

D.O.C. INSPIRED BY ADOLPH HITLER

May 2016

In November 0f 1939, in the city of Prague, German security forces rounded up “intellectuals” comprised mostly of high school and college students. Those who fled were killed while the rest, numbering in the thousands, were dragged from their beds and taken to Rayzen Barrocks and Sparta Football Stadium. Hours later 124 students were paraded in front of others and shot.

Seventy-seven years later and a continent away, the Department of Correction (D.O.C.) along with help from its own “security force” – Inner Perimeter Security (IPS) and Office of Investigative Services (OIS) – have borrowed these jackboot tactics by rounding up “intellectual” prisoners, transferring them to various prisons and placing them in solitary confinement. Although they have resisted the urge to shoot us, the move is an effort to silence the growing support these “intellectuals” have gained in their fight for prison reform and their work with legislators toward that end.

What the D.O.C. fails to realize is that, much like Hitler or Cambodia’s Pol Pot, these tactics cannot prevail. “Words are weapons”, Winston Churchill once said. Especially when they are used for truth. Otherwise they cannot sustain the impact for which they were intended. Yet I.P.S. and O.I.S. use words such as “build a computer,” “hack into our system,” “so you’re working with legislators,” and “The problem – Tim Muise”. The first two are comical to those who know better but dangerous enough to level trumped up allegations. “Oh, the tangled web we weave, when first we practiced to deceive” reels its head with those last two statements. The D.O.C. will hide behind the two former statements but their true intentions are revealed in the latter.

The “intellectuals” they seek to silence are Tim Muise, a well known prisoner rights activist and avid blogger as well as Shawn Fisher, a friend of Muise who has had prison reform essays published in international academic journals. Both were working with legislators providing them with empirical studies, data, and first hand accounts of proven and effective strategies that will bolster public safety. For the first time legislators would be able to rely on information from experts who have lived it, rather than rely solely on those whose experience came from a text book. Using both these resources,

legislators could now make informed decisions on policies that would save lives.

But these are things the D.O.C. does not want revealed. They don't want you to know about their 45-60% recidivism rate, and annual budget of over \$500 million of which 68% is allocated to salaries and less than 2% to rehabilitative programming, abuse by staff toward prisoners, visitors, and volunteers, lack of meaningful parole, or the exposure of the corrosive guard culture that dramatically impacts recidivism.

These are "words that are weapons." These are not the words the D.O.C. uses. However, the D.O.C.'s words are still dangerous because they use them as weapons to retaliate. It allows them to act with impunity, without fear of reprisal, and more importantly, because they can.

Locking up "intellectuals" is good for business. They fear that what we are doing will reduce crime, thus reduce prisoners, and ultimately reduce the number of prisons in Massachusetts. Less prisons equal less jobs! With one of the highest staffing ratios in the country at 2:1 (two prisoners to every one employee) and one of the strongest guard unions in the nation, silencing the truth is good for job security.

Make no mistake, locking us up is NOT in the interest of public safety or the pursuit of right and wrong. Rather, in typical totalitarian fashion, they do it because they can. Until the day comes when they can't, men like Tim Muise, myself, and others will remain in retaliatory solitary confinement. That is their weapon. To extinguish hope, to smother our voices from telling the truth, limiting our options, and leaving us with little choice but to write words. But, "words are weapons", as Churchill stated, "sometimes the only weapons left with which to fight, but in the right hands they can prove the most powerful weapons of all."

Use your words to end these Nazi tactics and stop what is happening to "intellectuals" like Tim and me. Contact the Secretary of Public Safety Daniel Bennett at One Ashburton Place, RM 2133

Boston, MA 02108

(617) 727-7775; fax (617) 727-4764

www.mass.gov/eopss

Contact: Gabrielle Viator
Assistant Attorney General
Office of the Attorney General
One Ashburton Place, 20th Floor
Boston, MA 02108

Timothy J. Muise, W66927
MCI Norfolk
PO Box 43
Norfolk, MA 02056-0043

DETAILED REPORT
ELIMINATING SENTENCING OF
LIFE WITHOUT THE POSSIBILITY OF PAROLE (LWOPP)

Introduction

Life without parole has been a growing problem in this country contributing to the highest per capita incarceration rate in the world, five to eight times higher than similar industrialized countries.¹ Massachusetts relies solely on LWOPP for a 1st degree murder sentence whereas other states have several sentencing options available to judges and/or juries in similar capital cases; sentences such as:

- ① death penalty
- ② LWOPP
- ③ LWPPA 15
- ④ LWPPA 25
- ⑤ LWPPA 40

There has been a dramatic increase in life sentences these past 2 decades and Massachusetts has followed this national trend emphasizing more prison sentences and more mandatory minimum terms. The result has been more than a tripling of incarceration rates between 1980 and now.² In Massachusetts more than 1 in 6 inmates (16.9%) is serving a life sentence (including 2nd degree murder LWPPA 15). This is the fifth highest percentage in the fifty United States.³ Further, a trend of longer life sentences in the past decade is evident. In 1991 a "lifer" served an average of 21 years in prison, by 1997 that average has grown 38% to 29 years.⁴ And nearly EVERY LWOPP prisoner in Massachusetts ends his/her sentence with death, (The other significant means of leaving is an overturned verdict!). There have been no commutations granted to lifers since 2000. Nationally, forty eight of fifty states have legislated LWOPP, many during this last two decade

period.⁵ Although a popular criminal justice policy in the United States, it is considered morally wrong in most of the world to imprison a human being until they die.

