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New York State's New Death Penalty:

*The Death Toll of Mass
Incarceration in a Post
Execution Era*

 COLUMBIA UNIVERSITY
CENTER FOR JUSTICE

About the Center for Justice at Columbia

The Center for Justice is committed to ending mass incarceration and criminalization, and advancing alternative approaches to justice and safety through education, research, and policy change. Its mission is to help transform approaches to justice from being driven by punishment and retribution to being centered on prevention, healing and accountability. The Center is interdisciplinary and works in partnership with schools, departments, centers and institutes across Columbia, other universities, government agencies, community organizations, advocates and those directly affected by the criminal justice system.

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Introduction

New York State was once an international outlier in its use of capital punishment. Prior to 1972, when the US Supreme Court outlawed the death penalty, New York ranked second in most executions of any state in the country, executing 1130 people over a 364 year period¹. Yet, abolishing the death penalty did not slow death behind bars. Since 1976—when the state began compiling data on deaths in custody—7,504 people died while in the custody of the New York State Department of Corrections and Community Supervision (DOCCS). **This is seven times the number of deaths of those who were executed by the state.** Those who have died in custody over the last 45 years have largely been Black people, and particularly in the last decade, older people and people serving sentences of 15 years or more. Increasingly, advocates and lawmakers have come to call this devastating reality “death by incarceration”², or “death by incarceration sentences”³ that ensure that thousands will die in prison and/or face a Parole Board that denies release to the majority of people who appear before it, and disproportionately denies release to Black New Yorkers⁴.

This report compiles and analyzes data on in-custody deaths in New York State between 1976 and 2020 and offers policy recommendations for curtailing the number of deaths behind bars. Without policy intervention, thousands of currently incarcerated New Yorkers are at risk of dying behind bars in the years and decades to come.

All lives lost in the New York State correctional system raise questions about the morality and humanity of the state and its governance. The large proportion of deaths of incarcerated Black New Yorkers highlight the racism of criminal justice policy in the state, and how the need for racial justice is a matter of life and death. The disproportionate deaths of older adults serving long sentences highlight important questions about the state’s investments in public and community safety. Incarcerated adults aged 55 and older are the least likely to commit a new crime across all age groups⁵, and yet are kept in prison due to a lack of meaningful opportunities for release and repeated parole denials. Importantly, death by incarceration sentences and repeated parole denials ignore both the reality and possibility of redemption and transformation for people in prison.

Older adults in prison are often leaders, mentors and stewards of the community. Of those who are released from prison, many continue their service and leadership in their communities, mentoring young people, providing reentry services for others released from custody, and intervening to prevent and reduce violence.

This report concludes that New York State must end its new de facto death penalty and offers recommendations towards this goal, including policies with large community and legislative support.

Key Findings

- More people have died in NY State custody in the last decade than the total of number of people executed in the 364 years New York State had the death penalty. **1,278 people died in NY State custody in the last decade compared to 1,130 who were executed in NY State** between 1608 and 1972.
- Today, **more than 1 in 2 people who die in NY State custody are older adults**, compared to roughly 1 in 10 at the beginning of the era of mass incarceration.
- **Every three days** someone dies inside a NYS prison, compared to every 12 days in 1976.
- In 2018, Black people accounted for **45% of all deaths in DOCCS custody**, despite only making up 14% of all deaths of New York State residents.
- People who have **already served 15 years** in custody account for **9 times more of the total deaths behind bars** today than they did in the 1980s, the first full decade of available data.
- **40% of all deaths behind bars** since 1976 of people 55 and older happened in the last ten years.
- In the most recent decade, **roughly 1 in 3 people** who died behind bars had served at least 15 years, compared to 1 in 29 in the 1980s.

Breakdown of Deaths Behind Bars

From January 1976 to October 2020, 7,504 people died in the custody of the New York State Department of Corrections and Community Supervision. In the first full year of the collection of the data (1976), 30 people died behind bars. In the last full year (2019), 112 people died, an increase of 273%. This report considers three demographics in analyzing the number of deaths: age, race, and time served.

► Age

The total number of deaths behind bars started to drastically increase in the early 1980s into the 1990s as the total number of incarcerated people in New York State grew, more than tripling in size from 1980 to 1999. Deaths during this time mostly impacted middle aged and younger incarcerated people. In 1994, AIDS was the leading cause of death in people aged 25-44 nationwide⁶. At the height of the epidemic in the United States, AIDS related deaths made up 65% of total deaths⁷ in NY DOCCS custody* and 68% were people aged 25-44. In fact, 77% of all in-custody deaths since 1976 of people aged 25-44 occurred during the height of the AIDS epidemic.

The number of deaths each year for this age group has been in decline ever since, representing less than 20% of deaths behind bars in the last decade. The total incarcerated population has also decreased but the number of deaths of older people has skyrocketed,[†] with 40% of all deaths behind bars of people 55 and older happening in just the last ten years.

