

# ENSURING ACCESS TO REHABILITATIVE PROGRAMS AND ENDING DISCRIMINATION AGAINST PEOPLE SERVING LIFE WITHOUT PAROLE

BY ROSIE STOCKTON

There are currently 5,100 people serving Life Without Parole (LWOP) sentences in California,<sup>1</sup> a number that has quadrupled in the past 20 years, despite declining violent-crime rates statewide.<sup>2</sup> Studies have shown that LWOP, also known as “death by incarceration,” disproportionately impacts women and people of color.<sup>3</sup> Of the 200 women serving LWOP, the overwhelming majority are survivors of abuse, intimate partner violence, and sexual violence.<sup>4</sup> It is well documented that in both California men’s and women’s prisons, people serving LWOP are relied upon to provide leadership, mentorship, and peacekeeping within the prison population.<sup>5</sup> They do this as leaders of self-help groups and classes, in the familial roles they play to younger incarcerated people, and through their institutional knowledge of prison policies. Despite this, they face heightened institutional discrimination and are deprioritized and excluded from the majority of self-help groups and educational classes,<sup>6</sup> because these rehabilitative opportunities require parole eligibility to enroll. Such discrimination leaves people serving LWOP in a contradictory position. The nature of this sentence renders them a necessary population the prison depends on, while it simultaneously



Posters from the a Drop LWOP rally. 2018. Photograph. Source: Drop LWOP Coalition.

excludes them from any semblance of rehabilitation.

**I**N THE PAST TWO YEARS, due to shifts in legislation such as California Senate Bill 1437, “Accomplice Liability for Felony Murder,” and the growing understanding of the injustice of the LWOP sentence, former California Governor Jerry Brown and current Governor Gavin Newsom have granted commutation to 154 people serving LWOP,<sup>7</sup> which makes them eligible to appear before the parole board. Given this trend of commutations, it is essential that people serving LWOP have access to rehabilitative programs to prepare them for their parole hearings and reentry, as programming is one of the primary factors used to assess parole readiness. Moreover, having access to programming can support the mental health and overall well-being of people serving LWOP, many of whom suffer

from complex and ongoing trauma. Denying programming and access to skills development, community engagement, and educational opportunities is essentially a statement that this community of people serving LWOP, including women who have suffered sexual assault and intimate partner abuse, is expendable. While many with LWOP convictions will not receive commutations, and therefore also not be eligible for parole hearings, that determination is currently a matter of executive discretion. The California Department of Corrections and Rehabilitation (CDCR) must not abuse that discretion through discriminatory penal policies and practices, which deny many incarcerated people with LWOP sentences the possibility to rehabilitate.

This policy brief recommends that legislators take steps to challenge discrimination against people serving LWOP

by requiring that they have access to all programming within the CDCR. Such a bill should bar the CDCR from preventing or deprioritizing individuals designated as LWOPs, or lifers, from participating in programming based on their classification. It should ensure that more Community-Based Organizations (CBOs) and nonprofits could sponsor and facilitate programs within California prisons through a reallocation of funds currently funneled towards the CDCR. Finally, it is well documented that LWOP is part of a culture of perpetual punishment in the United States that disproportionately targets marginalized communities, especially black and brown people, and allows them to disappear into the criminal justice system. Following the path set by Governors Brown and Newsom, California should therefore have a moratorium on LWOP sentencing and commute the sentences of *all* those already serving LWOP, allowing them to go before a parole board.

## PROBLEM DESCRIPTION AND CRITIQUE

Over 40,000 people in California—more than 30 percent of people incarcerated in the state—are serving a life sentence, and over 5,100 of these people are serving LWOP.<sup>8</sup> LWOP sentences are a result of nationwide “tough-on-crime” policies, mandatory minimum sentencing, three-strike laws, and sentence enhancements. Nationwide, 50 percent of people serving LWOP sentences are sentenced for nonviolent crimes under the three-strikes law, a policy known to criminalize poor people of color.<sup>9</sup> This trend has particularly harsh repercussions for women in California, where 90 percent of people serving LWOP in women’s prisons were sentenced under the felony murder aider and abettor sentence enhancement, indicating

they were not the main perpetrators of the crime.<sup>10</sup> The majority of women serving LWOP for violent crimes were first-time offenders and survivors of abuse, including domestic violence, childhood abuse, sexual violence, and trafficking. Troubling the “good victim” / “bad criminal” binary, organizations like Survived & Punished make clear that survivors of violence are prosecuted using racist, sexist, anti-trans/queer and classist logics, through policies that target poor communities of color.<sup>11</sup>

Discriminatory practices against people serving LWOP take place in prisons, both officially and unofficially. Some rehabilitative programs, such as the Long Term Offender Program (LTOP), explicitly exclude people serving LWOP. This is stated in Title 15 of the California Code of Regulations,<sup>12</sup> which offers programs such as “Cognitive Behavioral Treatment and other rehabilitative programs” that are crucial for facilitating the well-being and rehabilitation of people serving long-term sentences.<sup>13</sup> Other programs, like the “Educational Programs,” “Inmate Activity Groups (Arts in Corrections and Innovative Programming Grants),” and “Treatment Programs,” exclude people serving LWOP for three main reasons: (1) limited enrollment capacity, (2) an explicit parole eligibility requirement, and (3) the security status of people serving LWOP prohibiting them from entering “unsecured areas” where programs are held. As noted previously, this exclusion is a result of both formal and informal practices that render people serving LWOP unable to access programs for the majority of their lives. Meanwhile, people serving LWOP provide mentorship by facilitating many of the peer-led support groups. This leaves them barred from accessing any semblance of “rehabilitation,” and at the same time, re-

sponsible for foundational aspects of social stability within the prison.

