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# **We All Pay**

**Mississippi's Harmful Habitual Laws**

# Introduction

Mississippi has an incarceration crisis, driven in large part by its use of extreme sentences. In fact, long prison sentences have become the norm in Mississippi. First-time drug possession can land you in prison for 20 years. Stealing tools from a garage can result in 25 years behind bars. These excessively long sentences weaken Mississippi's families and workforce and waste tax dollars since they also do nothing to make neighborhoods safer.

On top of these already extreme sentences, people can have extra years, decades, or even life imprisonment added to their sentences if they have ever been convicted of crimes in the past. These so-called "habitual" penalties can be used at the complete discretion of the prosecutor and can be applied to any offense, including minor crimes such as shoplifting or drug possession.

As a result of these harmful laws, Mississippi has the third highest imprisonment rate in the country, and there are thousands of people serving extreme sentences in prisons across the state. New analysis by FWD.us demonstrates just how commonly these penalties are used and the ways in which they contribute to Mississippi's unsustainably high prison population and corrections spending.

## **AMONG THE KEY FINDINGS:**

- Too many people are serving far too long in prison because of the state's habitual laws: Of the more than 2,600 people in prison today who have been sentenced with a habitual penalty, one-third (906 people) have been sentenced to more than 20 years in prison. Nearly half of that group (439 people) has been sentenced to die in prison through either a life or virtual life sentence of 50 years or more.
- The impact of these laws is not felt equally across communities: Habitual penalties are applied overwhelmingly and disproportionately to Black men. Despite making up 13 percent of the state's population, 75 percent of the people with 20+ year habitual sentences are Black men;
- Habitual penalties are costing taxpayers hundreds of millions in unnecessary spending: Taking just a small group of those sentenced to habitual penalties demonstrates the extraordinary expense of the policy. The 78 people in prison serving life and virtual life habitual sentences for drug crimes alone were collectively sentenced to 4,668 years in prison at a cost of nearly \$70 million to state taxpayers;
- Mississippi voters want reform to habitual laws: Public opinion polling demonstrates that Mississippians believe in redemption and want policymakers to adopt bold reforms that will reduce the prison population, including reforms to the state's habitual laws. Sentencing people to die in prison just because they have been convicted of crimes in the past directly contradicts public sentiment. That is why a growing chorus of bipartisan voices are calling for an end to the use of these extreme sentences and habitual penalties.

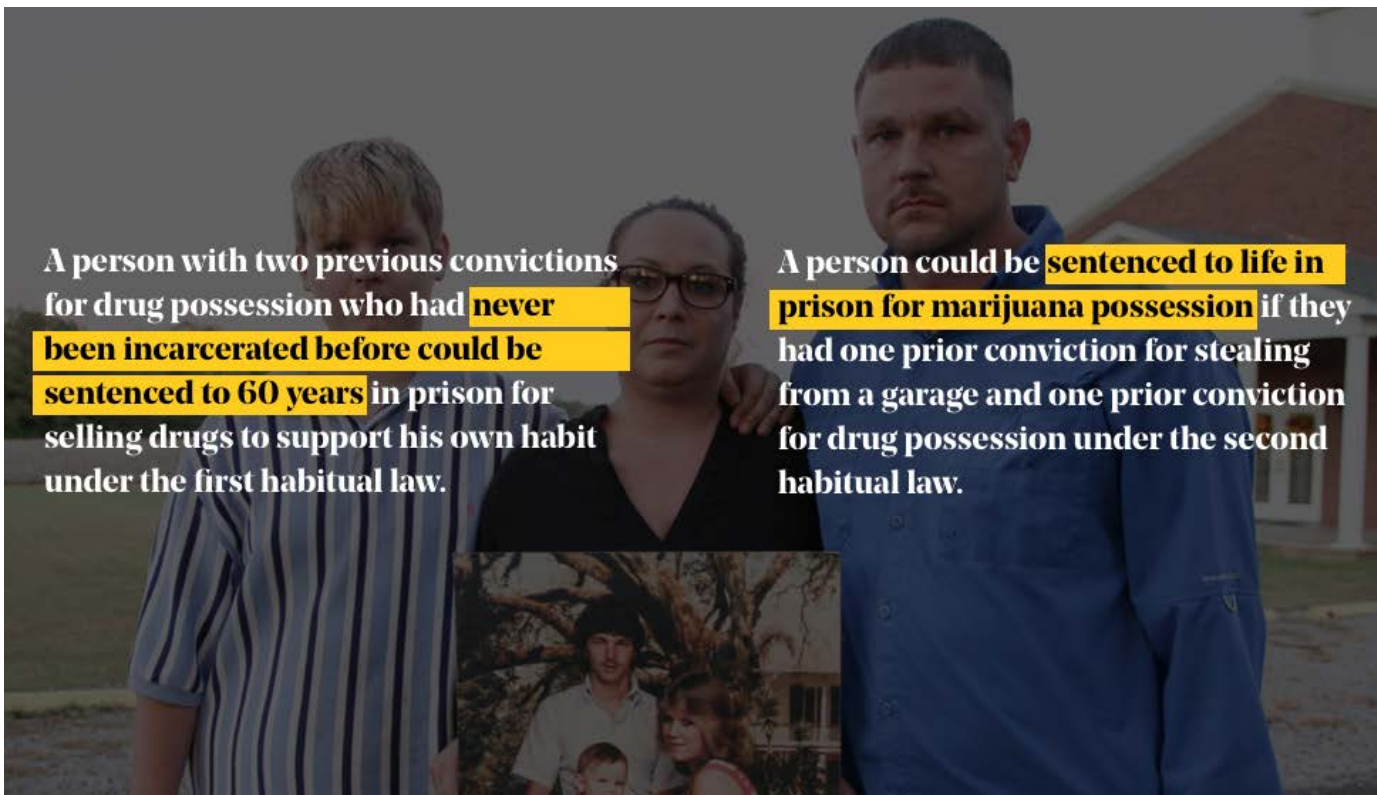
## **Understanding Mississippi's Habitual Laws**