This is a position paper arguing that everyone should be afforded a possibility to show a changed character and a low public safety risk after 2½ decades. Mark Mauer, assistant director of The Sentencing Project put it this way, "The people serving life have committed serious offenses, but it doesn't mean that imposing life sentences across the board is always appropriate or the best crime control strategy." ⁶ Empirical evidence shows there is no direct correlation between the increased use of incarceration and decreasing the crime rate. Changes in the crime rate account for 12% of the prison population rise while sentencing policy has accounted for the other 88%.⁷

In a recent poll of Massachusetts residents, two-thirds of the public want the state to focus on prevention and rehabilitation rather than longer sentences or more prisons.⁸ Warehousing a human being until they die is not the solution, not morally, not socially, not logically and not fiscally. Many people believe that those convicted of 1st degree murder are too dangerous ever to be considered for release from prison. Other people are convinced that a life sentence is harsher than execution and is therefore appropriate for individuals convicted of the most heinous crimes. Still, others opposed to execution worry that pushing for a lesser sentence than LWOPP will give support to those seeking reinstitution of the death penalty in Massachusetts. In suggesting the proposed maximum sentence of LWPPA 25, it acknowledges that some offenders will remain too dangerous to ever be let out of prison and will die in prison for those crimes being denied parole. But it also acknowledges, unlike LWOPP, that after 25 years someone can be rehabilitated, is no longer a threat to public safety and can more economically be tracked and accounted for through a parole system at less than 10% the cost of incarceration.

The United States is lagging behind the rest of the world in this thinking. Vivian Stern, Secretary General of Peace Reform International said, "Among mainstream politicians and commentators in Western Europe, it is a truism that the criminal justice system of the U.S. is an inexplicable deformity." ⁹ Politics has poisoned sound criminal justice policies. This may be best illustrated by Ernest D. Preate Jr., State Attorney General of PA who, in 1992, put forth an effort to keep lifers locked up longer. He pushed for a constitutional change in PA requiring a unanimous rather than a majority vote of the parole board for life sentences (MA has a majority vote). A few years later he was convicted of mail fraud and spent one year in prison which convinced him that the current system is unduly punitive for some.

Mr. Preate now supports legislation that would allow a parole board to consider the cases of lifers who have served 25 years and are at least 50 years old. "I never foresaw the politicization of this process," he said, "and the fear that has crept into the process." ¹⁰ His wisdom by experience demonstrates the absurdity of a punitive system promoting having a person die in prison as the only means to serve out his/her sentence.

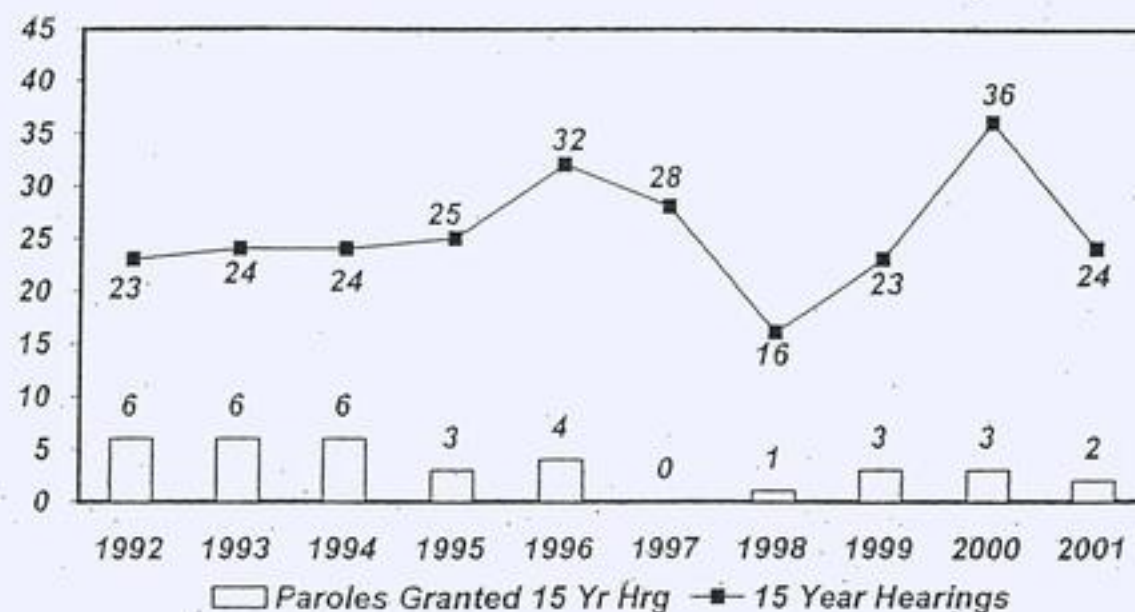
After a review of this position paper, it is our hope that you will be convinced that LWOPP for someone demonstrating an ability to rejoin the realm of society, with supervised observation after 2½ decades, is not a sound criminal justice policy. We know, at this time, this position would fall on deaf legislative ears to sponsor such a Bill. Yet, nationally, the pendulum is beginning to swing back from the tough on crime, lock 'em up and throw away the key thinking. That change is what is captured in this paper to affect public thinking that would eventually lead to a statute change in sentencing for 1st degree murder.

