



Summary of the Submission of the American Civil Liberties Union (ACLU) to the United Nations UPR of the United States of America
36th Session of the Universal Periodic Review; 3rd Cycle (May 4-15, 2020)

Complete ACLU UPR Submission: <https://www.aclu.org/hearing-statement/aclu-universal-periodic-review-submission>

In the United States, more than 2.2 million people are locked behind bars on any given day, while an additional 4.5 million people are on probation or parole. Jails across the country are incarcerating 462,000 people pre-trial who have not even been convicted of a crime. The United States locks up more people, both in absolute numbers and per capita, than any other country. Blacks and Latinos represent 56 percent of the adult prison population, while only 28 percent of the U.S. general population. Since the 1970s, extreme sentencing laws and practices are keeping people incarcerated for far longer than ever before.

Today, nearly 162,000 prisoners—one in nine people in prison—are serving life sentences, more than a third of whom are sentenced to life without the possibility of parole. Those serving life sentences in the United States account for nearly a third of all life prisoners around the world. Of those currently serving life or de facto life sentences, more than 17,000 were convicted of nonviolent crimes, thousands of whom are serving life without the possibility of parole.

Currently, all 50 states and the federal government have some form of habitual offender or three-strikes law. These laws often are extremely severe. For example, 30 states and the federal government have habitual offender laws that *mandate* life-without-parole sentences for certain crimes; in seven states (Alabama, Georgia, Illinois, Iowa, Louisiana, Michigan, and Oklahoma), the life-without-parole sentence is mandatory even if every offense is nonviolent. At the same time that states and the federal government were passing laws to dramatically increase sentences, there was also a significant push to guarantee that prisoners served a significant portion of their sentences before receiving parole or being granted “good time” credits.

Even when prisoners can access parole and other release mechanisms (like medical, geriatric, or work release), they are under-utilized, broken, or non-existent. In states that *do* have parole, parole boards operate in secrecy, with limited guidance, and with few required qualifications for board members. Additionally, parole rates have been declining for years and are as low as 0.5% in Florida and 9% in Ohio. When prisoners have the opportunity to go before a parole board, they place so much emphasis on the crime of conviction that other factors, like youth at the time of the crime and subsequent change and rehabilitation, are routinely disregarded.

And when parole is denied, a prisoner may wait more than a decade for another chance at freedom.

Since 1976, when the modern death penalty era began, the United States has executed 1,524 people. As of mid-2019, 2,673 people remained on death row across the United States. Twenty-nine states formally retain the death penalty, as does the federal system and the military. In these jurisdictions, the death penalty is applied in an arbitrary and discriminatory manner, based on race, geography, socioeconomic status, and the quality of representation. Prisoners with intellectual disabilities and severe mental illness continue to face execution and those with strong claims of intellectual disability remain on death row. And, due to a shortage of drugs to use in lethal injection procedures, states have turned to risky and untested methods of execution, often resulting in excruciating pain and tortuous executions as well as increased secrecy surrounding their procedures.

Racial bias also continues to play an unacceptable role in all stages of capital proceedings—from jury selection to sentencing. The race of the victim is a major factor in determining who will face a capital prosecution and receive a death sentence. The federal government has never fulfilled its commitment in the UPR process to study racial disparities in the death penalty.

While the death penalty in the United States is practiced predominantly at the state level, there has been a rise in federal capital prosecutions since the start of the Trump Administration. Attorney General Barr directed the federal government to resume capital punishment for the first time in 17 years. After a six-month stay in federal

executions was lifted in June 2020, Barr's Department of Justice carried out five federal executions in July and August, executing more people this summer than in the last 57 years combined. Three men were executed within four days in July and two men were executed within three days in August. On August, 26, 2020, the federal government executed Lezmond Mitchell despite the objections of the Navajo Nation, and despite a federal statute intended to prevent federal executions of indigenous people over the objections of Native American tribes. In all five executions carried out so far, the federal government sidestepped due process, public health recommendations, and legal precedent in its rush to kill. The Department of Justice has scheduled two more executions before October, a record-breaking string of back-to-back executions.