In the first full decade of data collection, 118 older people—9% of all deaths—died in custody. But in the most recent decade, 713 older people died, representing more than half—56%—of all in-custody deaths. The increase in deaths of older people does not appear to be influenced by changes in the total number of deaths. For example, the total number of deaths between the 1980s and 2010s decreased by 7%, but the number of deaths of people 55 and older increased by 504%. Even during the decade with the most total deaths by far (1990-1999), 11% of those deaths were of older people. In the decade with the least amount of deaths (2010-2019) they make up 56%. As is evidenced by the chart below, every age group has decreased in number of deaths as total deaths have decreased, except for people 55 and older. It is only in recent decades, with harsher sentencing practices⁸ and fewer parole releases granted⁹, that the number of deaths of older people has been vastly increasing.

56%

of deaths behind bars in the last decade were of older people

504%

increase in deaths behind bars of people 55 & older since the 1980s

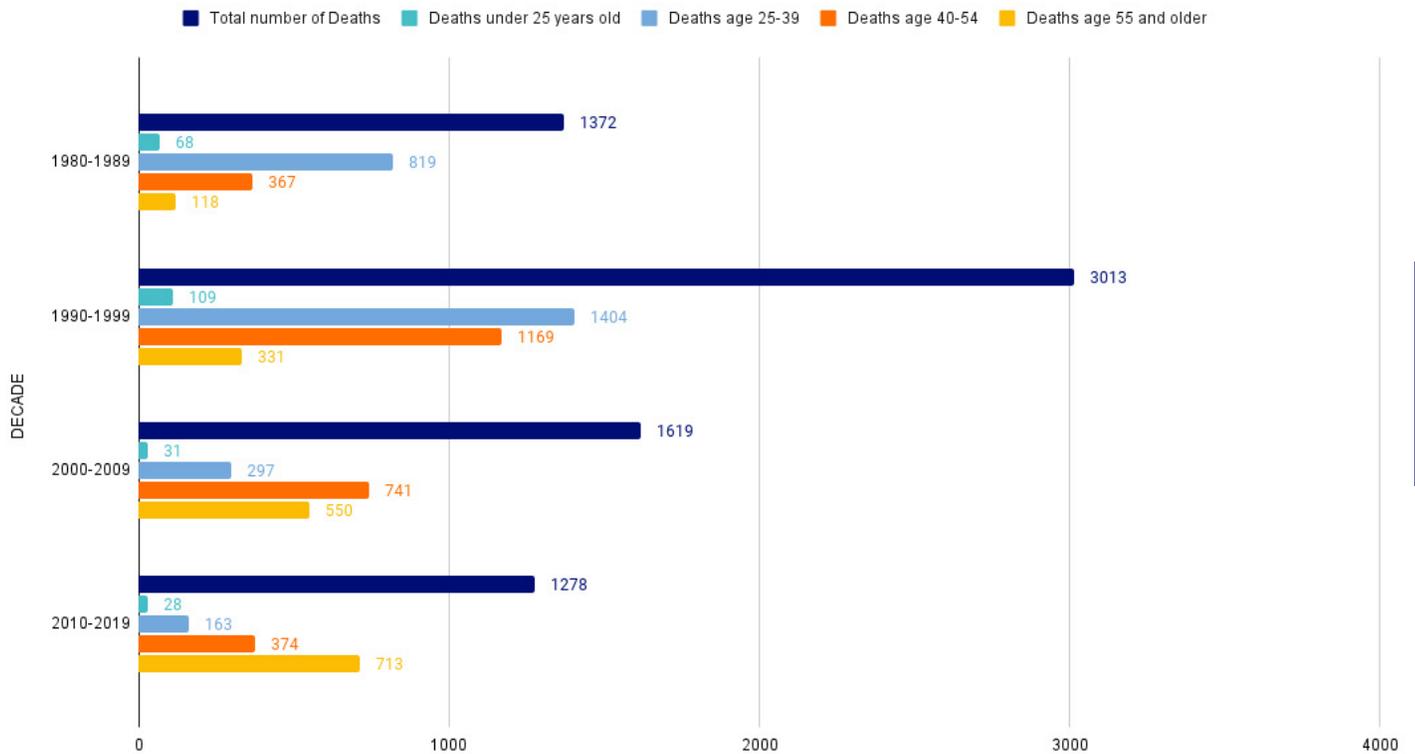
40%

of deaths since 1976 of people 55 and older happened in the last ten years

*Those counted in the total deaths were only people whose illness was labeled an AIDS diagnosis by the Center for Disease Control, and did not include people who died with HIV but without an official AIDS diagnosis.

†For the purposes of this report, "older" is defined as a person aged 55 or older. This is consistent with DOCCS's own definition of who is considered "older" in prison.¹⁰

Deaths in Custody by Age



“Researchers have said [55 and older] is a good measure for [defining ‘aging’ in prison]. 65 and older in the community translates to 55 and older in prison. Prison is stressful and can exacerbate issues.”

