



RESEARCH AND ADVOCACY FOR REFORM

# **Testimony of Nazgol Ghandnoosh**

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**On the Revised Criminal Code Act  
of 2021, B24-0416**

**Before the Council of the District of  
Columbia, Committee on the  
Judiciary & Public Safety**

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## INTRODUCTION

I'm Nazgol Ghandnoosh, Senior Research Analyst at The Sentencing Project and a Ward 6 resident. Established in 1986, The Sentencing Project promotes effective and humane responses to crime that minimize imprisonment and criminalization by promoting racial, ethnic, economic, and gender justice.

In the past decade of studying sentencing, both in this position and previously for my dissertation research, I have focused on extreme sentences, reform trends, and factors contributing to and abating racial disparities in the prison population. A priority for me in this work has been advancing public safety, which I see as the key function of criminal sentencing. Given that people of color are more likely than whites to experience serious violent crime, developing effective policies to advance public safety is a racial justice issue.

The Sentencing Project strongly supports the Revised Criminal Code Act of 2021 (RCCA), B24-0416, because several of its features help to scale back extreme prison sentences, which are infused with racial bias and are counterproductive to public safety. Specifically, we commend:

1. The elimination of all mandatory minimum sentences
2. Lowering maximum sentences to 45 years
3. Allowing judicial sentencing reconsideration after 15 years of imprisonment

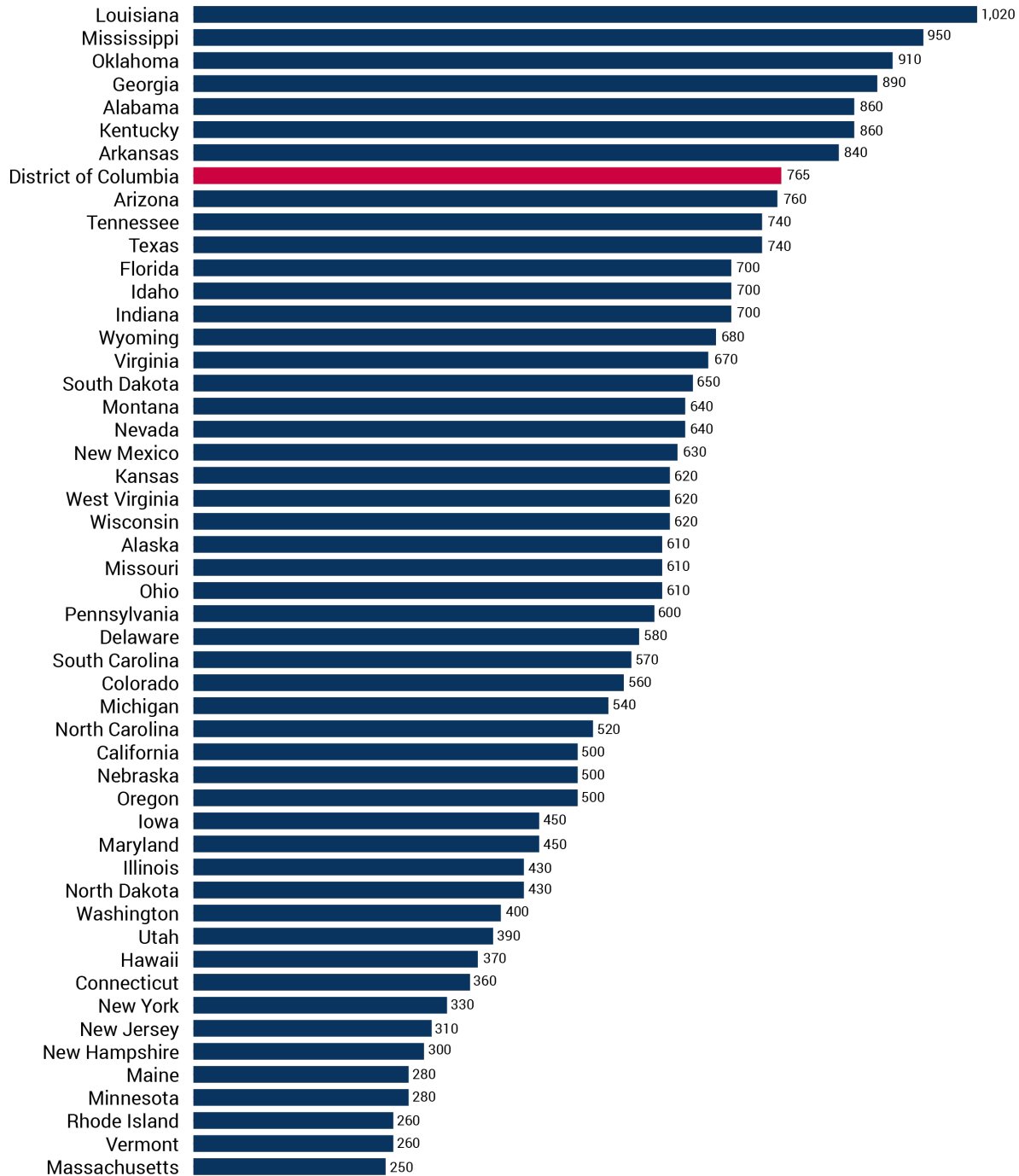
These proposals echo and build upon similar reforms happening around the country. As I'll show, they'll bring D.C.'s criminal penalties closer in line with criminological evidence on public safety, though in some cases the Council should go much further.

