

A Way Out

**ABOLISHING
DEATH BY INCARCERATION
IN PENNSYLVANIA**

**Abridged
Report**

**A Report on
Life-Without-Parole
Sentences**



**ABOLITIONIST
LAW
CENTER**

A Way Out
ABOLISHING DEATH BY INCARCERATION
IN PENNSYLVANIA

Abridged Report

A Report On Life-Without-Parole Sentences



Abolitionist Law Center

REPORT AUTHORS

Quinn Cozzens, ALC Staff Attorney

Bret Grote, ALC Legal Director

ACKNOWLEDGMENTS

This project has benefited from the feedback and support of many. A special note of gratitude to the staff of the Abolitionist Law Center: Lauren Johnson, Robert Saleem Holbrook, Dustin McDaniel, and Jamelia Morgan. Your assistance, insight, dedication, and friendship help ensure that this work is as rewarding as it is challenging – and we all know how challenging it is.

To the Amistad Law Project – our movement-lawyering family – you hold us down and push us forward, giving us inexhaustible reasons to come to Philadelphia. Kris Henderson, Nikki Grant, Kempis Ghani Songster, and Sean Damon, your comradeship and selfless commitment to justice and liberation are stronger than any obstacle in our path.

The movement organizations that we are a part of and accountable to – the Coalition to Abolish Death By Incarceration, Lets Get Free-Women and Trans Prisoner Defense Committee, Human Rights Coalition, Fight for Lifers, Decarcerate PA, Right to Redemption – we offer this report as a modest contribution toward a new paradigm of justice, toward parole eligibility for all lifers, and in service of those family members and friends of the incarcerated who will fight with every last breath to bring their loved ones home.

Vital Projects Fund provided generous support for this work, believes in a future where life-without-parole is a relic of the past, and has shown a commitment to justice that is deep, informed, and strategic. We thank you for that.



DEDICATION

To the more than 5,300 people serving life-without-parole sentences in Pennsylvania, condemned to “death-by-incarceration”, who survive a daily assault upon your humanity: you are not forgotten. Whether you have committed yourself to building the movement for justice and liberation or are still finding your way there, accept this report as a humble offering – building off the work of lifers and their families – to help in a collective endeavor to do nothing less than totally transform ourselves and our society.

To those who have suffered the immeasurable grief and pain of losing a loved one to violence: we seek a change that will address the root causes of such devastation. We gently offer this work as an alternative to those who pursue a perpetual condemnation that all too often stands in the way of healing. Community, justice, and healing require us to give all of ourselves and aspire to be more – individually and collectively – than we have yet become. We are committed to walking this path with you.

To those who have experienced both sides of this painful dynamic, those who have harmed and been harmed, who have persevered and won a hard-earned wisdom, and who believe in second-chances and redemption more than ever: may your example light the way ahead.



NOTE ON TERMINOLOGY

Throughout this report we use the term Death By Incarceration (DBI) when referring to life-without-parole (LWOP) sentences. We do this for several reasons. First, it is the preferential term selected by incarcerated people that we work with who are serving these sentences, and we are a movement-lawyering organization that is accountable to the movements we work with. Second, it focuses on the ultimate fact of the sentence, which is that the only way it ends, barring extraordinary relief from a court or the Board of Pardons, is with death. Third, DBI

invokes the social death experienced by the incarcerated, as they are subject to degraded legal status, diminished rights, excluded from social and political life, tracked with an “inmate number” like a piece of inventory, and warehoused for decades in this subjugated status. Finally, although DBI in this report is used to refer to LWOP sentences, the DBI label indicates that our concern is not merely with LWOP sentences, but inclusive of other term-of-years sentences that condemn a person to die in prison.

LIFE SENTENCE

A man serving a life sentence dies at an average of 10 years after the penitentiary gates clang behind him. So claims Warden Whitman of Joliet (Ill.) prison.

He predicts: "If Leopold and Loeb are alive 20 years from now, they will have accomplished the miraculous."

How many readers would prefer the death penalty to life imprisonment? Monotony is about the worst thing in life. The worst loss of liberty. That is, on the basis of physical predicaments, not including catastrophes of the emotions.

The tiger in his circus menagerie cage has it easy compared with the cell inmate who has no hope of release.

Unlike the tiger, the man has the power to think, which intensifies the incarceration.

Days in the prison workshop, nights in a cramped, barred cell. This is not life. It is a living death.

People who are against capital punishment put forward many convincing arguments

It is, admittedly, barbaric for the government to take human life. An interesting debate could be arranged, as to whether it isn't even more barbaric and cruel to lock a man up until death releases him.

Small wonder, the average life of a "lifer" is only ten years. Existence is monotonous enough, at times, even when we have our freedom. On the other hand, there is no such thing as real freedom.

We are all prisoners serving a life sentence imposed by customs, regulations, the system of economics and the inexorable laws of nature.

The problem of getting enough to eat and to clothe, warm and shelter ourselves is a life sentence in itself for the average person.

We boast of freedom. But the only liberty we have is political. Industry, customs and superstition still have us jailed. Their slave master power is, fortunately, slipping, though very slowly.

ABRIDGED REPORT

Decarceration Through Redemption:

Ending Permanent Punishment in Pennsylvania

Death-by-incarceration sentences are perhaps the most distinctive and emblematic feature of the United States' system of mass incarceration, with Pennsylvania staking a claim as a national leader in the practice of condemning people to die in prison and exhibiting its most pernicious features. Philadelphia is the DBI capital of the world. Pennsylvania itself is an international and national leader in DBI sentencing. The racial disparities in DBI sentencing in the state are stark evidence of systemic discrimination. DBI sentences are overwhelmingly imposed on teenagers and young adults, but increasingly are being served by aging and elderly prisoners still being punished for acts committed decades ago. The legal framework is unforgiving, allowing for no mitigation, no lesser sentence, and no hope of release short of commutation, which has become increasingly rare just as it has become increasingly necessary to address the extraordinary number of rehabilitated people serving a DBI sentence. As will be further explored in this report, the inadequate policy justifications for this state of affairs renders this a punishment lacking in legitimacy, one that we need to bring to an end.