BACKGROUND: The 20th Century Review On LWOPP

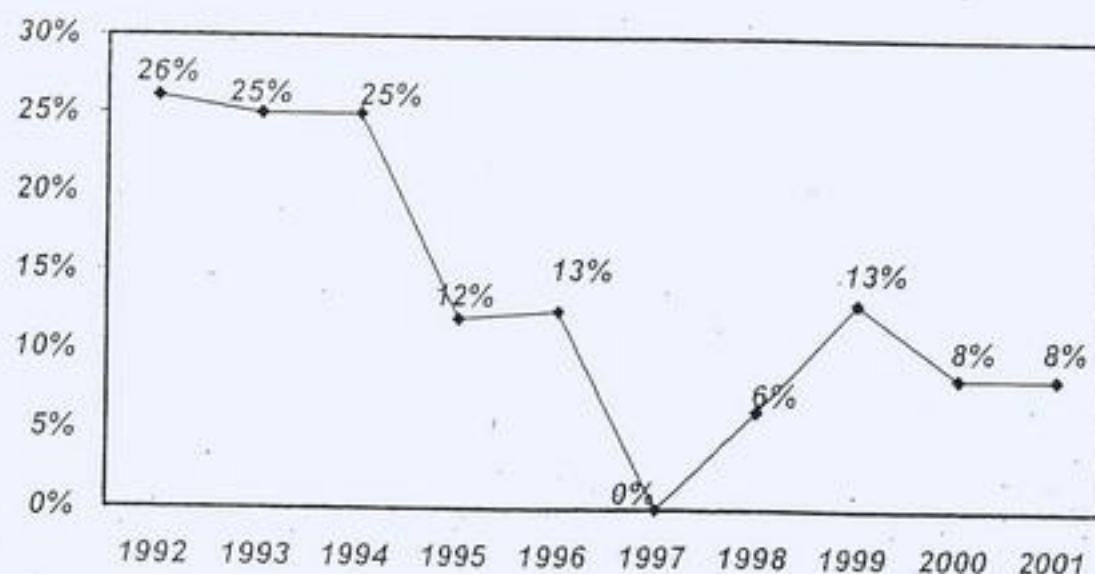
How this country has treated a life sentence in the last century has changed dramatically. In 1913 "life" in the federal system officially meant 15 years and state rules were similar. From then up until the 1970's an actual LWOPP statute largely did not exist. Instead, the criminal justice pendulum was moving toward increased parole, commutations, and indeterminate sentencing. The pendulum swung to its most extreme left in 1976 when the federal government reduced parole eligibility for prisoners doing life sentences to 10 years. In that same year it began to swing the other way with The Supreme Court re-authorizing the death penalty (*Gregg v. Georgia*).¹¹

From 1976 to 2005 there was a growth to 48 states implementing LWOPP statutes. And already existing life sentences offering parole became harder and harder to get. Nationally, less than two-thirds as many people were getting discretionary paroles in 2005 than 10 years earlier. For Massachusetts, prisoners serving Life with Parole possibility after 15 years, the discretionary dropped down to just 6% with no one getting parole at their first hearing in 1997 as shown below.¹²

*Initial 15 Year Hearings Held and Paroles
Granted for Inmates Serving Life Sentences
1992 - 2001*



*Paroling Rate for Lifers at
Initial 15 Year Hearing
1992 - 2001*



In the short period from 1991 to 1997 there was a 37% increase in time served by all lifers prior to release. In 1991 the national average time served by lifers prior to release was 21.2 years; six years later it had jumped to 29 years served.¹³ So, in contrast to popular imagery portraying lifers as serving short prison terms today, the average life sentence today results in nearly three decades of time served indicating not only an increase in LWOPP sentencing but also in life sentences with paroles being delayed.