Reverend Vivian Nixon, former Executive Director of College & Community Fellowship in New York City has said: "The quality of the solution depends on who is impacted by the problem."<sup>1</sup> Criminal sentencing in D.C. overwhelmingly affects people of color, in particular Black men; crime victims are also overwhelmingly people of color. Researchers have demonstrated that the association of crime with communities of color has favored punitive policies over prevention and rehabilitation.<sup>2</sup> Let us work to mitigate our biases and develop high-quality solutions.

## ELIMINATING MANDATORY MINIMUMS

By only stipulating maximum sentences, and not minimum sentences, the RCCA would reinstate judges' ability to tailor sentencing to the circumstances of individual cases. As researchers have shown in jurisdictions across the country, mandatory sentencing has been a key driver of mass incarceration—by dramatically increasing the lengths of imposed sentences.<sup>3</sup> Mandatory minimums have contributed to D.C. ranking eighth among states in its incarceration rate.

## Incarceration Rates, 2019



Note: Incarceration rates include people in local jails and state prisons per 100,000 residents in each jurisdiction. D.C.'s rate includes those with D.C. Code violations held in the federal Bureau of Prisons. Sources: Bureau of Justice Statistics, D.C. Department of Corrections, D.C. Sentencing Commission, U.S. Census Bureau.

Rather than eliminate racial disparities, mandatory sentences allow them to flourish through discretionary prosecutorial decisions. Prosecutors decide whether to bring charges that carry mandatory sentences and they craft plea deals in the shadow of lengthy mandatory sentencing.

It's especially important in Washington, D.C. that we not allow mandatory minimum sentences to tilt the scales of justice, because our felony cases are handled by unelected prosecutors with a history of resisting popular reform measures and their implementation.<sup>4</sup>

The RCCA is in good company in proposing to eliminate mandatory minimum sentences. President Joe Biden and Attorney General Merrick Garland have proposed eliminating mandatory minimums for federal sentences. The American Bar Association, the American Law Institute, and the NAACP Legal Defense and Educational Fund have proposed eliminating mandatory minimums more broadly.<sup>5</sup>

Over a decade ago, Rhode Island and New York eliminated mandatory minimums for certain drug offenses, with New York making this reform retroactive and allowing people to apply for resentencing.<sup>6</sup> Since then, these states have dramatically reduced their prison populations while also experiencing substantial reductions in their crime rates.<sup>7</sup>

