

# GOOD INTENTIONS: A NATIONAL SURVEY OF LIFE SENTENCES FOR NONVIOLENT OFFENSES

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*Over the past four decades, America's prison population has grown exponentially. Mass incarceration has exacted a serious toll on public finances, public trust in the administration of justice, and the individuals and communities affected by it. Although the "wars" on crime and drugs resulted from an understandable concern for public safety, many of those crowding American prisons have been convicted of nonviolent offenses. This Note contends that the widespread availability and use of severe punishments, such as life sentences, for nonviolent offenses is a significant contributing factor to mass incarceration. Using the results of a unique statutory survey of all fifty states and the federal government, this Note explains where and for what offenses it is possible to be sentenced to life in prison for a nonviolent crime.*

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## INTRODUCTION

Over the past forty years, the United States prison population has undergone a precipitous expansion. The United States has the world's highest rate of incarceration,<sup>1</sup> and its prisons and jails housed nearly 2.3 million people as of 2010.<sup>2</sup> America's correctional facilities are also dramatically under-resourced and overcrowded, both because of a steep rise in the number of individuals incarcerated or under correctional supervision and because prisoners are serving average sentences over thirty-five percent longer than the average sentence twenty years ago.<sup>3</sup> Public funds are being shoveled into local, state, and federal correctional systems at alarming rates (the Vera Institute of Justice estimated that the average cost of incarcerating one inmate in 2010 was \$31,286);<sup>4</sup> such astronomical correctional spending limits the availability of government resources in other critical areas such as education and infrastructure. What makes all of the above even more troubling is that a significant proportion of the individuals crowding American prisons have been convicted of low-level, nonviolent offenses, such as drug offenses and property crimes, rather than serious offenses such as aggravated assault and rape. For example, in 2010, 46.8% of state prisoners, and ninety-two percent of federal prisoners, were incarcerated for offenses other than homicide, robbery, and "other violent" offenses such as rape and sexual assault.<sup>5</sup>

The goal of this Note, however, is not primarily to take issue with mass incarceration or the wars on crime and drugs; those arguments

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1. ROY WALMSLEY, INT'L CENTRE FOR PRISON STUDIES, WORLD PRISON POPULATION LIST 1 (2010).

2. LAUREN E. GLAZE, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, CORRECTIONAL POPULATION IN THE UNITED STATES, 2010, at 3 tbl.1 (2011).

3. PEW CTR. ON THE STATES, TIME SERVED: THE HIGH COST, LOW RETURN OF LONGER PRISON TERMS 13 tbl.1 (2012), *available at* [http://www.pewstates.org/uploadedFiles/PCS\\_Assets/2012/Pew\\_Time\\_Served\\_report.pdf](http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/Pew_Time_Served_report.pdf) (observing that prisoners released in 2009 served an average sentence thirty-six percent longer than prisoners released in 1990).

4. CHRISTIAN HENRICHSON & RUTH DELANEY, VERA INST. OF JUSTICE, THE PRICE OF PRISONS: WHAT INCARCERATION COSTS TAXPAYERS 9 (2012).

5. PAUL GUERINO ET AL., U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2010 29 tbl.17B (2011) (reporting that in 2010, 46.8% of state prisoners were incarcerated for offenses other than murder, manslaughter, rape, other sexual assault, robbery, assault, and "other violent" offenses). *Id.* at 30 tbl.18 (reporting that ninety-two percent of federal prisoners in 2010 were incarcerated for offenses other than homicide, robbery, and "other violent" offenses).

have been made elsewhere, by many others.<sup>6</sup> Rather, this Note aims to describe and analyze one of mass incarceration's contributing factors: the widespread availability of life sentences for nonviolent offenses. To that end, this Note presents the results of a national survey of where and under what circumstances it is possible to receive a life sentence for a nonviolent crime, whether for a first-time offense or under a habitual offender or "Three Strikes" law.

To the author's knowledge, there is no other study in existence that undertakes such an exhaustive examination of the extent to which such sentences are available throughout the United States. The research on which this Note is based comprises the most comprehensive and thorough survey of criminal statutes that permit life sentences for nonviolent offenses. Moreover, this Note relies on the most current statutory data available; all statutes are current as of the writing of this Note. The research that forms the foundation of this Note was undertaken in the Summer of 2012 at the behest of the ACLU's Initiative to End Mass Incarceration. The ACLU is currently pursuing advocacy relating to sentencing policy, and is using the research cited herein to help develop and support sentencing and correctional reforms at the state level. Opinions asserted in this Note, however, are solely the author's, and do not necessarily reflect the policy or position of the ACLU.

Part I provides some initial definitional and theoretical clarifications and describes the methodology used to gather the statutes discussed herein. Part II presents the results of the national survey, and attempts to group the statutes into discrete categories, so as to provide some amount of descriptive clarity. Part III briefly offers some theoretical and practical critiques of harsh sentencing policies, most particularly mandatory minimum and habitual offender laws. Finally, Part IV proposes a number of reforms that could be implemented in order to limit or reverse the effects of the severe sentencing policies discussed herein.

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6. See, e.g., BRUCE WESTERN, PUNISHMENT AND INEQUALITY IN AMERICA (2006); Sanford H. Kadish, *The Crisis of Overcriminalization*, 374 ANNALS AM. ACAD. POL. & SOC. SCI. 157 (1967); Erik Luna, *The Overcriminalization Phenomenon*, 54 AM. U. L. REV. 703 (2005); Marc Mauer, *Why Are Tough on Crime Policies So Popular?*, 11 STAN. L. & POL'Y REV. 9 (1999); Heather Schoenfeld, *The War on Drugs, the Politics of Crime, and Mass Incarceration in the United States*, 15 J. GENDER RACE & JUST. 315 (2012); Adam Gopnik, *The Caging of America*, NEW YORKER, Jan. 30, 2012, at 72.

## I.

## SOME INITIAL DEFINITIONS AND EXPLANATIONS

Before summarizing the laws that provide life penalties for violent and nonviolent offenses, there are three aspects of criminal law that complicate the analysis involved in a national survey of this type and that must be addressed before it is possible to proceed. First, it is necessary to reach a satisfactory definition of "violence." As it turns out, there is no single agreed-upon account of what makes a given offense "violent" or "nonviolent," thus making it difficult to refer generally to "nonviolent" crime without first directly addressing what factors make a given offense violent or nonviolent. Section I.A therefore explains some of the problems that arise in conceptualizing "violence" and offers a definition thereof that is used throughout the paper.

Second, it is necessary to differentiate between the various types of "life" sentences that exist. Some sentencing statutes provide for a sentence to "life in prison," while others refer to "life without the possibility of parole." The differences between these two types of sentences, as well as added complications posed by the availability of extremely long terms of years and strict parole provisions, are discussed in Section I.B.

Finally, the increased prevalence and applicability of habitual offender laws significantly affects the types of offenses that qualify for life sentences. While a traditional sentencing provision sets forth a prescribed punishment for a given offense (e.g., up to fifteen years in prison for armed robbery), habitual offender laws focus, rather, on the *offender*. A typical habitual offender law will establish an enhanced penalty—often life in prison—for persons who have been convicted of a certain number of certain types of crimes. That is, under a habitual offender law, the available penalty for a given infraction will differ depending on the number and types of prior crimes the offender has committed, rather than according to the nature of the charged offense. The structure and availability of recidivist sentencing varies widely from jurisdiction to jurisdiction, and drastically affects the extent to which it is possible to receive a life sentence for a nonviolent crime. These issues, as well as related issues having to do with mandatory sentencing in general, are discussed in Section I.C. This Part addresses each of these three complications in turn.

#### A. *Meaning of "Nonviolent"*

One of the more difficult aspects of undertaking and presenting the results of a study of this nature involves settling upon a satisfac-

tory definition of violence. Alice Ristroph argues that “[r]elatively few jurisdictions—and even fewer scholars, perhaps—have offered a clear account of what makes a crime *violent*.<sup>7</sup> As such, it is impossible to refer to “nonviolent” crime without making a number of assumptions that might not be shared by all readers. Thus, in order to be able to say when it is possible to receive a life sentence for a *nonviolent* offense, it is first necessary to set forth a definition of “violence.” A number of researchers have found that most people conceptually correlate crimes such as murder and rape with criminal activity generally.<sup>8</sup> But while it is true that lethal violence is more prevalent in America than in other developed nations,<sup>9</sup> most crime does not result in physical harm; in fact, offenses that produce physical injury account for only a small subset of all criminal activity.<sup>10</sup> Despite this, the fear of lethal violence, and the concomitant perception that lethal crime is prevalent, are foundational ideas and background assumptions in United States sentencing policy; our harshest and most broadly applicable sentencing laws are often enacted in response to perceived upticks in the incidence of serious offenses such as murder and rape.<sup>11</sup>

One might imagine that statutory law would prove a good starting point in a quest to determine which crimes count as violent. Unfortunately, however, sentencing law is often unclear and haphazard when it comes to actually staking out the boundaries that separate violent from nonviolent crime. For example, every United States jurisdiction has in place some form of habitual offender law that predicates an enhanced sentence on a person’s commission of a certain number of “violent” offenses.<sup>12</sup> But while the phrase “violent crime” calls to

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7. Alice Ristroph, *Criminal Law in the Shadow of Violence*, 62 ALA. L. REV. 571, 573 (2011).

8. *Id.* at 572–73.

9. See FRANKLIN E. ZIMRING & GORDON HAWKINS, CRIME IS NOT THE PROBLEM: LETHAL VIOLENCE IN AMERICA 19–20 (1997).

10. The Bureau of Justice Statistics (BJS) reports that violent crime constituted roughly twenty percent of all crime in 2010. JENNIFER L. TRUMAN, U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, CRIMINAL VICTIMIZATION, 2010, at 2 tbl.1 (2011). Moreover, many violent offenses are relatively minor. Simple assault, for example, accounted for sixty-three percent of all violent crimes in 2011. *Id.* at 2. The violent crime rate has also dropped significantly over the past twenty years. BJS reports that the violent crime victimization rate in 2010 was 14.9 per 1,000 persons age 12 or older, compared with 49.9 per 1,000 persons age twelve or older in 1993. *Id.* at 3.

11. See generally Ristroph, *supra* note 7; Joseph E. Kennedy, *Monstrous Offenders and the Search for Solidarity Through Modern Punishment*, 51 HASTINGS L.J. 829 (2000).

12. See, e.g., MD. CODE, CRIM. LAW § 14-101(c) (2012) (providing mandatory life without parole sentence for fourth conviction for a “crime of violence”).

mind serious offenses such as kidnapping and murder,<sup>13</sup> the statutory definition of violence, and thus the reach of habitual offender laws and other statutory penalty enhancements, varies quite dramatically between jurisdictions. Some definitions of violent crime encompass only a narrow band of serious offenses such as murder, aggravated assault, and rape.<sup>14</sup> Others cover a much broader swath of criminal activity, such as burglary, looting, and even manufacture or sale of controlled substances.<sup>15</sup> Still others expand the reach of such provisions by defining violence to include any offense involving the use, threat, or *risk* of force against the person or property of another.<sup>16</sup>

Official reports of crime rates, such as the Federal Bureau of Investigation's Uniform Crime Reports, on the other hand, typically refer to only a small group of offenses (usually murder, manslaughter, rape, aggravated assault, and robbery) when tallying violent crime rates.<sup>17</sup> While nearly every statutory definition of violence covers this same group of offenses, the extent to which different jurisdictions opt to expand (or contract) that definition is unpredictable and unmетодical. The result is a national patchwork of statutory definitions of violence, some of which vary depending on context (i.e., different definitions of "violence" in different statutory provisions in the same

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13. Kennedy, *supra* note 11, at 829–30.

14. For example, New Mexico's habitual offender law creates a mandatory life sentence for an offender convicted of a third "violent felony." N.M. STAT. § 31-18-23(A) (2012). The statute defines "violent felony" as first- and second-degree murder; shooting at or from a motor vehicle resulting in great bodily harm; kidnapping resulting in great bodily harm; criminal sexual penetration; and armed robbery resulting in great bodily harm. *Id.* § 31-18-23(E)(2).

15. For example, Rhode Island creates a discretionary life sentence for a third offense involving carrying a firearm or dangerous substance (such as explosives) during a "crime of violence." R.I. GEN. LAWS § 11-47-3 (2012). The definition of "crime of violence" for these purposes includes crimes against the person such as murder and rape as well as offenses such as burglary, breaking and entering, and "any felony violation involving the illegal manufacture, sale, or delivery of a controlled substance." *Id.* § 11-47-2(2) (West 2012).

16. E.g., 18 U.S.C. § 924(c)(1)(C)(ii) (2006), creating a mandatory life sentence for a second or subsequent conviction for using, carrying, or possessing a machine gun or firearm equipped with a silencer during and in relation to any "crime of violence" or "drug trafficking crime." For purposes of this provision, "crime of violence" means any felony that has as an element the use, attempt, or threat of force against the person or property of another or that by its nature involves a substantial risk that physical force against the person or property of another may be used. *Id.* at § 924(c)(3) (2006).

17. The Uniform Crime Reports define "violent crime" as murder, non-negligent manslaughter, forcible rape, robbery, and aggravated assault. U.S. DEP'T OF JUSTICE, FED. BUREAU OF INVESTIGATION, *Violent Crime*, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u-s/2010/crime-in-the-u-s-2010/violent-crime/violent-crime> (last visited Oct. 21, 2012).

jurisdiction),<sup>18</sup> and very few of which seem informed by a reasoned legislative determination of which crimes pose the most significant public safety risk and merit the most severe penalties.

For these and other reasons, there is some amount of conceptual confusion when it comes to discussing “violent” crime. But, for the sake of clarity and consistency, it is necessary to settle on a definition. For purposes of this Note, a “violent” offense is defined as a crime against the person of another.<sup>19</sup> This includes rape, murder, and assault, but not offenses, such as drug offenses and property crimes, which do not by definition involve the use or threat of force against the *person* of another. This definition is, naturally, both over- and under-inclusive. That is, some crimes are referred to herein as violent—simple assault, for example—that most people might agree do not number among the most egregious criminal offenses.<sup>20</sup> On the other hand, this definition categorizes some crimes as *nonviolent*, such as burglary, even though many would consider such offenses to be

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18. For example, the Federal Government defines a “crime of violence” as:

- (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
- (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

18 U.S.C. § 16 (2006). The Armed Criminal Career Act, on the other hand, offers a slightly different definition for “violent felony”:

[T]he term “violent felony” means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that—

- (i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or
- (ii) is burglary, arson, or extortion, involves the use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another . . .

18 U.S.C. § 924(e)(2)(B).

19. “Violent crime” will also include treason, terrorism, and offenses relating to the possession, sale, or use of weapons of mass destruction. This is because of the distinct and extreme threat to both public safety and national security posed by these offenses. A record of the extent to which different jurisdictions punish these types of offenses is on file with the author.

20. According to the Bureau of Justice Statistics, in 2010, sixty-three percent of all violent victimizations (defined as murder, non-negligent manslaughter, rape, robbery, and aggravated and simple assault) consisted of simple assaults, which include “attacks or attempted attacks resulting in either no injury or minor injury.” TRUMAN, *supra* note 10, at 2, 6.

quite serious, or even, perhaps, violent. And in fact, a number of jurisdictions include burglary in their statutory definitions of violence.<sup>21</sup>

But in the interest of drawing a firm line, both the over- and under-inclusiveness of this definition, as well as the inclusion of burglary as a nonviolent offense, are defensible. For while it is easy to agree that burglary is a serious crime, I would nevertheless maintain that it should be treated as *nonviolent*, for three main reasons. First, at its core, burglary is a property offense: it is traditionally defined as unlawfully breaking and entering a dwelling (or, in modern definitions, any building) at night, with intent to commit a felony therein.<sup>22</sup> Burglary does not, therefore, necessarily involve any threat to the *physical safety* of other human beings; indeed, no person need even be present at the time of entry.<sup>23</sup> Thus, to the extent habitual offender laws and other penalty enhancements intend to target individuals who commit offenses that threaten the physical safety of others, burglary does not fall into that category.<sup>24</sup>

Second, even in cases where a person commits burglary and in so doing injures or physically threatens another, she will be charged with other crimes, such as felony-murder, battery, or robbery, in addition to the underlying burglary charge. That is, to the extent burglary *does* result in harms in addition to that caused by the burglary itself, the offender will be charged and punished accordingly. For example, imagine that a person commits a burglary of a home, and learns that the home's occupants are present at the time he enters the house. If the burglar also commits assault and false imprisonment by, for example, pointing a gun at one of the residents and instructing her to remain in

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21. See Appendix; see also, e.g., DEL. CODE tit. 11, § 4201(c) (2007) (defining first- and second-degree burglary as violent offenses); LA. REV. STAT. § 14:2(B) (2007) (defining aggravated burglary as a “crime of violence”).

22. BLACK’S LAW DICTIONARY 225 (9th ed. 2009).

23. However, in cases where the statutory definition of certain types of aggravated burglary includes as an element the assault of an occupant, burglary will be defined as violent. For example, one of Tennessee’s habitual offender statutes includes “especially aggravated burglary” as a violent offense qualifying for habitual offender treatment. TENN. CODE § 40-35-120(b)(1) (2010). “Especially aggravated burglary” is defined as burglary where any victim suffers serious bodily injury. TENN. CODE § 39-14-404 (2010). Because this definition of burglary includes as a necessary element the causation of serious bodily injury to another, it counts as “violent” for the present purposes.

24. In fact, researchers have shown that most burglaries, even those of dwellings, do not actually result in physical violence to occupants or even a risk thereof. See Franklin E. Zimring & Gordon Hawkins, *Is American Violence a Crime Problem?*, 46 DUKE L.J. 43, 60–61 (1996) (stating that home burglary does not entail a great danger to life; majority of burglarized dwellings are unoccupied; and that the “great majority of burglars would react nonviolently in any interaction with household members”).

her bedroom, the burglar will receive three separate charges: one for burglary, one for assault, and one for false imprisonment. The burglary charge itself only applies to the harm involved in unlawfully entering the building. Any other physically violent conduct will be recognized and charged as such.

Finally, as a normative matter, offenses on the border of those involving high risk to safety are likely to produce the most unjust outcomes where they are included in penalty enhancement provisions. A wide range of research has demonstrated that habitual offender laws that apply to a broad range of offenses, including burglary and other lower-risk offenses such as drug felonies, have their most dramatic impact on low-level offenders, rather than those who commit serious, physically violent offenses.<sup>25</sup> This is because physically violent offenses are punished severely regardless of sentencing enhancements.<sup>26</sup> If a person commits such an offense, she will meet with a serious penalty, regardless of the applicability of a habitual offender law or other enhancement. The result, then, is that any marginal deterrent or incapacitative effect from recidivism laws with broad “strike zones” falls on the marginal, lower-risk offender, such as the burglar or drug offender.<sup>27</sup> Allowing those less serious offenses to qualify for penalty enhancements, according to Zimring, often results in nonviolent offenders spending long periods of time in prison without any positive effect on violent crime rates or public safety.<sup>28</sup> Thus, the more sentencing enhancement statutes penalize *risk* of physical violence, rather than actual physical harm, the greater the likelihood of affecting individuals who are not actually committing serious offenses,<sup>29</sup> without any added benefits to public safety.

But simply because these borderline offenses are not categorized as “violent” for my purposes does not, however, mean their severity will be disregarded. After all, even if any particular definition of violent crime might appear, to some extent, over-inclusive, it is still true

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25. *Id.* at 68. See also Linda S. Beres & Thomas D. Griffith, *Do Three Strikes Laws Make Sense? Habitual Offender Statutes and Criminal Incapacitation*, 87 GEO. L.J. 103, 131–32 (1998) (arguing that habitual offender laws that target broad categories of offenses risk targeting offenders who commit high numbers of low-level offenses but few serious offenses, rather than offenders who commit multiple serious offenses); Erik G. Luna, *Foreword: Three Strikes in a Nutshell*, 20 T. JEFFERSON L. REV. 1, 21–22 (1998) (demonstrating this effect with California’s Three Strikes law, which includes burglary as a “violent” offense).

26. Zimring & Hawkins, *supra* note 24, at 68–69.

27. *Id.* at 68; Beres & Griffith, *supra* note 25, at 131–32; Luna, *supra* note 25, at 21–22.

28. Zimring & Hawkins, *supra* note 24, at 69–70.

29. See Ristrop, *supra* note 7, for further discussion of this phenomenon.

that elected, politically responsible legislators have decided that certain crimes qualify as violent. For that reason, and in order to avoid confusion, this Note refers to three broad categories of crime: “violent crime,” “legislatively violent crime,” and “nonviolent crime.” “Violent crime” includes only offenses that by definition involve the use or threat of physical force against the person of another. “Legislatively violent crime” includes offenses that do not count as violent for my purposes but that are defined as violent by statute in a given jurisdiction. For example, many state habitual offender laws, as discussed above, establish sentencing enhancements for persons who commit a certain number of “violent” offenses. Often, however, a state’s definition of “violent crime” includes offenses, such as burglary and drug offenses, which are not defined as violent for my purposes. In cases where a state defines a crime as violent but I do not, the crime will be categorized as “legislatively violent.” “Nonviolent crime” thus is a residual category that comprises all offenses that fit into neither the “violent” nor the “legislative violent” categories. Therefore, when this Note asserts that it is possible in a given jurisdiction to receive a life sentence for a nonviolent offense, it refers to an offense that is violent by neither legislative nor conventional definition. To provide an example, imagine a state has a habitual offender law that provides an enhanced penalty for persons who commit three or more “violent” offenses. Imagine further that the state defines “violent” to include murder, manslaughter, rape, assault, burglary, and selling drugs while armed. For my purposes, murder, manslaughter, rape, and assault would be defined as “violent,” while burglary and selling drugs while armed would be defined as “legislatively violent,” because those offenses do not by definition involve physical force against the person of another. Other criminal offenses, such as theft and drug manufacturing, would be defined as “nonviolent.” Offenses are categorized in this manner not with the aim of making normative judgments about different habitual offender statutes or differing definitions of violence, but, rather, to optimize clarity.

### B. Meaning of “Life Sentence”

Another issue in need of brief explanation is the difference between a sentence to life in prison and life without the possibility of parole (“LWOP”). The actual effect of these two types of sentences can be quite different (or similar, as noted further on). The effect of a sentence to life *without the possibility of parole* is relatively clear; a person facing such a sentence must remain in prison for the rest of his

or her life.<sup>30</sup> While one might imagine that a person sentenced to “life in prison” would *also* be required to spend the rest of his or her life in prison, however, in reality a sentence simply to “life imprisonment” typically provides some opportunity for parole consideration after a specified period of time, say, twenty-five years.<sup>31</sup> Thus, the effective length of a sentence to life imprisonment can be unclear, and varies depending on the jurisdiction, offender, and type of offense involved.

Over the past several decades, many jurisdictions have enacted restrictions on parole eligibility for life prisoners (or, in some cases, all prisoners), expanded the availability of sentences to terms of years that exceed any reasonable life expectancy (e.g., sentences to three consecutive sixty-year terms), or both.<sup>32</sup> The result of these restrictions is that a number of sentences can have the same effect as LWOP (that is, a person sentenced under such a provision must remain in prison for the rest of her life) without using the “LWOP” terminology.<sup>33</sup> During the 1980s and 1990s, out of concern that criminal sentences were too lenient and that prisoners were not serving a large enough portion of their sentences, many jurisdictions instituted “truth-in-sentencing” laws.<sup>34</sup> Such laws required that an offender serve a specified percentage of her sentence—typically eighty-five percent—

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30. However, a few states provide limited parole eligibility for elderly prisoners sentenced to life without parole. *See, e.g.*, Md. Code, Crim. Law § 14-101(g) (2012) (providing that person serving an LWOP sentence under that provision may petition for parole if the person is at least sixty-five years old and has served at least fifteen years of his or her sentence before petitioning for parole).

31. *See MARC MAUER ET AL., THE SENTENCING PROJECT, THE MEANING OF “LIFE”: LONG PRISON SENTENCES IN CONTEXT 1 n.3 (2004).*

32. *E.g.*, Ala. Code § 14-3-38(a) (2011) (“When a convict is sentenced to imprisonment in the penitentiary on two or more convictions, unless it is [otherwise] specifically ordered in the judgment entry . . . such sentences shall be cumulative and shall be served consecutively . . .”). Under such a provision, a person convicted of three counts of first-degree burglary (Ala. Code § 13A-7-5 (2011)), a “Class A” felony for which the permissible term of imprisonment is anywhere from ten to ninety-nine years (Ala. Code § 13A-5-6 (2011)) could be sentenced to, e.g., three terms of forty years each, to be served consecutively (i.e., 120 years). Because the imposition of consecutive terms is often discretionary and varies substantially between jurisdictions, making a survey of such statutes difficult or impossible, this paper does not discuss the availability of such length “back-to-back” sentences.