–Acting NY DOCCS Commissioner Anthony Annucci, February 2021 NY Senate Hearing

▶ Time Served

Concurrently with age, the amount of time served among people who have died in custody has steadily increased despite the total number of deaths fluctuating and on a decline since the AIDS epidemic. The data from DOCCS calculates time served by the number of months served in

777%

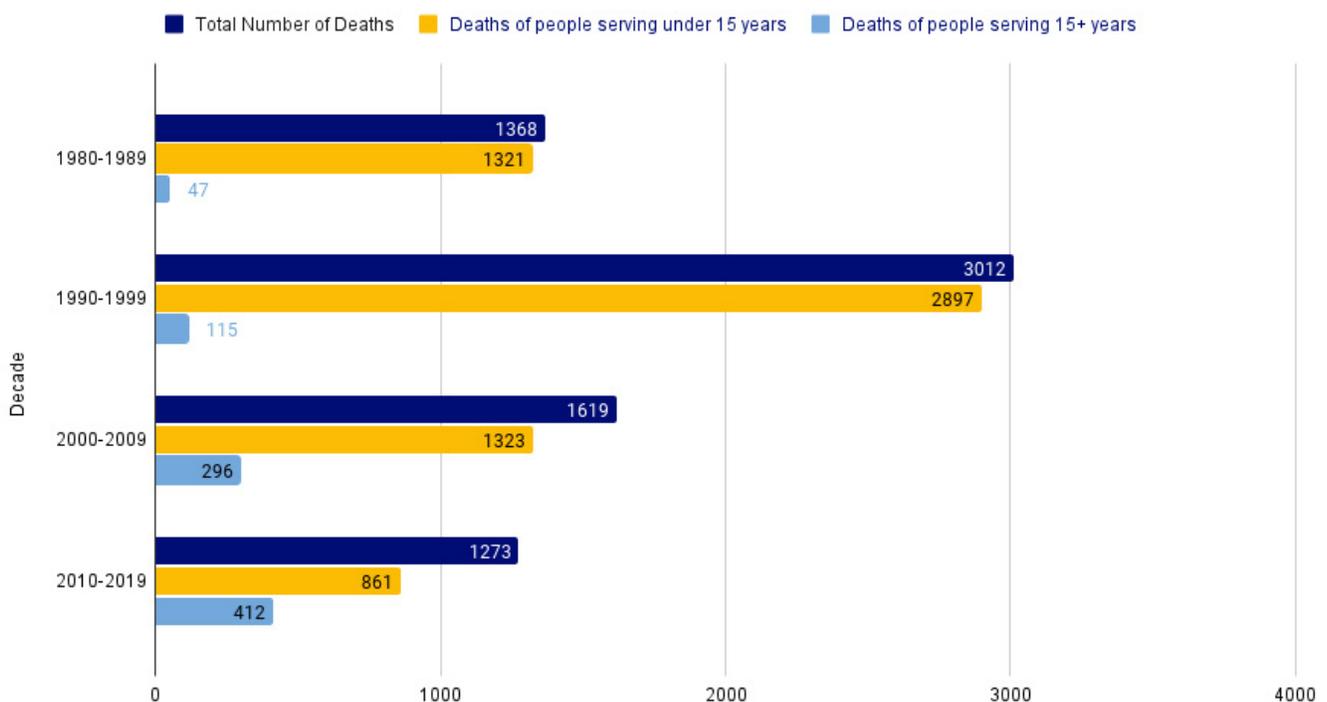
increase in deaths behind bars of people who have served 15+ years since the 1980s

custody, including prison and jail time. It is not a reflection of sentence length, but is the amount of time someone had been incarcerated at the time of their death. The data has been combined to show results for people who had served under 15 years in custody at the time of their death, and people who had served over 15 years.

Incarcerated people who had served under 15 years at the time of death make up 88% of all deaths behind bars. However, 64% of those deaths happened during the AIDS epidemic. In the last decade, people who had served under 15 years at the time of death made up only 13% of deaths.

Similarly with older people, the number of deaths of people serving 15 or more years began to skyrocket in the 2000s. During the 1990s this group represented only 3.8% of all deaths. In the last decade, they made up 32%. The number of deaths of people who had served 15 or more years at the time of their death also does not appear to be dependent upon the overall number of deaths. Since the 1990s, the total number of deaths fell by 136% but the number of deaths of people who have served 15 or more years increased by 258%, and by 777% since the 1980s. Today, roughly 1 in 3 people who die behind bars have served at least 15 years, compared to 1 in 29 in the 1980s.