## **LIMITING MAXIMUM SENTENCES TO 45 YEARS**

Since 2004, The Sentencing Project has called for the end of life-without-parole sentences because they are cruel, costly, and counterproductive to public safety.<sup>8</sup> We therefore strongly support the RCCA's proposal to limit prison terms to 45 years and encourage the Council to go further and establish a limit that cannot be considered a *de facto* life sentence. We and over 200 organizations recommend limiting maximum prison terms to 20 years, except in unusual circumstances.<sup>9</sup>

Criminological research has established that people age out of crime. For a range of offenses, crime rates peak around the late teenage years and begin a gradual decline in the early 20s. For example, University of Texas criminologist Alex Piquero—who is testifying today—and colleagues have noted that existing research suggests: “Criminal careers are of a short duration (typically under 10 years), which calls into question many of the long-term sentences that have characterized American penal policy.”<sup>10</sup>

Life sentences incapacitate many people who pose limited criminal threat. This fact is reflected in the extremely low recidivism rates of people released after lengthy terms for violent crimes, compared to those who served shorter sentences for less serious crimes. People released from life sentences for murder convictions were found to have “minuscule” recidivism rates upon their release in California, Michigan, and Maryland.<sup>11</sup>

Life and other extreme sentences are also of limited deterrent value. As Daniel Nagin, a leading national expert on deterrence and professor of public policy and statistics at Carnegie Mellon University, has written: “Increases in already long prison sentences, say from 20 years to life, do not have material deterrent effects on crime.”<sup>12</sup> Long sentences are limited in deterring future crimes because most people do not expect to be apprehended, are not familiar with relevant legal penalties, or commit crime with their judgment compromised by substance use or mental health problems.<sup>13</sup>

Extreme sentences are also very costly, because of the higher cost of imprisoning the elderly. They also put upward pressure on the entire sentencing structure, by making lengthy sentences seem

relatively modest. This is how long sentences are *counterproductive* to public safety: they divert attention and resources towards imprisoning people years after they have aged out of crime, at the expense of effective investments in policies that would prevent future victimization.

Some organizations advocating on behalf of crime survivors recognize these facts and have advocated for making investments outside of the criminal legal system to prevent future victimization. For example, the Network for Victim Recovery of DC (NVRDC) has stated:

NVRDC believes that in order to fully support communities who have experienced violence, we must evaluate all the root causes of crime that affect crime victims and defendants alike—poverty, lack of access to education, lack of safe housing, institutional racism, and other systemic biases.<sup>14</sup>

Extreme sentences are also cruel to the individuals serving them and their families. Pope Francis, for example, has called life imprisonment the “secret death penalty,” describing it as “not the solution to problems, but a problem to be solved.” That’s because life imprisonment, like the death penalty, crushes people’s hope and rejects the goal of rehabilitation.

We commend the RCCA’s implementation of a 45-year sentencing cap, as well as the addition of offense gradations to make sentencing limits more suitable. We have received enthusiastic inquiries about the sentencing cap proposal from practitioners around the country. But we offer two points of caution.

First, please recognize that 45 years is still excessive. It’s just under the cutoff that our organization has used to define a *de facto* life sentence—50 years. In fact, in its 2015 study of life sentences in the federal system, the United States Sentencing Commission considered 470 months—just over 39 years—to be a *de facto* life sentence, “so long that the sentence is, for all practical purposes, a life sentence.”<sup>15</sup> So while the 45-year maximum sentence is an important step in the right direction, the Council should go further by reducing this maximum to 20 years.

We’re seeing growing support for the 20-year limit, among lawmakers and prosecutors in California and over 60 elected prosecutors and law enforcement leaders around the country who have urged “prosecutor colleagues to create policies in their offices whereby no prosecutor is permitted to seek a lengthy sentence above a certain number of years (for example 15 or 20 years) absent permission from a supervisor or the elected prosecutor.”<sup>16</sup>

Second, we encourage you to ensure that sentences never exceed the maximum, through consecutive sentencing and enhancements. Given the prevalence of criminal histories among those being sentenced, and that criminal histories are not just a reflection of criminal offending but also of racially biased criminal legal processing, the RCCA’s repeat offender penalty enhancement would unnecessarily weaken the 45-year sentencing cap.