33. For an in-depth discussion of these issues, see Rachel E. Barkow, *Life Without Parole and the Hope for Real Sentencing Reform*, (N.Y. Univ. Sch. of Law, Pub. Law & Legal Theory Research Paper Series, Working Paper No. 11-38, 2011), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1848069](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1848069).

34. *See* Ashley Nellis, *Throwing Away the Key: The Expansion of Life Without Parole Sentences in the United States*, 23 FED. SENTENCING REPORTER 27, 28 (2010). The federal system, for its part, abolished discretionary parole in 1984. Sentencing Reform Act of 1984, Pub. L. No. 98-471, 90 Stat. 1987.

before becoming eligible for parole.<sup>35</sup> The statutes also imposed restrictions on parole eligibility for those sentenced to life terms, requiring that “lifers” serve a longer term of years before becoming eligible for parole,<sup>36</sup> or, in some cases, abolishing parole for life prisoners altogether.<sup>37</sup> While a few states have curtailed their truth-in-sentencing laws in recent years,<sup>38</sup> minimum parole eligibility dates are still much longer than they were twenty years ago.<sup>39</sup> In addition, the availability and prevalence of life and LWOP sentences has increased recently, resulting in more prisoners serving increasingly longer sentences.<sup>40</sup> An exploration of parole laws and practices in each jurisdiction (not to mention the availability of sentences to very long terms of years) is beyond the scope of this Note. However, it is useful to flag the issue as one that significantly affects the lengths of sentences, particularly under habitual offender laws.

### C. Increased Prevalence of Habitual Offender Laws

Another significant development in criminal justice policy has been a drastic increase in the prevalence of habitual offender laws.<sup>41</sup> This subsection discusses how the availability of habitual offender laws and other mandatory sentencing provisions affect which types of nonviolent or legislatively violent offenses may be punished with a life sentence.

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35. TIMOTHY HUGHES ET AL., U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, TRENDS IN STATE PAROLE, 1990–2000, at 3 (2001).

36. See MAUER, *supra* note 31, at 3 (“Time to be served for lifers admitted to prison increased by 37% from 1991 to 1997, rising from 21.2 years to 29 years”).

37. S.D. CODIFIED LAWS § 24-15-4 (2012) (“No inmate sentenced to life imprisonment is eligible for parole by the Board of Pardons and Paroles.”).

38. For example, Mississippi amended its truth-in-sentencing law in 2001 to provide that individuals convicted of “nonviolent” offenses could become eligible for parole after serving only twenty-five percent of their term. However, relief under this provision does not extend to offenses such as unarmed home burglary and drug sales. Miss. CODE § 47-7-3(1)(h) (2011).

39. See generally PEW CTR. ON THE STATES, *supra* note 3.

40. See generally MAUER, *supra* note 31; PEW CTR. ON THE STATES, *supra* note 3; Nellis, *supra* note 34.

41. See, e.g., DALE PARENT ET AL., U.S. DEP’T OF JUSTICE, NAT’L INST. OF JUSTICE, KEY LEGISLATION ISSUES IN CRIMINAL JUSTICE: MANDATORY SENTENCING 1 (1997) (indicating all fifty states had enacted one or more mandatory sentencing laws by 1994); Gary T. Lowenthal, *Mandatory Sentencing Laws: Undermining the Effectiveness of Determinate Sentencing Reform*, 81 CALIF. L. REV. 61, 69–71 (1993) (describing the increasing prevalence of mandatory minimum sentencing provisions starting in the 1970s, different types of sentence enhancement provisions, and effects of mandatory minimum sentences on prison populations); Michael Tonry, *The Mostly Unintended Effects of Mandatory Penalties: Two Centuries of Consistent Findings*, 38 CRIME & JUST. 65, 75 (2009) (stating that “mandatory minimums were America’s most frequently enacted sentencing law changes” between 1975 and 1996).

Historically, sentencing discretion lay with the trial judge: a criminal statute would prescribe a broad range of possible sentences (e.g., zero to thirty years) for a given offense, and the judge, at sentencing, had the power to set the sentence at any point along that continuum. Some criminal statutes, however, contain what are commonly called “mandatory minimums.” Such provisions, rather than merely providing a sentencing maximum, will require that a person convicted of a given offense serve a certain minimum term (e.g., at least ten years).

Although mandatory minimum sentences are not of recent vintage,<sup>42</sup> they have become much more prevalent over the past forty years.<sup>43</sup> Beginning in the 1970s, a number of jurisdictions took steps to ensure that persons convicted of certain offenses served some statutorily prescribed minimum sentence before becoming eligible for release.<sup>44</sup> Under such systems, while the sentencing judge might still retain discretion to impose a sentence *greater* than the mandatory minimum, she would not have discretion to impose a sentence *below* the mandatory minimum. Prior to the early 1970s, most state sentencing systems were “indeterminate” in both the length of time statutorily permitted for a given offense and in the amount of time a prisoner was required to serve before becoming eligible for release under a parole system.<sup>45</sup> For example, a conviction for robbery might produce a permissible sentencing range of one to fifty years, and a sentencing judge could pick any term within that broad range. A person sentenced to prison might be required to serve, e.g., only sixty percent of her sentence before becoming eligible for parole, depending on a number of factors, including the length of the imposed sentence, the offender’s history, and the offender’s post-incarceration behavior. Both of these features of indeterminate sentencing prompted concerns, both because of the broad discretion afforded trial judges, and because of the possibility that individuals released “before their time” might recidivate. These concerns prompted a call for “truth-in-sentencing,” and culminated in a number of jurisdictions both limiting the availability

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42. Congress, for example, has used mandatory minimum penalties since the late 18th century. U.S. SENTENCING COMM’N, REPORT TO THE CONGRESS: MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM 7 (2011).

43. See Tonry, *supra* note 41, at 75.

44. See generally PAULA M. DITTON & DORIS JAMES WILSON, U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, TRUTH IN SENTENCING IN STATE PRISONS (1999); Susan Turner et al., *The Impact of Truth-in-Sentencing and Three Strikes Legislation: Prison Populations, State Budgets, and Crime Rates*, 11 STAN. L. & POL’Y REV. 75 (1999).

45. DITTON & WILSON, *supra* note 44, at 1.

of parole consideration and increasing the number of offenses subject to mandatory minimum sentencing.<sup>46</sup>

The move toward mandatory sentencing occurred throughout the nation, and many jurisdictions also expanded the number and range of offenses that could result in a mandatory *life* sentence. This shift coincided with the passage of a raft of habitual offender laws.<sup>47</sup> As mentioned above, habitual offender laws (often referred to as “three strikes and you’re out” or “Three Strikes” laws), impose a lengthy mandatory sentence, often life imprisonment, for a person convicted of a certain number of specified offenses.<sup>48</sup> Although laws punishing repeat offenders with harsher punishments have been around for centuries,<sup>49</sup> the “Three Strikes” movement dates to the 1990s.<sup>50</sup> Following Washington State’s passage of its habitual offender law in 1992,<sup>51</sup> dozens of states followed suit and enacted their own version of recidivist statute.<sup>52</sup> Today, all fifty states, the federal government, and the District of Columbia have some form of habitual offender law.<sup>53</sup>

Not all habitual offender laws, however, entirely remove sentencing discretion from the trial judge: habitual offender statutes that do not *mandate* a life sentence typically prescribe a minimum term of years that must be served for a specific offense but permit a longer term (or a life sentence) to be imposed on top of the mandatory minimum, thus leaving the sentencing judge the option to impose a life sentence in his or her discretion.<sup>54</sup> Because mandatory and discretion-

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46. See, e.g., Cecelia Klingele, *Changing the Sentence Without Hiding the Truth: Judicial Sentence Modification as a Promising Method of Early Release*, 52 Wm. & MARY L. REV. 465, 466 (2010); Mauer, *supra* note 6, at 11; see generally WILLIAM J. SABOL ET AL., THE URBAN INSTITUTE, THE INFLUENCES OF TRUTH-IN-SENTENCING REFORMS ON CHANGES IN STATES’ SENTENCING PRACTICES AND PRISON POPULATIONS (explaining the history of the truth-in-sentencing movement, and particularly exploring the impact of federal truth-in-sentencing laws on state sentencing policies and prison populations).

47. See generally Beres & Griffith, *supra* note 25 (detailing the history of the “Three Strikes” movement and explaining the impact of habitual offender laws generally); Turner et al., *supra* note 44.

48. See generally *Id.*

49. Note, *Selective Incapacitation: Reducing Crime Through Predictions of Recidivism*, 96 HARV. L. REV. 511, 511 (1982).

50. See generally Michael G. Turner et al., “*Three Strikes and You’re Out*”: A National Assessment, FED. PROBATION, Sep. 1995, at 16.

51. WASH. REV. CODE § 9.92.090 (2012).

52. See generally Michael Vitiello, *Three Strikes: Can We Return to Rationality?*, 87 J. CRIM. L. & CRIMINOLOGY 395, (1997).

53. See Appendix.

54. E.g., VA. CODE § 18.2-248(C) (2012) (court may sentence an offender convicted a third or subsequent of manufacture, sale, etc. of specified controlled substances to life or any term of years not less than ten).

ary life sentences can produce sentences of drastically different effective lengths, this paper refers to and describes separately those statutes that *mandate* life sentences and those that merely permit them. As discussed more thoroughly in Part III, mandatory life sentences (and mandatory minimum sentences in general) are more problematic than discretionary sentences for a number of reasons.

One final note about discretionary sentences: A number of states, as well as the federal government, have created commissions responsible for establishing guidelines for sentencing judges to use in determining what term to impose for a given criminal offense.<sup>55</sup> Under a typical sentencing guidelines system, after a person has been convicted of an offense, the sentencing judge must consult the guidelines in order to determine a permissible sentencing range, but may depart from the presumptive range (i.e., make the sentence longer or shorter than the presumptive range would normally permit) after taking into account various considerations, such as the defendant's role in the offense.<sup>56</sup> Where a life or LWOP sentence is *discretionary* under the relevant statute, it is likely that any applicable sentencing guidelines would propose a much lower sentence than life or LWOP, particularly for a first-time offense. The following jurisdictions have established sentencing commissions that publish sentencing guidelines: the federal government, the District of Columbia,<sup>57</sup> Alabama,<sup>58</sup> Arkansas,<sup>59</sup> Delaware,<sup>60</sup> Florida,<sup>61</sup> Maryland,<sup>62</sup> Massachusetts,<sup>63</sup> Michigan,<sup>64</sup> Mis-

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55. E.g., *About the Commission*, U.S. SENTENCING COMM'N, [http://www.ussc.gov/About\\_the\\_Commission/index.cfm](http://www.ussc.gov/About_the_Commission/index.cfm) (last visited Aug. 13, 2013); *About the Commission*, ALA. SENTENCING COMM'N, <http://sentencingcommission.alacourt.gov/about.html> (last visited Aug. 13, 2013); *Connecticut Sentencing Commission*, CONN. OFFICE OF POL'Y & MGMT., [http://www.ct.gov/oppm/cwp/view.asp?a=2967&Q=476520&oppNav\\_GID=1797](http://www.ct.gov/oppm/cwp/view.asp?a=2967&Q=476520&oppNav_GID=1797) (last visited Aug. 13, 2013); VA. CRIM. SENTENCING COMM'N, <http://www.vpsc.virginia.gov/index.htm> (last visited Aug. 13, 2013).

56. E.g., U.S. SENTENCING GUIDELINES MANUAL § 1B1.1 (2012).

57. D.C. SENTENCING & CRIMINAL CODE REVISION COMM'N, <http://acs.dc.gov/acs/site/default.asp> (last visited Oct. 29, 2012).

58. ALA. SENTENCING COMM'N, <http://sentencingcommission.alacourt.gov/Default.htm> (last visited Oct. 27, 2012).

59. ARK. SENTENCING COMM'N, <http://www.arkansas.gov/asc/> (last visited Oct. 27, 2012).

60. DEL. SENTENCING ACCOUNTABILITY COMM'N, <http://cjc.delaware.gov/SENTAC/sentac.04.07.shtml> (last visited Oct. 27, 2012).

61. Florida requires a criminal code scoresheet for each conviction, which is then used to determine the sentence for each offense. Florida's Department of Corrections publishes and updates a "Criminal Punishment Code Scoresheet Preparation Manual" in order to assist in the creation of criminal code scoresheets. See FLA. DEP'T OF CORR., *Criminal Punishment Code Preparation Scoresheet Manual*, [http://www.dc.state.fl.us/pub/sen\\_cpcm/index.html](http://www.dc.state.fl.us/pub/sen_cpcm/index.html) (last visited Oct. 27, 2012).

62. MD. STATE COMM'N ON CRIMINAL SENTENCING POLICY, <http://www.msccsp.org/> (last visited Oct. 27, 2012).

souri,<sup>65</sup> Pennsylvania,<sup>66</sup> Utah,<sup>67</sup> Virginia,<sup>68</sup> and Washington.<sup>69</sup> A jurisdiction's particular set of sentencing guidelines or rules often significantly affect the likelihood of an offender's actually being sentenced to life or LWOP under a statute that grants discretion to impose such a sentence. A study of the operation of guidelines systems in each jurisdiction is, however, beyond the scope of this Note, and no effort has been made to determine what the guidelines sentence would be in any given case, or the extent to which life sentences are actually imposed in cases in which such sentences are discretionary. Interested readers may consult the jurisdiction's sentencing commission website or manual.

#### *D. Methodology*

The statutes described herein were gathered using Westlaw's legislative database. The first step was to determine, for each jurisdiction, whether sentencing provisions were set out within each criminal law statute (i.e., providing the definition of the offense and setting forth permissible prison terms in the same provision) or whether the jurisdiction utilized an offense categorization system (i.e., dividing offenses into categories and labeling them, e.g., "Class A felony," "Class B felony," etc. and then setting forth sentencing ranges for each class of felony in a separate statute). For those jurisdictions that used an offense categorization system, the next step was to determine the maximum penalties for each offense category by referring to the sentencing provisions in the jurisdiction's legislative database. If the penalty ranges for any given offense category included life or LWOP, a database search was completed for each jurisdiction using a search term to match that offense category. For those jurisdictions that did not rely on an offense categorization system, a search was conducted

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63. MASS. SENTENCING COMM'N, MASS. COURT Sys., <http://www.mass.gov/courts/admin/sentcomm.html> (last visited Oct. 27, 2012).

64. Michigan's Judicial Commission publishes sentencing guidelines each year. See MICH. JUDICIAL INST., *State of Michigan Sentencing Guidelines Manual*, <http://courts.mi.gov/education/mji/Publications/Documents/sg-manual.pdf> (last visited Oct. 11, 2013).

65. MO. SENTENCING ADVISORY COMM'N, <http://www.mosac.mo.gov/page.jsp?id=45392> (last visited Oct. 27, 2012).

66. PA. COMM'N ON SENTENCING, <http://pcs.la.psu.edu/> (last visited Oct. 29, 2012).

67. UTAH SENTENCING COMM'N, <http://www.sentencing.utah.gov/> (last visited Oct. 27, 2012).

68. VA. CRIMINAL SENTENCING COMMISSION, <http://www.vcsc.virginia.gov/> (last visited Oct. 27, 2012).

69. WASH. STATE SENTENCING GUIDELINES COMM'N, <http://www.ofm.wa.gov/sgc/> (last visited Oct. 27, 2012).

to locate all statutes that permitted a life sentence. Search queries were made to target statutes that mentioned life sentences (e.g., “life imprisonment,” “life /s prison!”), as well as extremely long terms of years, which are permitted by statute in a few jurisdictions (e.g., “ninety-nine years” or “100 years”).<sup>70</sup> For those jurisdictions that relied on an offense categorization system, a search of the table of contents of the jurisdiction’s sentencing-related statutes was then performed, so as to include any further sentencing provisions that might result in a life sentence (i.e., statutes that imposed or permitted a life sentence for certain offenses even where such a sentence would not typically be permitted under the offense categorization system).

In order to locate habitual offender laws, a search was completed of the table of contents of the sentencing provisions for each jurisdiction (in the criminal law and criminal procedure chapters, where applicable) in order to locate provisions dealing with recidivism. Where the habitual offender law was based on offense categories (e.g., any offense punishable by twelve years or more, or any “Class X” offense), a separate search was conducted in order to gather those statutes as well. A separate search was also conducted of provisions that defined groups of felonies as “violent,” where the habitual offender statute itself did not do so. While it is impossible to be absolutely certain that no relevant statutes were inadvertently omitted from the search, the study was structured so as to be as exhaustive as possible. To the author’s knowledge, this paper contains the most comprehensive study of statutes that permit life or LWOP sentences for first-time nonviolent offenses, as well as the most comprehensive study of habitual offender laws, that has been conducted to date.

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70. Sentences to long terms of years, such as ninety-nine years, will often be treated differently than life sentences for purposes of parole. However, because these long terms of years were outliers (a search found terms of 99 and 100 years in only four jurisdictions (Alabama, Alaska, Montana, and Texas. *See Appendix.*), these terms were included in furtherance of the goal of comprehensiveness, and the relevant statutes will be discussed along with statutes that prescribe or permit life or LWOP sentences. As discussed above, however, this paper will not generally include or discuss other long terms of years, or provisions that allow for consecutive sentences or multiples of otherwise permitted sentences. For example, a number of habitual offender statutes will prescribe a sentence of “three times the normal maximum for the offense of conviction,” or some similar construction, for a third or subsequent specified offense. While this type of provision could produce extremely long sentences, these statutes were not included in the study, both because of the difficulty of locating such laws with search terms and the difficulty of describing or predicting their application.

## II. 50-STATE SURVEY

This Part describes and analyzes the results of the national survey. Section A discusses statutes that apply to first-time offenses, presenting the results of the survey of first-time offense statutes in the following order: first, life without parole sentences (mandatory followed by discretionary); and second, life sentences (mandatory followed by discretionary). Each subsection discusses three categories of offenses: nonviolent drug offenses; other (i.e., non-drug-related) non-violent offenses; and legislatively violent offenses. Because a life sentence for a first-time violent offense is not as controversial, violent crimes are not discussed in the section describing first-time offenses.

Section B describes and analyzes the results of the survey of habitual offender laws. Such laws typically describe a triggering offense, which makes an enhanced sentence possible, as well as predicate offenses, which are the prior convictions that render an offender who has been convicted of the triggering offense eligible for enhanced punishment. For example, a typical habitual offender statute might provide that a person convicted of, e.g., armed burglary (a triggering offense) is subject to a mandatory life sentence if that person has two or more prior convictions for offenses such as burglary, drug trafficking, and robbery (predicate offenses). Analysis is separated according to the classification of both the triggering and the predicate offenses as nonviolent, nonviolent drug, legislatively violent, or violent.<sup>71</sup> To help the reader digest the material, each subsection will conclude with a one- or two-sentence example of a conviction or series of convictions that could result in a life sentence in a relevant jurisdiction. The Appendix contains two charts, one for first-time offenses and one for habitual offender statutes, listing and summarizing relevant statutes in each of the above-discussed categories.

### A. *First-Time Nonviolent and Legislatively Violent Offenses*

A strong majority of states—thirty-four in total<sup>72</sup>—and the federal government permit or mandate a sentence of life or LWOP for at least one first-time nonviolent or legislatively violent offense.

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71. Again, drug crimes are discussed separately because the availability of life sentences for such offenses is more problematic. *See infra* Part III.

72. *See* Appendix (Ala., Alaska, Ariz., Ark., Conn., Del., Fla., Ga., Haw., Idaho, Ill., Iowa, Ky., La., Md., Mass., Mich., Miss., Mo., Mont., Neb., Nev., N.J., N.Y., N.D., Okla., Pa., R.I., S.C., Tex., Utah, Va., Wash., and Wis.).

### 1. Life Without Parole: Mandatory and Discretionary

Overall, eleven states<sup>73</sup> and the federal government permit or mandate LWOP for a nonviolent or legislatively violent offense. Of those jurisdictions, six states<sup>74</sup> and the federal government mandate LWOP for certain first-time nonviolent or legislatively violent offenses, while six (different) states<sup>75</sup> and the federal government make such a sentence discretionary.

#### a. LWOP—Mandatory

LWOP is mandatory for certain first-time nonviolent drug offenses in three states<sup>76</sup> and the federal government.<sup>77</sup> These typically must involve relatively large quantities of drugs and/or participation in a drug trafficking enterprise.<sup>78</sup> LWOP is available for selling as much as 150 kilograms of cocaine<sup>79</sup> (between 975,000 and 15 million doses)<sup>80</sup> or as little as two ounces of heroin<sup>81</sup> (between 5,600 and 11,300 doses),<sup>82</sup> depending on the jurisdiction.

Wisconsin is the only state that mandates LWOP for a first-time nonviolent offense other than a drug offense: LWOP is mandatory if a person adjudicated delinquent of a crime that would be a “Class A” felony<sup>83</sup> if committed by an adult thereafter absconds, that is, avoids arrest or prosecution for the offense.<sup>84</sup>

Pennsylvania and Utah mandate LWOP for specified first-time legislatively violent crimes,<sup>85</sup> including arson resulting in the death of

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73. See Appendix (Ala., Fla., Ill., La., Miss., Mo., Nev., N.D., Pa., Utah, and Wis.).

74. See Appendix (Ala., Fla., Miss., Pa., Utah, and Wis.).

75. See Appendix (Ala., Ill., La., Mo., Nev., and N.D.).

76. See Appendix (Ala., Fla., and Miss.).

77. All federal statutes referred to herein refer to “life imprisonment,” rather than LWOP. However, because the federal system abolished parole in 1984, Sentencing Reform Act of 1984, Pub. L. No. 98-471, 90 Stat. 1987, all life sentences in the federal system are without parole and thus effectively LWOP.

78. *Id.*

79. E.g., FLA. STAT. § 893.135(1)(b)(2) (2012). Florida also mandates LWOP for a person who imports, traffics, etc., e.g., 300 kilograms or more of cocaine knowing the “probable result” will be the death of any person. FLA. STAT. § 893.135(1)(b)(3) (2012).

80. Cf. *United States v. Marshall*, 908 F.2d 1312, 1334 (7th Cir. 1990) (Posner, J., dissenting) (discussing how many doses of cocaine a given mass would yield).

81. E.g., Miss. CODE § 41-29-139(f) (2011).

82. Cf. *Marshall*, 908 F.2d at 1334 (Posner, J., dissenting).

83. Class A felonies in Wisconsin are typically serious violent offenses, such as repeated sexual assaults against a child (WIS. STAT. § 948.025 (2012)) and first-degree intentional homicide (WIS. STAT. § 940.01 (2012)).

84. E.g., WIS. STAT. § 946.50 (2012).

85. See Appendix (Pa. and Utah).

a first responder<sup>86</sup> and committing burglary while serving a sentence for a capital or first-degree felony.<sup>87</sup>

To provide an example, a person convicted in Mississippi of possession with intent to sell two ounces of heroin would receive a mandatory sentence of life without parole, even if that person had no prior criminal history.<sup>88</sup>

*b. LWOP—Discretionary*

LWOP is available, but not mandatory, for certain first-time non-violent drug offenses in four states<sup>89</sup> and the federal system. Qualifying offenses range from acting as an organizer of a drug operation involving one kilogram of marijuana<sup>90</sup> to manufacture or sale of *any* amount of any drug in a school zone.<sup>91</sup>

Illinois, Louisiana,<sup>92</sup> and the federal government permit LWOP for certain nonviolent non-drug-related offenses. Generally, these are financial crimes involving large amounts of money (e.g., managing a “continuing financial crimes” enterprise)<sup>93</sup> or racketeering offenses.<sup>94</sup>

Nevada and the federal government allow LWOP for certain legislatively violent crimes.<sup>95</sup> Several of the relevant statutes require that death result from the offense (for example, arson resulting in death<sup>96</sup>). It is also possible to receive LWOP for such crimes as conspiring to possess certain firearms during a drug trafficking offense<sup>97</sup> and perjury resulting in the execution of an innocent person.<sup>98</sup>

For instance, a person convicted of possession in North Dakota with intent to sell two grams of cocaine in a school zone could be subject to a maximum sentence of life without parole.<sup>99</sup>

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86. *E.g.*, 18 PA. CONS. STAT. § 3301 (2012) (arson must result in the death of a firefighter or emergency personnel in order to qualify for the mandatory LWOP sentence).

87. *E.g.*, UTAH CODE § 76-3-203.6 (2012).

88. MISS. CODE § 41-29-139(f) (2011).

89. See Appendix (Ala., Mo., Nev., and N.D.).

90. *E.g.*, ALA. CODE § 13A-12-233(c)(1) (2012).

91. *E.g.*, N.D. CENT. CODE § 19-03.1-23.1 (2011).

92. See Appendix (Ill. and La.).

93. *E.g.*, 18 U.S.C. § 225 (2006).

94. *E.g.*, 720 ILL. COMP. STAT. 5/33G-5 (2012).