Time Served in Custody at Time of Death



*total missing 10 cases, 7494 total deaths versus 7504

Race

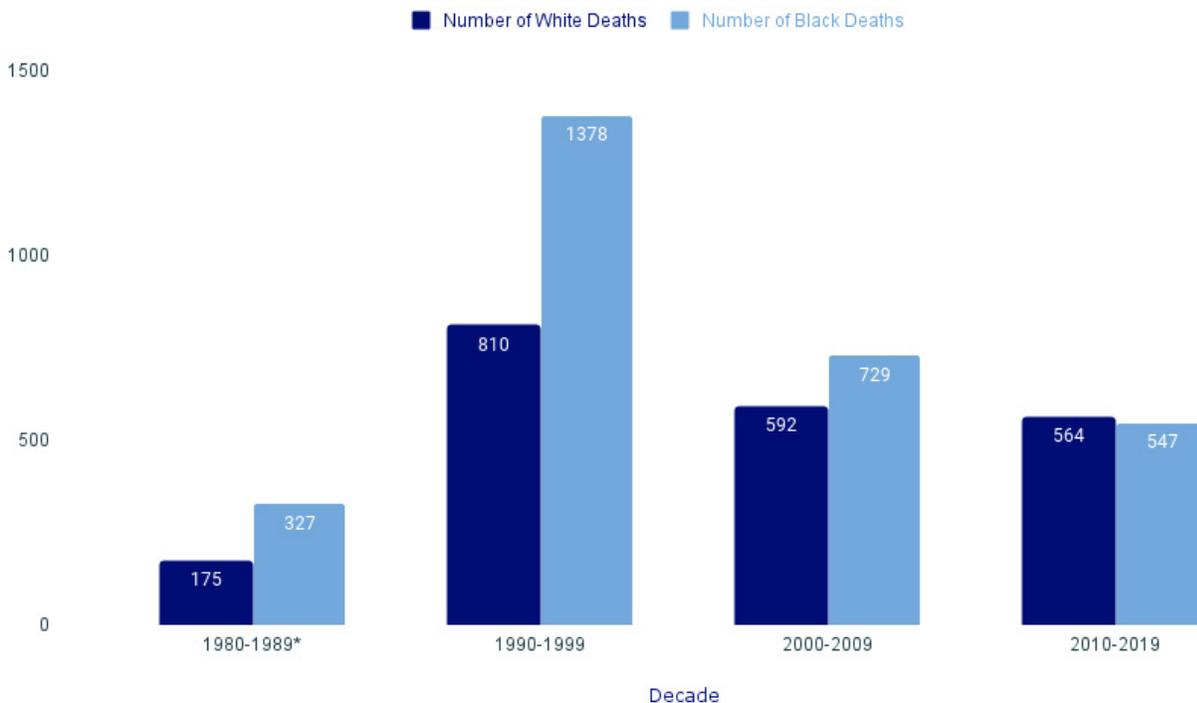
The race data analyzed for this report only includes deaths of Black and White people because (1) there were 36 years of missing data for two race groups, and (2) Asian people and Native American people made up less than 1% of total deaths. Deaths of Black and White people together made up 71% of all deaths. The race of 27% of the deaths reported was either unknown or labeled as “other”. Additionally, there is data missing for the race demographic from 1985–1987. In the 1980s, the total number of deaths and number of deaths by race was calculated excluding those three years of missing data.

41%

of all deaths behind bars from 1976-2020 were Black people

From 1976-2020, Black people have comprised anywhere between 37%–58% of all deaths behind bars. 41% of the 7,504 deaths in DOCCS custody during this time were Black people, compared to 30% White. At the height of the AIDS epidemic, Black people comprised an alarmingly higher number of deaths than White people or any other race. Black people made up 70% more of the total deaths than White people. While the number of Black people has remained consistently high over the years, the number of White people dying behind bars has increased by 222% since the 1980s, despite their incarceration rate decreasing. Although the number of deaths of Black people behind bars is proportional to their overall incarcerated population (48%), their incarcerated percentage is disproportionate to their percentage of the state’s population, making up only 18% of NYS residents.¹²

Number of Deaths by Race



**three years of data is missing for the 1980-1989 range*

The numbers alone are concerning, but the stories behind them are devastating. The 7,504 people who have died in New York State prisons were mothers, fathers, grandparents, siblings, and children. Many would have had an opportunity for release if they had not died before getting the chance.

One such story is that of Valerie Gaiter.

Valerie Gaiter

When Valerie was 19 years old, she and a friend robbed and killed two people in an attempt to get money for drugs. **Val was sentenced to 50 years to life in prison**, meaning she would not have seen the Parole Board **until she was 73 years old**.



During her time in prison, Valerie Gaiter was **a mentor to young women** at Bedford Hills Correctional Facility in Bedford Hills, NY. She worked with the Puppies Behind Bars program, and was the photographer in the prison visiting room. One of Val's friends said of her, "Over time Valerie Gaiter became one of my best friends. **I was amazed at how much she accomplished during her time**. She wanted to be the best person she could be. She never believed she wouldn't get out of prison one day."