## **SENTENCING RECONSIDERATION AFTER 15 YEARS**

Tyrone Walker. Momolu Stewart. Troy Burner. Halim Flowers. James Carpenter. Shannon Battle. And Warren Allen, who I’m proud to now have as a colleague at The Sentencing Project.

I’m grateful to your legislative body for making it possible for these men and many others to return to our communities. Through the Incarceration Reduction Amendment Act and Second Look

Amendment Act, people who have served over 15 years in prison for crimes they committed as minors or as emerging adults can receive a judicial review of their sentence.

But many others like them cannot receive this review because they committed their crime after they turned 25. Specifically, among the 3,627 individuals imprisoned with a D.C. conviction in the Federal Bureau of Prisons in 2019, 52% had sentences of 15 years or longer, and of these, 46% committed their offense after reaching age 25.<sup>17</sup>

While the criminological research is clear that youth and emerging adults are especially prone to criminal activity and amenable to rehabilitative interventions, this doesn't mean that we should foreclose the possibility of redemption for others. That's why the Model Penal Code, which recommends that resentencing begin after 10 years of imprisonment for youth crimes, advises that for everyone whose crime occurred at age 18 or older:

The legislature shall authorize a judicial panel or other judicial decisionmaker to hear and rule upon applications for modification of sentence from prisoners who have served 15 years of any sentence of incarceration.<sup>18</sup>

The RCCA rightly extends judicial review of sentences to everyone after 15 years of imprisonment. The Sentencing Project and many experts would advise lowering that cutoff to 10 years.<sup>19</sup>

University of Minnesota Law School professor Kevin Reitz, who led the Model Penal Code revisions as Reporter (working with Associate Reporter Cecelia Klingele, who is testifying today), has explained: "Where there was disagreement over the 15-year provision, it came from proponents of significantly shorter periods, such as 10 or even 5 years."<sup>20</sup> Along with national parole experts Edward Rhine and the late Joan Petersilia, Reitz has endorsed initiating resentencing reviews after 10 years of imprisonment.<sup>21</sup>

Such a proposal would be in line with a bill advanced at the federal level by Senator Cory Booker and Representative Karen Bass, which would allow people who have spent over 10 years in federal prison to petition a court for resentencing.

It would also align with the recommendation of the District Task Force on Jails and Justice, an independent body whose members included Attorney General Karl Racine, Judiciary Committee Chair Charles Allen, and Department of Corrections Director Quincy Booth, to amend D.C. law to:

allow any person who has served at least ten (10) years in prison to petition for resentencing and require D.C. Superior Court to review sentences of any person who has served at least 20 years.<sup>22</sup>

The Sentencing Project encourages you to allow individuals to be resentenced after 10 years of imprisonment, with a rebuttable presumption of resentencing, and to make these reviews automatic. In addition, we recommend instructing judges to intentionally address anticipated sources of racial disparities, such as racially biased in-prison disciplinary records.

Meaningful sentencing reconsideration may, as Ohio State University Law Professor Douglas Berman has noted, "foster respect for a criminal justice system willing to reconsider and recalibrate the punishment harms that it imposes upon its citizens."<sup>23</sup>

## CONCLUSION

I'm grateful for this opportunity to testify in support of the Revised Criminal Code Act of 2021. The features of the bill that I have mentioned would go far in aligning D.C.'s criminal penalties with criminological evidence on how to advance public safety.

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<sup>1</sup> Nixon, V. D. (2015, September 24). Keynote address at inaugural conference: From mass incarceration to effective and sustainable decarceration. Washington University in St. Louis.