95. See Appendix.

96. *E.g.*, 18 U.S.C. § 844(f) (2006) (discretionary LWOP sentence for arson of building or other property owned by the United States where the offense results in death); NEV. REV. STAT. § 202.830(2) (2011) (discretionary LWOP sentence for use of explosives to destroy property having reason to know a person is therein).

97. *E.g.*, 18 U.S.C. § 924(o) (2006).

98. *E.g.*, NEV. REV. STAT. § 199.160 (2011).

99. N.D. CENT. CODE §§ 19-03.1-23.1; 12.1-3201(1) (2011).

## 2. *Life: Mandatory and Discretionary*

Overall, thirty-one states<sup>100</sup> permit or mandate a life sentence for a first-time nonviolent or legislatively violent offense. Of those, nine<sup>101</sup> mandate such a sentence, while thirty<sup>102</sup> make such a sentence discretionary.

### a. *Life—Mandatory*

Five states<sup>103</sup> require life sentences for certain first-time nonviolent drug offenses. Qualifying crimes typically involve participating in a drug enterprise or drug offenses involving minors, school zones, or moderate to large quantities of controlled substances.

Four states<sup>104</sup> mandate life imprisonment for certain non-drug-related nonviolent offenses, most involving perjury or similar crimes.<sup>105</sup> In Rhode Island, a life sentence is required for the “unlawful exercise of the functions of state office.”<sup>106</sup>

Rhode Island is the only jurisdiction that mandates a life sentence for a first-time legislatively violent crime: delivery of any drug to a minor who dies as a result of its ingestion.<sup>107</sup>

In Michigan, a seventeen-year-old convicted of recruiting a minor under seventeen to sell 1 kilogram of marijuana would be subject to a mandatory life sentence.<sup>108</sup>

### b. *Life—Discretionary*

Twenty states<sup>109</sup> permit life for certain first-time nonviolent drug crimes. Of those, seventeen<sup>110</sup> allow such a sentence for crimes involving specified amounts of drugs or participation in a drug enter-

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100. See Appendix (Ala., Alaska, Ariz., Ark., Conn., Del., Fla., Ga., Haw., Idaho, Ill., Iowa, Ky., La., Md., Mass., Mich., Mo., Mont., Neb., Nev., N.J., N.Y., N.D., Okla., R.I., S.C., Tex., Utah, Va., and Wash.).

101. See Appendix (Ariz., Ga., Ill., Mich., N.J., N.D., R.I., Utah, and Va.).

102. See Appendix (Ala., Alaska, Ariz., Ark., Conn., Del., Fla., Haw., Idaho, Ill., Iowa, Ky., La., Md., Mass., Mich., Mo., Mont., Neb., Nev., N.J., N.Y., N.D., Okla., R.I., S.C., Tex., Utah, Va., Wash.).

103. See Appendix (Ariz., Mich., N.J., N.D., and Va.).

104. See Appendix (Ga., Ill., R.I., and Utah).

105. See Appendix (qualifying offenses typically must be committed during murder trials or other capital proceedings).

106. R.I. GEN. LAWS § 11-43-7 (2002).

107. R.I. GEN. LAWS § 11-23-6 (2002).

108. MICH. COMP. LAWS § 333.7416(1)(b) (2009).

109. See Appendix (Ala., Alaska, Ark., Conn., Fla., Idaho, Iowa, Mich., Mo., Mont., Neb., Nev., N.J., N.Y., N.D., Okla., R.I., Tex., Utah, and Va.).

110. See Appendix (Ala., Ark., Conn., Idaho, Mich., Mo., Mont., Neb., Nev., N.J., N.Y., N.D., Okla., R.I., Tex., Utah, and Va.).

prise. Qualifying drug quantities vary from two grams of heroin<sup>111</sup> to one kilogram of a Schedule I or II substance (such as cocaine)<sup>112</sup> to *any* amount of any narcotic or opiate (other than marijuana).<sup>113</sup> Eight states<sup>114</sup> permit life sentences for specified drug offenses involving minors, such as recruiting a minor to sell or manufacture drugs. Six<sup>115</sup> permit life imprisonment for drug offenses committed in “school zones.”<sup>116</sup> Four<sup>117</sup> permit life for a drug offense resulting in death or serious bodily injury, and three<sup>118</sup> permit such a sentence for drug offenses where the actor was armed. A life term is also possible in three states for such crime as stealing methamphetamine precursor chemicals,<sup>119</sup> expenditure of funds known to be derived from a drug offense,<sup>120</sup> and conversion of marijuana to hashish.<sup>121</sup>

Twenty states<sup>122</sup> allow a life term for certain first-time non-drug-related nonviolent offenses. Of those states, half<sup>123</sup> permit life for participation in a criminal enterprise, racketeering, money laundering, and similar offenses. Another five<sup>124</sup> permit life sentences for theft, counterfeiting, and related offenses. Life sentences for perjury, obstruction of justice, and related offenses are possible in six states.<sup>125</sup>

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111. *E.g.*, IDAHO CODE § 37-2732B(6)(A) (2013); IDAHO CODE § 37-2732B(6)(D) (2013).

112. *E.g.*, MICH. COMP. LAWS § 333.7401(1)(A) (2009).

113. *E.g.*, MONT. CODE § 45-9-101(2) (2011).

114. *See Appendix* (Ala., Alaska, Ark., Idaho, Iowa, Neb., R.I., Tex.).

115. *See Appendix* (Mo., Mont., N.D., R.I., Tex., and Utah).

116. There is a fair amount of variation from state to state in how far the “school zone” extends, and to what facilities and areas it applies. For example, Idaho defines the school zone as “on or within one thousand (1,000) feet of the property of any public or private primary or secondary school, or in those portions of any building, park, stadium or other structure or grounds which were, at the time of the violation, being used for an activity sponsored by or through a school.” IDAHO CODE § 37-2739B(b)(2) (2009). Missouri defines the school zone as “in a residence where a child resides or within two thousand feet of the real property comprising a public or private elementary or public or private elementary or secondary school, public vocational school or a public or private community college, college or university, or any school bus.” MO. REV. STAT. § 195.211(2) (2012).

117. *See Appendix* (Fla., Mich., Neb., and Nev.).

118. *See Appendix* (Ark., Neb., and N.D.).

119. *See e.g.*, MO. REV. STAT. § 570.030(4) (2012) (stating the theft of certain chemicals “by appropriation of a tank truck, tank trailer, rail tank car, bulk storage tank, field (nurse) tank or field applicator,” is punishable with a life sentence).

120. *E.g.*, TEX. HEALTH & SAFETY CODE § 481.126 (2011).

121. *E.g.*, OKLA. STAT. tit. 63, § 2-509(D) (2012).

122. *See Appendix* (Alaska, Ark., Del., Fla., Haw., Idaho, Ill., La., Md., Mass., Mich., Mo., Neb., Nev., N.J., N.D., Okla., Tex., Utah, and Va.).

123. *See Appendix* (Ark., Fla., Haw., Ill., La., Neb., N.J., N.D., Tex., and Utah).

124. *See Appendix* (La., Mass., Mich., Mo., and Tex.).

125. *See Appendix* (Ill., La., Mich., Nev., Tex., Utah). Such statutes typically require the relevant conduct to have been committed in a capital proceeding. *E.g.*, LA. REV.

Other crimes that can result in a life sentence in these states include arson;<sup>126</sup> some types of Medicare fraud;<sup>127</sup> unarmed burglary of a dwelling, if committed as part of a street gang;<sup>128</sup> and advocating sedition on school grounds.<sup>129</sup>

Eighteen states<sup>130</sup> allow life sentences for legislatively violent offenses. Ten<sup>131</sup> permit life terms for a first conviction for burglary, although only one (Rhode Island) offers this punishment without restrictions.<sup>132</sup> Other states may specify that the burglary must be of a dwelling<sup>133</sup> or require that the burglary be committed while armed,<sup>134</sup> in order to qualify for the life term.

A life sentence is possible in seven states<sup>135</sup> for arson and related crimes, and in five<sup>136</sup> for offenses involving possession of weapons or body armor. Three states<sup>137</sup> permit life sentences for certain offenses committed in connection with a criminal gang or from which the offender derives a monetary benefit. And three<sup>138</sup> permit life sentences for drug offenses involving minors, where the minor suffers injury.<sup>139</sup> Life sentences are also possible for offenses such as tampering with a consumer product resulting in serious bodily injury,<sup>140</sup> possession of child pornography,<sup>141</sup> and commission of specified crimes (such as

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STAT. § 14:129(B)(2)(a) (2011) (discretionary sentence of up to ninety-nine years for tampering with a juror during the trial of a crime punishable by death or life imprisonment).

126. *E.g.*, ARK. CODE § 5-38-301 (2012).

127. *E.g.*, MD. CODE, CRIM. LAW § 8-516 (2012).

128. TEX. PENAL CODE §§ 71.02, 30.02 (2011).

129. *E.g.*, OKLA. STAT. tit. 21, § 1327(B) (2012) (sentence ranging from ten years to life imprisonment for an adult who advocates syndicalism or sedition on school grounds).

130. See Appendix (Alaska, Ariz., Ark., Fla., Haw., Ky., Mass., Mo., N.J., N.Y., N.D., Okla., R.I., S.C., Tex., Utah, Va., and Wash.).

131. See Appendix (Ark., Fla., Haw., Mass., R.I., S.C., Tex., Utah, Va., Wash.).

132. R.I. GEN. LAWS § 11-8-1 (2012) (stating a life sentence is possible for a burglary of any structure, armed or unarmed).

133. See Appendix (Ark., Haw., S.C., and Tex.).

134. See Appendix (Fla., Mass., Tex., Utah, Va., and Wash.).

135. See Appendix (Ky., N.Y., Okla., R.I., S.C., Tex., and Utah).

136. See Appendix (Fla., Mass., N.D., Utah, and Va.).

137. See Appendix (Ark., N.J., and Utah).

138. See Appendix (Ariz., Ky., and Utah).

139. *E.g.*, ARIZ. REV. STAT. § 13-705(B) (2012) (manufacturing methamphetamine under circumstances that cause injury to a child under twelve years of age); KY. REV. STAT. § 530.064 (2008) (inducing minor to engage in drug activity other than activity relating to marijuana if minor is injured); UTAH CODE § 76-5-112.5(2)(b), (2)(c) (2012) (permitting a child or vulnerable adult to be exposed to, inhale, or have contact with drugs or drug paraphernalia if child or vulnerable adult dies as a result).

140. *E.g.*, TEX. PENAL CODE § 22.09 (2011).

141. *E.g.*, ALASKA STAT. § 12.55.125(i)(4)(A) (2012) (imposing a discretionary ninety-nine year sentence but presumptive sentence of two to twelve years for a first

sale of drugs) while in possession of a stolen vehicle,<sup>142</sup> depending on the state.

To provide an example, an adult convicted in Rhode Island of selling any amount of “ecstasy” (or MDMA) to a minor at least three years her junior would be subject to a maximum term of life imprisonment, with a fifteen-year mandatory minimum sentence.<sup>143</sup>

### B. Habitual Offender Statutes

All fifty states, the federal government, and the District of Columbia have at least one habitual offender law that can produce a sentence of life or LWOP.<sup>144</sup> Thirty-one states<sup>145</sup> and the federal government permit or mandate life or LWOP upon conviction for a nonviolent “triggering” offense; of these, twenty-seven states<sup>146</sup> and the federal government also permit such a sentence when the triggering offense is a nonviolent drug crime. Thirty-four states,<sup>147</sup> the federal government, and the District of Columbia permit or mandate life or LWOP upon conviction for a legislatively violent triggering offense.

#### 1. Where all triggering and predicate offenses are nonviolent

This subsection describes habitual offender laws that apply in situations where the offender’s current offense and all relevant past offenses are nonviolent. Thus, it is possible in certain jurisdictions to receive a sentence to life or LWOP for a series of convictions for, say, theft, unarmed burglary, or drug sale.

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conviction for indecent exposure or possession or distribution of child pornography); ALASKA STAT. § 12.55.125(i)(2)(A) (2012) (imposing a discretionary ninety-nine year sentence but presumptive sentence of fifteen to thirty years for online enticement of a minor).

142. *E.g.*, N.J. STAT. § 2C:44-3(f),(g) (2012).

143. R.I. GEN. LAWS §§ 21-28-4.07; 21-28-2.08 (2012).

144. See Appendix.

145. See Appendix (Ala., Alaska, Ark., Cal., Colo., Del., Fla., Ga., Haw., Idaho, Ill., Iowa, Ky., La., Mass., Mich., Miss., Mo., Mont., Neb., Nev., N.J., N.Y., N.D., Okla., S.D., Tex., Utah, Vt., Va., and W. Va.).

146. See Appendix (Ala., Ark., Colo., Del., Fla., Ga., Haw., Idaho, Ill., Iowa, Ky., La., Mich., Miss., Mo., Mont., Neb., Nev., N.J., N.D., Okla., S.D., Tex., Utah, Vt., Va., and W. Va.).

147. See Appendix (Alaska, Ariz., Ark., Cal., Colo., Conn., Del., Fla., Ga., Ind., Iowa, Ky., La., Md., Mass., Mo., Nev., N.J., N.Y., N.C., Okla., Or., Pa., R.I., S.C., S.D., Tenn., Tex., Utah, Vt., Va., Wash., Wis., and Wyo.).

a. *Where all triggering and predicate offenses are nonviolent: LWOP*

Seven states<sup>148</sup> and the federal government mandate LWOP for a sequence of entirely nonviolent crimes. These may include sale of fifty grams of cocaine<sup>149</sup> (roughly 325 to 5,000 doses),<sup>150</sup> sale of any amount of methamphetamine to a minor,<sup>151</sup> or simple burglary.<sup>152</sup>

LWOP is available, but not mandatory, for a series of entirely nonviolent crimes in eight states<sup>153</sup> and the federal system. Drug offenses that can trigger a discretionary LWOP sentence include possession of two grams of cocaine<sup>154</sup> (roughly thirteen to 200 doses),<sup>155</sup> manufacture of any amount of methamphetamine,<sup>156</sup> and sale of any amount of any drug to a minor.<sup>157</sup>

Three states<sup>158</sup> allow LWOP for a third or subsequent conviction for *any* felony. And three<sup>159</sup> permit LWOP for specified categories of offenses, but allow *any* felony to act as a predicate. For example, South Carolina makes LWOP discretionary for offenses such as sale of one pound of marijuana, if the offender has at least three prior felony convictions of any type.<sup>160</sup>

In Louisiana, a person with three separate convictions for simple (unarmed) burglary, extortion, and purse snatching would be subject to a mandatory sentence of life without parole.<sup>161</sup>

b. *Where all triggering and predicate offenses are nonviolent: Life*

A life sentence is mandatory where the triggering offense and all predicate offenses are nonviolent in seven states.<sup>162</sup> Four states<sup>163</sup> require a life sentence for specified offenses committed subsequent to

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148. See Appendix (Ala., Ga., Ill., Iowa, La., Mich., and Okla.).

149. E.g., MICH. COMP. LAWS § 333.7413(1) (2012).

150. Cf. United States v. Marshall, 908 F.2d 1312, 1334 (7th Cir. 1990) (Posner, J., dissenting).

151. E.g., IOWA CODE §§ 124.401D, 902.1 (2012).

152. E.g., LA. REV. STAT. 15:529.1(A)(3)(b) (2011).

153. See Appendix (Ala., Ark., Del., La., Mo., Nev., S.D., and Va.).

154. E.g., MO. REV. STAT. § 195.296 (2012).

155. Cf. Marshall, 908 F.2d at 1334 (Posner, J., dissenting).

156. E.g., ARK. CODE §§ 5-4-501(b)(1)(A), 5-64-423, 16-93-613 (2012).

157. E.g., MO. REV. STAT. § 195.292 (2012).

158. See Appendix (Del., La., Nev.).

159. See Appendix (Ala., Ark., S.D.).

160. S.D. CODIFIED LAWS §§ 22-7-8.1, 22-6-1, 22-42-7, 24-15-4 (2012).

161. LA. REV. STAT. 15:529.1(A)(3)(b); 14:65.1; 14:62; 14:66 (2011).

162. See Appendix (Ala., Colo., Ga., Mass., Nev., and W. Va.).

163. See Appendix (Ala., Colo., Ga., Mass.).

two or more felony convictions of any type. In Massachusetts, for instance, a life sentence may be mandated for offenses such as armed night-time burglary of a dwelling, if the offender was convicted of and sentenced to at least three years for each of at least two prior felonies.<sup>164</sup> A mandatory life sentence is also possible in certain states for specified repeat crimes such as possession of child pornography<sup>165</sup> and racketeering.<sup>166</sup> West Virginia is the only jurisdiction that mandates a life sentence for a third felony conviction of any type.<sup>167</sup>

Twenty states<sup>168</sup> establish discretionary life sentences where all relevant offenses are nonviolent. Twelve<sup>169</sup> permit life for specified repeat drug offenses, including sale of twenty-eight kilograms of cocaine<sup>170</sup> (roughly 182,000 to 2.8 million doses)<sup>171</sup> to sale of any amount of any drug to a minor<sup>172</sup> to sale of any amount of marijuana.<sup>173</sup>

Eleven states<sup>174</sup> permit life sentences for specified offenses, but allow any felony to act as a predicate offense. In Florida, for instance, a conviction for crimes such as home burglary may result in a life sentence, if the person has two or more prior felony convictions.<sup>175</sup> A life sentence is possible upon a second felony conviction of *any* type in seven states.<sup>176</sup> Life sentences are also possible in certain jurisdictions for a third repeat offense of indecent exposure<sup>177</sup> and commission of certain drug offenses while armed.<sup>178</sup>

To provide an example, in West Virginia, a person with a series of convictions for attempted arson; grand larceny; and issuing a false check for \$500 would be subject to a mandatory life sentence.<sup>179</sup>

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164. MASS. GEN. LAWS ch. 279, § 25(a) (2012). All predicate offenses must have actually resulted in a sentence of three or more years in order to qualify for the mandatory life sentence.

165. *E.g.*, NEV. REV. STAT. § 200.730 (2011).

166. *E.g.*, COLO. REV. STAT. §§ 18-1.3-801(1), 18-17-105 (2012).

167. W. VA. CODE § 61-11-18(c) (2012).

168. See Appendix (Ala., Fla., Ga., Haw., Idaho, Ky., Mich., Miss., Mo., Mont., Neb., Nev., N.J., N.Y., N.D., Okla., Tex., Utah, Vt., and Va.).

169. See Appendix (Ga., Idaho, Ky., Miss., Mo., Mont., Neb., Nev., N.J., Okla., Utah, and Va.).

170. *E.g.*, ALA. CODE §§ 13A-5-9(a)(3), 13A-12-231 (2012).

171. Cf. Marshall, 908 F.2d 1312, at 1334 (Posner, J., dissenting).

172. *E.g.*, NEV. REV. STAT. § 453.334 (2011).

173. *E.g.*, VA. CODE § 18.2-248.1(d) (2012).

174. See Appendix (Ala., Fla., Haw., Idaho, Ky., Mich., Mo., N.J., N.D., Okla., and Utah).

175. FLA. STAT. § 775.084(1)(a), (4)(a) (2012).

176. See Appendix (Idaho, Mich., Mont., Nev., N.Y., Okla., and Vt.).

177. *E.g.*, MONT. CODE § 45-5-504 (2011).

178. *E.g.*, NEB. REV. STAT. § 28-416(16) (2012).

179. W. VA. CODE §§ 61-11-18(c); 61-3-39; 61-3-4; 61-3-13 (2012).

2. *Where all triggering and predicate offenses are nonviolent drug offenses*

This subsection discusses recidivism laws that apply to offenders who commit a series of nonviolent drug offenses. Thus, an offender might receive an enhanced sentence under certain circumstances where she was convicted of, e.g., sale of drugs, possession, and sale to a minor.

a. *Where all triggering and predicate offenses are nonviolent drug offenses: LWOP*

Seven states<sup>180</sup> and the federal government mandate LWOP for a series of entirely nonviolent drug offenses,<sup>181</sup> such as manufacture or sale of 5,000 grams of marijuana,<sup>182</sup> simple possession of marijuana,<sup>183</sup> and sale of any amount of methamphetamine to a minor.<sup>184</sup>

LWOP is discretionary for a second or subsequent specified non-violent drug offense in nine states<sup>185</sup> and the federal system. Of those states, three<sup>186</sup> permit LWOP for a fourth or subsequent conviction for *any* felony. LWOP is also possible for offenses such as sale of one pound of marijuana,<sup>187</sup> possession of methamphetamine precursor chemicals,<sup>188</sup> and sale of any amount of any drug to a minor,<sup>189</sup> depending on the jurisdiction.

In Alabama, for instance, a person with a series of convictions for first-degree criminal mischief (causing property damage of \$2,500); third-degree (unarmed) burglary; and two convictions for sale of one kilogram of marijuana would be subject to a mandatory life without parole sentence.<sup>190</sup>

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180. See Appendix (Ala., Ga., Ill., Iowa, La., Mich., and Okla.).

181. See Appendix.

182. E.g., 730 ILL. COMP. STAT. 5/5-4.5-95 (2012); 720 ILL. COMP. STAT. 550 / 5 (2012).

183. E.g., LA. REV. STAT. §§ 15:529.1(A)(3)(b), 40:966(B) (2012). Offender must have two or more prior felony drug convictions of any type in order to qualify for the mandatory life sentence.

184. E.g., IOWA CODE §§ 124.401D, 902.1 (2012).

185. See Appendix (Ala., Ark., Del., Ky., La., Mo., Nev., S.D., and Va.).

186. See Appendix (Del., La., and Nev.).

187. E.g., S.D. CODIFIED LAWS § 22-7-8.1 (2012). Offender must have three or more prior felony convictions of any type in order to qualify.

188. E.g., KY. REV. STAT. §§ 250.991(2)-(3), 439.3401 (2012).

189. E.g., MO. REV. STAT. § 195.292 (2012).

190. ALA. CODE §§ 13A-5-9(c)(4); 13A-12-231; 13A-7-7, 13A-7-21; 15-22-27.2 (2012).

*b. Where all triggering and predicate offenses are nonviolent drug offenses: Life*

A life sentence is mandatory for a repeat conviction for certain nonviolent drug offenses in four states.<sup>191</sup> Qualifying offenses include manufacture of any amount of certain drugs (such as cocaine)<sup>192</sup> to sale of one kilogram of marijuana.<sup>193</sup> Only West Virginia requires a life sentence for a third or subsequent felony of *any* type, including simple possession of drugs.<sup>194</sup>

Twenty states<sup>195</sup> permit life imprisonment for a second or subsequent nonviolent drug offense. Eleven<sup>196</sup> allow life for specified offenses committed subsequent to one or more felony convictions. Alabama, for example, permits a life term for crimes such as simple possession of certain types of drugs,<sup>197</sup> where the actor has two or more prior felony convictions of any type.<sup>198</sup>

Nine states<sup>199</sup> permit life sentences for certain repeat drug offenses, and five<sup>200</sup> allow life for a second or subsequent conviction for sale of *any* amount of specified types of drugs.<sup>201</sup> Mississippi permits life for a second conviction for the sale of *any* amount of any drug in a school zone.<sup>202</sup> Five states<sup>203</sup> permit life for a repeat conviction for *any* felony, and three<sup>204</sup> allow a life term for certain drug offenses committed subsequent to one or more felony drug convictions of any type. Idaho, for example, allows a life sentence for sale of *any* amount of any drug, where the offender has one or more prior felony drug convictions of any type.<sup>205</sup>

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191. See Appendix (Ala., Colo., Ga., and W. Va.).

192. E.g., GA. CODE § 16-13-30(d), (l) (2012); GA. CODE § 16-13-30(d), (l) (2012). Offender must have one or more prior felony convictions (of any type) in order to receive the mandatory life sentence.

193. E.g., ALA. CODE §§ 13A-5-9(c)(3), 13A-12-231 (2012). Offender must have three or more prior felony convictions (of any type) in order to receive the mandatory life sentence.

194. W. VA. CODE § 61-11-18(c) (2012).

195. See Appendix (Ala., Ark., Fla., Ga., Haw., Idaho, Ky., Miss., Mo., Mont., Neb., Nev., N.J., N.D., Okla., Tex., Utah, Vt., and Va.).

196. See Appendix (Ala., Ark., Fla., Haw., Ky., Mich., Mo., N.J., N.D., Tex., and Utah).

197. ALA. CODE § 13A-12-212 (2012).

198. ALA. CODE § 13A-5-9(a)(2) (2012).

199. See Appendix (Ga., Idaho, Ky., Miss., Mo., Nev., Okla., Utah, and Va.).

200. See Appendix (Ga., Idaho, Mo., Utah, and Va.).

201. Missouri, however, provides that a life sentence is not possible if the current offense involves less than five grams of marijuana. MO. REV. STAT. § 195.291 (2012).