Some may argue that even someone with a LWOPP sentence has a way out via commutation. It is true that commutation is a legal possibility to MA prisoners serving LWOPP. However, not only must a petition for commutation need to be approved just to have a hearing, but even if a hearing results in a favorable majority vote by the commutation board, it must then be signed off by the Governor. Information on the remoteness of commutation in Massachusetts is unavailable. This is typical throughout the nation and is also highly improbable. So much so that in a 2003 address to the American Bar Association, Supreme Court

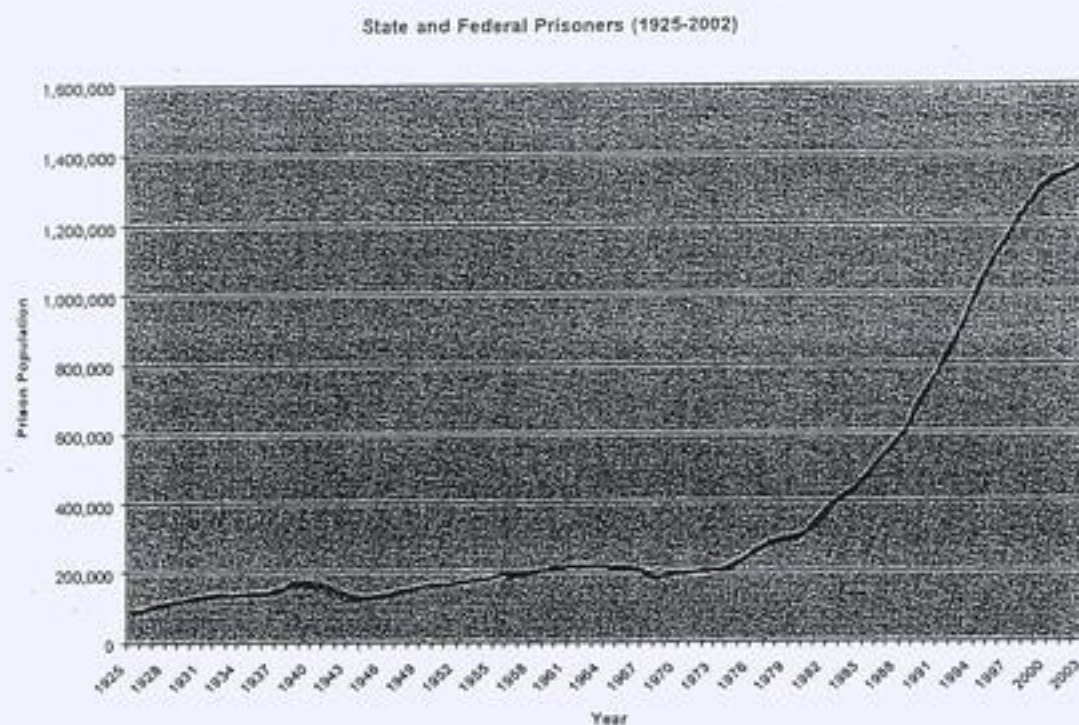
Justice Anthony Kennedy noted that pardons have now become infrequent and the pardon process has been "drained of its moral force."¹⁴

So, from 1976 until today the pendulum has swung from the far left to the far right in the U.S. causing the rest of the world to view our criminal justice policies as broken and a way NOT to be. Imposing a sentence of LWOPP in this day and age means that an offender will never be considered for release, no matter how old or changed in behavior. This flies in the face of empirical evidence showing that many persons sentenced to life change substantially while in prison, both by experiencing genuine remorse for their actions and engaging in programming and changed attitudes.¹⁵

In ten years from 1992-2003, prisoners incarcerated with LWOPP have jumped from 12,453 to 33,633 nationally.¹⁶ Some would argue that this is because LWOPP has been a tool used in the abolition of death sentences but this is generally not true. In the past decade where the LWOPP prisoner count has increased 170%, the death row population has increased 31% from 2,575 to 3,374 (1992 to 2003 respectively.) It is clear that LWOPP's purpose of offering an alternative to the death penalty has far outstripped its proponent's goal of using it to replace the death penalty.¹⁷

