least twice a week with his children, who were teenagers when he was incarcerated. His daughter says her father's incarceration has been immensely difficult for her. "It's like a hole is there in my heart, in my life," she said.^{lxxxvii} "I've cried many a nights...It was so hard not having my father around when I had relationship problems or just going through hard times in life. Just praying and talking to God and just crying, like, 'God, I need my father.'"^{lxxxviii} She says that because her father could not walk her down the aisle when she got married, she chose to be married by a justice of the peace instead of in a church.

The Louisiana pardon board unanimously approved Mr. Surry to complete only one-third, or 25 years, of his sentence, but according to Mr. Surry, the pardon request has been sitting on the Governor's desk since 2009. His wife continues to advocate for his release.

6. Anthony Kelly was sentenced to LWOP for possession of 32 grams of marijuana with intent to distribute in 1999, at age 25.

After a confidential informant made a controlled purchase of \$20 worth of marijuana from Ms. Gwen, a neighbor, police officers used a battering ram to forcibly enter and search her house.^{lxxxix} There they found a clear plastic bag containing 21 small nickel bags of marijuana in the toilet, as well as three partially smoked hand-rolled marijuana cigarettes in an ashtray.^{xc} An additional 21 small bags of marijuana and a bag of loose marijuana were found in Ms. Gwen's purse.^{xc1} According to Mr. Kelly, at the time of the police search, he and his brother were at Ms. Gwen's house, helping bring in groceries after driving her to the grocery store.

Police arrested Ms. Gwen, her son, Mr. Kelly, and his two brothers. At trial, the lead detective claimed that she found Mr. Kelly trying to flush the marijuana baggies down the toilet.^{xcii} Mr. Kelly insists this is untrue, and both Gwen and her son testified that the detective found the marijuana after everyone had been handcuffed and brought to the living room. Ms. Gwen testified that the marijuana was hers and that Mr. Kelly did not know she was selling marijuana.^{xciii} Mr. Kelly was convicted, despite this testimony, by 10 out of 12 jurors.^{xciv} The lead police detective, a primary witness against Mr. Kelly, was later convicted of evidence tampering and malfeasance in office, and she was accused of taking drugs from the evidence room for her own use.

Mr. Kelly was originally sentenced to 15 years but was resentenced to a mandatory LWOP sentence as a third-strike felony offender based on two prior convictions, one for possession of cocaine with intent to distribute in 1995, when he was 21, and the other for simple possession of cocaine in 1993, when he was 19.^{xcv} Mr. Kelly had pleaded guilty to both charges and says he was never told that these convictions could be used to enhance a future felony sentence.^{xcvi} He says that his sentence "feels like being buried alive."^{xcvii}

Mr. Kelly, now 39, has served 13 years in prison. He says of prison, "It seems like it would get easier, but instead it gets harder every day."^{xcviii} Mr. Kelly, who completed the ninth grade prior to his incarceration but was a special education student at a fifth-grade level, is currently studying for his GED. He has taken faith-based spiritual classes and courses in drug addiction and recovery and says that he has found God while in prison.

When Mr. Kelly was arrested, his girlfriend was pregnant with his first child. His daughter is now 12 years old, and he says it is difficult being away from her. "She is my world," he says. "I always sit and think about my daughter at night and wonder how did I fall short at providing for her."^{xcix} His father and grandmother have died since he has been incarcerated, and his 73-year-old mother, with whom he is close, has cancer.

7. Ronald Kyles is serving LWOP for simple burglary of a vacant house in Bogalusa, Louisiana.

The house had been vacant for over a year.^c Late one morning in February 2006, a neighbor noticed Mr. Kyles, who is black, exiting the house with a television set.^{ci} Based on the neighbor's description of Mr. Kyles's car, police later arrested Mr. Kyles at his house. He told police he had a circular saw and power converter from the house and claimed that a white man named Danny had sold him the tools and left with the television.^{cii} The police report supported some aspects of Mr. Kyles's story, as it stated that the neighbor witnessed Mr. Kyles