202. MISS. CODE § 41-29-142 (2011).

203. See Appendix (Idaho, Mont., Nev., Okla., and Vt.).

204. See Appendix (Idaho, Mo., and Okla.).

205. E.g., IDAHO CODE § 37-2739A (2012).

To provide an example, in Missouri, a person with two convictions for simple possession (without intent to sell) of thirty-five grams of marijuana and one conviction for two grams of cocaine would be subject to a ten-year mandatory minimum sentence, and could receive a life sentence, in the court's discretion.<sup>206</sup>

3. *Where all triggering and predicate offenses are legislatively violent*

This subsection addresses habitual offender laws that apply to a series of legislatively violent offenses. An enhanced sentence might be available in some jurisdictions where an offender is convicted of, e.g., night-time burglary, extortion, and sale of drugs in a school zone.

a. *Where all triggering and predicate offenses are legislatively violent: LWOP*

LWOP is mandatory for a series of legislatively violent offenses in fourteen states<sup>207</sup> and the federal system.

Ten of those states<sup>208</sup> and the federal government mandate LWOP for multiple convictions for burglary, extortion, or committing offenses while armed. LWOP is required in seven states<sup>209</sup> and the federal government for repeat drug offenses ranging from sale of any amount of any drug in a school zone<sup>210</sup> to sale of ten grams of cocaine<sup>211</sup> to sale of any amount of any drug to a minor.<sup>212</sup> Four states<sup>213</sup> mandate LWOP for a repeat conviction for arson and/or discharge or "use" of a firearm during a felony. Three<sup>214</sup> mandate LWOP for sex-related offenses including possession of child pornography<sup>215</sup> and pandering involving a minor.<sup>216</sup>

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206. Mo. Rev. Stat. §§ 195.285(2); 195.275; 195.202; 558.011 (2012).

207. See Appendix (Ark., Del., Fla., Iowa, La., Md., Mass., N.C., Or., S.C., Tenn., Va., Wash., and Wis.).

208. See Appendix (Ark., Del., Fla., La., Md., Mass., N.C., S.C., Wash., and Wis.).

209. See Appendix (Del., La., Md., N.C., S.C., Wash., and Wis.).

210. E.g., N.C. GEN. STAT. §§ 14-7.7, 14-7.12 (2012) (establishing a mandatory sentence of life without parole for persons convicted of three consecutive "violent felonies," the definition of which includes all "Class A" through "Class E" felonies); N.C. GEN. STAT. §§ 90-95(a)(1), (e)(8), (e)(10) (2012) (making it a "Class E" felony for a person over 21 to sell drugs (other than small quantities of marijuana) in a school zone or in or near a public park).

211. E.g., DEL. CODE tit. 11, § 4214 (2012).

212. E.g., WASH. REV. CODE ANN. §§ 9.94A.030, 9.94A.570 (2012).

213. See Appendix (La., Md., Tenn., Va.).

214. See Appendix (Iowa, Or., and Wis.).

215. E.g., OR. REV. STAT. §§ 137.719, 181.594(5) (2012).

216. E.g., IOWA CODE § 901A.1(1) (2012).

Six states,<sup>217</sup> the federal government, and the District of Columbia make LWOP discretionary for a repeat legislatively violent offense. In each of those jurisdictions, triggering offenses include burglary. Qualifying offenses may also include gang recruitment,<sup>218</sup> racketeering,<sup>219</sup> and dealing cocaine in a school zone.<sup>220</sup>

For instance, a person in Delaware with a series of convictions for simple possession of 175 grams of marijuana in a school zone; unarmed burglary of a dwelling; and attempted unarmed burglary of a dwelling would receive a mandatory life without parole sentence.<sup>221</sup>

*b. Where all triggering and predicate offenses are legislatively violent: Life*

A life sentence is mandatory for a second or subsequent legislatively violent offense in eight states.<sup>222</sup> Of those states, four<sup>223</sup> mandate a life term for a repeat conviction for burglary and/or committing drug offenses while armed. Three<sup>224</sup> require life for multiple convictions for offenses such as sale of child pornography,<sup>225</sup> involving minors in drug offenses,<sup>226</sup> and burglary with intent to commit a sex offense against a minor.<sup>227</sup>

Ten states<sup>228</sup> and the District of Columbia establish discretionary life terms for a repeat legislatively violent offense. Six states<sup>229</sup> and the District of Columbia allow life for a second or subsequent conviction for offenses such as burglary. Two states<sup>230</sup> permit life sentences for multiple convictions for offenses involving minors.<sup>231</sup> Vermont allows life for a third “crime of violence,” the definition of which gener-

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217. See Appendix (Ark., Ind., Nev., Pa., R.I., and S.D.).

218. E.g., D.C. CODE § 22-1804a (2012).

219. E.g., NEV. REV. STAT. § 207.012 (2011).

220. E.g., IND. CODE § 35-50-2-8.5(a) (2012).

221. DEL. CODE tit. 11, §§ 4214(b), 825(a)(1) (2012); DEL. CODE tit. 16, §§ 4754(3), 4751C(5), 4751A(1)a (2012).

222. See Appendix (Alaska, Ariz., Colo., Ga., N.Y., R.I., and Tex.).

223. See Appendix (Ariz., Ga., N.Y., and R.I.).

224. See Appendix (Alaska, Ariz., and Tex.).

225. E.g., ALASKA STAT. § 12.55.125(i)(3)(E) (2012). Offender must have two or more prior convictions for similar offenses in order to qualify.

226. E.g., ARIZ. REV. STAT. § 13-706(A) (2012).

227. E.g., TEX. PENAL CODE § 12.42(c)(2) (2011); TEX. GOV. CODE § 508.145(c) (2011).

228. See Appendix (Ark., Cal., Conn., Mass., Nev., N.J., Okla., R.I., Utah, and Vt.).

229. See Appendix (Ark., Conn., Mass., Nev., R.I., and Utah).

230. See Appendix (Cal. and Utah).

231. See Appendix.

ally includes only serious violent offenses such as rape, but also includes arson resulting in death.<sup>232</sup>

In Rhode Island, for instance, a person with a series of convictions for carrying a dangerous weapon (such as a knife or firearm) during a burglary; breaking and entering; and sale of one ounce of heroin would receive a fifteen-year mandatory minimum sentence, and could receive a life sentence, in the court's discretion.<sup>233</sup>

*4. Where the triggering offense is nonviolent but predicate offenses must be legislatively violent*

This subsection discusses recidivism laws that apply where the current offense is nonviolent but the offender has prior convictions for legislatively violent offenses. Thus, an offender who is convicted of, e.g., possession of one kilogram of cocaine might receive a life sentence if he has prior convictions for, e.g., burglary or enticement of a minor.

*a. Where the triggering offense is nonviolent but predicate offenses must be legislatively violent: LWOP*

LWOP is mandatory for specified nonviolent offenses committed subsequent to legislatively violent offenses in three states.<sup>234</sup> Alaska, for instance, requires LWOP for possession of methamphetamine if the actor has two or more prior convictions for crimes such as arson or online enticement of a minor.<sup>235</sup>

*b. Where the triggering offense is nonviolent but predicate offenses must be legislatively violent: Life*

Two states<sup>236</sup> mandate a life term for a nonviolent offense committed subsequent to two or more legislatively violent crimes. California's oft-discussed Three Strikes Law<sup>237</sup> until recently mandated a life sentence for *any* felony where the offender had two or more prior "serious" or "violent" felonies (including offenses such as simple burglary and sale of drugs to a minor).<sup>238</sup> However, the Three Strikes

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232. VT. STAT. tit. 13, § 11a (2012).

233. R.I. GEN. LAWS §§ 11-47-3(3), 11-47-2 (2012).

234. See Appendix (Alaska, La., and Miss.).

235. ALASKA STAT. §§ 12.55.125(l), 33.16.090(a)(1) (2012).

236. See Appendix (Cal. and Colo.).

237. CAL. PENAL CODE § 667 (2012).

238. CAL. PENAL CODE § 1192.7(c) (2012).

Law was amended by ballot initiative in November 2012.<sup>239</sup> Under the amended law, if the triggering offense is nonviolent (i.e., not defined as “serious” or “violent”), the offender will generally receive only twice the normal sentence for the triggering offense, rather than a life sentence.<sup>240</sup> However, a life sentence is still required for specified third offenses, including possession of one kilogram of cocaine<sup>241</sup> (roughly 6,500 to 100,000 doses).<sup>242</sup>

*5. Where the triggering offense is legislatively violent but predicate offenses may be nonviolent*

This subsection focuses on situations where an offender’s current offense is legislatively violent, but where she has also been previously convicted of nonviolent offenses. For example, a person might receive an enhanced sentence under such provisions where she is convicted of armed burglary, if she has prior convictions for, e.g., drug sale or theft.

*a. Where the triggering offense is legislatively violent but predicate offenses may be nonviolent: LWOP*

Three states<sup>243</sup> and the federal government mandate LWOP for certain legislatively violent offenses, including armed burglary,<sup>244</sup> enticement of a minor,<sup>245</sup> and looting,<sup>246</sup> if the offender has two or more prior convictions for nonviolent crimes.

LWOP is discretionary for legislatively violent offenses committed subsequent to two or more nonviolent crimes in two states<sup>247</sup> and the federal system. The federal government, for instance, permits LWOP for any offense involving possession or transportation of firearms, where the actor has at least three prior convictions for “serious drug offenses” (including sale of five grams of methamphetamine) or “crimes of violence” (including burglary).<sup>248</sup>

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239. Samantha Tata & Jason Kandel, *Prop. 36 Passes; Will Modify California’s Three Strikes Law*, NBC S. CA. (Nov. 7, 2012, 10:21 AM), <http://www.nbclosangeles.com/news/local/Proposition-36-California-Three-Strikes-Law-Vote-Election-Results-177596561.html>.

240. 2012 Cal. Legis. Serv. Prop. 36 (West).

241. *Id.*

242. *Marshall*, 908 F.2d 1312, 1334 (Posner, J., dissenting).

243. See Appendix (Del., La., and Wyo.).

244. E.g., WYO. STAT. § 6-10-201 (2012) (Offender must have three or more prior felony convictions of any type to qualify).

245. E.g., ALASKA STAT. §§ 12.55.125(l), 33.16.090(a)(1) (2012).

246. E.g., LA. REV. STAT. §§ 15:529.1(a)(3)(b), 14:2(B) (2011).

247. See Appendix (Ark. and Ky.).

248. 18 U.S.C. § 924(e) (2006).

*b. Where the triggering offense is legislatively violent but predicate offenses may be nonviolent: Life*

Only Colorado mandates a life term for a legislatively violent offense, while allowing nonviolent crimes to act as predicates; life is mandatory for offenses such as armed burglary and extortion, if the actor was previously sentenced as an habitual offender.<sup>249</sup> It is possible to be sentenced as an habitual offender in Colorado (but to a term of less than life imprisonment) for a series of entirely nonviolent crimes.<sup>250</sup>

Four states<sup>251</sup> allow a life sentence for specified legislatively violent offenses committed subsequent to one or more nonviolent crimes. In Oklahoma, for instance, a defendant would receive a mandatory twenty-year sentence with a possible life sentence for a series of convictions for offering false evidence; larceny by false pretenses of goods valued at \$500; and armed burglary.<sup>252</sup>

*6. Where the triggering offense is violent but predicate offenses may be nonviolent*

This section addresses habitual offender laws that prescribe an enhanced sentence where an offender is currently convicted of a violent offense but has previous convictions for nonviolent crimes. For example, a person might receive a life or LWOP sentence for robbery if she has prior convictions for, say, drug sale or larceny.

*a. Where the triggering offense is violent but predicate offenses may be nonviolent: LWOP*

Only Mississippi mandates LWOP for a violent crime, where the offender has prior convictions for offenses that may be nonviolent: LWOP is required for, e.g., robbery (armed or unarmed),<sup>253</sup> if the actor has two or more prior felony convictions.<sup>254</sup>

Only North Carolina creates a discretionary LWOP sentence for a violent crime committed subsequent to one or more nonviolent offenses. Offenses such as sexual assault on a child<sup>255</sup> may result in LWOP, if the actor has a certain number of “prior record points” and

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249. COLO. REV. STAT. § 18-1.3-801(2.5) (2012).

250. COLO. REV. STAT. § 18-1.3-801(1.5) (2012).

251. See Appendix (Fla., Ky., Mo., and Okla.).

252. OKLA. STAT. tit. 21, §§ 51.1(B); 451; 1541.2 (2012); OKLA. STAT. tit. 57, §§ 571 (2012).

253. See Appendix; Miss. CODE § 99-19-81 (2011).

254. *Id.*

255. N.C. GEN. STAT. § 14-27.4A (2012).

the offense is aggravated.<sup>256</sup> A person's "prior record points" depends upon the number and type of prior offenses of which that person has been convicted;<sup>257</sup> prior nonviolent crimes can add to an actor's number of prior record points. Aggravating factors include committing a crime for consideration and acting in an especially heinous or cruel manner.<sup>258</sup>

*b. Where the triggering offense is violent but predicate offenses may be nonviolent: Life*

New York establishes discretionary life sentences for violent offenses, such as predatory sexual assault,<sup>259</sup> if the offender has one or more prior felony convictions of any type.<sup>260</sup>

*7. Where the triggering offense is violent but predicate offenses may be legislatively violent*

This subsection discusses situations where a person is convicted of a violent offense and has prior convictions for legislatively violent offenses. Thus, a person convicted of sexual assault might receive life or LWOP, if he has prior convictions for, say, burglary or arson.

*a. Where the triggering offense is violent but predicate offenses may be legislatively violent: LWOP*

LWOP is mandatory for specified violent offenses in two states,<sup>261</sup> where the offender has one or more prior convictions for legislatively violent offenses. For instance, a person convicted in Arkansas of armed home burglary and rape would receive a mandatory life without parole sentence.<sup>262</sup>

*b. Where the triggering offense is violent but predicate offenses may be legislatively violent: Life*

A life term is mandatory for specified violent offenses committed after conviction for one or more legislatively violent crimes in two states.<sup>263</sup> In Ohio, for instance, a life sentence is required for rape,<sup>264</sup>

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256. N.C. GEN. STAT. § 15A-1340.17 (2012).

257. See N.C. GEN. STAT. § 15A-1340.14 (2012).

258. See N.C. GEN. STAT. § 15A-1340.16 (2012).

259. N.Y. PENAL LAW § 130.96 (McKinney 2012).

260. N.Y. PENAL LAW § 70.06 (McKinney 2012).

261. See Appendix (Ark. and Kan.).

262. ARK. CODE § 5-4-501(c)(3) (2012).

263. See Appendix (Alaska and Ohio).

264. OHIO REV. CODE § 2929.14(B)(2)(b) (2011).

where the actor has two or more prior convictions for crimes such as armed burglary and intimidation.<sup>265</sup>

Three states<sup>266</sup> create discretionary life sentences for violent offenses, where the offender has a certain number of prior convictions for legislatively violent offenses. Maryland, for example, permits a life term for serious crimes such as sexual assault, where the actor has two or more prior convictions for certain less serious offenses, such as arson.<sup>267</sup>

#### *8. Where all triggering and predicate offenses must be violent*

This subsection addresses habitual offender laws that permit enhanced sentencing where all relevant offenses are violent. A person subject to such a law might receive a life or LWOP sentence for a conviction for sexual assault, where the offender has prior convictions for, say, robbery or kidnapping.

##### *a. Where all triggering and predicate offenses must be violent: LWOP*

Thirteen states<sup>268</sup> mandate LWOP while requiring that all relevant offenses are violent. Eight<sup>269</sup> require LWOP where all relevant crimes are sexually violent. Four<sup>270</sup> mandate LWOP for a narrow range of repeat violent crimes such as murder, robbery, and kidnapping.<sup>271</sup> Minnesota requires LWOP for first-degree murder where the actor has one or more prior convictions for offenses such as first-degree criminal sexual conduct.<sup>272</sup>

Two states<sup>273</sup> permit discretionary LWOP sentences for a repeat violent crime, when the triggering offense is sexual assault.<sup>274</sup>

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265. OHIO REV. CODE § 2929.01(CC) (2011-2012).

266. See Appendix (Conn., Md., and N.J.).

267. MD. CODE, CRIM. LAW § 14-101(d) (2012).

268. See Appendix (Ga., Ill., Iowa, Minn., Mo., Mont., N.H., N.J., N.M., N.C., Tenn., Tex., and W.Va.).

269. See Appendix (Iowa, Minn., Mo., N.H., N.M., N.C., Or., Tex., and W.Va.).

270. See Appendix (Ga., Mont., N.J., and Tenn.).

271. E.g., N.J. STAT. § 2C:43-7.1 (2012).

272. MINN. STAT. § 609.106 (2012).

273. See Appendix (Tex. and Wis.).

274. E.g., TEX. PENAL CODE §§ 12.42(c)(3), 12.31 (2011); WIS. STAT. § 939.618(2)(b) (2012).

b. *Where all triggering and predicate offenses must be violent: Life*

Six states<sup>275</sup> mandate life terms for a sequence of violent offenses. Five<sup>276</sup> have statutes specifically targeting repeat sex crimes.<sup>277</sup> A life sentence is also mandatory in these jurisdictions for offenses such as armed robbery resulting in great bodily harm<sup>278</sup> and armed carjacking.<sup>279</sup>

Four states<sup>280</sup> permit discretionary life sentences for certain repeat violent offenses, such as rape,<sup>281</sup> unarmed robbery of a person sixty years of age or older,<sup>282</sup> and trafficking in children.<sup>283</sup>

### III.

#### ANALYSIS: THEORETICAL AND PRACTICAL PROBLEMS WITH CURRENT PRACTICE

Due in large part to the increased prevalence of harsh sentencing laws such as those described above, the U.S. prison population has grown exponentially over the past forty years, exploding from just under 200,000 in 1970<sup>284</sup> to over 1.5 million in 2010.<sup>285</sup> The total incarcerated population, including those confined in jails (which includes persons awaiting trial or sentencing or those sentenced to jail for misdemeanors and certain low-level felonies), topped 2.2 million in 2010.<sup>286</sup> A substantial proportion of these individuals are incarcerated for nonviolent offenses such as drug crimes:<sup>287</sup> in 2010, 17.8% of state prisoners (approximately 243,000 individuals), and 51.1% of federal prisoners (approximately 97,000 individuals) were incarcerated for drug offenses such as trafficking.<sup>288</sup> Laws like those described in

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275. See Appendix (Ariz., Conn., Ga., N.H., N.M., and Tex.).

276. See Appendix (Ariz., Conn., N.H., N.M., and Tex.).

277. E.g., N.H. REV. STAT. § 651:6(III)(e), (III)(f) (2013).

278. E.g., N.M. STAT. § 31-18-23(A) (2012).

279. E.g., GA. CODE § 16-5-44.1 (2012).

280. See Appendix (Me., Mass., Okla., and Vt.).

281. E.g., ME. REV. STAT. tit. 17-A, § 1252(4-B) (2008).

282. E.g., MASS. GEN. LAWS ch. 265, § 19 (2012).

283. E.g., OKLA. STAT. tit. 21, §§ 867(B), 62.1 (2012).

284. PATRICK A. LANGAN ET AL., U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, HISTORICAL STATISTICS ON PRISONERS IN STATE AND FEDERAL INSTITUTIONS, 1925–1986 11 (1988).

285. Glaze, *supra* note 2, at 3 tbl.1.

286. *Id.*

287. 17.8% of state prisoners in 2010 were incarcerated for drug offenses. Guerino et al., *supra* note 5, at 29 tbl.17B. That figure is even more significant in the federal system; 51.1% of federal prisoners were incarcerated for drug offenses in 2010. *Id.* at 30 tbl.18.

288. GUERINO ET AL., *supra* note 5, at 29 tbl.17B, 30 tbl.18.

Part II are responsible for the high numbers of drug offenders crowding federal and state prisons. The following section will briefly discuss a few of the many conceptual and practical issues posed by severe sentencing policies, as well as the effects such policies have had on prisons, correctional budgets, the criminal justice system, and society at large.

#### A. Explosive Growth of the Prison Population

Along with a burgeoning incarceration rate comes an increased need for space to house the ever-increasing prison population. But although hundreds of prisons and jails have been built in order to keep up with demand for space, the incarceration rate has far outpaced the creation of new bed space.<sup>289</sup> Even though the rate of incarceration has slowed somewhat in the past few years,<sup>290</sup> many state correctional systems (nineteen, in 2010) are still operating well above their rated capacity,<sup>291</sup> and the resultant overcrowding makes prisons more dangerous and thus more costly to run.<sup>292</sup> For example, the Vera Institute of Justice found that the cost to taxpayers of state correctional systems in 2010 topped \$39 billion.<sup>293</sup> Craig Haney notes that overcrowding reduces the available resources for prison programming such as vocational and rehabilitative services. This, in turn, leads to increased idleness on the part of prisoners, which produces unrest, frustration, and violence inside prisons.<sup>294</sup> A number of studies have linked habitual offender laws and mandatory sentencing policies in general to the explosion in the prison population.<sup>295</sup> That is, the implementation of harsh mandatory sentencing laws has been responsible for the prison

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289. See, e.g., Craig Haney, *The Wages of Prison Overcrowding: Harmful Psychological Consequences and Dysfunctional Correctional Reactions*, 22 WASH. U. J.L. & POL'Y 265 (2006).

290. See Glaze, *supra* note 2, at 1.

291. “Rated capacity” refers to the number of beds or inmates that institutions within each jurisdiction are able to accommodate, according to a rating official. *Terms & Definitions: Corrections*, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, <http://www.bjs.gov/index.cfm?ty=tdtp&tid=1> (last visited Aug. 5, 2013). According to the Bureau of Justice Statistics, nineteen state prison systems were operating above their rated capacity in 2010, and twenty-eight states were operating at or below capacity. GUERINO ET AL., *supra* note 5, at 7.

292. See generally Haney, *supra* note 289.

293. HENRICHSON & DELANEY, *supra* note 4, at 6.

294. Haney, *supra* note 289, at 273–74.

295. Lisa Cowart, Comment, *Legislative Prerogative vs. Judicial Discretion: California's Three Strikes Law Takes a Hit*, 47 DePaul L. Rev. 615, 639–43, 659–61 (1998).

population boom<sup>296</sup> because such laws require that individuals sentenced under them remain in prison for longer periods of time. As a result, prisons are more crowded and dangerous, and prisoners are more likely to suffer from physical, psychological, and behavioral maladies both while incarcerated and following their release, leading to increased recidivism.<sup>297</sup>

Jurisdictions with harsher laws— i.e., those that are more likely to punish low-level offenders with extreme sentences—are more likely to have overburdened and overcrowded prison systems. For example, in 2010, California, whose Three Strikes Law was until recently one of the most overbroad in the nation, had an imprisonment rate of 458 individuals per 100,000 population (i.e., nearly one in 2,000 people who live in California were in prison in 2010).<sup>298</sup> The comparable number in Florida, where it is possible to obtain a mandatory life sentence for a first-time conviction for drug trafficking, was 559 per 100,000 population.<sup>299</sup> By contrast, Minnesota, which has far fewer punitive drug and habitual offender laws, had an imprisonment rate of only 189 per 100,000 population.<sup>300</sup>

### B. Increased Demands on Correctional Spending

The massive prison population has also led to a drastic surge in the need for correctional spending. As discussed above, the Vera Institute found that correctional spending totaled nearly \$40 billion in 2008<sup>301</sup> A number of researchers have suggested that habitual offender laws and truth-in-sentencing laws have had a particularly marked effect on correctional spending,<sup>302</sup> because such laws are partially responsible for the growth in the prison population and the concomitant need for more prisons and more resources to maintain the prison system. And of course the “war on drugs,” which has resulted in [nonviolent?] drug crimes often being punished as severely as violent offenses, has also created substantial costs at every stage of the criminal justice system. This push to detect, prosecute, and punish

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296. See Lowenthal, *supra* note 41, at 72. See also PEW CTR. ON THE STATES, *supra* note 3.

297. See, e.g., Terry A. Kupers, *Prison and the Decimation of Pro-Social Life Skills*, in *THE TRAUMA OF PSYCHOLOGICAL TORTURE* 127 (Almerindo E. Ojeda ed., 2008); Haney, *supra* note 289.

298. GUERINO ET AL., *supra* note 5, at 22 tbl.9.

299. *Id.*

300. *Id.*

301. Haney, *supra* note 289, at 6.

302. See, e.g., Turner et al., *supra* note 48, at 78 (“[s]tates with neither Truth-in-Sentencing Laws nor Three Strikes laws show the smallest percentage of general expenditures going to corrections.”).

large numbers of drug offenders has made every aspect of the criminal justice system more costly to taxpayers, from policing to prosecution to court costs and, of course, prison itself.<sup>303</sup> In addition, an increasing portion of the cost of incarceration is due to the growing population of aging prisoners, who require substantially more resources to house because of health care and other costs related to housing the aging and infirm.<sup>304</sup> This rise in the proportion of aging prisoners is in part due to the fact that mandatory sentencing policies make sentences longer,<sup>305</sup> thus increasing the average age of the prison population.<sup>306</sup> All of these factors increase the burden on correctional systems, and ensure that public funds are funneled into maintaining the prison system, rather than directed at other, more pressing, societal needs such as violent crime prevention, education, and infrastructure.