On Tuesday, August 13th, 2019, Val died in DOCCS custody. She was 61 years old and had been in prison for **nearly 40 years**. At the time of her death, she was **the longest-serving woman** in a New York State prison. Val had only recently been diagnosed with cancer and never received treatment. **Val's death could have been prevented**, not only through adequate healthcare, but through policies that would have allowed Valerie's accomplishments and transformation to be seen by a Parole Board earlier in her life.

1 in 3

In the last decade, 1 in 3 people who died behind bars had served at least 15 years

Overall Trends

Stories like Val's will continue to be the norm if no action is taken to disrupt the rising numbers of older people dying behind bars. Despite the overall number of deaths declining, people who are 55 and older and serving 15 or more years in prison are at an especially higher risk of dying behind bars than they were only a few decades ago.

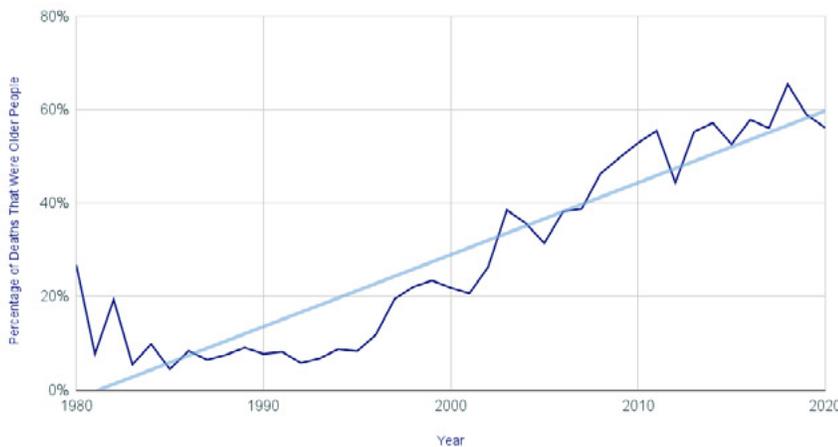
► Trends in Age, Time Served, and Race

The ratio of deaths of older people has skyrocketed within the last two decades. The trend is continuing upward, and suggests that the 2020s will maintain that the majority of deaths in prison

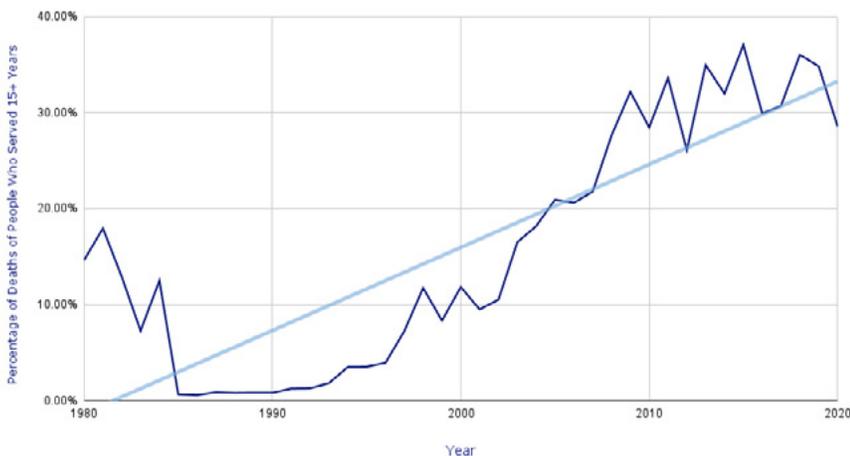
are of people 55 or older. For the ten months of data collected in 2020, 55 of the 98 deaths were of older people, keeping with the 56% average of the last ten years. If action is not taken, it would not be far-fetched to assume the number will keep with the trend or worse, potentially increase.

The number of deaths will also continue to be largely of people serving 15 or more years. 29% of the total number of deaths in 2020, with two months of data not yet accounted for, were of people serving 15 or more years. The average for the last decade is 32%. It is worth noting that the National Institute of Justice confirms there is no evidence that harsher punishments, longer sentences, the death penalty, or even sending someone to prison to begin with has any effect on crime deterrence.¹³