<sup>2</sup> Ghandnoosh, N. (2014). *Race and punishment: Racial perceptions of crime and support for punitive policies*. The Sentencing Project. <https://www.sentencingproject.org/publications/race-and-punishment-racial-perceptions-of-crime-and-support-for-punitive-policies/>

<sup>3</sup> Travis, J., Western, B., & Redburn, S. (Eds.) (2014). *The growth of incarceration in the United States: Exploring causes and consequences*. National Research Council. National Academies Press.

<https://www.nap.edu/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes>

<sup>4</sup> Racine, K. A. (2021, Jan. 26). President Biden's choice for U.S. attorney should reflect D.C. values.

*Washington Post*. <https://www.washingtonpost.com/opinions/2021/01/26/president-bidens-choice-us-attorney-should-reflect-dc-values/>

<sup>5</sup> Joe Biden for President Official Campaign Website. (n.d.) *The Biden plan for strengthening America's commitment to justice*. <https://joebiden.com/justice/>; Lynch, S. N., & Chiacu, D. (2021, February 22). Key quotes from U.S. attorney general nominee Garland on criminal justice policies. *Reuters*.

<https://www.reuters.com/article/us-usa-senate-garland-hearing-quotes/key-quotes-from-u-s-attorney-general-nominee-garland-on-criminal-justice-policies-idUSKBN2AM2HT>; American Bar Association. (2017, August 15). *ABA opposes mandatory minimum sentences*. [https://www.americanbar.org/news/abanews/aba-news-archives/2017/08/aba\\_opposes\\_mandator/](https://www.americanbar.org/news/abanews/aba-news-archives/2017/08/aba_opposes_mandator/); American Law Institute. (2021). *Model Penal Code: Sentencing*.

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<sup>6</sup> Porter, N. D. (2010). *The state of sentencing 2009: Developments in policy and practice*. The Sentencing Project. <https://www.sentencingproject.org/publications/can-we-wait-60-years-to-cut-the-prison-population-in-half/>

<sup>7</sup> Ghandnoosh, N. (2021). *Can we wait 60 years to cut the prison population in half?* The Sentencing Project.

<https://www.sentencingproject.org/publications/can-we-wait-60-years-to-cut-the-prison-population-in-half/>

<sup>8</sup> See Mauer, M., King, R. S., & Young, M. C. (2004). *The meaning of 'life': Long prison sentences in context*. The Sentencing Project. <https://www.sentencingproject.org/wp-content/uploads/2016/01/The-Meaning-of-Life-Long-Prison-Sentences-in-Context.pdf>; The Sentencing Project. Campaign to End Life Imprisonment.

<https://endlifeimprisonment.org>

<sup>9</sup> The Sentencing Project. Campaign to End Life Imprisonment. <https://endlifeimprisonment.org>; Justice Roundtable. (2020). *Transformative justice: Recommendations for the new administration and the 117th Congress*.

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<sup>10</sup> Piquero, A., Hawkins, J., & Kazemian, L. (2012). Criminal career patterns. In R. Loeber & D. P. Farrington (Eds.), *From juvenile delinquency to adult crime: Criminal careers, justice policy, and prevention* (pp. 14–46). New York, NY: Oxford University Press, p. 40.

<sup>11</sup> Weisberg, R., Mukamal, D. A., & Segall, J. D. (2011). *Life in limbo: An examination of parole release for prisoners serving life sentences with the possibility of parole in California*. Stanford Criminal Justice Center.

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- <sup>15</sup> United States Sentencing Commission. (2015). *Life Sentences in the federal system*. [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20150226\\_Life\\_Sentences.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20150226_Life_Sentences.pdf)
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- <sup>21</sup> Rhine, E. E., Petersilia, J., & Reitz, R. 2017. The future of parole release. In Tonry, M. (Ed.), *Crime and Justice*, Vol, 46 (pp. 279-338).
- <sup>22</sup> District Task Force on Jails & Justice. (2021). *Jails & justice: Our transformation starts today*. Office of Victim Services and Justice Grants, Executive Office of the Mayor, District of Columbia, p. 63. <http://www.courtexcellence.org/uploads/publications/TransformationStartsToday.pdf>
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