Jurisdictions with more punitive sentencing policies spend more on corrections than jurisdictions whose sentencing laws are less extreme. Georgia, which prescribes a mandatory LWOP sentence for a fourth conviction for sale of any amount of cocaine,<sup>307</sup> spent more than \$1.1 billion in 2012 on corrections<sup>308</sup> (or about 11.3 cents per capita).<sup>309</sup> Indiana, whose habitual offender law does not dictate a mandatory minimum sentence,<sup>310</sup> spent a bit more than half—about \$569,000<sup>311</sup> (or about 8.7 cents per capita).<sup>312</sup>

### C. Effect on Crime Rates and Public Safety

The overwhelming majority of scholars who have studied the effects of habitual offender and mandatory sentencing laws have found

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303. See, e.g., Schoenfeld, *supra* note 6.

304. See generally INIMAI CHETTIAR ET AL., AMERICAN CIVIL LIBERTIES UNION, AT AMERICA'S EXPENSE: THE MASS INCARCERATION OF THE ELDERLY (2012); see also JAMIE FELLNER, HUMAN RIGHTS WATCH, OLD BEHIND BARS: THE AGING PRISON POPULATION IN THE UNITED STATES (2012).

305. See Lowenthal, *supra* note 41, at 72.

306. See generally CHETTIAR ET AL., *supra* note 304.

307. See Appendix.

308. HENRICHSON & DELANEY, *supra* note 4, at 8 fig. 3.

309. Georgia's population was 9,919,945 in 2012. *State & County QuickFacts – Georgia*, U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, <http://quickfacts.census.gov/qfd/states/13000.html> (last visited Aug. 5, 2013). \$1,129,858, the amount Georgia spent on corrections in 2012 (Henrichson & Delaney, *supra* note 4, at 8 fig.3), divided by Georgia's population, yields a per capita correctional cost of \$0.11.

310. See Appendix.

311. HENRICHSON & DELANEY, *supra* note 4, at 8 fig. 3.

312. Indiana's population was 6,537,334 in 2012. *State & County QuickFacts – Indiana*, U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, <http://quickfacts.census.gov/qfd/states/18000.html> (last visited Aug. 5, 2013). \$569,451, the amount Indiana spent on corrections in 2012 (HENRICHSON & DELANEY, *supra* note 4, at 8 fig.3), divided by Indiana's population, yields a per capita correctional cost of \$0.087.

that such policies impact deterrence and crime rates only minimally, and that any positive effects they do have come at a substantial financial cost.<sup>313</sup>

As noted by Michel Tonry, a number of conceptual justifications are offered for mandatory sentencing policies. Mandatory minimum terms are meant to ensure that similarly situated offenders are treated alike (that is, that two individuals who commit the same crime under similar circumstances will be punished with the same term); increase transparency in the criminal justice system; express public reprobation of certain types of offenses; incapacitate the worst offenders (incapacitation); and, of course, discourage would-be offenders from committing crimes (deterrence).<sup>314</sup> Tonry surveyed the academic literature on the efficacy of mandatory sentencing policies in deterring crime and concluded that “[n]o individual evaluation has demonstrated crime reduction effects attributable to the implementation of a mandatory minimum sentence law.”<sup>315</sup> Many others have reached similar conclusions.<sup>316</sup> One study by Hirsch et al., which focused on mandatory sentencing generally, found that increased *likelihood* of conviction deters crime, but increased sentence *severity* has either no effect or only a marginal deterrent effect.<sup>317</sup> Specifically, Hirsch found that offenders were less likely to commit crimes in circumstances in which their criminal activity was more likely to be detected and punished.<sup>318</sup> On the other hand, Hirsch also found that making sentences for specific crimes longer or more severe does not have any strong effect on deterrence.<sup>319</sup> This suggests that punishing minor crimes with severe sentences does not have the effect of deterring would-be offenders, but that investing more resources in policing and crime detection might have such an effect.

Scholars have reached largely similar conclusions about habitual offender laws, although the results of such analyses are often less

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313. See, e.g., Erik Luna & Paul G. Cassell, *Mandatory Minimalism*, 32 CARDozo L. REV. 1, 13–17 (2010).

314. Tonry, *supra* note 41, at 67. See also Luna & Cassell, *supra* note 313, at 9–12.

315. Tonry, *supra* note 41, at 95.

316. See generally WALTER J. DICKEY, CAMPAIGN FOR AN EFFECTIVE CRIME POLICY, THE IMPACT OF ‘THREE STRIKES AND YOU’RE OUT’ LAWS: WHAT HAVE WE LEARNED? 9 (1996) (“there is no hard evidence that [T]hree [S]trikes law [sic] has had a deterrent effect on crime commission”); David Schultz, *No Joy in Mudville Tonight: The Impact of “Three Strike” Laws on State and Federal Corrections Policy, Resources, and Crime Control*, 9 CORNELL L.J. & PUB. POL’Y 557, 572–73 (2000).

317. ANDREW VON HIRSCH ET AL., CRIMINAL DETERRENCE AND SENTENCE SEVERITY: AN ANALYSIS OF THE RECENT RESEARCH 45, 47 (1999).

318. *Id.*

319. *Id.*

clear. Tonry performed a meta-analysis of a number of studies on the effects of California's "Three Strikes law"; not surprisingly, he found that the research overwhelmingly supported the proposition that Three Strikes had no positive effect on crime rates.<sup>320</sup> Similarly, Kovandzic et al. performed a sophisticated regression analysis of the effect of habitual offender laws on crime rates generally.<sup>321</sup> Although their findings marginally supported the proposition that habitual offender laws "tend to reduce crime rates through incapacitation,"<sup>322</sup> they concluded that any incapacitative effect stemmed from a burgeoning prison population, rather than from the implementation of recidivism laws.<sup>323</sup> That is, Kovandzic found that states with Three Strikes laws also relied more heavily on widespread incarceration as a crime control technique. It was that reliance on incarceration, Kovandzic concluded, rather than the existence in those states of habitual offender laws, that had the (slight) effect of reducing crime rates through incapacitation.<sup>324</sup> Elsa Chen likewise suggested that "[c]ontrary to the theory of 'selective incapacitation,' [California's Three Strikes could have the effect of] forcing authorities to use limited prison space to warehouse nonviolent offenders and those who have aged beyond the peak of their 'criminal careers.'"<sup>325</sup> Moreover, Kovandzic concluded that Three Strikes laws have virtually no deterrent effect,<sup>326</sup> and both Kovandzic and Chen found that such laws might have the effect of *increasing* murder rates. In fact, both found evidence to support the idea that the possibility of a longer sentence makes some offenders more likely to commit murder so as to avoid detection for the underlying crime.<sup>327</sup>

As such, making mandatory minimum sentences for specific offenses more severe might not produce any deterrent or incapacitative effect on top of that produced by making the offense punishable by

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320. *Id.* at 97.

321. Tomislav V. Kovandzic et al., "*Striking Out*" as Crime Reduction Policy: The Impact of "Three Strikes" Laws on Crime Rates in U.S. Cities, 21 JUST. Q. 207 (2004).

322. *Id.* at 223.

323. *Id.* at 225.

324. *Id.*

325. Elsa Chen, *Impacts of "Three Strikes and You're Out" on Crime Trends in California and Throughout the United States*, 24 J. CONTEMP. CRIM. JUST. 345, 360 (2008).

326. Kovandzic et al., *supra* note 321, at 225.

327. *Id.* (noting that homicide rates increase significantly following the implementation of a Three Strikes law, and offering as a possible explanation that some offenders might attempt to avoid a "third strike" by killing potential witnesses or arresting officers); Chen, *supra* note 325, at 360 (same).

confinement in the first place. Moreover, using resources for incarceration diverts them from policing and prosecution. That is, diverting public funds to imprison criminals for long periods of time often means, particularly in this time of budgetary crisis, that fewer funds are available to prevent and detect crime.

More significantly, if one of the goals of harsh sentencing policies is to target and incapacitate those few offenders who pose the greatest risk to public safety (i.e., repeat physically violent offenders), such policies have missed the mark. Severe sentencing policies do not successfully target and incapacitate the most dangerous offenders. As discussed in Part I, habitual offender laws with broad “strike zones” (i.e., those that permit a wide range of offenses, including burglary and drug crimes, to qualify for enhanced sentencing) most often have their most significant incapacitative impact on high-rate, low-level, nonviolent offenders, rather than serious violent offenders.<sup>328</sup>

Similar conclusions have been reached in other contexts, particularly with mandatory drug sentencing (discussed in further detail below). To wit, the United States Sentencing Commission has demonstrated that the mandatory minimum provisions of the Anti-Drug Abuse Act of 1986, which were intended to target drug “kingpins” and “major traffickers,” most often affect low-level functionaries such as street dealers and mules.<sup>329</sup> To the extent that the harshest sentencing policies are meant to target the worst, most dangerous offenders, they have been unsuccessful, and resources are thus wasted incarcerating nonviolent offenders for long periods of time.

#### *D. Overbreadth of “Strike Zones” and Other Problems with Habitual Offender Laws Generally*

Many habitual offender laws, as described in Part II, are drawn broadly, and apply to a wide range of criminal offenses. Specifically, many Three Strikes laws permit a number of nonviolent offenses, such as drug and property crimes, to qualify for enhanced sentencing. As discussed in Part I, however, recidivism laws whose “strike zones” include lower-risk offenses such as burglary and drug offenses fail to accurately target the most high-risk offenders. Most of the incapacitative effects from such broad sentencing provisions, as a result, fall on low-level offenders like burglars and drug couriers. The more broadly

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328. See *supra* note 24 and accompanying text. See also *infra*, Part III.D.

329. U.S. SENTENCING COMM’N, SPECIAL REPORT TO THE CONGRESS: COCAINE AND FEDERAL SENTENCING POLICY 29 (2007) (In 2006, 73.4% of federal crack offenders whose primary role in the drug organization was street-level dealing were subject to mandatory-minimum penalties created by the ADAA).

habitual offender laws are phrased, the more likely it becomes that such laws will have their most significant impact on low-risk individuals, which in turn imposes significant costs on the criminal justice system without a corresponding public safety benefit.

The reason for this phenomenon has been explained at length by Franklin Zimring.<sup>330</sup> As Zimring explains, violent crime always meets with serious punishment, no matter what type of sentencing regime a jurisdiction has in place. Because such crimes are already punished severely, “there is less room left in the system to get tough with this sort of offense.”<sup>331</sup> Thus, when the push to “get tough” on crime results in the passage of increasingly severe sentences, the most dramatic impact falls on *less* serious offenses, such as property crimes.<sup>332</sup> Zimring found that during California’s crime crackdown in the 1980s and 1990s, the number of individuals incarcerated for the nonviolent offenses of burglary and theft grew at rates three and six times faster, respectively, than the number of individuals incarcerated for the violent offense of robbery.<sup>333</sup> As Zimring explains, “[s]ince robbery and murder were always seriously punished in California, there was a smaller number of leniently treated robbers and killers who had been spared by the previous regime and were thus available to be swept up by the crackdown.”<sup>334</sup>

The result, inevitably, is that broadly drawn habitual offender laws produce minimal, if any, added public safety benefits, at least as far as violent offenses are concerned. Because such offenses are already punished severely by stand-alone provisions,<sup>335</sup> subjecting such offenses to penalty enhancements under habitual offender laws yields little marginal benefit, from a public safety standpoint. As explained by Franklin Zimring and Gordon Hawkins:

Armed robbery, attempted murder, and offenses of equivalent magnitude are seriously punished even before special efforts to increase penal severity are introduced; no matter how small the prison, we tend to make room for Charles Manson. . . [C]rime crackdowns have their most dramatic impact on less serious, nonviolent of-

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330. See, e.g., ZIMRING & HAWKINS, *supra* note 9; Zimring & Hawkins, *supra* note 24. See also FRANKLIN E. ZIMRING, THE GREAT AMERICAN CRIME DECLINE (2007); FRANKLIN E. ZIMRING & GORDON HAWKINS, INCAPACITATION: PENAL CONFINEMENT AND THE RESTRAINT OF CRIME (1995).

331. ZIMRING & HAWKINS, *supra* note 9, at 17.

332. *Id.*

333. *Id.* at 18.

334. *Id.*

335. In New York, for example, a first conviction for armed robbery can lead to a sentence of up to thirty years. N.Y. PENAL LAW §§ 160.15, 70.00 (McKinney 2012).

fenses that are close to the margin between incarceration and more lenient penal sanctions.<sup>336</sup>

As a result, under broad habitual offender laws, scarce criminal justice resources are needlessly devoted to prosecuting and punishing the marginal, nonviolent repeat offender, rather than the serious violent offender.

There seems to be little critical thinking, from a legislative standpoint, about how to structure habitual offender statutes so that they actually target the most dangerous offenders.<sup>337</sup> As discussed above, the structure of Three Strikes laws varies widely from jurisdiction to jurisdiction: such laws vary as to the number of felonies necessary in order to qualify for habitual offender treatment; as to what types of crimes may qualify as a predicate or triggering offense;<sup>338</sup> and, to the extent they require the qualifying offense to be "violent," they vary in their definitions of that term. The lack of uniformity in statutory definitions of violence, and the breadth of many such definitions, discloses a seeming lack of concern for defining, and carefully targeting, those offenses and offenders that most significantly threaten the social order. Rather, many of the most severe sentencing provisions are enacted, quickly and without significant consideration, in response to (real or perceived) crime waves.

A further problem is that many habitual offender laws fail to create "washout" periods. Some jurisdictions require, before an augmented penalty is available under a recidivism law, that all relevant offenses have been committed within a specified time period—this is typically referred to as a "washout" period. Some states fail to establish any such temporal limit, with the result being that a repeat felon could qualify for a severe penalty for committing a crime decades after committing any predicate offenses. California's Three Strikes law, for example, until recently allowed *any* qualifying felony conviction, no matter how long past, to serve as a predicate offense for the enhanced penalty.<sup>339</sup> Louisiana's habitual offender law, on the other hand, specifies that a current offense does not qualify as a repeat offense unless more than ten years have elapsed between the current

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336. Zimring & Hawkins, *supra* note 24, at 68.

337. See FRANKLIN E. ZIMRING ET AL., PUNISHMENT AND DEMOCRACY: THREE STRIKES AND YOU'RE OUT IN CALIFORNIA 11–16 (2001) (describing the haste with which California's Three Strikes law was passed and the concomitant lack of contributions from outside analysts as to the scope and possible impact of the law).

338. See also Vitiello, *supra*, note 52, at 400–02.

339. See Michael Vitiello & Clark Kelso, *A Proposal for a Wholesale Reform of California's Sentencing Practice and Policy*, 38 LOY. L.A. L. REV. 903, 928 n.115 (2004).

offense and the expiration of the maximum sentence of the prior offense.<sup>340</sup> Other such statutes require *all* relevant offenses to have been committed within a specified period of time.<sup>341</sup> Some jurisdictions allow juvenile convictions to act as predicate offenses,<sup>342</sup> while some do not. Because criminal activity, and particularly violent criminal behavior, typically decreases with age, habitual offender laws that fail to establish a “washout period” even further risk of having their most significant impact on low-risk offenders, perhaps even those who are long past their peak period of criminality.<sup>343</sup>

#### E. Exacerbation of Racial Disparities

The shocking racial disparities throughout the criminal justice system have been detailed and discussed exhaustively.<sup>344</sup> While African American people make up less than thirteen percent of the general population of the United States,<sup>345</sup> they constitute nearly forty percent of the nation’s prisoners.<sup>346</sup> Black people and other people of color are more likely to be arrested, prosecuted, and convicted than similarly situated white offenders; they are also likely to receive longer prison terms than similarly situated white offenders.<sup>347</sup> A substantial amount of research has suggested that mandatory sentencing laws have exacerbated racial disparities, despite the lack of specific intent to target people of color. The disproportionate impact of mandatory drug laws in the federal system on people of color, for instance, has been well documented.<sup>348</sup> The “war on drugs” has been directly linked to disproportionately high incarceration rates in black communities.<sup>349</sup> Finally, some commentators suggest that recidivism laws disproportionately

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340. LA. REV. STAT. § 15:529.1(C) (2012).

341. See, e.g., OHIO REV. CODE § 2929.14(B)(2)(b) (2011–2012) (requiring that defendant’s current offense be committed within twenty years of defendant’s earliest predicate offense).

342. See Beth Caldwell, *Twenty-Five to Life for Adolescent Mistakes: Juvenile Strikes as Cruel and Unusual Punishment*, 46 U.S.F. L. REV. 581 (2012).

343. See Vitiello & Kelso, *supra* note 339, at 928 n.115.

344. See, e.g., Marc Mauer, *Racial Impact Statements as a Means of Reducing Unwarranted Sentencing Disparities*, 5 OHIO ST. J. CRIM. L. 19 (2007); Dorothy E. Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 STAN. L. REV. 1271 (2004); Western, *supra* note 6.

345. KAREN R. HUMES ET AL., U.S. DEP’T OF COMMERCE, U.S. CENSUS BUREAU, OVERVIEW OF RACE AND HISPANIC ORIGIN: 2010 4 tbl.1 (2011).

346. GUERINO ET AL., *supra* note 5, at 26 tbl.13.

347. See, e.g., Mauer, *supra* note 344.

348. See U.S. SENTENCING COMM’N, *supra* note 329, at 15 (noting that nearly eighty-two percent (82%) of federal crack cocaine offenders in 2006 were black). See also Mauer, *supra* note 344, at 29.

349. See Roberts, *supra* note 344, at 1275–76; see also Mauer, *supra* note 344.

impact people of color, making people of color more likely to be charged with and convicted of sentencing enhancements contained in habitual offender laws,<sup>350</sup> even controlling for other relevant factors. For example, one study conducted in 1998 found that black people were more likely to be prosecuted under habitual offender laws in Georgia and California.<sup>351</sup> Marc Mauer has also pointed out that black people are disproportionately represented in California's prison population in general, and that the Three Strikes law exacerbated that disparity. "In California, African Americans represent 31.3% of the inmate population but 44% of persons serving [T]hree [S]trikes sentences."<sup>352</sup> Thus, many of the laws discussed in this paper likely have the effect of increasing—or perpetuating, at the very least—the stark racial disparities already present in the criminal justice system.

#### F. Social Effects

The extent to which harsh sentencing laws affect racial minorities and/or nonviolent offenders has, many argue, inculcated distrust of the criminal justice system.<sup>353</sup> The United States Sentencing Commission has pointed out that even if the disproportionate effect on racial minorities from mandatory sentencing laws stems from legally relevant factors (e.g., gun possession), "they may create perceptions of unfairness and unwarranted disparity that cause concern insofar as they may foster disrespect for and lack of confidence in the federal criminal justice system."<sup>354</sup> To wit, distrust of the criminal justice system is particularly high in communities with a high percentage of racial minorities, as harsh sentencing policies are most likely to have a noticeable effect on such communities.<sup>355</sup> African Americans are more likely than whites to say that they believe drug laws are disproportionately enforced, as well as less likely than whites to say that they feel confident that the police would respond appropriately to a complaint about a home burglary.<sup>356</sup> Such perceptions, whether or not they are accurate, undermine the efficacy of the criminal justice system, and risk creating social unrest and turmoil.

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350. See WALTER J. DICKEY & PAM S. HOLLOWHURST, CAMPAIGN FOR AN EFFECTIVE CRIME POL'Y, "THREE STRIKES" LAWS: FIVE YEARS LATER 14 (1998). See also Mauer, *supra* note 344, at 30–31; Luna, *supra* note 25, at 27–28.

351. Dickey & Hollowhurst, *supra* note 350, at 5, 14.

352. Mauer, *supra* note 344, at 30–31.

353. See Roberts, *supra* note 344, at 1294–96.

354. U.S. SENTENCING COMM'N, *supra* note 42, at 352–53.

355. See, e.g., Marc Mauer, *Addressing Racial Disparities in Incarceration*, 91 PRISON J. 87S (2011).

356. *Id.* at 96S.

### G. Shifting Discretion

One goal of the truth-in-sentencing movement was to take discretion away from sentencing judges, in order, in part, to ensure that similarly situated offenders received similar sentencing treatment.<sup>357</sup> Mandatory minimum laws and other limitations on judicial discretion were meant to make punishments certain and transparent, and to ensure that criminal defendants were not left at the unfettered whim of the trial judge when it came time for sentencing.<sup>358</sup>

The problem, however, is that mandatory sentencing policies do not take discretion out of the sentencing process; they merely shift discretion from judge to prosecutor.<sup>359</sup> Such policies transpose sentencing power to the front end of the criminal justice system, leaving prosecutors, rather than judges, with the ability to decide when the mandatory minimum applies. This is because prosecutors decide whether to charge an offender with a crime that will trigger a mandatory minimum sentence or, conversely, with an offense that carries a much less severe term. If the prosecutor doesn't feel that a given defendant deserves the mandatory minimum, or if she wants simply to avoid trial, she can offer a criminal defendant a "carrot" in the form of a lesser-included offense or immunity in a plea bargain, using the habitual offender law or mandatory minimum as a "stick" in order to discourage the defendant from going to trial.<sup>360</sup> Moreover, the charging decisions of prosecutors are essentially unreviewable.<sup>361</sup> The sentencing decisions of judges, by contrast, are subject to appellate review and may be reversed on appeal. Shifting discretion from judge to prosecutor also changes the motivations of the actor responsible for applying the mandatory minimum: prosecutors are motivated, for good reason, to convict and imprison criminal actors, while judges are tasked with impartially weighing the evidence and applicable law in arriving at an appropriate sentence. Thus, there is reason to worry that prosecutors, without any malicious intent, will be disposed to invoke

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357. See Nellis, *supra* note 34; Lowenthal, *supra* note 41; Cowart, *supra* note 295, at 629.

358. See Tonry, *supra* note 41, at 67.

359. See, e.g., *id.* at 81–82; Margaret P. Spencer, *Sentencing Drug Offenders: The Incarceration Addiction*, 40 VILL. L. REV. 335, 369 (1995).

360. See, e.g., Luna & Cassell, *supra* note 313, at 12; Schoenfeld, *supra* note 6, at 342.

361. See, e.g., William J. Stuntz, *The Pathological Politics of Criminal Law*, 100 MICH. L. REV. 505, 580 (2001); Michael Vitiello, "Three Strikes" and the Romero Case: The Supreme Court Restores Democracy, 30 LOY. L.A. L. REV. 1601, 1656 (1997).

mandatory minimums much more often than judges, and perhaps more often than is warranted by the facts of a given case.

A related problem is that giving sentencing power to prosecutors produces disparities unexplainable by legally relevant offense characteristics, contradicting the ability of mandatory sentencing policies to ensure that similarly situated defendants are treated similarly. This has been demonstrated extensively with California's Three Strikes law. There was a great deal of variation in the extent to which local prosecutors were willing to enforce the Three Strikes Law, resulting in significant disparities among similarly situated offenders in different parts of the state.<sup>362</sup> While some individuals received sentences of twenty-five years to life under the law, other similarly situated offenders received much more lenient sentences outside the Three Strikes rubric, with the differences explainable only by the local district attorney's political stance on Three Strikes.<sup>363</sup>

Yet another problem with mandatory minimums is that, in addition to producing unpredictable sentencing disparities among similarly situated offenders, such laws often do not provide an adequate opportunity to account for *relevant* differences between offenders. Mandatory minimum provisions focus on one aggravating offense characteristic (such as the quantity of drugs sold or the fact that it is an offender's third conviction for a specified offense), rather than other circumstances often more directly relevant to culpability (such as the extent and severity of the offender's criminal history, or the offender's role in the offense).<sup>364</sup> In the habitual offender context, this has resulted in the impact of enhancement provisions falling more heavily on lower-level, nonviolent offenders.<sup>365</sup> As explained by Zimring and Hawkins, this is because serious violent crimes are, in most cases, punished with severe sentences even in the absence of sentencing en-

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362. Samara Marion, *Justice by Geography? A Study of San Diego County's Three Strikes Sentencing Practices From July-December 1996*, 11 STAN. L. & POL'Y REV. 29 (1999); Joshua E. Bowers, Note, "The Integrity of the Game is Everything": The Problem of Geographic Disparity in Three Strikes, 76 N.Y.U. L. REV. 1164 (2001).

363. See Bowers, *supra* note 362, at 1164-65 ("In San Diego County, a forty-eight-year-old grandfather with two prior nonviolent felony convictions was arrested for shoplifting videotapes from a K-Mart store. The crime was his third strike. He was sentenced to twenty-five years to life behind bars. Three hundred miles to the north, a man in Alameda County stole a belt, three shirts, and a backpack from a Target store. Though the crime qualified as his third strike, he received only sixteen months in prison. . . This checkered pattern of application has transformed the law into a 'civic Rorsharch [sic] test,' reflecting the disparate crime control approaches of California's fifty-seven counties.").

