

We All Pay Update: The Devastating Cost of Habitual Penalties During the COVID-19 Pandemic

In the months since *We All Pay* was published, the need for habitual law reform has become even more urgent. Nearly 40 incarcerated people have died in Mississippi prisons since December 2019, making it clear that the state is not able to safely house the nearly 20,000 people in its care and custody. On top of these tragic deaths, COVID-19 has reached Mississippi prisons, further imperiling the lives of incarcerated people. To date, four incarcerated people have tested positive for the virus, one of whom has died. Because the Mississippi Department of Corrections (MDOC) has tested fewer than 40 incarcerated people, the rate of infection is likely much higher than what is currently being reported. In fact, a new report from FWD.us estimates that nearly everyone in MDOC custody will be infected with the virus, and 186 people will die if no action is taken to reduce the prison population.

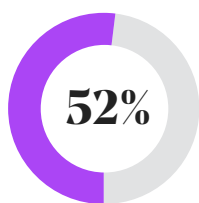
People with habitual sentences are particularly vulnerable in the current crisis. These individuals are serving very long prison terms with no opportunity for parole or other forms of release, meaning that they are aging behind bars in unsafe and unsanitary conditions.

The report FWD.us published on Mississippi's harmful habitual laws, *We All Pay*, focused on the 906 incarcerated men and women serving the most extreme habitual sentences of 20 or more years. Nearly half of this group--449 people--are aged 50 or older. And, as the original report showed, 75 percent of people in prison with 20+ year habitual penalties are Black men. The CDC reports that older adults are at higher risk of contracting and dying from COVID-19, and Black people have been disproportionately impacted by the virus in the United States. In Mississippi alone,

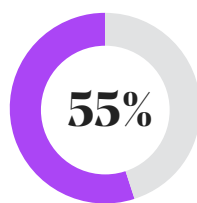
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52% people who have tested positive for COVID-19 are Black, as are 55% of those who have died from the virus. Incarcerated people also have higher rates of underlying chronic health issues, conditions caused and exacerbated by a lack of adequate health care in prisons, placing them at even greater risk during this pandemic. This is especially true for people with extreme habitual sentences. The majority of people in prison with 20+ year habitual sentences have been incarcerated for 10 or more years without access to reliable medical care.

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This deadly confluence of events requires immediate action from elected officials to reduce the state's dangerously high prison population. It is not too late to spare people from illness and death. Below are recommendations for actions the governor and state legislature can take to reduce the prison population and save lives. These recommendations are focused on people in prison with habitual sentences, a group at very high risk for COVID-19. However, these recommendations are meant to be a starting place, not an endpoint, for action. State leaders must take bold steps to dramatically reduce the number of people in prisons across the state. More than ever before, it's a matter of life or death.

Gubernatorial Action

With the legislative session suspended because of COVID-19, it is incumbent upon the governor to take action to immediately reduce the state's prison population. The governor has broad authority to issue pardons and commutations, including the ability to release people from prison or make people eligible for parole. As part of a broader clemency program, Governor Reeves should consider releasing people with extreme habitual sentences, especially those who are 50 or older and those who have been incarcerated for long periods of time, making them even more vulnerable to the virus.

Legislative Action

When the legislative session resumes on May 18, state lawmakers should take up and strengthen the bills they have advanced to reduce Mississippi's prison population. One of those bills, HB 1024, aims to reform Mississippi's habitual laws. The current version of the bill:

- Prohibits prior offenses older than 15 years from increasing sentence lengths under the state's "little" habitual law (§ 99-19-81);
- Restricts the use of habitual sentences carrying mandatory life imprisonment, also known as the "big" habitual (§ 99-19-83), to people with a current violent offense and two prior convictions, at least one of which was for a crime of violence; and
- Extends eligibility for parole consideration to people currently serving long prison sentences who would no longer be eligible for a habitual sentence based on the changes detailed above.

We do not have data to determine the impact of the provision that prohibits old convictions from counting towards a habitual sentence. However, nearly 100 people are currently serving habitual life sentences for nonviolent offenses and would become parole eligible if this bill became law. In addition, dozens fewer people would be sentenced to life-without-parole terms over the next decade.

Given the current crisis, it is imperative to not only pass but expand this bill. The bill could be made stronger by:

- Restricting “little” habitual sentences (§ 99-19-81) for nonviolent offenses; and
- Expanding parole eligibility to people currently serving these extreme sentences that do nothing to protect public safety.

There are over 175 people serving 20+ year “little” habitual sentences for nonviolent crimes in prison today who are ineligible for parole and earned time and thus must serve every day of their sentences behind bars. The majority of them (89 people) are aged 50 or older, making them particularly vulnerable to the virus. Adding parole eligibility for this group would provide relief to these individuals, as well as hundreds of others serving parole-ineligible prison terms of 20 years or less for nonviolent offenses because of Mississippi’s habitual laws.

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On top of this immediate impact, roughly 100 people are sentenced each year to extreme prison sentences for nonviolent crimes under the state’s “little” habitual law. Allowing judges to sentence below the maximum in these cases and extending parole eligibility to these individuals would reduce this group’s time served behind bars by roughly 1,000 collective years, saving the state millions of dollars during an economic crisis.

Mississippi’s habitual laws have wreaked havoc on Mississippi’s families, communities, and economy for decades. They are a major cause of Mississippi’s incarceration crisis, a crisis that has been thrown into stark relief as prison conditions have grown more dangerous and deadly in recent months. State leaders must act now to reduce incarceration and save lives. If they wish to protect the most vulnerable among the incarcerated population, and safely reduce the cost of Mississippi’s prison system, these efforts must include relief for people sentenced to extreme habitual sentences.