with a white man.^{ciii}

Mr. Kyles's first trial resulted in a mistrial when jurors could not agree on a verdict. Mr. Kyles was convicted of simple burglary on retrial and initially sentenced to 10 years in prison. That sentence was then vacated and he was given a mandatory life-without-parole sentence under Louisiana's four-strikes law because of his prior convictions for simple burglary of two sheds, two convictions for possession of stolen property, and two convictions for theft dating back as far as two decades.^{civ} Mr. Kyles reports he had struggled with mental health and substance abuse, but he says he had married, had finally turned his life around since 2004, and was working as a truck driver to support his family.^{cv} He recalls that when he heard his sentence, "I almost passed out."^{cvi} Now 49, he has been incarcerated for seven years, during which his son, sister, brother, and mother have died.^{cvii} He remains in contact with his wife, and participates in Narcotics Anonymous and a Bible studies program in prison.

8. Terrance L. Mosley was sentenced to LWOP for possession of marijuana with intent to distribute.

In August 2008, he was seated in the passenger seat of a parked car when a police officer searched the car, allegedly because it had duplicate license plates and was parked on the street, facing traffic.^{cviii} The officer found two bags of marijuana in the car that totaled 867 grams, or about two pounds.^{cix} Mr. Mosley says he was trying to get a ride and did not know the marijuana was in the car, which he adamantly insists did not belong to him. The driver of the car received probation in exchange for pleading guilty and did not serve any time.

Mr. Mosley was first sentenced to 25 years in prison, but was subsequently sentenced to life without parole as a third-strike offender. To adjudicate Mosley a habitual offender, the judge used a 12-year-old conviction for a nonviolent drug crime he had committed as a juvenile. Mosley, a former special education student who has an eighth-grade education, had only two prior convictions: possession of cocaine with intent to distribute when he was age 17 and distribution of cocaine when he was 18.^{cx} Mosley has served five years of his LWOP sentence and says that he feels "dead" and "lost in the system."^{cxii} Calling his sentence "pure hell," he says that it is "cruel and unusual punishment to think you will never be free before you die."^{cxii} His fiancée continues to support him and visits him regularly. The father of five children, 36-year-old Mosley says, "I'd like to have my freedom back and be the best in society possible and father for my children."^{cxiii}