364. See, e.g., Lowenthal, *supra* note 41, at 66.

365. See Luna, *supra* note 25, at 20-22; Zimring & Hawkins, *supra* note 24, at 68-69.

hancements such as those contained in habitual offender laws.<sup>366</sup> As a result, habitual offender laws that are broadly drawn (that is, those that permit nonviolent offenses to qualify for enhancement) have their strongest impact on “less serious, nonviolent offenses that are close to the margin between incarceration and more lenient penal sanctions,” resulting in resources being unnecessarily devoted to punishing nonviolent offenders.<sup>367</sup>

Harsh drug sentencing laws have also resulted in lower-level offenders bearing the brunt of the increased severity in sentencing, because most drug sentencing provisions predicate the mandatory minimum sentence on the quantity of drugs involved.<sup>368</sup> Drug volume, however, is a notoriously inaccurate proxy for an offender’s position in a drug enterprise; the mere fact that an offense involves a large quantity of drugs does not mean the offender is a serious trafficker.<sup>369</sup> For instance, often, drug mules (that is, individuals, often poor and drug-addicted, who are paid to transport drugs internationally) are apprehended with quantities of drugs large enough to qualify them for a stiff mandatory minimum sentence.<sup>370</sup> But such individuals are often low in the organization’s hierarchy (indeed, mules are in some cases intentionally shielded from information about the organization in order to protect those higher up the chain), and thus are not the “major” drug offenders mandatory minimum sentences are meant to target.<sup>371</sup> In addition, because of accessory liability, it is even possible for individuals who never directly handle drugs, or who handle small amounts of drugs, to be held criminally responsible for *all* quantities of drugs

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366. Zimring & Hawkins, *supra* note 24, at 68–69.

367. *Id.*

368. See, e.g., Miss. CODE § 41-29-139(f) (2011) (mandatory LWOP sentence for offender who manufactures, sells, etc., e.g., ten pounds or more of marijuana over any twelve-month period).

369. U.S. SENTENCING COMM’N, *supra* note 42, at 349–50 (explaining that drug quantity is only one factor in determining the appropriate sentence for a drug offender).

370. *Id.* at 350 (explaining that in the federal system, lower-level functionaries such as couriers and mules are convicted of offenses carrying a mandatory minimum penalty in 49.6% and 43.1% of their cases, respectively).

371. See *id.* at 349–50. See also Mary De Ming Fan, *Disciplining Criminal Justice: The Peril Amid the Promise of Numbers*, 26 YALE L. & POL’Y REV. 1, 45–46 (2007) (“More than half of federal prosecutions involve either immigration or drugs, primarily drug trafficking, which are the kinds of crimes that involve powerful and elusive figures and scores of the bottom-rung poor who are abused as disposable couriers or exploitable resources. A host of writers. . . have deplored the frequency at which prosecutions and severe penalties are aimed at a seemingly inexhaustible supply of the poor, who are conscripted by powerful organizations, rather than the most culpable who control the criminal enterprises.”).

sold by a drug enterprise, regardless of their relatively limited involvement.<sup>372</sup>

The federal government partially addressed this issue by creating a so-called “safety valve.”<sup>373</sup> This mechanism allows certain offenders who play a relatively minor role in drug offenses to avoid the harsh penalties usually mandated for drug offenders under the United States Code. However, the utility of the safety valve is limited, because it is drawn so narrowly that very few qualify for relief.<sup>374</sup> For instance, under the federal system, there is a five-year mandatory minimum for a first-time conviction for sale of one gram of LSD.<sup>375</sup> If the offender qualifies under the “safety valve,” however, the sentencing court is permitted to impose a lesser sentence than the usual mandatory five-year minimum.<sup>376</sup> But in order to qualify for this potentially more lenient sentencing, all of the following must be true: the defendant has little or no criminal history; the offense did not involve the use or threat of violence, or the possession of a firearm by any participant;

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372. See, e.g., U.S. SENTENCING COMM’N, U.S. SENTENCING GUIDELINES MANUAL, § 1B1.3 (2011) (relevant conduct for purposes of sentencing includes “in the case of a jointly undertaken criminal activity a criminal plan, scheme, endeavor, or enterprise undertaken by the defendant in concert with others, whether or not charged as a conspiracy), all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity.”); *Black’s Law Dictionary* 997 (9th ed. 2009) (“accomplice liability” is the “[c]riminal responsibility of one who acts with another before, during, or (in some jurisdictions) after a crime”); see also Spencer, *supra* note 359, at 380.

373. See generally Jane L. Froyd, *Sentencing Failure: Low-Level Drug Offenders and the Federal Sentencing Guidelines*, 94 Nw. U. L. REV. 1471 (2000) (explaining Congress’ overhaul of the federal sentencing system in the 1980s and the creation of the federal Sentencing Guidelines, and critiquing the Guidelines’ treatment of lower-level drug offenders).

374. *Id.*

375. 21 U.S.C. § 960(b)(2)(E) (2012).

376. 18 U.S.C. § 3553(f) (2012); U.S. SENTENCING COMM’N, U.S. SENTENCING GUIDELINES MANUAL § 5C1.2 (2012). It should be noted, moreover, that even if a defendant qualifies under this narrow relief rubric, she will still be subject to presumptive Guidelines sentencing ranges that are tied to the statutory mandatory minimum sentences established by Congress. In the example cited above, for instance, a first-time seller of one gram of LSD who qualified for statutory safety-valve treatment would receive a base offense level of 26, under the Guidelines. U.S. SENTENCING GUIDELINES MANUAL §§ 2D1.1(a)(5), (c) (2012). Assuming the person also received a “mitigating role” adjustment and no other criminal history or aggravating factors, his final offense level would be 24. *Id.* at § 3B1.2. That would give the offender a 51-month suggested sentence, or more than four years. *Id.* at § 5A. The practical effect of this is that, unless the sentencing judge is willing to depart from the advisory Guidelines range, the defendant will still receive a fairly harsh sentence. See also Memorandum from John Gleeson, U.S. Dist. Judge, to U.S. Sentencing Comm’n (Jan. 28, 2013) (2013 WL 322243) (explaining a policy disagreement with the Drug Trafficking Offense Guideline, U.S. v. Diaz (E.D.N.Y. Jan. 28, 2013)).

the offense did not result in bodily injury to any person; the defendant was not a leader or organizer of the offense; *and* the defendant told the prosecution everything she knew about the offense and/or the criminal organization before the time of sentencing.<sup>377</sup> The requirements are so strict and narrow, however, that only a very small number of defendants qualify for safety valve relief.<sup>378</sup> As such, in many cases, even very low-level drug offenders are stuck with the severe mandatory minimum penalties.<sup>379</sup>

#### IV. OPPORTUNITIES FOR REFORM

What follows is a brief list of possible reforms to mandatory minimum and habitual offender sentencing systems that might limit the disproportionate effects of such policies on nonviolent offenders.<sup>380</sup> And while the list of proposed reforms is by no means exhaustive, any one of them could have positive effects on prison overcrowding, correctional resources, public perception of the criminal justice system, and public safety.

##### *A. Narrow the “Strike Zone”*

One of the most direct ways to combat the propensity of habitual offender laws to trap low-level offenders is to narrow the “strike zone,” or the range of offenses that qualify for habitual offender treatment.<sup>381</sup> In order to curb the effect of such laws on low-risk offenders, “strike zones” could be limited to a narrow range of violent offenses, such as murder, manslaughter, rape and other sexual assaults, kidnapping, armed robbery, and human trafficking. In determining which offenses should qualify for habitual offender treatment, outside experts and analysts should be consulted, and a concerted effort should be made to determine which offenses pose the most significant public safety risk.

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377. *Id.*

378. See Froyd, *supra* note 373, at 1498–99 (“Because the five requirements are so narrow in scope, not all low-level offenders are eligible for the safety valve provisions.”); Virginia G. Villa, Retooling Mandatory Minimum Sentencing: Fixing the Federal Statutory Safety Valve to Act as an Effective Mechanism for Clemency in Appropriate Cases, 21 HAMLINE L. REV. 109, 119–24 (1997) (detailing why many low-level offenders fail to qualify for safety-valve relief).

379. *See id.*

380. Several of the proposed reforms are based, in whole or in part, on reforms previously proposed by Michael Tonry. *See* Tonry, *supra* note 41, at 103–06.

381. *See supra*, Part III.

*B. Exclude Nonviolent Drug Offenses From Habitual Offender Treatment*

Nonviolent drug offenses should never be permitted to qualify as predicate or triggering offenses under a habitual offender law. A number of scholars have demonstrated that drug offenders are particularly insusceptible to deterrence, in part because most individuals who commit drug-related offenses are drug-addicted, and thus unable to wrest themselves from the cycle of rehabilitation, relapse, and involvement in criminal activity.<sup>382</sup> To wit, although penalties for drug offenses have grown exponentially more severe over the past four decades, drugs remain cheap and readily available,<sup>383</sup> and drug trafficking remains prevalent. While it is true that the drug trafficking trade is associated with a significant amount of violent crime, such issues could be more directly and efficiently addressed by (a) punishing violent crime harshly (which, as noted, is already the case) and (b) using strategies to reduce the demand for drugs, such as increasing the availability of drug treatment and implementing incarceration alternatives such as drug courts that help drug offenders recover from addiction, thus reducing their likelihood of recidivating.<sup>384</sup>

*C. Enact Time Limits or “Washout Periods”<sup>385</sup>*

If the goal of habitual offender laws is to target dangerous, high-risk offenders—that is, individuals who commit multiple serious, physically violent offenses—then washout periods should be used so that all predicate and triggering offenses must occur within a specified period of time. Jurisdictions could implement relatively short washout periods in order to target offenders who commit multiple crimes over short periods of time. Alternatively, jurisdictions could require that the longer the period of time that has passed since the offender’s *earliest* predicate offense, the higher the number of offenses it is necessary to have committed in order to qualify for the enhanced penalty. This would ensure that the targeted offender is committing offenses at a constant or near-constant rate. Either approach would ensure that only those offenders who pose the greatest risk to public safety qualify for habitual offender treatment, and will avoid permitting habitual offender laws to apply to individuals who are long past the peak of their criminal careers.

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382. See, e.g., Linda Fentiman, *Rethinking Addiction: Drugs, Deterrence, and the Neuroscience Revolution*, 14 U. PA. J. L. & SOC. CHANGE 233 (2011).

383. See Mauer, *supra* note 6, at 11.

384. See, e.g., Spencer, *supra* note 359, at 373–74.

385. See Vitiello & Kelso, *supra* note 339, at 928 n.115.

*D. Make Minimum Sentences Presumptive  
Rather Than Mandatory<sup>386</sup>*

In order to provide relief in cases where the prescribed sentence might be too harsh given the individual circumstances of the offense or offender, sentencing judges should retain discretion to disregard the prescribed sentence if a certain number of mitigating factors are found, or if the mandatory minimum sentence is higher than the suggested sentence under any applicable sentencing guidelines.<sup>387</sup> This will ensure that relevant differences between offenders are taken into account.<sup>388</sup> For example, a sentencing judge could consider the offender's criminal history, whether anyone was injured during the commission of the offense, and whether the offender performed a supervisory or managerial role in the offense. Relatedly, habitual offender laws could require a finding by the sentencing authority that the enhanced sentence is necessary to protect the public safety, before a Three Strikes penalty may be imposed.<sup>389</sup> Provisions such as these will significantly increase the likelihood that a person subject to a Three Strikes penalty poses a serious public safety threat.

*E. Require Periodic Reassessments<sup>390</sup> and/or  
Racial Impact Statements<sup>391</sup>*

States should not be discouraged from experimenting in sentencing policy. It is too often the case, however, that punitive sentencing policies are passed in the wake of a perceived crisis, but long-term negative effects on the criminal justice system are ignored.<sup>392</sup> A better approach might require periodic reassessments of the benefits and costs of mandatory minimum and habitual offender laws. For example, state legislatures could implement commissions to study and periodically report on the effects of different mandatory sentencing laws on crime rates, public safety, and criminal justice and correctional costs. These commissions could be utilized in conjunction with sunset provisions, thus requiring legislatures periodically to review the wisdom and efficacy of their sentencing policies. This would protect

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386. See Tonry, *supra* note 41, at 104–05. See also Luna & Cassell, *supra* note 313, at 60–74.

387. Luna & Cassell, *supra* note 313, at 60–74.

388. See *supra* Part III.

389. See HAW. REV. STAT. § 706–662 (2012).

390. See Tonry, *supra* note 41, at 104.

391. See Mauer, *supra* note 344.

392. See generally Kennedy, *supra* note 11; Vitiello, *supra* note 339; Alyssa L. Beaver, Note, *Getting a Fix on Cocaine Sentencing Policy: Reforming the Sentencing Scheme of the Anti-Drug Abuse Act of 1986*, 78 FORDHAM L. REV. 2531 (2010).

against the likelihood that harsh penalties proposed in times of crisis do not continue wreaking havoc on the criminal justice system long after their utility has come into question.<sup>393</sup>

Similarly, in order to limit the disproportionate impact of our sentencing policies on communities of color, legislatures could be required to create racial impact statements before implementing any new sentencing policies.<sup>394</sup> For example, legislatures could be required to study the intended and unintended racial effects of any new laws, including the likelihood of their disproportionately impacting people of color. Where study discloses a likelihood of such an effect, alternative avenues of reform could be considered.<sup>395</sup>

#### *F. Post-Sentence Modification<sup>396</sup>*

One way to decrease pressure on correctional resources and provide some needed relief for the thousands of nonviolent offenders subject to harsh minimum sentences would be to provide for judicial discretion to lower prisoners' terms post-sentencing, if specified requirements have been met.<sup>397</sup> Cynthia Klingele has suggested that such programs should have four key characteristics:

- (1) the petitioner is required to seek modification in the original sentencing court; (2) interested parties are given notice and opportunity to be heard prior to any decision to modify; (3) before modification is granted, the court holds a public hearing in open court; and (4) the judge is required to provide a reasoned, on-the-record explanation for any decision to modify.<sup>398</sup>

Implementing such a program would make early release decisions transparent, and could provide relief to low-risk offenders with a positive prison record. One similar initiative that has recently been implemented is California's "realignment" program.<sup>399</sup> Under that program, California is allowing non-violent, non-serious, non-sex offenders to be diverted to local custody (e.g., county jails), rather than state prisons. While this program does not make sentences shorter for low-level offenses, it does allow localities to use alternative means of custody, such as house arrest and electronic monitoring, in addition to

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393. See Tonry, *supra* note 41, at 104.

394. See Mauer, *supra* note 344, at 31–35.

395. *Id.*

396. See Klingele, *supra* note 46; Tonry, *supra* note 41, at 105–06.

397. Klingele, *supra* note 46, at 498.

398. *Id.* at 515.

399. See CAL. DEP'T OF CORR. & REHABILITATION, *Public Safety Realignment*, <http://www.cdcr.ca.gov/realignment/> (last visited Jan. 17, 2013); CAL. REALIGNMENT, <http://www.calrealignment.org/> (last visited Jan. 17, 2013).

incarceration in county jails.<sup>400</sup> Following the completion of their terms, counties are permitted to release specified low-level offenders to community-level supervision, rather than the state-run parole program.<sup>401</sup> The program is projected to significantly reduce correctional costs, limit overcrowding in state prisons, and lower the rate of recidivism, particularly for low-level offenders.<sup>402</sup>

Alternatively, parole boards or other authorities could be given the discretion to release prisoners sentenced to lengthy terms after such prisoners have served a specified amount of time.<sup>403</sup> Release decisions could be made using evidence-based risk assessment instruments, so as to ensure that those released actually posed little or no public safety risk.<sup>404</sup> Tonry points out that such a system could provide a needed opportunity for mercy without requiring elected officials to face political opposition for being “soft on crime.”<sup>405</sup>

## CONCLUSION

The phenomenon of mass incarceration is financially, politically, and morally costly; it has led to overcrowding and inhumane, unsafe prison conditions;<sup>406</sup> it has been responsible for outsize budgetary expenditures on corrections;<sup>407</sup> it has produced unwarranted racial disparities in the prison population;<sup>408</sup> and it has undermined the public’s perception of the criminal justice system.<sup>409</sup> The goal of this paper has been to describe one significant contributing factor to the problem of mass incarceration: the availability of life and LWOP sentences for nonviolent offenses. A number of states have recently started to amend their criminal justice policies in response to budgetary crises.<sup>410</sup> While pursuing reforms to create positive budgetary impacts is

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400. CAL. DEP’T OF CORR. & REHABILITATION, *Overview: AB 109 & AB 117, Public Safety Realignment of 2011*, [http://www.cdr.ca.gov/realignment/docs/AB\\_109-PowerPoint-Overview.pdf](http://www.cdr.ca.gov/realignment/docs/AB_109-PowerPoint-Overview.pdf) (last visited Jan. 17, 2013).

401. *Id.*

402. See CAL. DEP’T OF CORR. & REHABILITATION, *Public Safety Realignment*, <http://www.cdr.ca.gov/realignment/> (last visited Jan. 17, 2013).

403. Tonry, *supra* note 41, at 105–06.

404. See generally Christine S. Scott-Hayward, *The Failure of Parole: Rethinking the Role of the State in Reentry*, 41 N.M. L. REV. 421 (2011).

405. *Id.*

406. See Haney, *supra* note 287.

407. See HENRICHSON & DELANEY, *supra* note 4.

408. See, e.g., Mauer, *supra* note 355; Roberts, *supra* note 344.

409. See, e.g., Roberts, *supra* note 344.

410. See, e.g., VANITA GUPTA ET AL., AM. CIVIL LIBERTIES UNION, SMART REFORM IS POSSIBLE: STATES REDUCING INCARCERATION RATES AND COSTS WHILE PROTECTING COMMUNITIES (2011) (discussing recent successful state-level bipartisan criminal justice reform efforts).

by no means objectionable, sentencing and correctional reforms should be pursued not only for their fiscal effects, but because reform is the just and humane thing to do.

## FIRST-TIME OFFENSES

### MANDATORY LWOP NONVIOLENT DRUG CRIMES

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
FEDERAL GOVERNMENT	21 U.S.C.A. § 848(b) (West 2006)	Directing or managing a continuing criminal drug enterprise where enterprise received \$10 million or more over a 12-month period or involved, e.g., 150 kilograms or more of cocaine.	LWOP	Yes
ALABAMA	ALA. CODE § 13A-12-23(1)(b), (2)(d) (2012)	Manufacture, sale, etc. of, e.g., 10 kilograms or more of cocaine or 1,000 pounds or more of cannabis.	LWOP	Yes
FLORIDA	FLA. STAT. ANN. § 893.135(1)(b)(2), (1)(c)(2) (West 2012)	Manufacture, import, sale, etc. of, e.g., 150 kilograms or more of cocaine or 30 kilograms or more of morphine.	LWOP	Yes
MISSISSIPPI	MISS. CODE ANN. § 41-29-139(f) (West 2011)	Manufacture, import, sale, etc. of, e.g., 300 kilograms or more of cocaine or 60 kilograms or more of morphine knowing the probable result will be the death of any person. Person 21 or older convicted of manufacture, sale, etc. over any 12-month period of, e.g., 10 pounds or more of marijuana or 2 ounces or more of heroin. Does not apply if defendant furnishes information to the state which in the opinion of the trial judge should or would have aided in the arrest of others who violate this provision.	LWOP or death penalty if court makes appropriate findings	Yes

### MANDATORY LWOP NONVIOLENT OTHER

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
WISCONSIN	WIS. STAT. ANN. § 946.50 (West 2012)	Absconding by person adjudicated delinquent of crime that would be Class A felony (serious felonies) if committed by an adult.	LWOP	Yes

<b>MANDATORY LWOP</b>				
<b>LEGISLATIVE VIOLENT CRIMES</b>				
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
PENNSYLVANIA	18 PA. CONS. STAT. ANN. § 3301 (West 2012)	Arson; death of police or firefighter results.	LWOP	Yes
UTAH	UTAH CODE ANN. § 76-3-203.6 (West 2012)	Prisoner serving sentence for capital or 1st-degree felony who commits, e.g., armed burglary or arson.	LWOP unless court finds justice demands otherwise (if so, 20 years up to life)	Yes

<b>DISCRETIONARY LWOP</b>				
<b>NONVIOLENT DRUG CRIMES</b>				
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
FEDERAL GOVERNMENT	21 U.S.C.A. § 841(b)(1)(A) (West 2010)	Manufacture/sale of, e.g., 1 kilogram or more of heroin, 280 grams or more of cocaine base, or 1,000 pounds or more of marijuana.	10 years to LWOP; 20 years to LWOP if death or serious bodily injury results.	No
	21 U.S.C.A. § 841(b)(1)(B) (West 2010)	Manufacture, sale, etc. of, e.g., 500 grams or more of cocaine or 100 kilograms or more of marijuana; death or serious bodily injury results from use of substance.	20 years or up to LWOP	No
	21 U.S.C.A. § 848(a) (West 2006)	Engaging in a continuing criminal drug enterprise.	20 years or up to LWOP	No
	21 U.S.C.A. § 841(b)(1)(C) (West 2010)	Manufacture, sale, etc. of, e.g., 1 gram or more of flunitrazepam; death or serious bodily injury results from use of substance.	20 years or up to LWOP	No
	21 U.S.C.A. § 960(b)(1) (West 2010)	Importing, exporting, etc. of, e.g., 1 kilogram of more of heroin or 50 grams or more of methamphetamine.	10 years up to LWOP; 20 years up to LWOP if death or serious bodily injury results.	No
	21 U.S.C.A. § 960(b)(2) (West 2010)	Importing, exporting, etc. of, e.g., 500 grams or more of cocaine or 100 kilograms or more of marijuana; death or SBI results.	20 years or up to LWOP	No
	21 U.S.C.A. § 960(b)(3) (West 2010)	Importing, exporting, etc. of, e.g., 1 gram or more of flunitrazepam; death or SBI results.	20 years or up to LWOP	No
ALABAMA	ALA. CODE § 13A-12-233(c)(1) (2012)	Engaging in "drug trafficking enterprise" (in concert with 5 or more others with respect to whom actor is an organizer, supervisor, or manager and from which actor obtains substantial income).	25-year mandatory minimum; maximum up to LWOP	No
MISSOURI	MO. ANN. STAT. §	Manufacture, sale, etc. of, e.g., 90 grams or more of methamphetamine	10-30 years or up to life,	No

	195.222(8)(2), (9)(2) (West 2012)	in a school zone or within a motor vehicle or structure used for the accommodation or lodging of guests.	without parole.	
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
MISSOURI	MO. ANN. STAT. § 195.222(1)(2), (3)(2), (7)(2) (West 2012)	Manufacture, sale, etc. of, e.g., 90 grams or more of heroin, 24 grams or more of cocaine base, or 100 kilograms or more of marijuana.	10-30 years or up to life, without parole.	No
	MO. ANN. STAT. § 195.223(9)(3), (10)(3) (West 2012)	Possession, purchase, import, etc. of, e.g., 450 grams or more of amphetamine or methamphetamine.	10-30 years or up to life, without parole	No
NEVADA	NEV. REV. STAT. ANN. § 453.3353 (West 2011)	Manufacture of any drug other than marijuana; death results from ingestion of substance.	LWOP, life with 20-year mandatory minimum, or 50 years with 20-year mandatory minimum.	No
	NEV. REV. STAT. ANN. § 453.3325 (West 2011)	Allowing child to be present during commission of specified drug offenses (other than those involving marijuana) where child dies as a result.	LWOP, life with 20-year mandatory minimum, or 50 years with 20-year mandatory minimum.	No
NORTH DAKOTA	N.D. CENT. CODE ANN. § 19-03.1-23.1 (West 2011)	Class A drug offenses if offense involved aggravating factors, e.g., in school zone, delivery of drugs to minors, or involving, e.g., 5 grams or more of cocaine base or 500 grams or more of marijuana.	Life with 20-year mandatory minimum or LWOP	No

## DISCRETIONARY LWOP

NONVIOLENT OTHER			
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE
FEDERAL GOVERNMENT	18 U.S.C.A. § 225 (West 2006) 8 U.S.C.A. § 1324(a)(1)(B) (West 2006)	Organizing or supervising a continuing financial crimes enterprise if person received \$5 million or more over any two-year period. Knowingly bringing or attempting to bring unauthorized alien into the United States, knowingly transporting or moving unauthorized alien within the United States, etc., or aiding or abetting same; death results in violation of Illinois RICO where death of a person results as a "natural or necessary consequence" and deaths were reasonably foreseeable and occurred while the actor was otherwise engaged in the violation.	10 years or up to LWOP <sup>1,2</sup> Any term of years or up to LWOP <sup>1,2</sup> 25 years or up to LWOP
ILLINOIS	720 ILL. COMP. STAT. ANN. 5/33G-5 (West 2012)	Skimming of gaming proceeds in amounts of \$25,000 or more.	At least 25 years or up to life
LOUISIANA	LA. REV. STAT. ANN. §§ 27:262(E), 15:574.4(B) (2011)		No