Percentage of Total Deaths That Were People Aged 55+



Percentage of Deaths of People Who Served 15+ Years

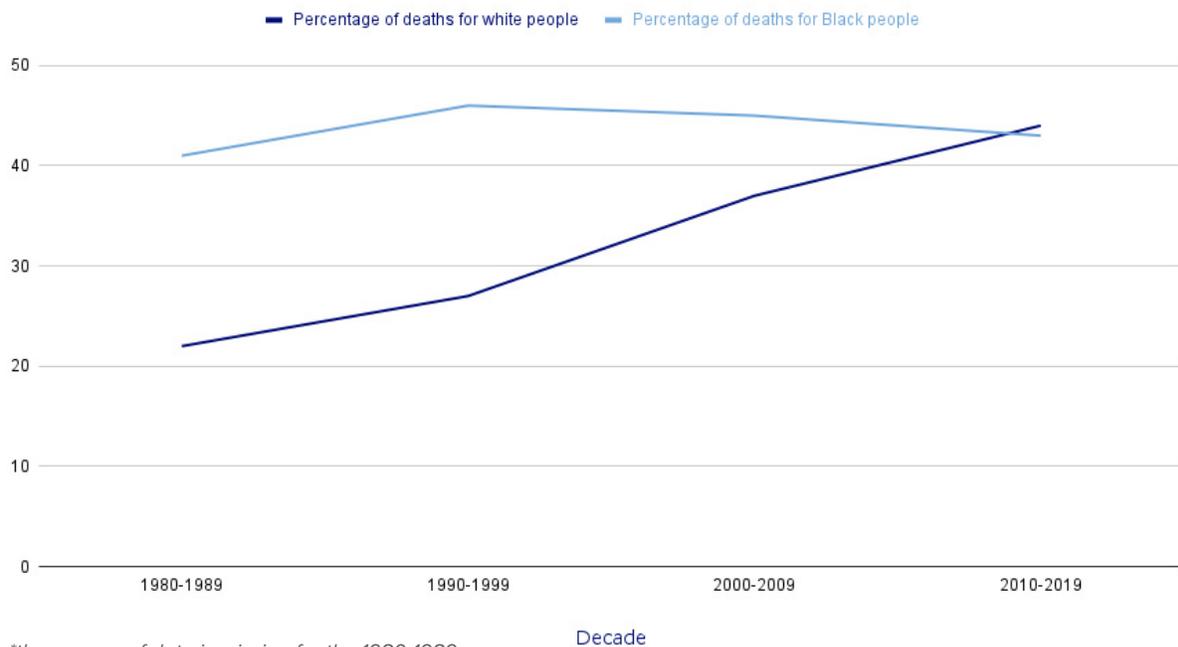


The graph below indicates that the number of Black people who have died in DOCCS custody stays consistently high, while deaths of White people have increased in recent years. It is unclear why the number of deaths behind bars of White people has doubled since the 1980s, despite their overall incarceration rate decreasing since that time. According to the Vera Institute of Justice, from 1978-2015, Black people on average comprised 51% of the incarcerated population. Since 2000, Black people have been incarcerated at more than twice the rate of any other race.¹⁴

No matter how the total number of deaths behind bars fluctuated over time, Black people consistently made up a large proportion of the deaths, having the highest number of deaths in 35 of the 45 years of data. This deviates from mortality rates outside of DOCCS custody. According to recent health data, Black people comprised 14% of all deaths in New York State in 2018, but made up 45% of all deaths in custody the same year. 77% of deaths in New York State at large in 2018 were White people, while 43% of deaths in custody were White people.¹⁵

From January to October 2020, 45% of all deaths were of Black people and 38% were White. It is unclear from the data from 2020 if the number of White deaths will continue to increase, but the steadily high number of Black deaths and incarceration rate of Black people suggests they will continue to die behind bars the same amount or more than other races unless policy is enacted to slow down their incarceration rate and increase their release rate.

Percentage of All Deaths in DOCCS Custody By Race



In the last decade...

1,278 people died in NYS prisons. This is more than the number of people executed during NY's 364-year use of the death penalty.

43%

were Black

44%

were White

56%

were 55 and older

32%

had served 15+ years

Over the next decade, people aged 55 and older are expected to make up one-third of the overall prison population¹⁶. According to DOCCS’s most recent “In Custody Report” from 2019, 12,104 people incarcerated in New York State prisons were serving sentences of 15 or more years, and 299 people were serving life without parole sentences¹⁷. Without policy intervention, many of these individuals will die behind bars without ever seeing a Parole Board or being granted release.

One of the people at risk of dying is Stanley Bellamy.

Stanley Bellamy

Stanley Bellamy is **58 years old** and currently incarcerated at Green Haven Correctional Facility in Stormville, NY. Stanley **went to prison at 23 years old** for his involvement in a robbery in which someone was killed. In his own words,



Stanley says he “entered the prison system as an impulsive 23 year-old who did not value life, not even his own” but that he is now “a mature 58 year-old man, who **years ago came to the realization and the understanding of the harm, the pain and suffering my crime caused the victim’s family, my family, and my community.**” Stanley has spent his time in prison—36 years so far—**trying to repair the hurt he caused** by mentoring younger incarcerated peers and founding and facilitating in-prison programs. Stanley is a college graduate and grandfather. His **62.5-year to life sentence** won’t allow him to appear before the Parole Board **until after his 86th birthday.**

If the trends of deaths among older, Black people who have served 15+ years in New York State correctional facilities continue to rise, **Stanley Bellamy**, an incredible mentor and leader, will die in prison before he reaches **his minimum sentence of 62.5 years.**

1 in 2

Almost 1 in every 2 people who die behind bars is Black. At one point, 58% of deaths in prison were Black people.