Pennsylvania in Context

14 In 1992, 12,453 people were sentenced to death-by-incarceration in the United States.¹ Today, over 53,000 people are sentenced to death-by-incarceration—almost 4% of the total incarcerated population serving sentences in state or federal custody.² Given the rapid growth and prevalence of death-by-incarceration sentences in the United States and a growing global consensus that DBI sentences are inhumane, DBI sentences may be “the distinctive American punishment.”³ With over 5,300 people sentenced to DBI and one of the highest per capita DBI-sentencing rates in the country, Pennsylvania stakes a strong claim as the U.S. leader in this “distinctively harsh” form of punishment and permanent exclusion of its citizens. Philadelphia, with nearly 2,700 people serving DBI sentences, is the world’s leading jurisdiction in sentencing people to die in prison—more than any county or parish in the United States and far more than any individual country in the world.⁴ Since 1980, roughly 800 people have died serving death-by-incarceration sentences in Pennsylvania prisons. That is roughly 800 more deaths than the number of executions in Pennsylvania – 3 – over the same time period.

In 1974, fewer than 500 people were serving DBI sentences in Pennsylvania. By 1990, the number of people serving DBI sentences increased to more than 2,139. As of September 2017, 5,346 people are serving death-by-incarceration sentences in Pennsylvania.

Despite a 21% decline in violent crime between 2003 and 2015, Pennsylvania's population of people sentenced to DBI has risen by 40% between 2003 and 2016.⁵

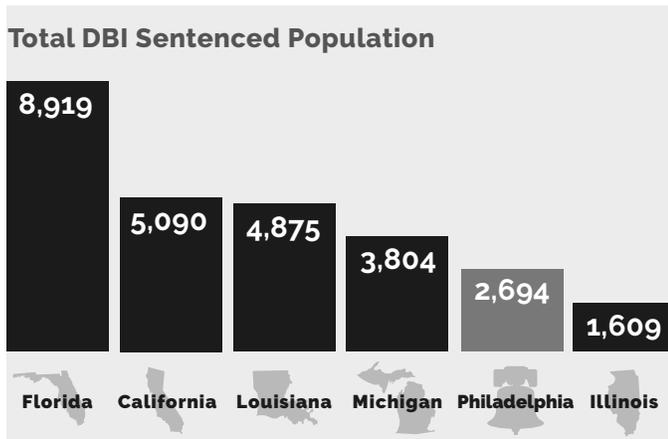
People sentenced to DBI account for approximately 11% of Pennsylvania's total prison population. Relative to the overall population of Pennsylvania, 42 people per 100,000 are condemned to die in prison under a DBI sentence. Pennsylvania ranks near the top of every measure of DBI sentences across the country.

More than 1 in 10 people serving DBI sentences in the United States are in Pennsylvania, and Pennsylvania has two-and-a-half times the rate of people serving DBI than the aggregate national rate of 17 per 100,000.⁶

Only Florida—with twice the population and twice as many people incarcerated as Pennsylvania—has more people serving DBI sentences. Pennsylvania has both a greater total and a greater portion of its prison population serving DBI sentences than states with higher incarceration rates, including Texas, Arizona, Alabama, Mississippi, Georgia, Oklahoma, Virginia, and Ohio.⁷

Philadelphia

Philadelphia County alone has 2,694 people sentenced to death-by-incarceration, which comprises just over 50% of those sentenced to DBI in Pennsylvania and is the highest total of any county or parish in the country. In 1979, there were 2,761 people from Philadelphia incarcerated under any sentence in the Pennsylvania Department of Corrections (DOC).



First and Second Degree Murder

There is no other penalty for non-capital first-degree murder or second-degree murder – the minimum is the maximum, the floor is the ceiling. This feature of the non-capital first-degree murder and second-degree murder sentencing makes these penalties outliers in the state’s criminal code, as they and the handful of other offenses that mandate imposition of a life sentence are the only criminal offenses on the books in Pennsylvania where

Death-By-Incarceration Capital of the World

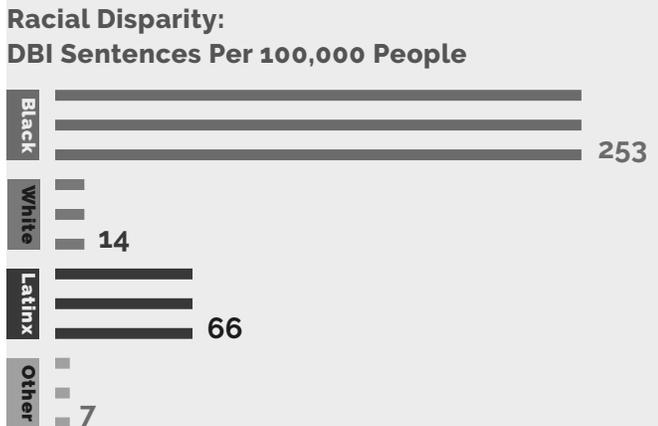
More people serving DBI sentences were convicted in Philadelphia than 45 states in the U.S., and Philadelphia has more people sentenced to DBI than the 24 states with the smallest populations of people serving DBI combined

(2,694 people from Philadelphia compared to 2,435 combined from the lowest 24 states). More people are serving DBI sentences from Philadelphia than the entire prison populations of 83 different countries and territories.⁸ Finland, with a population more than four-times that of Philadelphia, has only 500 more people incarcerated under any sentence than Philadelphia has serving death-by-incarceration.⁹

The Minimum is the Maximum

there is no individualized consideration and option for the imposition of a lesser sentence.

A Question of Racial Justice



Like most measures of the criminal legal system, death-by-incarceration sentences disproportionately impact communities of color, particularly

Black Pennsylvanians, who are serving death-by-incarceration sentences at a rate more than 18-times higher than that of White Pennsylvanians.