**DISCRETIONARY LWOP****LEGISLATIVE VIOLENT CRIMES**

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
FEDERAL GOVERNMENT	18 U.S.C.A. § 924(o) (West 2006)	Conspiring with 1 or more others to use or possess, e.g., a firearm with a silencer during a "crime of violence" or drug trafficking crime. "Crime of violence" includes any offense that has as an element the use, attempt, or threat of force against the person or property of another or by its nature involves a substantial risk of such force. "Drug trafficking crime" means a felony under the Controlled Substances Act.	Any term of years or up to LWOP	No
	21 U.S.C.A. § 848(e) (West 2006)	Engaging in or working in furtherance of a continuing criminal drug enterprise where person kills or commands, counsels, or directs, or causes the killing of a person.	20 years or up to LWOP	No
	18 U.S.C.A. § 844(d) (West 2006)	Transportation or receipt in interstate commerce of explosive with knowledge or intent that it be used to kill, injure, or intimidate a person or unlawfully damage or destroy a building or vehicle, death results.	Any term of years or death or LWOP	No
	18 U.S.C.A. § 844(f)(3), (i) (West 2006)	Arson of building owned by the United States or any institution receiving federal assistance or building used in interstate or foreign commerce; death results	20 years or up to LWOP	No
	18 U.S.C.A. § 33(b) (West 2006)	Willfully or recklessly tampering with a vehicle where the vehicle contained radioactive waste or spent nuclear fuel.	30 years or up to LWOP	No
	18 U.S.C.A. § 175e (West 2006)	Knowingly producing, possessing, or utilizing the variola virus.	25 years or up to LWOP	No
NEVADA	NEV. REV. STAT. ANN. § 202.330(2) (West 2011)	Use of explosives to destroy property knowing or having reason to know a person is therein.	LWOP, life, or 25 years with 10-year mandatory minimum	No
	NEV. REV. STAT. ANN. § 199.160 (West 2011)	Procuring the conviction and execution of an innocent person by perjury or subornation of perjury.	LWOP, life, or 50 years with 20-year mandatory minimum	No

**MANDATORY LIFE****NONVIOLENT DRUG CRIMES**

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
ARIZONA	ARIZ. REV. STAT. ANN. § 13-	Adult convicted of "serious drug offense" as part of a pattern of Life; 25-year mandatory Yes		

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
ARIZONA	3410(A) (2012)	conduct that constituted a significant source of the actor's income. "Serious drug offense" includes possession of marijuana for sale; and manufacture of drugs.	minimum before parole eligibility	
	ARIZ. REV. STAT. ANN. § 13-3410(B) (2012)	Adult convicted of "serious drug offense" if person is organizer, leader, or manager of a criminal drug enterprise. "Serious drug offense" includes possession of methamphetamine precursor chemicals; possession of marijuana for sale; and manufacture of drugs.	Life; 25-year mandatory minimum before parole eligibility	Yes
	ARIZ. REV. STAT. ANN. § 13-3410(A) (2012).	Adult convicted of "serious drug offense" committed as part of a pattern of conduct (at least 3 criminal acts) constituting a significant source of the persons income. "Serious drug offense" includes, e.g., possession of methamphetamine precursor chemicals, production or transportation of, e.g., 2 pounds or more of marijuana, and possession of a prescription-only drug for sale.	Life; 25-year mandatory minimum	Yes
	ARIZ. REV. STAT. ANN. § 13-3410(B) (2012)	Adult convicted of "serious drug offense" committed as organizer, manager, or director of a criminal drug enterprise. "Serious drug offense" includes, e.g., possession of methamphetamine precursor chemicals, production or transportation of, e.g., 2 pounds or more of marijuana, and possession of a prescription-only drug for sale.	Life; 25-year mandatory minimum	Yes
	MICH. COMP. LAWS ANN. § 333.7416 (West 2012)	Adult who recruits minor 17 or younger to manufacture, sell, etc., e.g., 1,000 grams or more of any Schedule I or II narcotic.	Life	Yes
	N.J. STAT. ANN. § 2C:35-3 (West 2012)	Conspiring with two or more others in a scheme to manufacture, sell, etc. methamphetamine, LSD, any Schedule I or II substance, etc. as a financier or organizer or supervisor of at least one other person.	Life; 25-year mandatory minimum	Yes
	N.D. CENT. CODE ANN. § 19-03.1-23.1 (West 2011)	"Class A" drug offense if involved aggravating factors: manufacture or sale in school zone; delivery of drug to minor by adult; involved, e.g., 50 grams or more of cocaine, 5 grams or more of cocaine base, or 500 grams or more of marijuana; or defendant was armed. "Class A" drug offenses include creation or sale of any amount of Schedule I or II narcotic (N.D. CENT. CODE ANN. § 19-03.1-23(2)(a) (West 2011)).	Life with 20-year mandatory minimum or LWOP	Yes
NORTH DAKOTA	V.A. CODE ANN. § 18.2-248(H2) (West 2012)	Principal or administrator of continuing criminal enterprise where enterprise received \$250,000 or more over a 12-month period or manufactured, sold, etc. over a 12-month period, e.g., 10 kilograms or more of cocaine or 250 kilograms or more of marijuana.	Life. However, may impose 40-year mandatory minimum if it finds actor substantially cooperated	Yes
VIRGINIA				

<b>MANDATORY LIFE</b>			
<b>NONVIOLENT OTHER</b>			
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE
GEORGIA	GA. CODE ANN. § 16-10-70 (West 2012)	Perjury in a death penalty proceeding where the defendant is convicted and sentenced to the death penalty.	Life
ILLINOIS	720 ILL. COMP. STAT. ANN. 5 / 29D-3.5 (West 2012)	Hindering the prosecution of a terrorist by rendering criminal assistance where death resulted from the act of terrorism.	Life
RHODE ISLAND	R.I. STAT. ANN. § 11-43-7 (West 2012)	Unlawful exercise of functions of state office.	Life
UTAH	UTAH CODE ANN. § 76-8-306 (West 2012)	Obstruction of justice where proceeding concerns offense punishable by death penalty or LWOP.	Death penalty or life with 25-year mandatory minimum

<b>MANDATORY LIFE</b>			
<b>LEGISLATIVELY VIOLENT CRIMES</b>			
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE
RHODE ISLAND	R.I. GEN. LAWS ANN. § 11-23-6 (West 2012)	Delivery of drug by adult to minor; minor dies as a result of ingestion of substance.	Yes

<b>DISCRETIONARY LIFE</b>			
<b>NONVIOLENT DRUG CRIMES</b>			
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE
ALABAMA	ALA. CODE § 13A-12-231 (2012)	Manufacture, sale, etc. of, e.g., 1 kilogram or more of cannabis or 28 grams or more of cocaine.	10-99 years or up to life; 1-year mandatory minimum
ALABAMA	ALA. CODE § 13A-12-215 (2012)	Sale by an adult of any amount of any Schedule I through Schedule IV controlled substance to a minor.	10-99 years or up to life

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
ALABAMA	ALA. CODE § 13A-12-233 (2012)	Violation of any trafficking provisions in concert with five or more others with respect to whom actor is an organizer, supervisor, etc., and from which actor obtains substantial income or resources.	25-year mandatory minimum or up to LWOP	No
ALASKA	ALA. CODE § 13A-12-218 (2012)	Manufacture of any amount of any drug if offense involved any of the following: possession of a firearm; use of booby trap; possession, transportation, etc. of hazardous materials or creating a substantial risk to human health or safety or a danger to the environment; operation took place within 500 feet of residence, business, or school; operation actually produced any amount of specified controlled substance; operation was for the production of Schedule I or II substances; person under 17 was present during manufacturing process.	10-99 years or up to life	No
ARKANSAS	ALASKA STAT. ANN. § 12.51.125(b) (West 2012) ARK. CODE ANN. § 5-64-440 (West 2012)	Distribution by adult of any amount of specified drugs to a minor.	5-year mandatory minimum or up to 99 years	No
	ARK. CODE ANN. § 5-64-406 (West 2012)	Possession of, e.g., 200 grams or more of methamphetamine or cocaine or 400 grams or more of a Schedule III controlled substance.	10-40 years or up to life	No
	ARK. CODE ANN. § 5-74-106 (West 2012)	Distribution by adult of any amount of any drug to a minor.	10-40 years or up to life	No
	ARK. CODE ANN. § 5-64-123 (West 2012)	Possession of a weapon during any controlled substance offense (except those relating to drug paraphernalia)	10-40 years or up to life	No
	ARK. CODE ANN. § 5-74-104(a) (West 2012)	Manufacture of methamphetamine with 2 or more others with respect to whom the actor is an organizer, supervisor, etc. → 2-degree enhancement. "Predicate offense" includes "crimes of violence" and "crimes of pecuniary gain" (including drug offenses). "Crime of violence" includes any crime if actor causes or threatens death or physical injury to another. Qualifying offenses include possession of drug paraphernalia (ARK. CODE ANN. § 5-64-435(b)(3) (West 2012)).	10-40 years or up to life	No
	ARK. CODE ANN. § 5-74-104(b) (West 2012)	"Predicate offense" as part of 2 or more predicate offenses in concert with 2 or more others with respect to whom the actor is <i>not</i> an organizer or supervisor → 1-degree enhancement. "Predicate offense" includes "crimes of violence" and "crimes of pecuniary gain" (including drug offenses). "Crime of violence" includes any crime if actor causes or threatens death or physical injury to another. Qualifying offenses include possession of drug paraphernalia (ARK. CODE ANN. § 5-64-420(b)(3) (West 2012)).	10-40 years or up to life	No
	ARK. CODE ANN. § 5-13-210 (West 2012)	Administration to another of any amount of any Schedule I or II narcotic.	10-40 years or up to life	No

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY
ARKANSAS	ARK. CODE ANN. § 5-64-423 (West 2012)	Class A or Class Y "predicate offense" in concert with 2 or more others. "Predicate offense" includes "crimes of violence" and "crimes of pecuniary gain" (including drug offenses). "Crime of violence" includes any crime if actor causes or threatens death or physical injury to another. Class A offenses include possession of, e.g., 10 grams or more of cocaine (ARK. CODE ANN. § 5-64-420(b)(3) (West 2012)). Class Y offenses include delivery of 10 grams or more of methamphetamine (ARK. CODE ANN. § 5-64-422 (West 2012))	10-40 years or up to life	No
COLORADO	CONN. GEN. STAT. ANN. § 21a-278 (West 2012)	Delivery of 10-200 grams of methamphetamine or cocaine.	10-40 years or up to life	No
FLORIDA	FLA. STAT. ANN. § 499.005(1)(0) (West 2012)	Manufacture, sale, etc. of, e.g., 1 ounce or more of heroin or methadone.	5-20 years minimum term; maximum term up to life	No
IDAHO	IDAHO CODE ANN. § 2732(a)(1)(A) (West 2012)	Sale, purchase, import, etc. of contraband prescription drugs; death results from ingestion of substance.	Term of years not exceeding life	No
IOWA	IDAHO CODE ANN. § 37-2732(B)(a)(2), (a)(6) (West 2012)	Manufacture, sale, etc. of any Schedule I narcotic or any Schedule II controlled substance.	Term of years not exceeding life	No
MICHIGAN	IDAHO CODE ANN. § 37-2739(B)(b)(2), (b)(3) (West 2012)	Manufacture, sale, etc. of, e.g., 28 grams or more of cocaine or 2 grams or more of heroin.	3-year mandatory minimum or up to life	No
MISSOURI	IOWA CODE ANN. § 902.9(1) (West 2012)	Manufacture, sale, etc. of, any amount of any Schedule I narcotic or Schedule II controlled substance in school zone or to a minor.	5-year mandatory minimum or up to life	No
MISSOURI	MICH. COMP. LAWS ANN. § 333.7401(2)(e)(i) (West 2012)	Manufacture, sale, etc. by adult to minor of any amount of amphetamine or methamphetamine.	Term of years not exceeding 99 years	No
MISSOURI	MICH. COMP. LAWS ANN. § 333.7403(2)(a) (West 2012)	Manufacture, sale, etc. of 1,000 grams or more of, e.g., any Schedule I or II narcotic.	Life or any term of years	No
MISSOURI	MICH. COMP. LAWS ANN. § 750.317a (West 2012)	Possession of 1,000 grams or more of, e.g., any Schedule I or II narcotic.	Life or any term of years	No
MISSOURI	MO. ANN. STAT. § 195.223(3), (7) (West 2012)	Delivery of any amount of any Schedule I or II substance (other than marijuana); death results from ingestion of substance.	Life or any term of years	No
MISSOURI	MO. ANN. STAT. § 195.222(1), (3) (West 2012)	Possession, purchase, import, etc. of, e.g., 24 grams or more of cocaine base or 100 kilograms or more of marijuana.	10-30 years or up to life	No
MISSOURI	MO. ANN. STAT. § 195.222(1), (3) (West 2012)	Manufacture, sale, etc. of, e.g., 30 grams or more of heroin or 8 grams or more of cocaine base.	10-30 years or up to life	No

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
MISSOURI	MO. ANN. STAT. § 565.330 (West 2012)	Pharmacist who causes adulteration of any prescribed drug, misrepresents a prescription, or sells a misbranded, altered, or diluted prescription with intent to mislead.	10-30 years or up to life	No
	MO. ANN. STAT. § 195.218 (West 2012)	Sale of any amount of any drug in or within 1,000 feet of public housing.	10-30 years or up to life	No
	MO. ANN. STAT. § 195.211(2) (West 2012)	Sale of any amount of any drug (except 5 grams or less of marijuana) in a residence where child resides or within 2,000 feet of any elementary or secondary school, a public vocational school, any community college, college or university, or any school bus.	10-30 years or up to life	No
	Mo. Ann. Stat. § 570.030(4) (West 2012)	Theft of anhydrous ammonia by appropriation of a tank truck, trailer, etc.	10-30 years or up to life	No
	Mo. Ann. Stat. § 195.219 (West 2012)	Protecting or attempting to protect production of drugs with any device that causes or is intended to cause damage to the person or property of another; serious physical injury results.	10-30 years or up to life	No
	Mo. Ann. Stat. § 577.075 (West 2012)	Release of anhydrous ammonia into the atmosphere.	10-30 years or up to life	No
	Mo. Ann. Stat. § 569.040(1)(2) (West 2012), Mont. Code Ann. § 45-9- 101 (West 2011)	Arson of a building in an attempt to produce methamphetamine.	10-30 years or up to life	No
MONTANA	Mont. Code Ann. § 45-9- 110 (West 2011)	Sale of any amount of any narcotic or opiate.	Not less than 2 years or up to life	No
	Mont. Code Ann. § 45-9- 109 (West 2011)	Manufacture or cultivation of any amount of any narcotic or opiate.	Not less than 5 years or up to life	No
	N.B. Rev. Stat. Ann. § 28- 416(7)-(10) (West 2012)	Sale of any amount of any "dangerous drug" (generally Schedule I and II drugs) in, on, or within 1,000 feet of a public or private elementary or secondary school. Affirmative defense if the offense occurred entirely within a private residence and no person 17 years of age or younger was present at any time.	Not less than 3 years or up to life	No
NEBRASKA	N.B. Rev. Stat. Ann. § 28- 416(4), (7), (9), (10) (West 2012), N.B. Rev. Stat. Ann. § 28- 416(5), (7), (9), (10) (West 2012).	Manufacture, sale, etc. of, e.g., 140 grams or more of cocaine, heroin, or amphetamine.	20 years or up to life	No
		Adult who manufactures, sells, etc. any drug or counterfeit drug to a minor; in, on, or within 1,000 feet of an elementary, vocational, or secondary school, community college, college, junior college, or university, or playground, or within 100 feet of a youth center, public swimming pool, or video arcade → 1-degree penalty enhancement. Qualifying offenses include those involving, e.g., 28 grams or more of cocaine, heroin, or methamphetamine.	20 years or up to life	No

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
NEBRASKA	NEB. REV. STAT. ANN. § 28-416(6), (7), (9), (10) (West 2012) NEB. REV. STAT. ANN. § 28-457(5) (West 2012)	Person who possesses a firearm during any drug offense → 1-degree penalty enhancement. Qualifying offenses include those e.g., 28 grams or more of cocaine, heroin, or methamphetamine. Causing a child or vulnerable adult to ingest methamphetamine; death results from ingestion of substance.	20 years or up to life	No
NEVADA	NEV. REV. STAT. ANN. § 453.3385 (West 2011)	Sale, manufacture, import, etc. of, e.g., 28 grams or more of any Schedule I substance other than marijuana.	20 years or up to life	No
NEW JERSEY	N.J. STAT. ANN. § 2C:43-7 (West 2012); N.J. STAT. ANN. § 2C:44-3 (West 2012)	Commission of 1st-degree drug felonies if actor is "professional criminal"; offense is committed for consideration, or actor uses or possesses a stolen vehicle. 1st-degree felonies: manufacture, sale, etc. of, e.g., 50 ounces or more of heroin or cocaine (N.J. STAT. ANN. § 2C:35-5 (West 2012)); actor maintains premises for manufacture of, e.g., any amount of methamphetamine or 10 or more marijuana plants (N.J. STAT. ANN. § 2C:35-4 (West 2012)); or actor manufactures, sells, etc. 1 gram or more of flunitrazepam (N.J. STAT. ANN. § 2C:35-5.3 (West 2012)).	20 years or up to life	No
NEW YORK	N.Y. PENAL LAW § 70.71 (McKinney 2012)	Operating as a "major drug trafficker." "Major trafficker: director of a drug organization during any period less than 12 months during which the proceeds collected from drug sales is \$75,000 or more; person sells or possesses with intent to sell as a "profiteer" on one or more occasions in 6 months on less a narcotic drug and proceeds from sales are	Indeterminate life term with 15-year minimum or 8-20 years if court is of the opinion that the presumptive term is unduly harsh.	No

			\$75,000 or more.	
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
NORTH DAKOTA	N.D. CENT. CODE ANN. §§ 12.1-32-09(1)(a)-(b), (1)(e), (2)(a) (West 2011)	Class A drug felonies if actor is a "dangerous, mentally abnormal person"; actor is a professional criminal; or actor used a firearm, weapon, etc. during offense. Class A felonies include manufacture or sale of any amount of Schedule I or II narcotic or methamphetamine (N.D. CENT. CODE ANN. 19-03-1-23(1)(a) (West 2011)); and manufacture/sale of any drug on or within correctional premises or in a correctional facility (N.D. CENT. CODE ANN. § 12-47-21 (West 2011)). Manufacture, sale, etc. of any amount of any Schedule I or II narcotic or methamphetamine or counterfeit thereof in or on or within 1,000 feet of a child care or preschool facility, elementary or secondary school, public career and technical education school, or college or university.	Any term of years up to LWOP	No
OKLAHOMA	N.D. CENT. CODE ANN. §§ 19-03-1-23.1(1)(b), 19-03-1-23(1), (2) (West 2011)	Manufacture, sale, etc. of any amount of any Schedule I or II narcotic or methamphetamine or counterfeit thereof if actor was at least 16 and offense involved delivery to a minor.	Any term of years up to LWOP	No
RHODE ISLAND	N.D. CENT. CODE ANN. §§ 19-03-1-23.1(1)(c), 19-03-1-23(1), (2) (West 2011)	Manufacture, sale, etc. of, e.g., 5 grams or more of cocaine base, 50 grams or more of cocaine, or 500 grams or more of marijuana.	Any term of years up to LWOP	No
OKLAHOMA	N.D. CENT. CODE ANN. §§ 19-03-1-23.1(1)(d), 19-03-1-23(1), (2) (West 2011)	Manufacture, sale, etc. of any amount of any Schedule I or II narcotic or methamphetamine or counterfeit thereof if actor actually possessed a firearm at the time of the offense.	Any term of years up to LWOP	No
OKLAHOMA	OKLA. STAT. ANN. tit. 63, § 2-40(B), (C) (West 2012)	Manufacture, sale, etc. of any amount of any Schedule I or II narcotic or LSD or synthetic controlled substance.	At least 5 years or up to life (any term of years up to life for synthetic)	No
OKLAHOMA	OKLA. STAT. ANN. tit. 63, § 2-509(D) (West 2012)	Conversion of marijuana into hashish.	Not less than 2 years or up to life	No
OKLAHOMA	OKLA. STAT. ANN. tit. 63, § 2-415(D)(4) (West 2012); OKLA. STAT. ANN. tit. 21, § 62.1 (West 2012)	Manufacture, sale, etc. of, e.g., 450 grams or more of cocaine or 1,000 pounds or more of marijuana.	15-year mandatory minimum or up to life	No
RHODE ISLAND	R.I. GEN. LAWS ANN. § 21-28-4.01(g)(2) (West 2012)	Manufacture, sale, etc. by any non-drug-addicted person of any Schedule I or II substance other than marijuana.	Any term of years up to life	No
RHODE ISLAND	R.I. GEN. LAWS ANN. § 21-28-4.07 (West 2012)	Sale, distribution, etc. by adult to minor at least 3 years younger than the actor.	15 year mandatory minimum (unless compelling factors	No

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
RHODE ISLAND	R.I. GEN. LAWS ANN. § 21-28-4.01.2 (West 2012)	Manufacture, sale, etc. of, e.g., 1 kilogram or more of cocaine or 5 kilograms or more of marijuana.	Not less than twice the normal authorized term or up to life	Any term of years up to life No
TEXAS	TEX. HEALTH & SAFETY CODE ANN. § 481.11.14 (West 2011)	Manufacture, sale, etc. of any amount of any Schedule I or II substance in, on, or within 300 yards of any elementary, vocational, or secondary school, or public park or playground.	Not less than twice the normal authorized term or up to life	Any term of years up to life No
TEXAS	TEX. HEALTH & SAFETY CODE ANN. § 481.11.15 (West 2011)	Furnishing wood alcohol knowing it will be used as a beverage.	Any term of years up to life	No
TEXAS	TEX. HEALTH & SAFETY CODE ANN. § 481.11.16 (West 2011)	Manufacture, sale, etc. of 4 or more grams of a substance in "Penalty Group 1" (e.g., heroin, morphine, or cocaine) (TEX. HEALTH & SAFETY CODE ANN. § 481.102 (West 2011)).	5.99 years or life (or 15.99 years or life if 400 grams or more)	No
TEXAS	TEX. HEALTH & SAFETY CODE ANN. § 481.11.17 (West 2011)	Manufacture, sale, etc. of 80 or more units of a substance in "Penalty Group 1-A" (e.g., LSD and similar substances) (TEX. HEALTH & SAFETY CODE ANN. § 481.102 (West 2011)).	5.99 years or life (or 15.99 years or life if 4,000 units or more)	No
TEXAS	TEX. HEALTH & SAFETY CODE ANN. § 481.11.18 (West 2011)	Manufacture, sale, etc. of 4 or more grams of a "Penalty Group 2" substance (e.g., peyote (TEX. HEALTH & SAFETY CODE ANN. § 481.103 (West 2011)) or "Penalty Group 2-A" (e.g., cannabinoids (TEX. HEALTH & SAFETY CODE ANN. § 481.1031 (West 2011)))	5.99 years or life (or 10.99 years or life if 400 grams or more)	No
TEXAS	TEX. HEALTH & SAFETY CODE ANN. § 481.11.19 (West 2011)	Manufacture, sale, etc. of 200 grams or more of a substance in "Penalty Group 3" (e.g., codeine and peyote (TEX. HEALTH & SAFETY CODE ANN. § 481.104 (West 2011)) or "Penalty Group 4" (e.g., buprenorphine and similar substances (TEX. HEALTH & SAFETY CODE ANN. § 481.1041 (West 2011)).	5.99 years or life (or 10.99 years or life if 400 grams or more)	No
TEXAS	TEX. HEALTH & SAFETY CODE ANN. § 481.11.20 (West 2011)	Possession of 2,000 pounds or more of marijuana.	5-99 years or life	No
TEXAS	TEX. HEALTH & SAFETY CODE ANN. § 481.11.21 (West 2011)	Possession 200 grams or more of a substance in "Penalty Group 1" (e.g., heroin, morphine, or opium) (TEX. HEALTH & SAFETY CODE ANN. § 481.102 (West 2011)).	5.99 years or life (or 10.99 years or life if 400 grams or more)	No
TEXAS	TEX. HEALTH & SAFETY CODE ANN. § 481.11.22 (West 2011)	Possession of 4,000 units or more of a substance in "Penalty Group 1-A" (e.g., LSD and related substances) (TEX. HEALTH & SAFETY CODE ANN. § 481.1021 (West 2011)).	5.99 years or life (or 15.99 years or life if 8,000 units or more)	No
TEXAS	TEX. HEALTH & SAFETY CODE ANN. § 481.11.23 (West 2011)	Possession of 400 grams or more of a substance in "Penalty Group 2" (e.g., mescaline or specified amphetamines (TEX. HEALTH & SAFETY CODE ANN. § 481.103 (West 2011)).	5.99 years or life	No
TEXAS	TEX. HEALTH & SAFETY CODE ANN. § 481.11.24 (West 2011)	Possession of 2,000 pounds or more of a substance in "Penalty Group 2-A" (e.g., specified cannabinoids (TEX. HEALTH & SAFETY CODE ANN. § 481.1031 (West 2011)).	5-99 years or life	No