Those whose loved ones have life, virtual life or life without parole sentences must deal every day with the very high, if not certain, possibility that their loved one will die behind bars. As the data in this report shows, that risk is also high for people 55 and older and for people who are serving long sentences. Additionally, the COVID-19 pandemic adds another layer of risk of death of those currently incarcerated who cannot protect themselves well. Thus, addressing COVID-19 behind bars and providing more opportunities for people to be released, will likely have a positive impact on the mental and physical health and potential longevity of their family members as well.

Theresa Grady

My husband is 66 years old. He has been incarcerated for 16 years and, even though he is a totally different person than he was when he committed his crime, he faces at least another 26 years in prison, when he is 92 years old, unless the law changes. Incarcerated people do not live to be 92. Amid this pandemic, his asthma,



diabetes, and kidney issues may take him from me far sooner. My husband was effectively sentenced to death in a cage. I worry for him every day. It both helps and hurts to know that I am not alone. Many families have already lost incarcerated loved ones to COVID, and many more have lost them to other premature deaths in prison. More than 1,000 people died in prison under former Governor Cuomo and another 1,000 are effectively sentenced to die in the coming years and decades. At the same time, many New Yorkers in prison have lost loved ones to COVID on the outside. There is an

especially depressing element to all COVID deaths that may help to illuminate the suffering of families separated by incarceration: Because the virus is so contagious, people often get no chance to say goodbye and their loved ones die alone. That is nearly always our experience when we lose a loved one in prison. With COVID spreading in our communities and behind bars, many of them may never return—unless lawmakers take quick action.

2.6 years

The life expectancy decrease for family members who have had at least one immediate family member incarcerated.

Recommendations

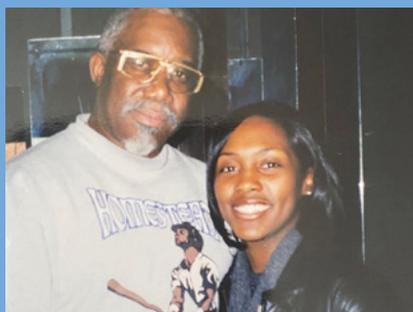
As researchers, advocates, and policy makers continue to raise the alarm of the life and death nature of long prison sentences and parole denials, the New York State Governor and Legislature have the means to interrupt the upward trend in deaths of older New Yorkers. The following recommendations provide critical steps with substantial support that policy-makers can and should adopt immediately. Enacting these policies will save lives and begin to shift course on what investments in public and community safety can look like.

► Address Aging in Prison

Elder Parole

New York's Elder Parole bill (S15/A3475A) would allow incarcerated people aged 55 and older who have already served 15 or more years a chance to go before the Parole Board and be individually evaluated for release on a case-by-case basis. Roughly 1,000 people would immediately become eligible for parole with the passage of Elder Parole, and thousands more people would ultimately benefit in years to come. Elder Parole would save lives, reunite families, promote racial justice, and save the state tens of millions of dollars annually.²² The Elder Parole bill does not provide automatic release but instead a meaningful review and evaluation by the Parole Board, something that is not reasonably available to many older incarcerated New Yorkers, who may be forced to wait decades for a hearing or never receive one at all. This bill is a critical step towards reducing the number of people subjected to long and life sentences in New York; reducing the number of deaths behind bars overall and of older people; and promoting public safety by releasing people whose risk of recidivism is very low but who are highly likely to help communities on the outside reduce violence.

Benjamin Smalls



Benjamin Smalls was **72 years old and had already served more than 20 years in prison when he died in May 2020** of COVID-19. He had a 118-page clemency application and medical parole request pending when he died, but **both clemency and medical parole are seldom granted**. Smalls showed symptoms of COVID-19 in early April and was hospitalized two days later. His daughter said “*He said to me, ‘I have a window [in my hospital room] I can look out of. That’s better than being in my cell. I can’t ask for anything more right now other than to be free.’*” If Elder Parole had been enacted, Smalls and so many others would have had a more meaningful opportunity for release instead of contracting COVID-19 behind bars.

Recommendations, ctd.

► *Address Repeated Parole Denials*

Fair + Timely Parole

A lack of meaningful opportunities for parole release is a major contributing factor to the rise of prison deaths of older people. Often, Parole Commissioners cite the nature of a person's original crime of conviction as the primary reason for denial. By looking only at the facts of the underlying crime of conviction, freedom is based on events that happened many decades in the past, and on facts that can never change. Repeated parole denials do not acknowledge the transformation many people have made while incarcerated, mean that families and communities are deprived of their elders and loved ones, and mean that thousands of people are spending decades beyond their court-imposed minimum sentence behind prison walls. New York's Fair and Timely Parole Act (S1415/A4231A) would provide more meaningful parole reviews for incarcerated people who are already parole eligible. The bill would change the standard of parole by centering release not on the original crime but on the person's current risk and rehabilitation while incarcerated. In other words, parole commissioners would no longer be able to deny release based solely on the crime for which the person is convicted. This is a meaningful step towards ensuring fairer parole hearings, increasing New York's low parole release rate, and reducing the number of New Yorkers behind bars, along with the number of deaths behind bars.