Within the limited programming currently available to lifers, people in women’s prisons have even less access to reentry-preparation classes (e.g., vocational training and degree programs), than people in men’s prisons.<sup>14</sup> This is due, in part, to the startling fact that since 1980, women are being incarcerated at a rate 50 percent higher than men nationwide.<sup>15</sup> This leaves women’s prisons ill-equipped not only to house incarcerated people, but also to provide adequate programming. This affects women serving LWOP and long-term sentences particularly harshly. Because the overwhelming majority are survivors of domestic violence and sexual assault, they are unable to access support groups for domestic-violence survivors, as well as educational and job-skills programs. Additionally, transgender women held in men’s prisons are often housed in solitary confinement “for their own protection,” and therefore have more restricted access to programming than their male-identified counterparts. According to a 2019 statewide audit of CDCR programs,<sup>16</sup> the rehabilitation programs that women-identified prisoners *are* offered are understaffed, mismanaged, and ineffective. They also show little recognition for complex trauma histories, hindering participants’ ability to prepare for parole and reentry, should they be eligible for that opportunity.<sup>17</sup> Finally, due to their “high security status,” people serving LWOP also face discrimination when it comes to work assignments, and are only eligible for jobs that pay the lowest hourly amount (currently \$0.08/hour).<sup>18</sup> They are also excluded from Prison Industry Authority jobs or Joint Venture jobs,<sup>19</sup> while being expected to pay a high victim restitution. The financial burden of providing for their

basic needs (e.g. hygiene products, food, and personal items) often falls on family members of incarcerated people serving LWOP. In effect, these discriminatory policies and practices “outsource” the CDCR’s responsibility to meet basic survival needs, and provide rehabilitation services, to the family members of incarcerated people and to other volunteer labor.

### RECOMMENDATIONS

LWOP sentences are inhumane and excessive. As such, all efforts should be made to end LWOP in California. Given that prison-reform advocates nationwide look to California as a leader in progressive policy change, it must be a priority for California lawmakers to ensure that people serving LWOP have access to rehabilitative programming for the extent of their sentences. Furthermore, lawmakers must ensure that women, particularly women of color, housed at both men’s and women’s prisons in California, remain the central focus of any policy concerned with combatting discrimination against people serving LWOP due to their particularly precarious positions within the prison system.

In 2016, California passed Proposition 57, which “incentivizes people in prison to take responsibility for their own rehabilitation with credit-earning opportunities for sustained good behavior, as well as in-prison program and activities participation.”<sup>20</sup> While these measures are indicative of progress, a 2019 audit reported that CDCR has been ineffective in delivering these programs.<sup>21</sup> Thus, legislators should move to redistribute Proposition 57 funding for CDCR to CBOs, which have proven more effective than the CDCR at providing quality, trauma-informed programs that prepare incarcerated individuals to safely return

to their families and communities.<sup>22</sup> Lawmakers should look to the Transformative In-Prison Workgroup, a coalition of 32 CBOs that administer effective rehabilitative programming in California’s 36 state prisons, as a successful example.

Legislators should also look for opportunities to prioritize people serving LWOP as a target population for Innovative Programming Grants (IPG) and Parole Prep. The 2019-2020 California state budget includes \$1,000,000 per year in ongoing CDCR funding intended to support eligible nonprofit organizations in providing programs for incarcerated people that focus on personal responsibility and restorative justice principles. The 2020 grant cycle should include language that prioritizes people serving LWOP and Life Sentences, in order to ensure that they are not pushed out of rehabilitative programs due to space limitations.

Finally, legislators should move to amend language in Title 15 of the California Code of Regulations that currently allows for the discrimination or deprioritization of people serving LWOP. Particular attention should be paid to language that excludes people with sentences that make them ineligible for parole from the Long-Term Offender Program (LTOP). Language should also be added to Title 15 to emphasize the importance of rehabilitative programming for *all* individuals in CDCR facilities, including those currently ineligible for parole.

Recommendations in brief:

- Ensure that people serving LWOP have access to rehabilitative programming for the extent of their sentences.
- Ensure that women, particularly women of color, housed at both

men’s and women’s prisons in California, remain the central focus of any policy concerned with combatting discrimination against people serving LWOP due to their particularly precarious positions within the prison system.

- Move to redistribute Proposition 57 funding for CDCR to CBOs.
- Prioritize people serving LWOP as a target population for Innovative Programming Grants (IPG) and Parole Prep.
- Amend language in Title 15 of the California Code of Regulations that currently allows for the discrimination or deprioritization of people serving LWOP.



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NOTES

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