- ⁱ ACLU interview with Burl Cain, Warden, Louisiana State Penitentiary, Angola, Louisiana, June 4, 2013.
- ⁱⁱ ACLU interview with Burl Cain, Warden, Louisiana State Penitentiary, Angola, Louisiana, June 4, 2013.
- ⁱⁱⁱ “Life without parole” is the most common term for sentences of life without possibility of release; “natural life,” “true life,” or “whole life” are also used. Throughout this report, we interchangeably use “life without parole” and “LWOP” to refer to these sentences.
- ^{iv} See <http://www.aclu.org/livingdeath>
- ^v State v. Carter, 99-KA-779 (La. App. 4 Cir. 11/15/00); 773 So.2d 268.
- ^{vi} State v. White, 36,935-KA (La. App. 2 Cir. 6/6/03); 850 So.2d 751.
- ^{vii} State v. Surry, 37,448-KA (La. App. 2 Cir. 9/24/03); 855 So.2d 893.
- ^{viii} State ex. rel. Veal v. State, 2003-KH-0451 (La. 3/19/04); 869 So.2d 844.
- ^{ix} State v. Finch, 97-KA-2060 (La. App. 4 Cir. 2/24/99); 730 S.2d 1020.
- ^x State v. Kelly, 01-KA-321 (La. App. 5 Cir. 10/17/01); 800 So.2d 978.
- ^{xi} State v. Bourda, KA 10-1553 (La. App. 3 Cir. 6/8/11); 70 So.3d 82.
- ^{xii} State v. Mosley, 08-KA-1318 (La. App. 5 Cir. 5/12/09); 13 So.3d 705.
- ^{xiii} State v. Winslow, 45,414 (La. App. 2 Cir. 12/15/10); 55 So.3d 910, *writ denied*, 63 So. 3d 1033 (La. 6/17/11).
- ^{xiv} State v. Green, 36,741-KA (La. App. 2 Cir. 5/5/03); 839 So.2d 970.
- ^{xv} State v. Coleman, 403-657 “B” (Crim. Dist. Ct. Parish Orleans 1999).
- ^{xvi} State v. Carthan, 99-512 (La. App. 3 Cir. 12/8/99); 765 So.2d 357, *writ denied*, 778 So.2d 547 (La. 1/12/01), *reconsideration denied*, 788 So.2d 438 (La. 3/30/01).
- ^{xvii} State v. Chester, 97-K-1001 (La. App. 1 Cir. 12/19/97).
- ^{xviii} State v. Stack, 97-KA-1176 (La. App. 5 Cir. 4/15/98).
- ^{xix} State v. Matthews, 2010-KA-1040 (La. App. 1 Cir. 12/22/10).
- ^{xx} State v. Pettus, 10-KA-215 (La. App. 5 Cir. 6/24/11); 68 So.3d 21, *writ denied*, 76 So.3d.1176 (La. 12/2/11).
- ^{xxi} State v. Caliste, 2010-KA-0650 (La. App. 1 Cir. 10/29/10).
- ^{xxii} State v. Washington, 41,182-KA (La. App. 2. Cir. 9/1/06).
- ^{xxiii} State v. Jackson, 96-KA-2540 (La. App. 4 Cir. 11/26/97).
- ^{xxiv} State v. Cushinello, 01-KA-109 (La. App. 1 Cir. 7/30/01); 792 So.2d 926.
- ^{xxv} State v. Nelson, 2010-0997 (La. App. 1 Cir. 10/22/10); 2010 WL 5442002.
- ^{xxvi} State v. Godbolt, 2006 KA 0609 (La. App. 1 Cir. 11/3/06); 950 So.2d 727.
- ^{xxvii} State v. Kyles, 2010-KA-1308 (La. App. 1 Cir. 2/11/11).
- ^{xxviii} State v. Fields, 411-743 “B” (Crim. Dist. Ct. Parish Orleans 3/20/00).
- ^{xxix} State v. Jones, 2000-KA-2117 (La. App. 4 Cir. 6/21/00).
- ^{xxx} State v. Mead, 988 So.2d 740, 749 (La. App. 2 Cir. 7/23/08); State v. Mead, 16 So.3d 470, 472 (La. App. 2 Cir. 8/13/09).
- ^{xxxi} State v. Bates, 37,282 KA (La. App. 2 Cir. 10/16/13).
- ^{xxxii} State v. Horne, No. 99-KA-2192 (La. App. 1 Cir. 9/22/00).
- ^{xxxiii} E. ANN CARSON AND DANIELA GOLINELLI, U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2012 – ADVANCE COUNTS (2013), available at <http://www.bjs.gov/content/pub/pdf/p12ac.pdf>.
- ^{xxxiv} For more on SB 239, see LAUREN GALIK AND JULIAN MORRIS, SMART ON SENTENCING, SMART ON CRIME: AN ARGUMENT FOR REFORMING LOUISIANA’S DETERMINATE SENTENCING LAWS (October, 2013), available at http://reason.org/files/louisiana_sentencing_reform.pdf.
- ^{xxxv} The felonies may fall into any of the following categories: (1) a crime of violence under R.S. 42:2(B), (2) a sex offense as defined in R.S. 15:540 et seq. if the victim is under 18, (3) a controlled substances offense punishable by 10 years or more, or (4) any other crimes punishable by 12 years or more. Given Louisiana’s very high sentences for drug offenses, qualifying felonies can include the simple possession of any amount of ecstasy or heroin, or the possession with intent to distribute any amount of almost any drug, including any amount of marijuana. Even the simple possession of marijuana becomes a qualifying offense if it is someone’s third conviction for low-level marijuana possession. Other potential qualifying offenses include purse snatching (which is an unarmed offense, and can involve removing a wallet from a purse, or stealing cash from a wallet), simple (unarmed) burglary of a non-residential building, credit card fraud by a person authorized to provide goods and services, and perjury under certain circumstances.
- ^{xxxvi} Letter to the ACLU from Libert Roland, Louisiana State Penitentiary, Angola, Louisiana, May 11, 2013.
- ^{xxxvii} Letter to the ACLU from Kerry Orgeron, Louisiana State Penitentiary, Angola, Louisiana, May 2, 2013.
- ^{xxxviii} Letter to the ACLU from Alonzo Jason, Louisiana State Penitentiary, Angola, Louisiana, May 30, 2013.
- ^{xxxix} Letter to the ACLU from Ricky Carthan, Louisiana State Penitentiary, Angola, Louisiana, Apr. 2, 2013.
- ^{xl} Letter to the ACLU from Alonzo Jason, Louisiana State Penitentiary, Angola, Louisiana, May 30, 2013.
- ^{xli} PATRICK A. LANGAN & DAVID J. LEVIN, U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, RECIDIVISM OF PRISONERS