Composition of the Parole Board

Implementing Elder Parole and Fair and Timely Parole effectively requires a fully staffed and fair Parole Board. The Parole Board in New York can be staffed with up to 19 parole commissioners, but as of July 2021, there are only 15 commissioners. The Parole Board interviews more than 11,000 people every year—roughly 60 hearings per day—via video conferences that last an average of 15 minutes.

Commissioners historically have come from law enforcement or prosecutorial backgrounds, and racism and white supremacy permeates the parole process. For example, a [front-page story in the Albany Times Union](#) published in November 2020 found that the Parole Board was far less likely to release Black and Latinx people than White people, including during the pandemic²³. These racially biased parole decisions are especially concerning given that on average between 1976 and 2020 41% of the people who died in custody are Black.

By fully staffing the Parole Board with commissioners who can adequately evaluate rehabilitation, more incarcerated New Yorkers can receive a more fair parole hearing and possibly be released.

Recommendations, ctd.

► ***Address the COVID-19 Pandemic***

According to DOCCS, 35 people incarcerated in New York State have died from COVID-19 since the pandemic began²⁴, although this number is likely an underestimate*. Incarcerated New Yorkers are some of the most vulnerable to the virus and have experienced delays in receiving PPE, testing, and vaccination. As of September 2021, New York is one of 15 states that has yet to vaccinate more than 60% of incarcerated people²⁵. Few release mechanisms, like clemency, were employed as a means to reduce the severity and spread of the virus.²⁶ Furthermore, the COVID-19 pandemic disproportionately impacts Black and Latinx incarcerated people, with Black people experiencing the highest number of COVID-related deaths in prison.²⁷

The drastic increase in deaths in prisons during the AIDS epidemic should cause New York legislators to act urgently to ensure more deaths do not happen in New York State correctional facilities during the COVID-19 pandemic. Legislators should also act urgently because Parole Board release rates decreased²⁸ during the pandemic and former governor Andrew Cuomo only used his executive power of clemency sparingly and failed to protect incarcerated New Yorkers from the virus. Governor Hochul should now do her part in reducing the prison population by using her executive power to grant mass clemencies.

► ***Support Families***

Maintaining a relationship with a loved one behind bars is stressful, constantly met with barriers, and extremely costly to families who may already be struggling with providing for their family while a loved one is incarcerated. Repeated parole denials crush the hopes of family members waiting for their loved ones to come home. Families who have experienced a death behind bars will carry that trauma with them for the rest of their life.

Families deserve to have their “secondary prisonization” recognized and to be supported. One way to support families maintaining connections with people in prison is to protect in-person visits. The COVID-19 pandemic halted in-person visits for families and many went a whole year or more without seeing their loved ones. Now, virtual visits are threatening to replace in-person visits. Having access to see, hug, touch, and be in the presence of an incarcerated loved one is shown to increase the well-being of the person who is incarcerated and their family.²⁹ The Protect In-Person Visiting Bill (A4250A), which will prevent New York State Correctional Facilities from reducing visits or replacing in-person visits with video visits, passed in the New York State Senate in the 2021 session,³⁰ and should now be passed by the Assembly and signed by the Governor.

Ultimately, what will have the most impact on reducing the impact of incarceration on families is to release their loved ones. Passing Elder Parole and Fair and Timely Parole, as well as changing the composition of the Parole Board, will give families real hope that their family members won't die behind bars.

*it is unknown when this report was last updated, considering that the NY Daily News reported in May 2020 that 27 people in DOCCS custody had already died in 2020.

Conclusion

Deaths behind bars are not a reality we have to accept as a natural result of incarceration. An increase in punitive sentencing, repeated parole denials, and keeping older people behind bars for longer periods created a new death penalty in New York State. In addition to incarceration reducing a family member's life expectancy, a 2016 study found that each year a person is incarcerated reduces their life expectancy by two years.³¹ Every time an incarcerated elder is denied parole and kept in prison for up to two more years before their next hearing, years are shaved off of their life expectancy and the possibility of them getting out alive decreases. Death by incarceration is no more humane than a legalized death penalty, and repeated parole denials that offer false hope to incarcerated people and their families border on cruel and unusual punishment. Neither has been proven in any way to keep New Yorkers safe. New York State has an opportunity to undo the deadly practices of the past and begin to reduce death behind bars by passing Elder Parole and Fair and Timely Parole, and fully staffing the Parole Board with commissioners who believe in rehabilitation.

Policy decisions led us to where we are and policy decisions can move us out of it. New York used to be a leader in executions across the country. Abolishing the death penalty meant that New York then became a leader in death-by-incarceration sentences. Lawmakers now have the historic opportunity to be a leader in parole justice, reducing deaths behind bars and reuniting families.

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