Latinx people are serving DBI sentences at a rate 5-times that of White Pennsylvanians. Racial disparities in DBI sentences are more pronounced than among the overall prison population. Pennsylvania had 49,301 people incarcerated in the state prison system as of December 31, 2016, 47% of whom were Black, while 42% were White. Of people serving DBI sentences, 65% (253 per 100,000) are Black and 25% (14 per 100,000) are White, while only 11% of Pennsylvania's residents are Black and over 76% are White.

One of every 294 Black Philadelphia residents is serving a sentence of death-by-incarceration (340 per 100,000). Out of Philadelphia's 2,694 people sentenced to DBI, 84% (2,250 people) are Black, while 43% of Philadelphia's residents are

Black. 42% of people serving DBI in Pennsylvania are Black Philadelphians. Only 153 (6%) people sentenced to DBI in Philadelphia are White, compared to 29% of Philadelphia's overall population, for a rate of 35 per 100,000. Latinx Philadelphians are serving DBI at a rate of 139 per 100,000.

Philadelphia sentences Black people to death-by-incarceration at a rate higher than the overall incarceration rates of all but 23 world countries and territories,

including Brazil (318 per 100,000), South Africa (291 per 100,000), Israel (265 per 100,000), and Saudi Arabia (161 per 100,000).¹⁰ In Allegheny County, 13% of the county's residents are Black, but 76% (409 people) serving DBI sentences are Black for a rate of 253 per 100,000. White residents make up 80% of Allegheny County's population, but 24% (128 people) of people sentenced to DBI from the county (13 per 100,000).

Racial disparities persist in counties with relatively homogenous racial compositions. In Fayette County, for example, only 5% of the population is Black, but 38% of people serving DBI sentences (16 people) are Black (253 per 100,000), while 93% of the population is White and 62% of people sentenced to DBI (26 people) are White (21 per 100,000). In Lackawanna County, 2.5% of the population is Black, but 39% of people serving DBI sentences (14 people) are Black (258 per 100,000), while 87% of the population is White and 50% of those serving DBI (18 people) are White (9.6 per 100,000). Similarly, in Mercer County, 6% of the population is Black, but 47% of people sentenced to DBI are Black (134 per 100,000), while 91% of the population is White and 53% of people serving DBI are White (10 per 100,000).

Women Sentenced to Die in Prison

Pennsylvania has 201 women incarcerated under death-by-incarceration sentences, representing almost 4% of those serving DBI sentences in the state. Although racial disparities are less stark among women serving DBI sentences, they are still pronounced. Out of 201 women sentenced to DBI, 87 (43%) are Black, 99 (49%) are White,

10 (5%) are Latina, and 5 (2.5%) are of other races. Like the overall DBI-sentenced population, most women—74%—were convicted of first-degree murder, while 20% of women serving DBI sentences were convicted of felony-murder. A higher proportion of Black women were convicted of felony-murder, with 25% of Black women serving DBI sentences under a second-degree murder conviction.

Age at Time of Offense

Consistent with data on most criminal offenses,¹¹ most people serving DBI sentences in Pennsylvania were convicted and sentenced when they were 25 years-old or younger. Data from the Department of Corrections reflects the age at which an individual entered DOC, rather than their age at the time of the offense for which they were convicted. Given the time between when a person is arrested until they are ultimately convicted, most people were likely at least one year younger at the time of their offense than when they were committed to DOC custody. Approximately 51% (2,723 people) of those serving DBI sentences entered Department

of Corrections custody between the ages of 18 and 25. 25% of those serving DBI (1,329 people) entered the DOC between the ages of 18 and 21. An additional two-percent (118 people) were 17 or younger, with the youngest entering the DOC at the age of 15. The age of entry into the DOC among people serving DBI steadily decreases after the age of 25. Roughly 20% (1,065 people) were between the ages of 26 and 30, while only 18% (969 people) were between the ages of 31 and 40. The median age of people serving DBI sentences upon entering the DOC is 25.

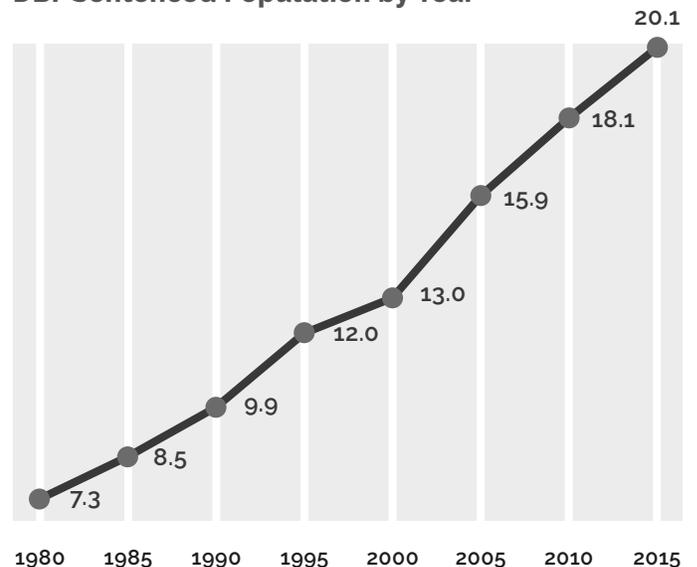
17

Growing Old in Prison

While research shows that the likelihood of a person engaging in criminal conduct or harmful behavior drops precipitously with age and maturity, the population of people serving DBI sentences in Pennsylvania is growing increasingly older. The average current age of people serving DBI sentences is 48.4 years old. Today the average person serving DBI in Pennsylvania is about 15 years older than the average person serving DBI in 1980. Over 70% (3,770 people) of those currently serving DBI sentences are at least 40 years old and 45% (2,377 people) are at least 50 years old. Over 21% (1,148 people) of those serving DBI are 60 or older and five percent (281 people) are 70 or older.