RELEASED IN 1994 (2002), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/rpr94.pdf>; LAURA D. CROSS, VA. DEP'T OF CORR., RECIDIVISM IN VIRGINIA: TRACKING THE 1999 RELEASE COHORT (2005), available at www.vadoc.state.va.us/about/facts/research/recidivism/recidivism05.doc; ARIZ. DEP'T OF CORR., ARIZONA INMATE RECIDIVISM STUDY 6 (2005), available at http://www.azcorrections.gov/adc/reports/recidivism_2005.pdf.

^{xlii} STANFORD LAW SCHOOL, PROGRESS REPORT: THREE STRIKES REFORM (PROPOSITION 36) (2013), available at <https://www.law.stanford.edu/organizations/programs-and-centers/stanford-three-strikes-project/proposition-36-progress-report>; CAL. DEP'T OF CORRS. AND REHAB., LIFER PAROLEE RECIDIVISM REPORT (2013), available at http://www.cdcr.ca.gov/adult_research_branch/Research_Documents/FINAL_06_07_Lifer_Parolee_Recidivism_1_14_13.pdf; LIFE IN LIMBO: AN EXAMINATION OF PAROLE RELEASE FOR PRISONERS SERVING LIFE SENTENCES WITH THE POSSIBILITY OF PAROLE IN CALIFORNIA, available at: http://blogs.law.stanford.edu/newsfeed/files/2011/09/SCJC_report_Parole_Release_for_Lifers.pdf.

^{xliiii} ACLU interview with Burl Cain, Warden, Louisiana State Penitentiary, Angola, Louisiana, June 4, 2013.

^{xliiv} *Id.*

^{xlv} *Id.*

^{xlvi} Arizona Revised Statutes 13-901.03.

^{xlvii} Arkansas Code 16-90-1101.

^{xlviii} State v. Matthews, No. 2010-KA-1040 (La. App. 1 Cir. 10/22/10).

^{xlix} *Id.*

ⁱ Letter to the ACLU from Patrick Matthews, Louisiana State Penitentiary, Angola, Louisiana, Apr. 23, 2013.

ⁱⁱ State v. Matthews, No. 2010-KA-1040 (J. McClendon, concurring).

ⁱⁱⁱ Letter to the ACLU from Patrick Matthews, *supra* note 50.

ⁱⁱⁱⁱ *Id.*

^{liv} State v. Jackson, No. 96-KA-2540 (La. App. 4 Cir. 11/26/97).

^{lv} Letter to the ACLU from Timothy Jackson, Louisiana State Penitentiary, Angola, Louisiana, Apr. 23, 2013.

^{lvi} State v. Jackson, No. 96-KA-2540; Letter to the ACLU from Timothy Jackson, *supra* note 50.

^{lvii} State v. Jackson, No. 96-KA-2540.

^{lviii} *Id.*

^{lix} State Ex Rel Jackson v. State, 1999-KH-2705 (La. 3/31/00) (J. Johnson, dissenting).

^{lx} Cindy Chang, *Tough Sentencing Laws Keep Louisiana's Prisons Full*, TIMES-PICAYUNE, May 16, 2012.