Mississippi has two versions of the habitual law that can be used by prosecutors to increase prison terms. The laws themselves and the ways in which they are used in practice have several punitive elements, which are discussed below.

The first habitual law<sup>1</sup> requires any person with two previous felony convictions<sup>2</sup> to be sentenced to prison for the

maximum possible term for their current offense.<sup>3</sup> For example, a person with two previous convictions for drug possession who had never been incarcerated before could be sentenced to 60 years in prison for selling drugs to support his own habit.

The second habitual law<sup>4</sup> requires any person with two previous felony convictions,<sup>5</sup> at least one of which is defined as “violent” in Mississippi statute, to be sentenced to life in prison without the possibility of parole for their third felony. The list of crimes defined as “violent” in Mississippi law<sup>6</sup> is lengthy and includes some offenses that do not involve the use of force against a person, such as breaking into a garage. For example, a person could be sentenced to life in prison for marijuana possession if they had one prior conviction for stealing from a garage and one prior conviction for drug possession.



### **MANDATORY MINIMUMS AND MANDATORY MAXIMUMS**

Both versions of the habitual law mandate prison time, making people ineligible for common alternatives to incarceration, like probation, no matter how minor the offense. And, as shown above, the habitual laws require the judge to hand down either the maximum possible sentence or a life sentence.

### **NO WAY OUT**

Habitual laws don't just mandate long sentences; they take the extra-punitive step of requiring the full length of the sentence to be served behind bars. In Mississippi and the majority of states in the US, most people in prison

are either 1) eligible for parole or 2) able to earn time off their prison terms for good behavior, attending classes, or participating in rehabilitative programs.<sup>7</sup> Neither of those options is available to people with habitual sentences.<sup>8</sup> When a person is given a habitual sentence, they will serve every day of their sentence, which often stretches for decades or beyond, in a prison cell. Many will die in prison before those sentences come to an end.

### NO PROPORTIONALITY FOR PRIOR CONVICTIONS

Mississippi's habitual laws count all prior felony convictions against a person as long as they meet the very short minimum sentence requirements. No exceptions are given for mitigating circumstances. For example, no consideration is given to the number of years that have passed since the previous convictions, the person's age at the time of the priors, or the severity of the previous convictions.