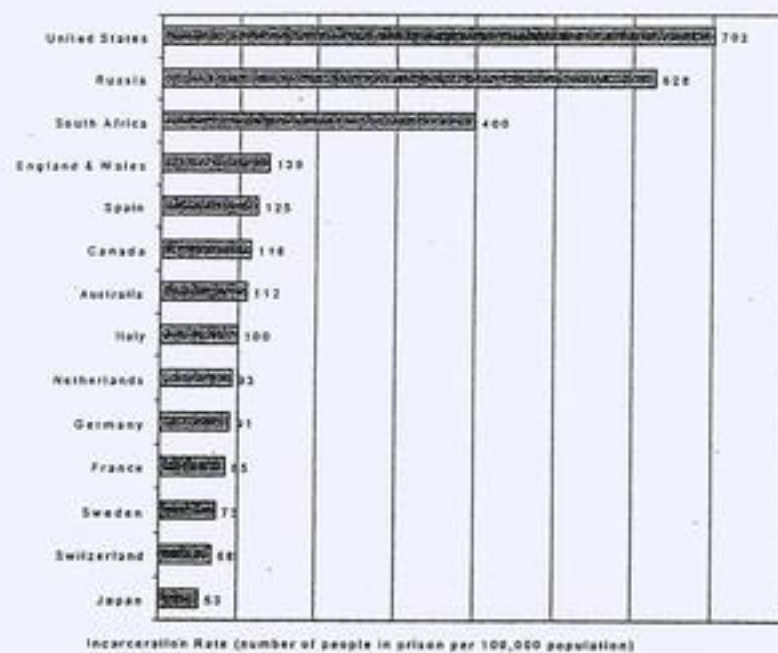
So, we see a big change. After six decades (from 1913-1976) where life sentences offered great discretion to allow, those serving life the ability to earn their early release by marked changed behavior, the last three decades the tough on crime criminal justice policies including harsher life sentences has resulted in the U.S. becoming the world leader in incarceration with a six fold increase in the use of incarceration.¹⁸

CHART 1



Comparing the U.S. per capita rate to other industrialized nations in its use of incarceration, it clearly demonstrates how grossly punitive our criminal justice policies to incarcerate have become.¹⁹

CHART 2



This incarceration surge led to a booming population of prisoners whose only way out of prison will most likely be in a casket. One in ten prisoners nationally are serving a life sentence. These 132,000 lifers have nearly doubled in size in just one decade far out pacing the overall growth in prison population. And in that number of lifers - 28% are serving LWOPP.²⁰

Many of our commentators in the press give their unresearched, outdated point of view about lifers not serving life. But in the last three decades that portrayal of a lifer has become a fallacy that is largely ignored by the press. It effects the public in such a way that it then effects jury pools. The possibility of parole is far more real in the minds of a juror than in reality. In the most comprehensive study to date, potential capital jurors believe that a defendant sentenced to life imprisonment would serve only ten years in prison before being released.²¹ Yet, if the truth were known it could impact jury sentencing (the criminal justice system Massachusetts does not use). In a Georgia study, more than two-thirds of potential capital jurors surveyed said they would be more likely to favor a life sentence over the death penalty if they knew the defendant would have served at least 25 years in prison before being eligible for parole.²²

This historical account clearly illustrates that the U.S. and Massachusetts policy to incarcerate people until they die is not effective. The remainder of this report will look at further intricacies that should be considered such as:

- (a) ineffective incarceration of elderly in prison
- (b) U.S. juvenile offenders policy outrage
- (c) the effect of aging in prison has on low recidivism
- (d) parole possibility does not mean someone will definitely leave prison
- (e) mentally ill in prison

A. INEFFECTIVE INCARCERATION OF THE ELDERLY

Massachusetts does not have a medical parole statute or a compassionate release program despite attempts to enact such laws in 1993 and 1997. Even those failed legislation's were sure to deny aging LWOPP prisoners to qualify.²³ LWOPP today means the prisoner dies in prison. Many may cite the need to have an available method in which to prevent certain individuals from ever being allowed back into society. Their concern most certainly has merit and is addressed with a life sentence, but to make a determination at the time of a life sentence of whether anyone should ever have the opportunity to again be released is absurd. It makes no moral, social or fiscal sense.

Michael H. Tonry, a professor of law and public policy at the University of Minnesota said LWOPP is a legal impossibility in much of the world.²⁴ "Western Europeans regard 10 or 12 years as an extremely long term, even for offenders sentenced, in theory, to "life", said James Q. Whitman, a law professor at Yale and author of "Harsh Justice" which compares criminal punishment in the United States and Europe."²⁵ Further, in the 1995 U.N. Council of Europe report on "Life Imprisonment", it states that "a crime prevention policy which accepts keeping a prisoner for life, even if he's no longer a danger to society, would be compatible neither with modern principles on the treatment of prisoners during the execution of their sentence nor with the idea of reintegration of offenders into society."²⁶

Having an indeterminate life sentence (i.e. LWPPA 15, LWPPA 25) establishes a minimum mandatory sentence behind a prison wall but then allows a parole board to determine if a lower security of monitoring, such as parole supervision of a person is in order. This is based on factors of (a) a prisoner taking responsibility for their crime, (b) demonstrating remorse, good conduct and positive programming while

incarcerated, (c) overall maturity and (d) age.