Recidivism rates are measured in a variety of ways,¹² but across all measures, recidivism for people released from prison at an older age—including those sentenced to life

Average Time Served of DBI-Sentenced Population by Year



imprisonment—are low.¹³ In Pennsylvania, of people who were 50 or older when they were released from prison in 2003, only 1.4% were convicted of any new crime within 22 months of their release.¹⁴

The average length of time people sentenced to DBI have served in the DOC is 20.5 years. Like most other measures of death-by-incarceration sentences, this number has increased steadily and dramatically in recent decades. In 1980, the average time served in the DOC by people serving DBI was 7.3 years.

Costs of DBI Sentences

Incarceration is costly. In Pennsylvania, the cost of DOC operations increased from \$94 million in 1980 to \$1.7 billion in 2010.¹⁵ The prevalence of death-by-incarceration sentences is an integral component of the rise in costs associated with incarceration. With people serving DBI sentences growing increasingly older and spending decades in prison, the economic costs of DBI sentences will only continue to rise. Because the typical range of physical ailments associated with aging are compounded or accelerated by incarceration, age 55 is usually regarded as delineating the elderly population in prisons.¹⁶ Due primarily to increased healthcare costs associated with age, it costs between two- and three-times more to incarcerate an elderly person than the average person in prison.¹⁷ Using an estimate of \$47,680 for the annual cost to incarcerate a person in Pennsylvania, assuming 2% annual inflation and adjusting for age-related cost increases, the total cost of incarcerating a person who began serving a DBI sentence

Currently, two-thirds of people sentenced to DBI have served 15 years or more in the DOC (3,436 people). Almost a quarter (1,196 people) have served more than 30 years, and six percent (303 people) have served more than 40 years. Nine people have served more than half a century under a death-by-incarceration sentence. 169 people have been incarcerated under a DBI sentence since the Fall of Saigon in 1975, which marked the end of the U.S. military's campaign in Vietnam.

in 2015 at age 25 until their death will be over \$3.6 million.¹⁸ Between 2010 and 2016, an average of 128 people per year began serving sentences in the DOC. If an average of 128 people sentenced to DBI are committed to the DOC per year and the state spends approximately \$3.6 million to incarcerate each person sentenced to DBI over their lifetime, every year Pennsylvania commits to spend roughly \$460 million to ensure that those sentenced to DBI die in prison. In Philadelphia alone, with an average of 56 people sentenced to DBI committed to the DOC per year between 2010 and 2016, Pennsylvania will ultimately spend over \$200 million for each annual cohort of people sentenced to DBI from Philadelphia. Furthermore, 1,811 people serving DBI sentences in Pennsylvania are 55 or older (34% of people serving DBI sentences). Adjusting for age-related cost increases, Pennsylvania currently spends approximately \$86 million per year to incarcerate elderly people serving DBI sentences.

No Way Out

Aside from having a conviction overturned or death itself, commutation is currently the only avenue by which a person serving death-by-incarceration may be released from prison in Pennsylvania. While commutation was used somewhat regularly through the 1970s, its use abruptly declined in the 1980s. In 1971, 38 people who had their DBI sentences commuted were released from

The False Hope of Commutation

Pennsylvania prisons. That figure represented nearly 8% of the total population of people serving DBI sentences in Pennsylvania.¹⁹ During the 1970s, an average of 769 people were serving DBI sentences in Pennsylvania, and 203 people had their life sentences commuted and were released. In the 1980s, as the number of people serving increased to an average of 1,786 for the decade, only 36 people were

released after having their DBI sentences commuted. Under Governor Dick Thornburgh, only seven DBI sentences were commuted between 1979-1986.

Subsequently, a 1997 amendment to the Pennsylvania Constitution made obtaining a commutation for a DBI sentence significantly more difficult. During Tom Ridge's time as governor, the Board of Pardons only recommended 4 commutations. Ridge granted 0. Since Ridge left office in 2001, only 8 DBI sentences have been commuted. During Governor Corbett's term in office from 2011-2014, the Board of Pardons did not even recommend that a single DBI sentence be commuted.

Even among ostensibly liberal regimes, commutation has been rare, especially considering the ever-increasing population of people serving DBI. During Ed Rendell's 8

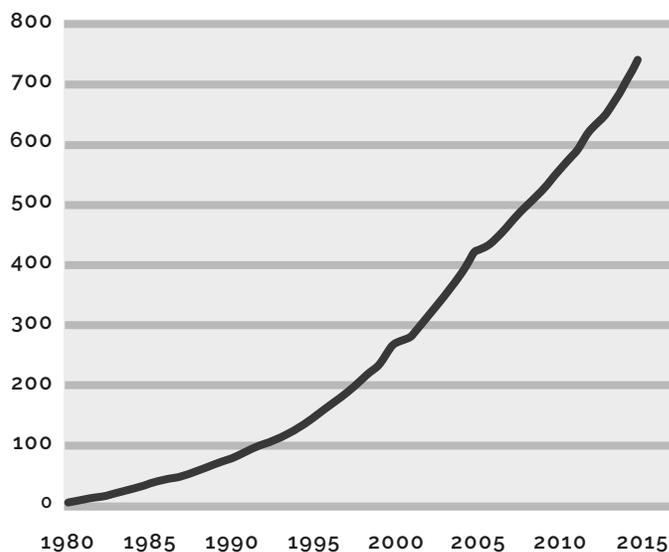
years in office, only 5 DBI sentences were commuted. Since entering office in 2015, Governor Wolf has only granted two commutations. Attorney General Josh Shapiro, who ran for office on a reform platform, has been one of the primary roadblocks in granting commutation to people serving DBI in the current administration. In December of 2016, Shapiro was the only Board of Pardons member to vote against recommending commutation for William "Smitty" Smith. Smitty, now approaching his late 70s, is serving DBI for his role as an accomplice in the 1968 death of Charles Ticktin. Smitty was unanimously recommended for commutation by the Board of Pardons in 1992, but his application was not granted prior to Governor Casey leaving office in 1994. Following critical coverage in the press and pressure from advocates, the decision to deny commutation to Smitty was reversed in June 2018.²⁰ His favorable recommendation now awaits a decision by Governor Wolf.²¹

The Rising Death Toll

Meanwhile, the number of people who have died while serving a DBI sentence is growing rapidly. In the 1980s, an average of 6.8 people per year died serving a DBI sentence. During the 1990s, that number had risen to 16.4 deaths per year, and in the 2000s an average of 28.9 people died per year. Between 2010-2016, an average of 38 people per year have died serving a DBI sentence. In all, 787 people have died serving a DBI sentence since 1980.