In December 2018, President Trump signed the FIRST STEP Act into law after it passed through Congress with bipartisan support. The federal legislation includes important sentencing and good conduct reform provisions that have led to the release of 3,100 federal prisoners, yet it is only a modest first step and much more comprehensive sentencing and release reform is required. For instance, some reform provisions of the FIRST STEP Act limiting some mandatory minimum sentences in the future are not retroactive and as a result thousands of people in federal prisons today serving sentences under now-reformed statutes will not benefit, including many people who will die in prison without retroactivity.

COVID-19 has swept through jails and prisons, where it spreads rapidly due to crowded, unhygienic conditions. To date, over 1,000 incarcerated people and staff have died of COVID-19 in the United States and nearly 160,000 have tested positive for the coronavirus. The COVID-19 infection rate is more than five times higher for incarcerated people in the United States and their mortality rate is higher than the national rate. People in custody in the United States are particularly vulnerable to COVID-19 because they are impeded from practicing social distancing or personal hygiene, lack access to adequate medical care or supplies, and disproportionately have the preexisting medical conditions that increase the chance of COVID-19 related death. Due to longstanding and systemic racial disparities in arrest, prosecution and sentencing, the criminal legal system exacerbates COVID-19's unequal impact on Black and Brown people, putting people of color in prisons and jails at disproportionate risk.

In order to avoid exponentially more deaths, the U.S. must dramatically reduce its incarcerated population and limit new admissions into jails and prisons. All 50 states and the federal government have some statutory authority to use executive clemency, commutation, medical quarantine or home detention as an alternative to incarceration. Major reductions in arrests and the mass release of people who pose no threat to public safety—including the older, elderly and medically vulnerable—is the only way to save lives and effectively address COVID-19 in prisons, jails and other places of detention.

Sentencing reform:

- Congress and state legislatures should enact comprehensive sentencing reform legislation, including federal legislation that eliminates mandatory minimums for drug crimes and other reforms of mandatory minimum and three-strikes laws. These reforms should apply retroactively, so those already serving harsh sentences may seek relief.
- Congress should pass federal legislation to create a "Second Look" process that allows anyone who has served 10 years or more to apply for resentencing before a decision-making body.
- Congress and state legislatures should pass legislation that limits life sentences to 20 years, ends mandatory life in prison without parole sentences, implements the second look process outlined above, and eliminates juvenile life without parole sentences by allowing people convicted as children to petition for resentencing in the original sentencing court.

Parole and federal release reform:

- Congress should pass federal legislation and the federal Bureau of Prisons should enact policies that allow people to file for elderly release after age 50 directly with the courts.
- States should adopt or expand presumptive parole models such as exist in South Dakota, where the burden is on the parole board to provide evidence for why a person should remain in prison. Under this system,

parole applicants would be released at the parole eligibility date unless the parole board, in consultation with the Department of Corrections and having reviewed the individual's record while incarcerated, objects.

- States should expand release eligibility for all offenses; set a fair, holistic criteria for release decision-making; increase transparency and fairness in release hearings and decisions; ensure petitioners for release who are denied are able to reapply immediately for reconsideration; and eliminate the ability of governors to block the release of an individual whom the parole board has approved for release.

Executive clemency reform:

- Expand executive clemency, in which the president or a state governor may order a commutation of sentence. The president and state governors should commit to an expansive clemency process that regularly reviews cases of individuals in prison and that would include:
 - Across-the-board, proactive review of entire categories of persons incarcerated in federal and state prisons, including those incarcerated for drug possession, the elderly, the sick, and people serving extraordinarily long sentences.
 - A presumption of release for certain categories of persons; for example, people still serving time for drug-related offenses where there has been a subsequent change in the law reducing or eliminating incarceration for those offenses.

End the death penalty:

- The federal government should impose a national moratorium on the use of the death penalty and Congress should pass legislation abolishing the federal death penalty. Meanwhile, the federal government should study the racial disparities in the imposition of death sentences.
- State governments and courts should abolish the death penalty, joining the 21 U.S. states that have already done so.