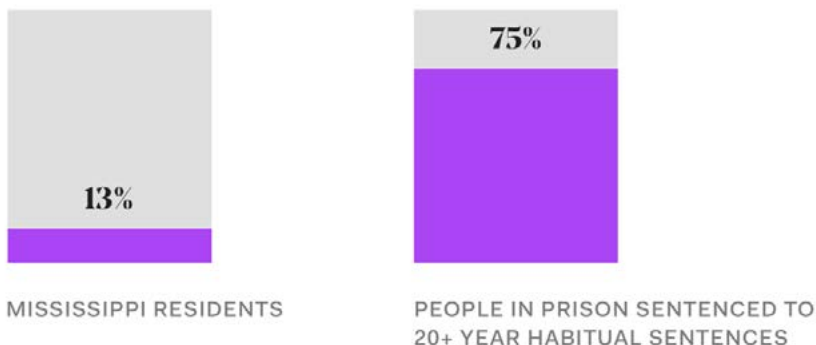
## The Habitual Laws by the Numbers

As of June 2019, there were 2,635 people serving a sentence handed down under Mississippi's habitual laws.<sup>9</sup> In order to better understand who is being given habitual sentences and for how long, we analyzed data on the subset of this population facing the longest terms. Data was provided by the Mississippi Department of Corrections.<sup>10</sup> The data includes everyone, a total of 906 people, currently in prison who have been sentenced to serve 20 or more years under the state's habitual laws.

### WHO IS SERVING LONG SENTENCES BECAUSE OF THESE LAWS?

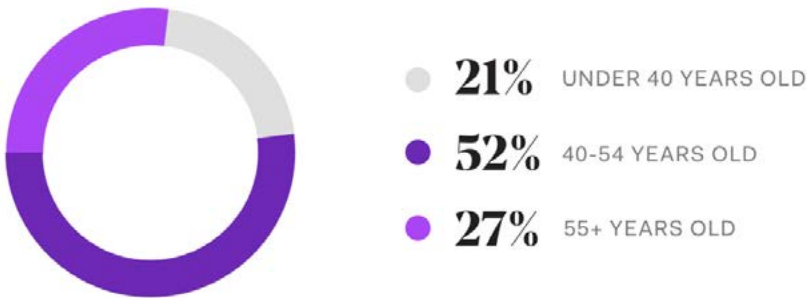
Like Mississippi's overall prison population, this group of people with very long prison sentences does not reflect the state population as a whole. Black men are far more likely to receive a very long prison sentence under the habitual laws than any other demographic group. Seventy-five percent of people in prison with 20+ year habitual penalties are Black men, despite the fact that adult Black men make up only 13 percent of state residents.<sup>11</sup>

## Mississippi's habitual laws disproportionately impact Black men.



This group of people is older than the general population as well.<sup>12</sup> Nearly 80 percent are over the age of 40, and over one quarter are 55 or older. Many of these people will continue to age and even die in prison, away from family and community support.

## The vast majority of those serving 20+ year habitual sentences are older Mississippians.



### EXTREME SENTENCES FOR NONVIOLENT CRIMES

The data reveal that decades-long sentences are routinely handed down for minor offenses in Mississippi. Nearly 250 people are serving 20+ year habitual penalties for nonviolent offenses.<sup>13</sup> The majority of people serving these very long sentences for nonviolent offenses were convicted of drug-related crimes. There are currently 154 people serving 20+ habitual sentences for drug offenses, and 31 people are serving 20+ years for the lowest-level drug offense: drug possession.<sup>14</sup>

### SENTENCED TO DIE IN PRISON FOR DRUG CRIMES

Given the ways in which the habitual laws increase sentence lengths and deny opportunities for alternatives such as probation or parole, it is no surprise that there are large numbers of people serving extreme prison sentences. Of the 906 people serving 20 or more years in prison as a result of these laws, nearly half (439 people) are sentenced to life or virtual life sentences (defined here as at least 50 years in prison<sup>15</sup>) and will almost certainly die in prison.

Like long sentences in general, life sentences are not reserved for the most serious violations of the law. Seventy-eight people are serving 50 or more years in prison for drug crimes, and 21 people have been sentenced to die in prison for simple drug possession as a result of the habitual laws. These life and virtual life sentences are especially alarming, because they represent the most punitive action the state can take against an individual, short of the death penalty.



There are

***154 people convicted of drug related offenses***

***31 people convicted of drug possession***

**sentenced to 20+ years in Mississippi's prisons because of the state's habitual laws.**

There are

***78 people convicted of drug related offenses***

***21 people convicted of drug possession***

**sentenced to life in Mississippi's prisons because of the state's habitual laws.**

#### **THE COST OF MISSISSIPPI'S EXTREME SENTENCES**

Many of the people serving long habitual sentences in Mississippi have been in prison for decades, with decades left to serve. Taking just a small group of those sentenced to habitual penalties demonstrates the extraordinary expense of the policy. The 78 people serving 50+ year sentences for drug crimes were sentenced to a collective 4,668 years in prison,<sup>16</sup> and they have already served 1,108 years behind bars. It costs roughly \$14,500 per year to house a person

in prison in Mississippi,<sup>17</sup> meaning state taxpayers have already spent over \$16 million housing this group of just 78 people and their sentences would cost nearly \$70 million if served in their entirety.