Decade	Deaths	Per Year
1980s	68	6.8
1990s	164	16.4
2000s	289	28.9
2010-2016	266	38
Total	787	21.3

Deaths of People Serving DBI in PA



The Case for Parole Eligibility

Closing off parole eligibility for the entirety of a person's natural life is a failed policy predicated upon the fallacy that the trajectory of a person's life – including their capacity for rehabilitation, transformation, and redemption

– can be accurately predicted at the time of sentencing. In Pennsylvania, the prediction that a person convicted of first or second degree murder should never be released from prison is not even made at sentencing. Instead, it is set in

stone by statute and imposed mandatorily based on the conviction without regard to any mitigating circumstances, the individual's role in the offense, or their prospects for change.

As demonstrated in Section III of this report, narratives of maturity and transformation are common among the more than 5,300 serving DBI sentences in Pennsylvania. By disregarding this basic reality, the mandatory sentencing scheme for imposition of DBI sentences in Pennsylvania has led to a situation where increasing numbers of aging and elderly prisoners who present virtually no public safety risk languishing in prisons at tremendous social and fiscal expense.

The case for parole eligibility for people serving DBI sentences is supported by unassailable policy justifications. DBI is a failed policy on its own terms, and the alternative – parole eligibility – possesses well-established merits. DBI sentences are unnecessary and harmful, particularly in the following ways:

- **DBI is not necessary to ensure or increase public safety.** Research has consistently shown that the strongest predictor for whether a person will commit future criminal offenses is age. As people age and mature they are less likely to re-offend and they are especially unlikely to commit a further homicide offense. Aging and elderly incarcerated people – an increasingly large cohort in Pennsylvania – pose little risk to public safety if released.
- **DBI is a waste of resources.** The costs of incarcerating a permanent, ever-growing number of people sentenced to DBI is a waste of resources, putting strain on the state budget by needlessly wasting money to confine people who are no longer a risk to the public. This money could instead be spent on public education, medical and mental health services, housing, and other social services that are necessary for creating safe and healthy communities.

- **DBI does not serve victims.** The retributive impetus inherent in DBI sentences, while an understandable response to the devastating loss wrought by homicide, does not help victims heal. Further, victim attitudes are not as punitive as they are often portrayed to be. Many support policy responses that emphasize preventing re-offending and addressing the causes of crime and violence over increased punishment. And a growing number of people who have lost loved ones to violence are raising their voices in support of second chances and restorative justice.
- **DBI harms the incarcerated, their families, and their communities.** By permanently removing people from their communities, DBI sentences deprive them and their families of hope and fail to provide incentives for rehabilitation and transformation. Family members pay a high emotional and economic cost in supporting their loved ones behind bars. The communities most targeted by violence lose out on the experience and guidance of rehabilitated elders who are prevented from returning to their communities where many would be incredible assets with invaluable life experiences and a commitment to making amends for harms they have caused.
- **Parole eligibility is the smart policy.** Ending DBI allows the parole board to do what it was created to do: assess whether an incarcerated person is ready for release. The determination that a person will never be capable of release cannot be realistically made at the time of sentencing; allowing for parole eligibility remedies this deficiency by creating the potential for eventual release subject to the safeguards of the parole system.

But DBI does not persist because it supports rational or humane or justifiable policy aims. It persists because of politics; more specifically, the punitive politics that rests upon an implicit and false premise that sending more people to prison for longer periods of time – even until they die – will result in increased public safety. This is not true; the justifications for DBI sentences cannot withstand scrutiny.

Failing On its Own Terms:

Death-by-incarceration advocates justify this sentence of permanent punishment because it allegedly furthers one or more of three goals: deterrence, retribution, and incapacitation.

Deterrence is nothing more than the instrumentalization of fear, based on the idea that punishment will sufficiently terrorize the punished or others so that they will be too afraid to commit the same offense.

As a general matter, however, criminal law's deterrent effect on people is dubious, at best.²² In the case of particularly long or harsh sentences, however, there is nothing doubtful about the consensus among experts that harsh sentences do not deter.²³ Studies generally show that lengthy sentences do not have a deterrent effect on crime.²⁴ The "rational actor" paradigm and the assumptions upon which deterrence theory is premised are divorced from the actual causes of violence and the thought processes of those who commit crimes punishable by DBI in Pennsylvania. Most violence is not driven by individual pathology or the cold rational calculus assumed by deterrence theory, but by poverty, inequity, lack of opportunity, shame and isolation, and violence itself.

Retribution is the idea that those who cause harm should have harm done unto them, it is the ethic of vengeance.

Far from a principled imposition of the harshest punishment on those who commit the most heinous crimes, however, over 99% of DBI sentences in Pennsylvania are imposed mandatorily—that is, without any consideration of the individual circumstances of each case. Mandatory DBI sentences risk ensuring that many DBI sentences are imposed on defendants who decline to testify against others or exercise their constitutional rights to a trial

Deterrence, Retribution, and Incapacitation

rather than accepting a plea deal for a lesser charge and therefore lesser sentence. This risk is especially great for defendants who are innocent, those who were less involved in the offense and therefore have little information to offer prosecutors in exchange for a plea deal, and those who simply opt to exercise their constitutional right to a jury trial.²⁵ For defendants charged with first-degree murder—where the sentence is either death-by-execution or mandatory death-by-incarceration—prosecutors can also pressure defendants to accept a mandatory DBI sentence in exchange for the prosecution declining to pursue a death-by-execution sentence.