Extending sentences for older prisoners raise the cost of incarceration because older prisoners have triple the health care cost of younger inmates. Keeping older prisoners in prison imposes high costs and provides little community-wide benefit. And, for prisoners who continue to demonstrate antisocial tendencies, after decades in prison, parole eligibility does not mandate release into the community, it only provides a possibility.²⁷

Massachusetts should look at suggestions made in other failing prison systems who have invested in studies for positive change. Early release for older prisoners has worked well in several states already as stated in, "A Proposal for Wholesale Reform of California's Sentencing Practice and Policy."²⁸

Back in 1992, five percent of the State prison population was over fifty years of age. By 2005 that percentage rate was more than triple and by 2010 is estimated to be approximately 33% of the total State Prison population.²⁹ There has been no physical modifications to prison facilities in Massachusetts to providing hospice care or geriatric care for this aging population. Even though the D.O.C. might argue otherwise, their "hospice care" is considered further punishment from the inmate perspective as these "care" units, such as MCI-Shirley, further isolate the elderly from the general population with no programming and not allowing personal property that is allowed in general population. The second largest category of the budget, after D.O.C. personnel expenses (78%), is inmate health care costs. Health care is already considered inadequate and the aging population will further exasperate this problem.

Empirical studies have shown the risk to re-offend goes way down as age advances. The current D.O.C. classification point system, in which lower points means a lower security setting, appropriately gives

negative points for every inmate over 38 years old.³⁰ Therefore, the D.O.C. itself affirms a maturity level simply based on age. And yet, such a classification system prevents murderers from ever advancing to security levels outside a walled, level four prison regardless of any and all positive changes in behavior for many years.

Compassionate releases for the elderly and public safety Parole Board reviews on a case by case basis for the possibility of a lower cost parole supervised security level for inmates who have aged in prison, only makes sense.

B. U.S. JUVENILE OFFENDERS POLICY OUTRAGE

The most shocking and internationally most outrageous aspects of LWOPP sentencing is in the U.S. and Massachusetts's juvenile conviction rates. Massachusetts has imprisoned FIVE TIMES MORE juveniles to LWOPP than all other countries in the entire world outside the United States! Human Rights Watch and Amnesty International filed a report in October 2005 reporting that only a dozen countries even allow their justice system to sentence juveniles to LWOPP. Of these twelve countries, only four actually have juveniles serving such sentences.³¹

<u>COUNTRY</u>	<u># of Juveniles SERVING LWOPP ■</u>
Israel	7
S. Africa	4
Tanzania	1
U.S.A.	2,225●

- sentencing prior to turning 18 turning 18 years old
- 350 of them received LWOPP at the age of 15 years or younger

Back in 1995, 192 countries ratified Article 37(a) of the U.N. Convention on the Rights of the Child which entered into force September 2, 1990, stating, in part, "Neither Capital Punishment nor life imprisonment without the possibility of release shall be imposed for offenses committed by persons below 18 years of age." There were only two countries who have not yet ratified it, despite signing it back in 1990 - Somalia and the U.S.A.³²

The New York Times, in an October 2, 2005 article, "Locked Away Forever After Crimes as Teenagers," wrote how "society has long maintained age distinctions for things like drinking alcohol and signing contracts, and the highest Court has ruled that youths under 18 who commit terrible crimes are less blameworthy than adults." ³³

In a news release by the American Psychiatric Association on July 19, 2004, they stated how adolescents underestimate risks and overestimate short term benefits and are more emotionally volatile and more susceptible to stressful situations. They reported how scientific imaging technology reveals the adolescent brain continues maturing into early adulthood. That the last regions of the brain to develop are impulse control regulation of emotions, risk assessment, and moral reasoning. And this does not even consider the added emotional and hormonal changes that effect behavior.³⁴

In the same month, Neuroscientist Ruben Gur of the University of Pennsylvania reported in an article, "Crime, Culpability and the Adolescent Brain," that the brain's frontal lobe which exercises restraint over impulse behavior "doesn't begin to mature until 17 years of age." And, "the very part of the brain that's judged by the legal system process, comes on board late." Some brain imaging experts say that brain growth and maturing doesn't max out until the age of 20 to 25.³⁵

Steven Drizin of Northwestern University equates "juvenile culpability to that of a mentally retarded person "in that they have a

similar cognitive deficit. Although teens are highly functioning, it doesn't make them capable of making good decisions." 36

Massachusetts ranks as the seventh highest state with number of youth offenders serving LWOPP at 60 children who were sentenced as such.³⁷ Judge Eugene Arthur Moore said it best in a sentencing opinion in the 6th Circuit Court where he critiqued handing out life sentences for juveniles. Judge Moore said, "Don't ask the judge to look into a crystal ball today and predict... give the juvenile system a chance to rehabilitate. Don't predict today, at sentencing whether the child will or will not rehabilitate, but keep the options open."³⁸

Six tenths of a percent of all Massachusetts prisoners are youth offenders sentenced to LWOPP with over 7% of the LWOPP population being sentenced as adolescent. Along with these statistics is a legal system displeasure in the laws to push for change in the criminal justice system. Juvenile offenders should never be sentenced to LWOPP, and for those who have, they should have a possibility of parole.