^{lxi} ACLU interview with Loretta Lumar, Baton Rouge, Louisiana, June 3, 2013.

^{lxii} Letter to the ACLU from Timothy Jackson, Louisiana State Penitentiary, Angola, Louisiana, Apr. 23, 2013.

^{lxiii} *Id.*

^{lxiv} State v. Finch, 97-KA-2060 (La. App. 4 Cir. 2/24/99); 730 S.2d 1020.

^{lxv} *Id.*

^{lxvi} *Id.*; Transcript of Plea of Guilty and Sentencing, State v. Finch, No. 390-132 (Crim. Dist. Ct. Parish Orleans La. 7/30/97).

^{lxvii} State v. Finch, 730 S.2d 1020 (J. Byrnes, dissenting).

^{lxviii} State v. Finch, 730 S.2d 1020.

^{lxix} *Id.*; Transcript of Plea of Guilty and Sentencing, State v. Finch, No. 390-132.

^{lxx} *Id.* (J. Byrnes, dissenting).

^{lxxi} Letter to the ACLU from Rayvell Finch, Louisiana State Penitentiary, Angola, Louisiana, Apr. 23, 2013.

^{lxxii} State v. Lewis, 42,365-KA (La. App. 2 Cir. 9/19/07).

^{lxxiii} *Id.*

^{lxxiv} *Id.*

^{lxxv} State v. Lewis, No. 47,534-KA (La. App. 2 Cir. 11/14/12).

^{lxxvi} *Id.*

^{lxxvii} Letter to the ACLU from Quierza Lewis, Louisiana State Penitentiary, Angola, Louisiana, Apr. 25, 2013.

^{lxxviii} *Id.*

^{lxxix} ACLU interview with DeLoice Lewis, Baton Rouge, Louisiana, June 2, 2013.

^{lxxx} *Id.*

^{lxxxi} ACLU interview with Willie Combs, Baton Rouge, Louisiana, June 2, 2013.

^{lxxxii} *Id.*

^{lxxxiii} *Id.*

^{lxxxiv} State v. Surry, 37,448-KA (La. App. 2 Cir. 9/24/03).

^{lxxxv} ACLU interview with Sarlower Surry, Baton Rouge, Louisiana, June 2, 2013.

^{lxxxvi} *Id.*

^{lxxxvii} ACLU interview with Cashawna Tilman, Baton Rouge, Louisiana, June 2, 2013.

^{lxxxviii} *Id.*

^{lxxxix} State v. Kelly, 01-KA-321 (La. App. 5 Cir. 10/17/01); 800 So.2d 978.

^{xc} *Id.*

^{xci} *Id.*

^{xcii} *Id.*

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- xciii *Id.*
- xciv *Id.*
- xcv *Id.*
- xcvi *Id.*
- xcvii Letter to the ACLU from Anthony Kelly, Louisiana State Penitentiary, Angola, Louisiana, Apr. 18, 2013.
- xcviii *Id.*
- xcix *Id.*
- ^c State v. Kyles, 2010-KA-1308 (La. App. 1 Cir. 2/11/11).
- ci *Id.*
- cii *Id.*; letter to the ACLU from Ronald Kyles, Louisiana State Penitentiary, Angola, Louisiana, Apr. 24, 2013.
- ciii State v. Kyles, 2010-KA-1308.
- civ *Id.*
- cv Letter to the ACLU from Ronald Kyles, *supra* note 102.
- cvi *Id.*
- cvii *Id.*
- cviii State v. Mosley, 08-KA-1318 (La. App. 5 Cir. 5/12/09); 13 So.3d 705.
- cix State v. Mosley, 13 So.3d 705.
- cx Mosley had pleaded guilty in February 1996 to possessing cocaine with intent to distribute when he was 17 years old and in June 1997 to distribution of cocaine. State v. Mosley, 13 So.3d 705.
- cxⁱ Letter to the ACLU from Terrance Mosley, Louisiana State Penitentiary, Angola, Louisiana, May 6, 2013.
- cxii *Id.*
- cxiii *Id.*