Incapacitation is a term denoting how prison removes the convicted from society and thus prevents further criminal conduct outside of prison walls during the period of incarceration. But, as discussed earlier, aging and elderly incarcerated people pose little threat of re-offending for any offense, rendering a DBI sentence severely excessive in regard to its "incapacitation" effect.

Essentially, the incarcerated are subject to social death, excluded and banished from their community and considered less than fully human from the vantage points of the law and the broader society.

Terror, vengeance, and social death. These are the ideological and political underpinnings of death-by-incarceration sentences as well as the system of mass incarceration more generally. Deployment of these punitive, stigmatizing, and harmful measures, institutionalizing them via the system of criminal prosecution and mass imprisonment, however, cannot be justified by assessing whether they achieve their stated goals. This is because, as discussed in this section, DBI sentences fail to achieve any of the purported goals used to justify them.

The Way Forward:

Redemption and Restoration to the Community

While politicians and prosecutors frequently trumpet the narrative that harsh sentences like DBI are desired by victims' families and best serve victims, victims themselves are far from monolithic in their desire to see the person convicted for killing their loved one imprisoned until death, and a criminal legal system that focuses primarily on retribution and punishing the offender does not address what survivors and families need to heal from the trauma they experience.²⁶ What constitutes popularly accepted punishment for harmful behavior is a social construct that varies widely across time and place and is largely based upon mechanisms or options that are already in place.²⁷ A 2016 survey from the Alliance for Safety and Justice found that 61% of crime victims prefer shorter prison sentences that focus on rehabilitation and increased spending on preventing crime rather than sentences that keep people incarcerated longer.²⁸ Many survivors or victims of crimes feel re-traumatized by a criminal legal system that seeks retributive sentences—which they often feel are focused primarily on the defendant—while services like mental health treatment and counseling for victims and their families are virtually non-existent.²⁹ Many victims who initially seek retribution through punishment are ultimately disappointed in the criminal legal system's inability to make them feel safer or provide the anticipated healing they require.³⁰

DBI sentences, by permanently banishing the person who committed the homicide from social life and restoration to the community, foreclose the possibility of the meaningful atonement and redemption that embodies recognition of the harm caused. Many victims' family members want precisely this: that the person who took their loved one's life recognize the immensity of the loss and change their own life to serve others and be a force for positive change in the world.

From the perspective of those like Lorraine Haw, member of the Coalition to Abolish Death by Incarceration, the retributive logic of DBI sentences is not simply wrong because it is applied unfairly or too broadly; instead, it is wrong because retribution and punishment are morally inferior and in every way less desirable than redemption and healing. In her own words:

If the courts had honored my wishes initially, the person who murdered my brother would be dead. But I'm glad he isn't. Today, I'd like to have a dialogue with the person who took my brother's life. I want justice that recognizes the possibility of transformation and healing; not just for those who have committed harm, but for those of us who have been harmed, who have survived violence, or lost our loved ones to violence.

I believe that society should set a limit on the kind of punishment it can dish out. Once upon a time, we tortured people to punish them, but then we decided that was wrong. Today, if someone said at trial, "I'd like you to torture the person who killed my brother," we would say: "We are sorry for your loss, and you are right to be furious, but we cannot do that." . . .

The death penalty is morally wrong.

Just as we should not torture people, we should not kill them, and we should not lock them away forever. We should give people the tools and the opportunity to change for the better, and have them try to make up for the harm they caused.

We call it the Department of Corrections rather than the Department of Revenge for a reason.³¹

The system of mass incarceration, with DBI sentences as its exemplar and anchor, both fails on its own terms and is totally refuted by the lived experience of redemption and transformation of those subjected to permanent exclusion, to social death. Rehabilitation, redemption, restoration to the community, identifying and addressing the root causes of violence and harm – these are the ways forward. Not emotive calls for punitive responses to violence that consistently fail to deliver on their promises.

Speaking for Themselves

To end DBI sentences we need to recognize that the fundamental fallacy of such punishment is the negation of the humanity of the person who has committed harm. The perpetual criminalization, the permanent stigma, the fear and degradation that are attached to those serving DBI sentences are not rooted in the complex lives and personalities of those who have committed serious harm, including murder.

The transformation proposed in this report is rooted in the lived experiences of those who have walked the walk and transformed their lives in spite of a DBI sentence that “forswear[s] altogether the rehabilitative ideal.” Transitioning to a criminal legal system that centers redemption and restoration to the community requires involving the incarcerated as full participants in asserting their humanity, developing their capabilities and talents, and being permitted to serve their families and communities. For that reason the heart of this report – the longest and most important section – is Section III, constructed from the words of those serving DBI sentences. It demands to be read – and re-read – in full. The hard-earned insight and vision expressed in this section animates this report and the goals of the movement to end DBI. Some excerpts:

Nicole Newell wrote: *“As long as I have breath in my lungs and believe that I will get a second chance, I will always have hope.”* Similarly, Phillip Ocampo wrote: *“So as long as there is breath in me, I’ll always have hope until I get out or go home to heaven.”* David Lee expressed that it is difficult to maintain hope in the negative environment of prison, *“but without a strong sense of hope we [have] absolutely no chance making it back to our families and communities.”*

Char Pfender wrote: *“I truly believe that hope is your belief in seeing a wonderful end no matter how bad the middle looks, and growing from horrible beginnings. You cannot rise like a phoenix from the ashes without walking through the fire first. I want to rise, not be consumed.”*

Malakki Bolden described how those who are currently serving DBI sentences are well-suited to carry out the work of building communities and serving as positive influences:

“Some of the best help and/or support for those right now struggling (with addiction, mental health, those living in crime-ridden areas, etc.) is us. We have lived lives similar to them – we are them – and our examples of how to manage life’s ups and downs can reach them like nothing else. Rehabilitated prisoners are the help society is looking for.”