C. THE EFFECT AGING IN PRISON HAS ON LOW RECIDIVISM

Many murders are coupled with issues of drug/alcohol problems, mental illnesses (when prescribed medications stopped being taken or were over prescribed), or severe emotional crisis (crime of passion). Many of these murders were committed as young adults and not of criminal-bred mind. They were committed by troubled individuals who reached a point of desperation that contributed to him or her committing a crime of murder. The thinking of these people change in the time that they are separated from society. For such

people, LWPPA25 would create a possibility for this person to be monitored by a parole board dictate with a case manager familiar with the circumstances that contributed to that person's crime. This opportunity would not arise until two and a half decades after the crime, and only if the person clearly demonstrated a new way of handling life's problems.

We often talk about rehabilitation for criminals, yet we fail to realize the habitat of horror many LWOPP inmates came from that caused such sociopathic, psychotic, drug induced or desperate behaviors. There is little from their former life to restore in a healthy way. What is needed is a new foundation of social, psychological, spiritual and educational realities for them to build the opportunity to cope in such a way which no longer is a threat to others. Such an infrastructure has begun with the relatively new (and stalled) Department of Public Safety Offender Re-Entry Program. It is trying to set individualized goals for each inmate to accomplish while incarcerated as well as afterwards under parole supervision.

Currently someone serving LWOPP has no goal other than to die in prison, with no reason to become healthy. This may be a contributing factor to Massachusetts prison suicides being at twice the national average. If there were a possibility, after 25 years, to leave prison, and the direction was given for a program plan, a young adult who committed murder would be more likely to apply him/herself to these positive behaviors.

There have been numerous studies that have examined the recidivism rate of released lifers which show a very low recidivism rate. A national study in 1994 gathered data on 1228 people released from prison. The recidivism rate of lifers was 20.6%, less than one third of any other crime category studied. 39

RE-ARREST RATES (%) OF PRISONERS**RELEASED IN 1994**

<u>Release Status/Offense</u>	<u>Re-arrest Offense</u>
ALL	67.5%
Lifers	20.6%
Violent	61.7%
Property	73.8%
Drug	66.7%
Public Order	62.2%

Internationally, countries have reacted properly to the research showing how an incarcerated person matures their thinking with the passage of time. In a comparative study of the U.S., England and Germany, law professor Dirk van Zyl Smit found that the U.S. employed life sentences more frequently and with more restrictions than the other two nations. ⁴⁰ German law now states life imprisonment MUST include a possibility of release. Norway and Portugal have abolished life imprisonment sentences and Slovenia has passed law where maximum imprisonment can only be 20 years for a crime - any crime, including murder. ⁴¹

Massachusetts does allow someone on LWOPP to apply for a commutation or parole. Some argue that this liberal thinking allows an "out" for lifers. ⁴² Such editorial comments lack the substance of researched journalism. In a 2003 address to the American Bar Association, Supreme Court Justice Anthony Kennedy noted that pardons have now become infrequent and the pardon process has been "drained of its moral force." ⁴³ In Massachusetts, there has not been a pardon or commutation given this century. With the Parole Board unwilling to share such information, this author's memory is such that a commutation was last given in the mid 1990's when Governor Weld followed the ground swell of public opinion and rightfully released seven women serving LWOPP based on Battered

Women's Syndrome research. Why isn't the State government looking at research showing the stupidity of keeping people in prison until they die, even if they have changed their thinking and character to become responsible citizens? It is the intention of this paper to begin a ground swell of public opinion on this matter. The natural process of aging in prison, coupled with isolation from society for a quarter century, while utilizing the positive programming available, clearly has shown great maturity in the thinking and character of an incarcerated person. It then makes social, scientific and fiscal sense to allow for a supervised parole at a small fraction of the cost of incarceration (estimated at 10%).

**D. PAROLE POSSIBILITY DOES NOT MEAN
SOMEONE WILL DEFINITELY LEAVE PRISON**

Just because a parole date is available, does not mean a person will leave prison. This is evidenced in 2nd degree murder parole hearings where the average denial of parole in an initial hearing (from the most recent five year period available from the Parole Board 1997-2001) is 93%.⁴⁴ Only seven of 100 lifers are paroled in first time hearings after a mandatory 15 year incarceration! And only 24% are paroled in subsequent hearings which sends the vast majority of lifers back to prison, averaging 29 years before a release. So, as such opinion articles as Jeff Jacoby's, "The Fallacy of Life in Prison" insinuates with quotes from sources some 25 years old saying "it was common knowledge that life imprisonment generally means 10 years and six months," ⁴⁵ this "fallacy of life" article is a fallacy! Today LWOPP means a person dies in prison with no review for release later in life.