Within this group, 21 people are serving 50+ year sentences for drug possession. They were sentenced to a collective 1,158 years in prison and have already served over 322 years for these minor crimes that show just how misaligned Mississippi's sentences can be with the severity of the convictions. For example, one man was sentenced to 108 years behind bars for drug possession because of habitual laws. These sentences far exceed the natural life of a human being and are troublingly common in Mississippi.

#### **WHO IS MISSING FROM THIS DATA?**

It is important to note that this data only captures a subset of people who were sentenced with a habitual penalty. There are currently 2,635 people serving habitual sentences in Mississippi, and this data captures only about one-third of them. Many more people have been sentenced with habitual penalties since the law passed in 1976 and completed their sentences, returned home, or died in prison. Their sentences are also not captured in this data.

Countless other people are serving long sentences that were impacted by the habitual laws during the plea bargaining process. That is because prosecutors can choose whether or not to pursue a habitual penalty in each individual case. As the data above demonstrates, prosecutors frequently do choose to pursue long sentences under these punitive laws. But even in cases where they do not use it, the threat of a habitual penalty can be enough to drive up sentences. For example, a district attorney might say they will not seek a 60 year sentence under the habitual penalty if a person is willing to plead guilty and serve 30 years in prison for a drug sale conviction. We cannot use data to determine how many people are serving sentences affected by habitual laws during plea negotiations, but the laws clearly have wide reaching impacts beyond just the cases captured in this data.

## **Other Extreme Penalties in Mississippi**

While the state's habitual laws stand out for their prominent role in excessive punishment, they are by no means Mississippi's only extreme sentencing laws. A wide range of other penalties exist in state law, granting prosecutors broad discretion to lengthen prison terms for a host of reasons. The following list is not exhaustive but gives examples of other penalties that contribute to Mississippi's extremely long sentences:

**School and Church Zone Penalties:**<sup>18</sup> People who are convicted of participating in a drug sale within 1,500 feet (roughly one quarter of a mile) of a school, church, park, or movie theatre, among other locations, can have their prison sentenced doubled or even tripled in some cases. Because of the broad areas covered by the zones, research from other states shows many people with no record of selling drugs to young people are subjected to these penalties.<sup>19</sup>

The “Doublor”:<sup>20</sup> Any second-time drug conviction in Mississippi carries double the sentence of a first-time offense. This means that second-time drug possession, a common occurrence for anyone with substance abuse issues, can and frequently does land a person in prison for 40 years.

## Why Are Long Sentences A Bad Idea?

Research shows long sentences don't work to keep communities safe.

Supporters of long sentences have traditionally argued that they improve public safety by deterring crime and keeping “dangerous” people off of the streets. However, both of these arguments have been disproven by research. In fact, long sentences go against the most recent research on how to deal with important problems like addiction and violence, and they cause immense harm along the way.

Deterrence, in the case of long sentences, is the idea that people will not commit crimes because they are scared of going to prison for a long time. But research shows that severe punishments do not increase public safety and don't deter criminal behavior in the first place<sup>21</sup>. Very few people are familiar with the various penalties laid out in state statute,<sup>22</sup> let alone the arbitrary and complicated nature of habitual laws. On top of that, many behaviors that have been deemed illegal by statute are actions driven by addiction or poverty. For example, long prison sentences are highly unlikely to deter people from using drugs if they suffer from addiction.<sup>23</sup>

Locking people in prison to isolate them from society, often referred to as incapacitation, is also a misguided way to approach public safety. Research has shown that long prison sentences are ineffective as a crime control measure<sup>24</sup> and evidence from multiple states proves that prison sentences for many offenses can be shortened with no effect on public safety.<sup>25</sup> Very long and life sentences also make little practical sense in light of the extensive evidence that people are far less likely to break the law as they age.<sup>26</sup>

Long sentences are especially insidious when they are handed down for drug violations. Medical science has proven that addiction is a disease, and that relapse is a common aspect of recovery.<sup>27</sup> Sending someone to prison does nothing to address the underlying addiction, and the lack of treatment and medication can increase the likelihood of relapse or overdose following release.<sup>28</sup>

Long sentences undermine public safety in other ways as well. People who serve long prison terms are routinely exposed to unsafe and unhealthy conditions, as recent investigations into prison conditions across Mississippi and the nation have demonstrated.<sup>29</sup> While even short periods of incarceration can be devastating on a person's stability after release, long sentences can make it even harder for people to successfully return home.<sup>30</sup>

Long sentences subject people to age and die in prisons that are not equipped to handle their needs.

