

Groups Oppose Legislation to Mandate Life without Parole for Certain Crimes

March 11, 2019

The Hon. Ralph Northam
Governor of Virginia
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Richmond, VA 23218
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Re: Requested Veto of HB 2615 and SB 1501 regarding mandatory minimums for certain persons sentenced to Virginia prisons

Dear Governor Northam:

We urge you to veto House Bill 2615 and Senate Bill 1501. We strongly oppose these bills because they would mandate life without parole for certain persons sentenced to Virginia prisons. Public safety goals will not be met by increasing the severity of prison terms.

HB 2615 mandates life without parole for all capital murder offenses while SB 1501 mandates life without parole for capital murder of a law enforcement or public safety officer. High-profile crimes have driven the expansion of life without parole nationally, contributing to a surge in incarceration rates and time spent behind bars – with the average length of imprisonment increasing by 24 percent between 2000-15. There is some tendency to generalize the circumstances of a single offense as the reason to mandate life prison terms. In reality, these tragic outcomes are rare; most violent crime is situational and contributing factors may include the influence of drugs or alcohol. Data from the Bureau of Justice Statistics show that about four in 10 people in state prisons in 2009 reported they were under the influence of drugs at the time of their offense.¹

Crime is a traumatic experience for nearly everyone who survives it. The individual circumstances of crime survival are unique yet there have been attempts to surface more comprehensive perspectives of crime survivors. Recently, a national survey determined victims believe that prison is more likely to make people commit future crimes than to rehabilitate them. The surveyed crime survivors were also more likely to believe that the U.S. sends too many people to prison than too few.²

Virginia's prison population increased more than 700 percent since 1970³ at tremendous social and financial cost. During this period, the rate of violent crime rose, then fell, rose again, then declined sharply. The best single proximate explanation of the rise in incarceration is not rising

¹ Staff. Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007-2009" Washington, DC: Bureau of Justice Statistics, 2017).

² Staff. "Crime Survivors Speak: The First-Ever National Survey of Victims' Views on Safety and Justice" Alliance for Safety and Justice, <https://allianceforsafetyandjustice.org/wp-content/uploads/documents/Crime%20Survivors%20Speak%20Report.pdf>

³ U.S. Bureau of Justice Statistics, *Prisoners in 2016*, 4 tbl.2 (Jan. 2018), available: <https://www.bjs.gov/content/pub/pdf/p16.pdf> and *Historical Statistics on Prisoners in State and Federal Institutions, Yearend 1925-86*, 2 tbl.1 (May 1988), available: <https://www.bjs.gov/content/pub/pdf/hspfy2586.pdf>

crime rates, but the policy choices made by legislators to increase the use of imprisonment as a response to crime. This includes flawed efforts such as abolishing parole in 1994 and instituting “truth in sentencing” which mandated that anyone convicted of offenses after January 1, 1995 serve at least 85 percent of their sentence, a mandatory minimum that applies now to all convictions making specific mandatory minima for some crimes superfluous

Solutions to address violent crime must be grounded in evidence-based research. Researchers have also compared the relative importance of both certainty and severity to meet punishment goals. Daniel Nagin, a leading criminologist on deterrence of criminal activity, concluded in a 2013 study, “The evidence in support of the deterrent effect of the certainty of punishment is far more consistent than for the severity of punishment,” and that the effect of certainty is essentially a function of the certainty apprehension.⁴

Recognizing the capacity for rehabilitation and allowing for a meaningful opportunity for release strengthens public safety priorities. Life-sentenced prisoners are frequently called upon by prison staff to serve as mentors to newly arrived prisoners. In addition, multiple studies confirm that the prevalence of misconduct is quite low compared to non-life prisoners, in contrast to the theory that life-sentenced prisoners are more volatile because they have “nothing to lose.”⁵ The challenge for Virginia is to develop a more comprehensive rehabilitative program in prison that addresses the underlying reasons that contributed to violent offending.

Addressing incarceration growth also should be a concern for Virginia legislators and other state policymakers. As of 2016, Virginia was among 42 states that reduced its prison population since it peaked. Yet, while Virginia’s prison population decreased by 2 percent, Alabama, Mississippi, and South Carolina reduced their prison populations by more than 10 percent.⁶ In addition, Virginia is one of only twelve states where a majority of the people incarcerated are black. The root causes for this gross racial disparity in incarceration rates must be understood before Virginia adopts additional policy changes that serve only to fill our prisons but not keep our communities safer.

Prison is an expensive sanction and sentencing people to lifelong prison terms has consumed vast but limited resources. The cost of life imprisonment is high, in the range of \$1 million per adult prisoner, with prison expenses rising precipitously after middle-age.⁷ Long-term solutions to violence include investments in education and job training initiatives. Short-term solutions include funding community-based initiatives proven to address the needs of crime survivors. Prevention efforts delivering case management to address health and basic needs for residents at risk of committing violence reinforce local strategies to confront crime rather than respond to it.⁸

⁴ Nagin N, (2013). “Deterrence in the Twenty-First Century: A Review of the Evidence”(Working Paper, Carnegie Mellon University, 2013), 1-8.

⁵ Cunningham, M. & Sorenson, J. (2006). Nothing to lose? A comparative examination of prison misconduct rates among lifewithout-parole and other long-term high-security inmates. *Criminal Justice and Behavior*, 33(6), 683-705; Cunningham, M., Sorenson, J., & Reidy, J.T. (2005). An actuarial model for assessment of prison violence risk among maximum security inmates. *Assessment* 12, 40-49; Weisberg, R. Mukamal, D., & Segall, J.D. (2011). *Life in limbo: An examination of parole releases for prisoners serving life sentences with the possibility of parole in California*. Stanford Law School: Stanford Criminal Justice Center.

⁶ Ghandnoosh, N. 2016 “Can We Wait 75 Years to Cut the Prison Population in Half?”. The Sentencing Project, available: <https://www.sentencingproject.org/publications/can-wait-75-years-cut-prison-population-half/>

⁷ American Civil Liberties Union (2012). *At America’s expense: The mass incarceration of the elderly*. Washington, DC: ACLU.

⁸ Coleman, James S. 1988. “Social Capital in the Creation of Human Capital.” *American Journal of Sociology* 94: S95- 120.

House Bill 2615 and Senate Bill 1501 move in the opposite direction by mandating life without parole for specified capital offenses. Solutions to respond to violent crime must center prevention and be grounded in evidence-based policy approaches that fairly meet public safety goals. For these reasons, we strongly oppose House Bill 2615 and Senate Bill 1501 and ask that you veto both bills.

Sincerely,

ACLU of Virginia
New Virginia Majority
Virginia CURE
The Sentencing Project

cc:

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