Many others expressed their desire to make their wrongs “more right” and attempt to atone for harms that they caused. Oscar Cintora wrote: *“There are many people serving this sentence (DBI) that are truly sorry and have changed their lives, that only ask for one more chance to demonstrate our changes, and that we could be assets to our communities, could make amends, or try to make amends, in better ways from the outside.”* Changa Asa Ramu expressed similar thoughts: *“We understand that we have a debt to pay to society and are willing to take that responsibility. Our communities and families need our presence.”* Kristin Edmundson wrote: *“I cannot change what happen although I really wish I could, but I can try to make up for my mistakes and the hurt I’ve caused. I would like people to know that I will continue to strive and make myself a better person.”*

Sheena King expressed similar thoughts:

We are not what we’ve done... DBI does not fix what’s broken in people or communities... DBI sentences serve no real purpose. You lock people up until they die and how does that bring back a loved one, or cause a person to see the error of their ways and change? How does it help a victim’s family to heal? People serving DBI have hurt entire communities – we need to be held accountable to help to fix it. We can’t in a cell.

Felix Rosado also wrote about others serving DBI sentences, writing that they are among the kindest, most caring, selfless, resilient human beings I’ve ever known. They’ve been making a positive difference in the lives of countless people for decades to little fanfare, not for credit, not to impress a parole board— but just because it’s the right thing to do. It’s about character and purpose, and a higher sense of self that transcends walls, bars, labels and the dehumanization inherent in prisons—

despite prison... We weren't created to be trapped in a moment of time, to be prevented from reaching something higher.

Many people focused on the particular ability of those serving DBI sentences to inspire and produce positive change for their communities on the outside if given the opportunity. Phillip Ocampo wrote: "A lot of us serving these sentences could do more good on the outside than in here and should be given the chance to show that we could make a difference in life on a positive level." David Lee, who maintains his innocence of the crime for which he was convicted, wrote: "I have spent over half of my life in prison for a crime I did not commit, and all I want to do is positive work within and beyond my community." He continued:

I also talk to many DBI prisoners who have committed the acts they're incarcerated for, and they just want an opportunity to redeem themselves. This is why the "Restorative Justice" concept is so vital, and something

desperately needed in this state. Healing and repair is needed, not excessive punishment.

Saadq Palmer summarized many of the sentiments expressed by other people serving DBI sentences:

Life without parole is not a deterrent and it's inhuman to keep somebody locked away for decades that has been rehabilitated. It's cost effective to grant us parole. And most of all we are the least likely to reoffend out of all offenses.. less than 1% of men and women serving DBI released on parole, pardon or commutation reoffend after release. Allow us to use our experience serving DBI as a prescription for change. Myself and the many men that I work with will be agents for change. Changing the lives and direction of our youth is paramount for all of us. We've lost children, family and friends in our time inside. We care, we're sorry for the harms we've caused. Let us lead by example, let us show the world that change and transformation is possible!"

Abolishing Death By Incarceration in Pennsylvania

As this report has demonstrated, Death-By-Incarceration is more than a failed policy or a well-meaning yet excessive response to violence.

Instead, DBI is central to the system of mass incarceration in Pennsylvania; a material, institutional, and ideological pillar of a regime of state violence that systematically targets the poor and communities of color. DBI sentencing exemplifies the logic of fear, vengeance, and social death that underlie and sustain the institutions of policing and prisons in this country.

The staggering racial disparities are indicative of the ongoing reality of white supremacy and anti-Blackness that relentlessly deprives people of color of their rights and their liberty. To speak plainly, in its application and function DBI is racist, targeting communities of color that are subject to conditions of imposed poverty and deprivation with policies of state violence rather than social support, services, and uplift, demonizing and traumatizing them with policies of permanent punishment under the insidious pretext of providing protection and safety, neither of which ever materialize.

DBI is not an effective deterrent to crime. In Pennsylvania, DBI sentences do not even offer the pretext of identifying individuals who will pose a public safety threat for the rest of their lives, as they are imposed pursuant to a mandatory scheme that never allows for a less severe punishment. The practice of sending people to serve decades in prison

without any prospect of release until they die has been conducted for decades without so much as a review by any legislative or executive official as to its efficacy, purpose, effect, or inhumanity.

The consequences are too pervasive and pernicious to ignore. The voices of those on the inside insisting on recognition of their full humanity and the rights that should accompany that recognition are growing louder by the day. As an increasingly elderly population, aging lifers in Pennsylvania prisons who have already served substantial time not only pose an extremely low risk of reoffending for any offense, but scores of them have invaluable life experiences, wisdom, skills, insight, and leadership to share with their communities and the society at large, earned through hard decades of maturation, reflection, dedication, and transformation.

In summary, DBI is an abomination—a human rights crisis demanding urgent attention and prompt abolition. As illustrated in the heart of this report—the words of lifers themselves—those serving these sentences do not need us to speak for them. They are more than capable of doing that for themselves.

Instead, they need people to fight *with* them for their freedom, for a new paradigm of justice rooted in community restoration and accountability, transformation rather than retribution, one where a preferential option for rehabilitation is *always* taken and the right to redemption becomes a reality.

The final section of this report, Section IV, discusses a multi-strategy, movement-building approach to ending DBI sentences and establishing parole eligibility for all in Pennsylvania that includes legislation, litigation, commutation reform, and organizing.

The identical legislation introduced by State Representative Jason Dawkins (HB135) and State Senator Sharif Street (SB942) that would end life-without-parole in Pennsylvania by establishing parole eligibility for all lifers after 15 years of incarceration is the optimal means to achieve our goal. While this legislation is the most direct and comprehensive approach to ending DBI sentences in Pennsylvania, its passage will take years of patient, methodical, and strategic organizing.

The situation of permanent imprisonment for more than 5,300 people in Pennsylvania is untenable. It does not have to be this way. In the vast majority of the world, it is not. DBI sentences are another peculiarly U.S.-based phenomenon. Around much of the world such sentences are not permitted, and where they are they are not imposed at anywhere near the levels that they are imposed in this country. The racial demographics of DBI sentences are a scandal and a human rights travesty. Even within the U.S., Pennsylvania is an outlier, both in terms of the absolute numbers of incarcerated people serving DBI sentences and the proportion of people in state custody serving DBI sentences.