Long sentences force prisons to act as hospitals, and they have proven unfit for the job. As people age in prison,<sup>31</sup> they are prone to the same health issues as aging people on the outside. On top of those issues, incarcerated people are more likely to develop chronic illnesses and infections, likely due to the stress associated with incarceration and substandard living conditions in jails and prisons. In fact, one study found that each year of incarceration results



in a two year decrease in life expectancy.<sup>32</sup> When people do grow ill in prison, they often receive poor medical care despite a constitutional guarantee to adequate medical care.<sup>33</sup> Several private providers of in-prison medical care have been in the news recently for failing to properly diagnose and treat sick people, resulting in unnecessary surgeries, amputations, and deaths.<sup>34</sup>

Aging in prison also comes at great emotional and financial cost. Families are unable to care for their loved ones who grow ill in prison, further isolating people who are already suffering and denying people private time with their loved ones during their final days. And taxpayers foot an enormous bill for this cruel and ineffective system. In 2015, states spent \$8.1 billion on prison health care.<sup>35</sup>

### **LONG SENTENCES DISRUPT FAMILY AND COMMUNITY TIES.**

When people are separated from their family and community ties for decades, the impacts spill over into the rest of the family and future generations.<sup>36</sup> When a family member is incarcerated, their loved ones face a host of challenges. When the incarcerated person is a parent, these consequences are especially severe. Over half of incarcerated parents reported that they were the primary financial support for their families.<sup>37</sup> And when mothers are incarcerated, their children are often displaced from their homes and frequently placed in foster care.<sup>38</sup> The trauma that these families experience leads to a wide range of negative impacts such as reduced earnings,<sup>39</sup> housing instability or homelessness,<sup>40</sup> poorer school outcomes<sup>41,42</sup>, and mental health issues.<sup>43,44</sup> It also reinforces existing social inequalities.<sup>45</sup>

Given the extensive harms caused by incarceration, even the most serious crimes warrant careful consideration before an extreme sentence is imposed. Locking people up into old age or until they die without any opportunity for release undermines the value of redemption and stops the clock at the time of the crime, even after decades spent in prison. While violence and loss should be taken seriously, long sentences take a strictly punitive approach, rather than emphasizing healing and rehabilitation, which are both values supported by crime victims and survivors. In fact, more than six in 10 crime survivors prefer shorter prison sentences and would prioritize investments in education and job creation over harsh sentencing.<sup>46</sup>

### **PUBLIC OPINION ON LONG SENTENCES**

Across the United States, and in Mississippi, sentencing laws do not reflect public sentiment. A recent nationwide poll found that 72 percent of voters are more likely to support a candidate who is in favor of “eliminat[ing] mandatory sentences that take discretion away from judges so that judges can issue a sentence that is appropriate to each crime.”<sup>47</sup> Similarly, Mississippi voters do not support the state’s habitual laws. The vast majority of voters believe that people convicted of nonviolent offenses should be eligible for opportunities not currently available with the habitual laws such as “time off their prison sentence for maintaining good behavior and participating in rehabilitation programs” (92 percent), “probation supervision” (89 percent), “parole and post-release supervision” (89 percent), and “prison terms less than the maximum sentence” (77 percent). The majority of voters also believe that convictions older than 10 years shouldn’t count towards habitual penalties (52 percent).<sup>48</sup> These numbers clearly demonstrate that state laws are out of step with what voters want from Mississippi’s criminal justice system.<sup>49</sup>

# Mississippi voters support bold reforms to the state's habitual laws.

Voters believe that people convicted of nonviolent offenses should be eligible for opportunities not currently available with habitual laws such as:



## Conclusion

Mississippi's habitual laws have wreaked havoc on thousands of families by subjecting people to years, decades, and even life behind bars, often for low level convictions. Families measure the failure of these laws by missed birthdays and holidays, while state taxpayers spend tens of millions each year on excessive sentences that do not improve public safety. State decision makers have the opportunity to prevent these needlessly long sentences and undo some of the harm that has already been done. The legislature can pass laws to eliminate or restrict the use of habitual penalties, district attorneys can opt out of applying the laws, judges can grant parole eligibility and choose lower sentences when they are able, and the governor can grant clemency to people serving these long and life sentences. These actions, which are common practice in states across the nation, will put Mississippi on the path to addressing its incarceration crisis and building stronger families, communities, and economies across the state.