The Parole Board provides a great service to public safety. For cases of criminal thinking that remain with a disregard for the law, the Parole Board simply denies inmates from a parole. Unfortunately, the

lack of social science, mental health and faith based influence in a Criminal Justice dominated Parole Board makeup has resulted in too conservative a public safety influence. It appears Governor Deval Patrick will begin correcting this as he replaces three of the longer standing members with criminal justice backgrounds in 2007. 46 Still, no board member from any background would ever consider releasing an inmate who, in some manner, indicates a lack of remorse sorrow, responsibility and empathy for/toward his or her victim or the victim's family.

Determining which offenders have undergone a self-transformation and are safe to release, and which individuals remain unreformed, is not an easy task. Certainly a jury and judge are not capable of foretelling what changes may occur within a criminal over the course of many years. It is unrealistic and even irresponsible to expect such clairvoyance from anyone. These determinations need to be made after a period of time, allowing such damaged individuals the ongoing opportunity to make needed changes to themselves, and where possible, to provide reparations and/or show true sorrow to those they have injured for the ripple effect of murder is large. Murder victim's family should have a voice in the process but not be a determining factor. An objective decision should be made from a body of professionals from such disciplines as psychiatry, psychology, faith based, social Science, fiscal affairs and education. It is imperative that prison populations be motivated toward healing where all prisoners have opportunities to change themselves in order to become contributing members of society rather than a financial sinkhole alone. Replacing LWOPP with LWPPA25 would continue to allow public safety to be of primary concern while emerging with a more sound, less opinionated criminal justice policy indicating a belief in restorative justice.

E. MENTALLY ILL IN PRISON

With the reduction of State Hospitals under the Department of Mental Health(DMH) in the 70's and 80's, the fallout has led to greater oppression to society's weakest members. Their already difficult life became worse with far fewer beds available in group homes than had existed in the hospitals now closed. This greater desperation of now homeless mentally ill lead to crime - some horrible crimes of senseless murder. The publicity of such crime led D.A.'s to push for LWOPP regardless of the perpetrator's mental health history. The insanity plea has been labeled a fraud since John Hinckley's attempted murder of President Regan. So, more and more mentally ill are convicted of LWOPP. When some of these individuals come to prison and deal with the sources of their problems through minimal mental health that is offered, should the message to them be - "You're damaged goods beyond repair, never to be trusted again?" This is barbaric thinking.

The Bureau of Justice Statistics documented that for lifers in prison, nearly one of every five is/was mentally ill. ⁴⁷ If this national number were applied to the Massachusetts LWOPP population, this would indicate that 180, or 1.8% of the total prison population is/was a mentally ill diagnosed person now serving LWOPP. What does this say about our society? Mentally ill people who have murdered and then came to terms with their illness and their crime should have a hope of leaving prison.

CONCLUSION

From a world wide perspective, the U.S. and Massachusetts demonstrates an ineffective, costly and inhumane policy of having only one mandatory minimum sentence for first degree murder- to die in prison! Massachusetts offers no discretion to a judge nor jury as

do other States when sentencing an individual who murdered with malice, aforethought and/or extreme atrocity. The discretion of determining if a murderer should ever leave prison should not be made at the end of a trial, but many years after that. LWPPA25 proposes that this decision be moved from the sentencing phase of a trial through the Judge, to the Parole Board some twenty-five years later. In the later life of the person who murdered, it will be far clearer to see if the balance of punishment, public safety and rehabilitation points to continued incarceration or a supervised release at 10% of the cost to an aged, matured and humbled person who murdered two and a half decades earlier.

The purpose of this position paper is to sway public thinking of a State Bill that would change the criminal laws for sentencing of 1st degree murder. Such a change would have an effect on the excessive incarceration rates that sadly make the U.S. the world leader in per capita incarceration. Further, this would also address the ballooning costs associated with incarcerating the elderly who no longer are a public safety threat.

FOOTNOTES

- 1 The Sentencing Project. Comparative international rates of incarceration: an examination of causes and trends. Mauer, M. (June 2003)
- 2 Brooks, L.E., Solomon A.L., Keegan S., Kohl, R., and LaHue, L. (2005). Prisoner reentry in Massachusetts. Washington DC: Urban Institute
- 3 McDonough, S. "One of 11 in prison serving a life sentence". The Boston Globe. 12 May 2004
- 4 *ibid*
- 5 Death Penalty Information Center. 7 September 2006.
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PLEASE CONTACT: CURE-ARM, INC.
PO Box 396
Billerica, MA
01821

Timothy J. Muese, W66927
MCI Norfolk
PO Box 43
Norfolk, MA 02056-0043