The consequences of DBI sentencing extend far beyond the prison walls. The total absence of redemptive opportunity hardens punitive attitudes in society by legitimating the most destructive and divisive impulses within people: fear, vengeance, racism, and cruelty. Ultimately, the fight to abolish DBI sentences is a fight over what type of society we want to live in, whether we will organize around values of restoration and redemption and healing or continue down the path of fear and stigma and vengeance. The fight is about how much injustice people will tolerate from the government.

As it stands now, the situation is intolerable. It doesn't have to remain this way, however, and the growing numbers of people getting organized to put an end to DBI once and for all are shining a bright lamp on the path forward.

- ¹ Ashley Nellis, The Sentencing Project, *Life Goes On: The Historic Rise in Life Sentences in America* 13 fig. 3 (2013).
- ² Ashley Nellis, The Sentencing Project, *Still Life: America's Increasing Use of Life and Long-Term Sentences* 10 (2017).
- ³ Craig S. Lerner, *Life Without Parole as a Conflicted Punishment*, 48 Wake Forest L. Rev. 1101, 1102 (2013).
- ⁴ Inquiries directed to or data obtained from the Department of Corrections of each state that holds more people serving DBI than Philadelphia confirmed that no individual county or parish was responsible for more people serving DBI sentences than Philadelphia. Orleans Parish, Louisiana has a higher per capita rate at 274 DBI sentences per 100,000 people.
- ⁵ Nellis, *Still Life*, *supra* n. 2 at 21 Table 8.
- ⁶ Unless otherwise indicated, all data pertaining to DBI in other jurisdictions was obtained from Nellis, *Still Life*, *supra* n. 2.
- ⁷ E. Ann Carson, Bureau of Justice Statistics, *Prisoners in 2016* g Table 7 (January 2018).
- ⁸ World Prison Brief, Institute for Criminal Policy Research http://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=All
- ⁹ World Prison Brief, Institute for Criminal Policy Research <http://www.prisonstudies.org/country/finland>
- ¹⁰ World Prison Brief, Institute for Criminal Policy Research http://www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=All
- ¹¹ See Jeffrey T. Ulmer and Darrell Steffensmeier, *The Age and Crime Relationship: Social Variation, Social Explanations*, in *The Nurture versus Biosocial Debate in Criminology* 377 (K. Beaver, B. Boutwell, and J.C. Barnes eds. 2014).
- ¹² Typical measures include rearrest rate (proportion of people released who were arrested within the specified time frame, regardless of whether the arrest led to new criminal charges or a conviction), reconviction rate (proportion of people convicted of a new crime within the specified time frame), and reincarceration rate (proportion of people released who were reincarcerated after their release for any reason, typically either a parole violation or a new criminal conviction).
- ¹³ Ashley Nellis, *Throwing Away The Key*, 23(1) Fed. Sent. R. 27, 28 (2010).
- ¹⁴ Advisory Committee on Geriatric and Seriously Ill Inmates, Joint State Government Committee of the General Assembly of the Commonwealth of Pennsylvania, *A Report of the Advisory Committee on Geriatric and Seriously Ill Inmates* (2005).
- ¹⁵ Pennsylvania Department of Corrections, *Costs & Population 2* (2011). Available at: <http://www.cor.pa.gov/About%20Us/Statistics/Documents/Budget%20Documents/2011%20Cost%20and%20Population.pdf>
- ¹⁶ The American Friends Service Committee, *Aging in Prison* 4 (2017).
- ¹⁷ The American Friends Service Committee, *supra* n. 16 at 4.
- ¹⁸ M. Kay Harris, *The Price of Life Sentences*.
- ¹⁹ Historical commutation statistics were obtained from Pennsylvania Department of Corrections historical Annual Statistical Reports unless otherwise indicated. Historical reports are available at: <http://www.cor.pa.gov/About%20Us/Statistics/Pages/Old-Statistical-Reports.aspx>
- ²⁰ Daniel Denvir, *The Appeal*, *Pennsylvania Democratic Attorney General Shuts Down Bids for Freedom* (March 13, 2018). Available at: <https://theappeal.org/pennsylvania-democratic-attorney-general-shuts-down-bids-for-freedom-4d75e56447d1/>
- ²¹ Samantha Melamed, *Sisters begged the Board of Pardons to free their brother's killer. The board said "no"*, Philadelphia Inquirer (June 28, 2018).
- ²² Paul H. Robinson and John M. Darley, *Does Criminal Law Deter? A Behavioural Science Investigation*, 24(2) Oxford J. of Legal Studies 173 (2004).
- ²³ Marie Gottschalk, *No Way Out?*, in *Life-Without-Parole: America's New Death Penalty?*, in *Life-Without-Parole: America's New Death Penalty?* 227, 235 (Charles J. Ogletree, Jr. and Austin Sarat eds. 2012).
- ²⁴ James Austin and Lauren-Brooke Eisen, Brennan Institute for Justice, *How Many Americans are Unnecessarily Incarcerated?* 36 (2016).
- ²⁵ Josh Bowers, *Mandatory Life and the Death of Equitable Discretion*, in *Life Without Parole: American's New Death Penalty?* 25, 38 (Charles J. Ogletree, Jr. and Austin Sarat eds. 2012).
- ²⁶ Danielle Sered, Vera Institute of Justice, *Accounting for Violence: How to Increase Safety and Break Our Failed Reliance on Mass Incarceration* 11-14 (2017).
- ²⁷ Gottschalk, *supra* n. 23 at 251-252.
- ²⁸ Alliance for Safety and Justice, *Crime Survivors Speak* 16 (2016).
- ²⁹ Sered, *supra* n. 26 at 11.
- ³⁰ Sered, *supra* n. 26 at 13.
- ³¹ Lorraine Haw, *My Brother's Killer was sentenced to death, but I hope he is allowed to live*, Philadelphia Inquirer (April 4, 2018).