## WORKS CITED

1. Miss. Code Ann. § 99-19-81.
2. Each prior felony conviction must have resulted in a prison sentence of at least one year. This can include cases where a person is sentenced to probation and given a “suspended” sentence, which is the prison sentence they will serve if they violate the rules of supervision.
3. A recent legislation change allows judges to sentence people to a prison term less than the maximum under the first habitual law. This does not apply to people being sentenced to life in prison without the possibility of parole under the second habitual law. The judge must explain in writing his or her reasoning for choosing a shorter sentence. However, even if the judge does sentence someone to less than the maximum, they are still not eligible for parole or earned release from prison.
4. Miss. Code Ann. § 99-19-83.
5. The person must have served at least one year in prison for at least two prior felony convictions.  
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<https://www.fwd.us/news/we-all-pay/> 30/31
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9. Mississippi Department of Corrections, June 2019 Fact Sheet, <https://www.mdoc.ms.gov/Admin-Finance/MonthlyFacts/2019-06%20Fact%20Sheet.pdf>.
10. The MacArthur Justice Project submitted Mississippi Public Records Act requests to the Mississippi Department of Corrections for the demographic, offense, and sentence information for 1) everyone serving 20 or more years who was sentenced under Miss. Code Ann. § 99-19-81 and 2) everyone serving a life sentence who was sentenced under Miss. Code Ann. § 99-19-83. This data was generated by MDOC in August/September 2018.
11. United States Census Bureau, American FactFinder, Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States: April 1, 2010 to July 1, 2018.
12. Ibid.
13. For the purposes of this report, we have excluded anyone convicted of an offense designated as violent per Mississippi statute, anyone convicted of a sex offense, and anyone serving time for a violent or sex offense that was not handed down through the habitual laws.
14. Drug possession is defined as simple possession of a controlled substance and possession of any two precursor chemicals or drugs in any amount with the intent to unlawfully manufacture a controlled substance.
15. Mississippi Department of Corrections calculates life sentences at sentence lengths of 50 years or longer. We

selected 50 year sentences to be consistent with MDOC

policy. See page 67, Mississippi Department of Corrections, Mississippi Department of Corrections, Annual Report FY 2018, [https://www.mdoc.ms.gov/Admin-](https://www.mdoc.ms.gov/Admin-Finance/Documents/2018%20Annual%20Report.pdf)

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17. Mississippi Department of Corrections, Annual Report FY 2018, [https://www.mdoc.ms.gov/Admin-Finance/ Documents/2018%20Annual%20Report.pdf](https://www.mdoc.ms.gov/Admin-Finance/Documents/2018%20Annual%20Report.pdf).

18. Miss. Code Ann. § 41-29-142.

19. C.J. Ciaramella and Lauren Krisai, "The Myth of the Playground Pusher," Reason, December 18, 2017, [https:// reason.com/2017/12/18/the-myth-of-the-playgroundpus](https://reason.com/2017/12/18/the-myth-of-the-playgroundpus).

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this article, Nagain states, "My main conclusions are as follows: First, there is little evidence that increases in the length of already long prison sentences yield general

deterrent effects that are sufficiently large to justify their social and economic costs. Such severity-based deterrence measures include "three strikes, you're out," life

without the possibility of parole, and other laws that mandate lengthy prison sentence. Second, based on the earlier noted Crime and Justice review (Nagin, Cullen,

and Jonson 2009), I have concluded that there is little evidence of a specific deterrent effect arising from the experience of imprisonment compared with experience of

noncustodial sanctions such as probation. Instead, the evidence suggests that that reoffending is either unaffected or increased."

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**FWD.us** is a bipartisan political organization that believes America's families, communities, and economy thrive when more individuals are able to achieve their full potential. For too long, our broken immigration and criminal justice systems have locked too many people out of the American Dream. Founded by leaders in the technology and business communities, we seek to grow and galvanize political support to break through partisan gridlock and achieve meaningful reforms that move America forward in a 21st century economy.