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
TEXAS	TEX. HEALTH & SAFETY CODE ANN. § 481.117 (West 2011)	Possession of 400 grams or more of a substance in "Penalty Group 3" (e.g., methylphenidate, codeine, and peyote (TEX. HEALTH & SAFETY CODE ANN. § 481.104 (West 2011)).	5-99 years or life	No
	TEX. HEALTH & SAFETY CODE ANN. § 481.118 (West 2011)	Possession of 400 grams or more of a substance in "Penalty Group 4" (e.g., buprenorphine and similar substances (TEX. HEALTH & SAFETY CODE ANN. § 481.105 (West 2011)).	5-99 years or life	No
	TEX. HEALTH & SAFETY CODE ANN. § 481.120 (West 2011)	Sale or delivery of 50 pounds or more of marijuana.	5-99 years or life (or 10.99 years on life if 2,000 pounds or more)	No
	TEX. PENAL CODE ANN. § 71.02 (West 2011)	2nd-degree felony for the benefit of a criminal street gang → 1st-degree felony, 2nd-degree felonies include manufacture, sale, etc. of 1 gram or more of, e.g., cocaine (TEX. HEALTH & SAFETY CODE ANN. § 481.112 (West 2011)) and sale of 5 pounds or more of marijuana (TEX. HEALTH & SAFETY CODE ANN. § 481.120 (West 2011)).	5-99 years or life	No
	TEX. PENAL CODE ANN. § 12.50 (West 2011)	2nd-degree felony committed in a disaster or evacuation zone → 1st-degree felony, 2nd-degree drug felonies include manufacture, sale, etc. of 1 gram or more of, e.g., opium or cocaine (TEX. HEALTH & SAFETY CODE ANN. § 481.112 (West 2011)) and sale of 5 pounds or more of marijuana (TEX. HEALTH & SAFETY CODE ANN. § 481.120 (West 2011)).	5-99 years or life	No
	TEX. PENAL CODE ANN. § 12.48 (West 2011)	2nd-degree felony resulting in loss to a nursing home → 1st-degree, 2nd-degree felonies include manufacture, sale, etc. of 1 gram or more of, e.g., opium or cocaine (TEX. HEALTH & SAFETY CODE ANN. § 481.112 (West 2011)) and sale of 5 pounds or more of marijuana (TEX. HEALTH & SAFETY CODE ANN. § 481.120 (West 2011)).	5-99 years or life	No
	TEX. HEALTH & SAFETY CODE ANN. § 481.134(b) (West 2011)	2nd-degree felony in, on, or within 1,000 feet of an institution of higher learning, a public or private youth center or playground; or in, on, or within 300 feet of a public swimming pool or video arcade facility → 1-degree penalty enhancement, 2nd-degree drug felonies include manufacture, sale, etc. of 1 gram or more of, e.g., opium or cocaine (TEX. HEALTH & SAFETY CODE ANN. § 481.112 (West 2011)) and sale of 5 pounds or more of marijuana (TEX. HEALTH & SAFETY CODE ANN. § 481.120 (West 2011)).	5-99 years or life	No
	TEX. HEALTH & SAFETY CODE ANN. § 481.140(a) (West 2011)	2nd-degree specified drug felony if minor was used to commit or assist in the offense → 1st-degree felony. Qualifying drug felonies include manufacture, sale, etc. of 1 gram or more of, e.g., opium or cocaine (TEX. HEALTH & SAFETY CODE ANN. § 481.112 (West 2011)) and sale of 5 pounds or more of marijuana (TEX. HEALTH & SAFETY CODE ANN. § 481.120 (West 2011)).	5-99 years or life	No

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
TEXAS	TEX. PENAL CODE ANN. § 71.028 (West 2011)	2nd-degree felony if court finds beyond a reasonable doubt that actor administered or provided a controlled substance to a victim of the offense with the intent of facilitating the offense → 1st-degree felony. 2nd-degree drug felonies include manufacture, sale, etc. of 1 gram or more of, e.g., opium or cocaine (TEX. HEALTH & SAFETY CODE ANN. § 481.112 (West 2011)) and sale of 5 pounds or more of marijuana (TEX. HEALTH & SAFETY CODE ANN. § 481.120 (West 2011)).	5-99 years or life	No
UTAH	UTAH CODE ANN. § 76-3-203.1 (West 2012)	2nd-degree felony in, on, or within 1,000 feet of a school, school board or institution of higher education, public or private youth center, or playground; in, on, or within 300 feet of a shopping mall, movie theater, public swimming pool, or video arcade; or on a school bus → 1st-degree felony if actor is 17 or older. 2nd-degree drug felonies include manufacture, sale, etc. of 1 gram or more of, e.g., opium or cocaine (TEX. HEALTH & SAFETY CODE ANN. § 481.112 (West 2011)) and sale of 5 pounds or more of marijuana (TEX. HEALTH & SAFETY CODE ANN. § 481.120 (West 2011)).	5-99 years or life	No
UTAH	UTAH CODE ANN. § 58-37-8(2)(e) (West 2012)	Possession or use of controlled substances or analogs in a jail, prison, or other correctional facility → 1-degree penalty enhancement. Qualifying felonies include possession or use of 100 pounds or more of marijuana. UTAH CODE ANN. § 58-37-8(2)(b) (West 2012).	At least 5 years or up to life	No
UTAH	UTAH CODE ANN. § 58-37d-5 (West 2012)	Offenses relating to clandestine drug lab operation or importing controlled substances if actor possessed a firearm; used a booby trap; illegally possessed or transported hazardous material or created a substantial risk to human health or safety or a danger to the environment; intended operation to take place within 500 feet of a residence, business, church, or school; the lab operation actually produced any amount of a specified substance; or intended operation was to produce cocaine base or methamphetamine.	At least 5 years or up to life	No
UTAH	UTAH CODE ANN. § 58-37-8(1)(d) (West 2012)	2nd-degree offense committed in connection with the criminal street gang → 1st-degree offense. 2nd-degree offenses include manufacture, sale, etc. of, e.g., any Schedule I or II substance (UTAH CODE ANN. § 58-37-8(1)(b) (West 2012)) and possession of, e.g., 100 pounds or more of marijuana ( <i>id.</i> at (2)(b)). Engaging in continuing criminal enterprise where actor participates, directs, or engages in conduct resulting in a drug offense and the	At least 7 years or up to life	No

JURISDICTION	STATUTE	DESCRIPTION	Sentence	LIFE OR LWOP MANDATORY?
UTAH	UTAH CODE ANN. § 58-37-8(4) (West 2012)	2nd-degree offense → 1st-degree felony if: committed in or within 1,000 feet of an elementary or secondary school or vocational or postsecondary institution; in a building, park, or structure being used by a school; or within 1,000 feet of a preschool or childcare facility; in a public park, amusement park, arcade, or recreation center; or within 1,000 feet of a house of worship, mall, sports facility, stadium, arena, theater, movie house, playhouse, or parking lot or structure adjacent thereto; or on the grounds of a library; in the presence of a person under 18; or for the purpose of facilitating, arranging, or causing the transport, delivery, etc. to an inmate or on the grounds of any correctional facility. 2nd-degree offenses include manufacture, sale, etc. of, e.g., any Schedule I or II substance (UTAH CODE ANN. § 58-37-8(1)(b) (West 2012)) and possession of, e.g., 100 pounds or more of marijuana ( <i>Id.</i> at 2(b)).	At least 5 years or up to life	No
VIRGINIA	VA CODE ANN. § 76-3-203.2 (West 2012)	2nd-degree drug felony committed while armed and in or within 1,000 feet of an elementary or secondary school or institution of higher education; or in on the grounds of a preschool or childcare facility → 1st-degree felony. 2nd-degree offenses include manufacture, sale, etc. of, e.g., any Schedule I or II substance (UTAH CODE ANN. § 58-37-8(1)(b) (West 2012)) and possession of, e.g., 100 pounds or more of marijuana ( <i>Id.</i> at 2(b)).	At least 5 years or up to life	No
VIRGINIA	VA CODE ANN. § 18.2-248(C) (West 2012)	Manufacture, sale, etc. of, e.g., 100 grams or more of heroin or 10 grams or more of methamphetamine. Mandatory minimum applicable unless court finds actor does not have a prior conviction for a violent offense; actor did not use violence or threats or possess a weapon during the offense; offense did not result in death or serious bodily injury; actor was not an organizer, leader, etc. and was not engaged in a continuing criminal enterprise; and not later than sentencing, actor has truthfully provided all information actor has concerning the offense.	At least 5 years or up to life	No
VIRGINIA	VA CODE ANN. § 18.2-248(H) (West 2012)	Manufacture, sale, etc. of, e.g., 100 kilograms or more of marijuana, 5 kilograms or more of cocaine, or 1 kilogram or more of heroin. Mandatory minimum applicable unless court finds actor does not have a prior conviction for a violent offense; the person did not use violence or threats thereof or possess a weapon during the offense; the offense did not result in death or serious bodily injury; the person was not an organizer, leader, or manager and was not engaged in a continuing	At least 20 years or up to life	No

violation is part of a series of 2 or more violations on separate occasions in concert with 2 or more others with respect to whom actor is an organizer, supervisor, or manager.

			criminal enterprise; <i>and</i> not later than sentencing, the person has truthfully provided all information the person has concerning the offense.	
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
VIRGINIA	VA. CODE ANN. § 18.2-248(H) (West 2012)	Principal or administrator of continuing criminal enterprise if enterprise received \$100,000 or more over a 12-month period from the manufacture or sale of, e.g., heroin or marijuana <i>or</i> enterprise manufactured, sold, etc., e.g., 1.5 kilograms of heroin or 100-250 kilograms of marijuana over a 12-month period. Mandatory minimum applicable unless court finds actor does not have a prior violent offense, did not use violence or threats or possess a weapon, the offense did not result in death or serious bodily injury; the person was not an organizer, or manager and was not engaged in a continuing criminal enterprise; <i>and</i> not later than sentencing, the person has provided all information the person has concerning the offense.	At least 20 years or up to life	No
	VA. CODE ANN. § 18.2-248.03 (West 2012)	Manufacture, sale, etc. of 227 grams or more of methamphetamine.	At least 5 years or up to life	No

DISCRETIONARY LIFE				
NONVIOLENT OTHER				
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
DELAWARE	DEL. CODE ANN. tit. 16, § 7113 (West 2012)	Offenses relating to sale/possession of explosive materials; death result.	Any term of years or up to life	No
	ARK. CODE ANN. § 5-38-301 (West 2012)	Arson causing damage of \$100,000 or more.	10-40 years or life	No
ARKANSAS	ARK. CODE ANN. § 5-74-104(a) (West 2012)	Class B “predicate felony offense” as part of 2 or more such offenses in concert with 2 or more others with respect to whom actor is a supervisor → Class Y felony. “Predicate offense” is a “crime of violence” or “crime of pecuniary gain.” ARK. CODE ANN. § 5-74-103 (West 2012). Class B felonies include theft of wireless services of \$25,000 or more (ARK. CODE ANN. § 5-36-303 (West 2012)) and possession of explosives (ARK. CODE ANN. § 5-73-108 (West 2012)).	10-40 years or life	No
	ARK. CODE ANN. § 5-74-104(b) (West 2012)	Class A “predicate felony offense” as part of 2 or more such offenses with 2 or more others with respect to whom actor is <i>not</i> a supervisor or manager → Class Y felony. “Predicate offense” is a “crime of	10-40 years or life	No

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
FLORIDA	FLA. STAT. ANN. § 874.10 (West 2012)	Organizing or managing criminal gang-related activity.	Any term of years up to life	No
	FLA. STAT. ANN. § 843.167 (West 2012)	Intercepting a police communication to assist in a 1st-degree felony 1st-degree felonies burglary causing property damage in excess of \$1,000 (FLA. STAT. ANN. § 810.02 (West 2012) and theft of property valued at \$100,000 or more (FLA. STAT. ANN. § 812.014 (West 2012)).	Any term of years up to life	No
HAWAII	HAW. REV. STAT. ANN. §§ 775.085 (West 2012)	1st-degree felony committed because of victim's race, color, ancestry, religion, etc. 1st-degree felonies burglary causing property damage in excess of \$1,000 (FLA. STAT. ANN. § 810.02 (West 2012) and theft of property valued at \$100,000 or more (FLA. STAT. ANN. § 812.014 (West 2012)).	Any term of years up to life	No
IDAHO	HAW. REV. STAT. ANN. §§ 706-662, 706-661 (West 2012)	Class A felony if actor is a "professional criminal" (crime is actor's major source of livelihood). Class A felonies include distribution of methamphetamine to a minor (HAW. REV. STAT. § 712-1240.7 (2012)) and burglary of a dwelling during a civil defense emergency or disaster relief period (HAW. REV. STAT. § 708-817 (2012)).	Indeterminate life terms as maximum if court finds beyond a reasonable doubt that sentence is necessary to protect public safety	No
ILLINOIS	HAW. REV. STAT. ANN. §§ 706-662, 706-661 (West 2012)	Class A felony if actor is currently being sentenced for 2 or more felonies, a felony committed while incarcerated, or the terms for each felony would exceed 40 years if run consecutively. Class A felonies include distribution of methamphetamine to a minor (HAW. REV. STAT. § 712-1240.7 (2012)) and burglary of a dwelling during a civil defense emergency or disaster relief period (HAW. REV. STAT. § 708-817 (2012)).	Indeterminate life terms as maximum if court finds beyond a reasonable doubt that sentence is necessary to protect public safety	No
LOUISIANA	IDaho CODE ANN. § 18-6011 (West 2012)	Willful obstruction of railroad; death results.	At least 5 years or up to life	No
	5/29 Ill. COMP. STAT. ANN. 5/29D-35 (West 2012)	Hindering the prosecution of a terrorist by rendering criminal assistance; no death caused by act of terrorism.	At least 20 years or up to life	No
	720 Ill. COMP. STAT. ANN. 5/33G-5 (West 2012)	Violation of the Illinois RICO where death of any person results as a "necessary or natural consequence," deaths were reasonably foreseeable to actor, and deaths occurred while actor was otherwise engaged in the violation.	At least 25 years or up to life	No
	LA. REV. STAT. ANN. § 14:230 (2011)	Money laundering in excess of \$100,000.	At least 5 years or up to 99 years at hard labor	No
	LA. REV. STAT. ANN. § 14:129 (2011)	Jury tampering in a death penalty proceeding or proceeding where life imprisonment may be imposed.	Not more than 99 years at hard labor	No

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
MARYLAND	Md. CODE ANN., CRIM. LAW § 8-516 (West 2012)	Medicare fraud; death results.	Any term of years up to life	No
	MASS. GEN. LAWS ANN. ch. 266, § 42 (West 2012)	Larceny of paper for bank bills	Any term of years up to life	No
	MASS. GEN. LAWS ANN. ch. 266, § 43 (West 2012)	Retention of paper designated for bank bills by person entrusted with the care thereof without consent and with intent to injure or defraud.	Any term of years up to life	No
	MASS. GEN. LAWS ANN. ch. 267, § 17 (West 2012)	Counterfeiting coin	Any term of years up to life	No
MASSACHUSETTS	MASS. GEN. LAWS ANN. ch. 268, § 1 (West 2012)	Perjury during a capital trial.	Any term of years up to life	No
	MASS. GEN. LAWS ANN. ch. 266, § 50 (West 2012)	Fraud or embezzlement by a state employee.	Any term of years up to life	No
	MASS. GEN. LAWS ANN. ch. 267, § 7 (West 2012)	Falsely making, altering, etc. a note or bill of credit with intent to defraud.	Any term of years up to life	No
	MASS. GEN. LAWS ANN. ch. 267, § 8 (West 2012)	Falsely making or counterfeiting a bank bill or promissory note with intent to injure or defraud.	Any term of years up to life	No
	MASS. GEN. LAWS ANN. ch. 267, § 9 (West 2012)	Possession of 10 or more counterfeit bills or notes.	Any term of years up to life	No
MICHIGAN	MICH. COMP. LAWS ANN. § 750.260 (West 2012)	Counterfeiting coin.	Any term of years up to life	No
	MICH. COMP. LAWS ANN. § 767A.9 (West 2012)	Perjury during the investigation of a crime punishable by life imprisonment.	Any term of years up to life	No
	MICH. COMP. LAWS ANN. §§ 750.335a, 750.338b (West 2012)	Sexual delinquent who is convicted of, e.g., indecent exposure or gross indecency.	At least 1 day or up to life	No
	MICH. COMP. LAWS ANN. § 750.543h (West 2012)	Rendering criminal assistance to a person who committed terrorism.	Any term of years up to life	No
MISSOURI	MO. ANN. STAT. § 570.223(3)(5) (West 2012)	Identity theft in amounts of \$50,000 or more.	10-30 years or life	No
	MO. ANN. STAT. § 570.145(1) (West 2012)	Financial exploitation of elderly or disabled persons in amounts of \$50,000 or more.	10-30 years or life	No
	MO. ANN. STAT. §§ 575.210(3), 575.200 (West 2012)	Escape from confinement or custody by means of a deadly weapon or dangerous instrument.	10-30 years or life	No

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
NEBRASKA	NEB. REV. STAT. ANN. § 28-1355 (West 2012); NEB. REV. STAT. ANN. § 28-1356 (West 2012)	Use of proceeds of racketeering to acquire property or make investments if the racketeering activity resulted in specified felonies.	At least 20 years or up to life	No
NEVADA	NEV. REV. STAT. ANN. § 199.160 (West 2011)	Procuring the conviction and execution of an innocent person by perjury or subornation of perjury.	LWOP, life with 20-year mandatory minimum, or 50 years with 20-year mandatory minimum	No
NEW JERSEY	N.J. STAT. ANN. § 2C:43-7 (West 2012); N.J. STAT. ANN. § 2C:44-3 (West 2012)	1st-degree felony if factor is a "professional criminal" or offense is committed for consideration. 1st-degree felonies include offenses relating to racketeering (N.J. STAT. ANN. § 2C:41-5 (West 2012)); simple arson of a place of worship (N.J. STAT. ANN. § 2C:5-4 (West 2012)); and acting as an organizer or manager of organized street crime (N.J. STAT. ANN. § 2C:3-30 (West 2012)).	At least 20 years or up to life	No
NORTH DAKOTA	N.D. CENT. CODE ANN. § 12.1-32-09(1)(a)-(b), (1)(e), (2)(a) (West 2011)	Class A felony if actor is a "dangerous, mentally abnormal person"; actor is a professional criminal; or actor used a firearm, weapon, etc., during offense. Class A felonies include financial exploitation of a disabled or elderly adult if the offense involves \$100,000 or more (N.D. CENT. CODE ANN. § 12.1-31-07.1 (West 2011); and making or possession by an inmate of any ammunition, knife or dangerous weapon (N.D. CENT. CODE ANN. § 12-44-1-2(5) (West 2011).	Any term of years up to LWOP	No
OKLAHOMA	OKLA. STAT. ANN. tit. 21, § 1266 (West 2012)	Advocating revolution or the overthrow of the United States government by force.	At least 5 years or up to life	No
	OKLA. STAT. ANN. tit. 63, § 124.8 (West 2012)	Failure by a company to inform personnel of fire codes with, e.g., intent that explosives be used to damage property; death results.	Any term of years or life	No
	TEX. PENAL CODE ANN. § 31.03 (West 2011)	Advocating syndicalism or sedition on school grounds by adult.	At least 10 years or up to life	No
TEXAS	TEX. PENAL CODE ANN. § 71.02 (West 2011)	2nd-degree felony for the benefit of a criminal street gang → 1st-degree felony. 2nd-degree felonies include burglary of a dwelling (TEX. PENAL CODE ANN. § 30.02 (West 2011)) and fraudulent use of possession of identifying information if the offense involved 10 or more items (TEX. PENAL CODE ANN. § 32.51 (West 2011)).	5-99 years or life	No

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
TEXAS	TEX. PENAL CODE ANN. § 12.50 (West 2011)	2nd-degree felony committed in a disaster or evacuation zone → 1st-degree felony. 2nd-degree felonies include burglary of a dwelling (TEX. PENAL CODE ANN. § 30.02 (West 2011)) and fraudulent use of possession of identifying information if the offense involved 10 or more items (TEX. PENAL CODE ANN. § 32.51 (West 2011)).	5-99 years or life	No
	TEX. PENAL CODE ANN. § 12.48 (West 2011)	2nd-degree felony resulting in loss to a nursing home → 1st-degree felony. 2nd-degree felonies include burglary of a dwelling (TEX. PENAL CODE ANN. § 30.02 (West 2011)) and fraudulent use of possession of identifying information if the offense involved 10 or more items (TEX. PENAL CODE ANN. § 32.51 (West 2011)).	5-99 years or life	No
	TEX. HEALTH & SAFETY CODE ANN. § 48.11.134(b) (West 2011)	2nd-degree felony in, on, or within 1,000 feet of an institution of higher learning, a public or private youth center, or playground; or, in, on, or within 300 feet of a public swimming pool or video arcade facility → 1st-degree felony. 2nd-degree felonies include burglary of a dwelling (TEX. PENAL CODE ANN. § 30.02 (West 2011)) and fraudulent use of possession of identifying information if the offense involved 10 or more items (TEX. PENAL CODE ANN. § 32.51 (West 2011)).	5-99 years or life	No
	TEX. PENAL CODE ANN. § 12.48 (West 2011)	2nd-degree felony if because of the offense, a trustee was appointed and emergency funds were used for a nursing or convalescent home → 1st-degree felony. 2nd-degree felonies include insurance fraud if the value of the claim was \$100,000 or more (TEX. PENAL CODE ANN. § 35.02 (West 2011)); and credit card record laundering if the offense involved \$100,000 or more (TEX. PENAL CODE ANN. § 52.35 (West 2011)).	5-99 years or life	No
	TEX. PENAL CODE ANN. § 71.028 (West 2011)	2nd-degree felony in, on, or within 1,000 feet of a school, school board or institution of higher education, public or private youth center, or playground; in, on, or within 300 feet of a shopping mall, movie theater, public swimming pool, or video arcade; or on a school bus → 1st-degree felony if factor is 17 or older. 2nd-degree felonies include unarmed burglary of a dwelling (TEX. PENAL CODE ANN. § 30.02 (West 2011)) and graffiti if the offense results in property damage of \$100,000 or more (TEX. PENAL CODE ANN. § 28.08 (West 2011)).	5-99 years or life	No
	TEX. PENAL CODE ANN. § 71.023 (West 2011)	Directing the activities of certain criminal street gangs.	5-99 years or life	No
	TEX. PENAL CODE ANN. § 28.02 (West 2011)	Arson with intent to damage or destroy structure or vegetation or specified buildings where the property damage is a dwelling or place of assembly or worship.	5-99 years or life	No
	TEX. PENAL CODE ANN. § 33.02 (West 2011)	Breach of computer security with intent to defraud if the offense involves \$200,000 or the actor obtains the identifying information of	5-99 years or life	No

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
	TEX. PENAL CODE ANN. § 28.08 (West 2011)	another by accessing a network.	5-99 years or life	No
	TEX. PENAL CODE ANN. § 28.07 (West 2011)	Graffiti causing property damage of \$200,000 or more. Interference with railroad property where the offense results in a loss of \$200,000 or more.	5-99 years or life	No
TEXAS				
	TEX. PENAL CODE ANN. § 32.441 (West 2011)	Illegal recruitment of an athlete where the benefit obtained is \$200,000 or more.	5-99 years or life	No
	TEX. PENAL CODE ANN. § 32.23 (West 2011)	Trademark counterfeiting if the value of the item is \$200,000 or more.	5-99 years or life	No
	TEX. PENAL CODE ANN. § 32.35 (West 2011)	Credit card record laundering if the amount laundered is \$200,000 or more.	5-99 years or life	No
	TEX. PENAL CODE ANN. § 32.33 (West 2011)	Hindering secured creditors; loss of \$200,000 or more.	5-99 years or life	No
	TEX. PENAL CODE ANN. § 31.16 (West 2011)	Organized retail theft of \$100,000 or more.	5-99 years or life	No
	TEX. PENAL CODE ANN. § 34.02 (West 2011)	Money laundering of \$200,000 or more.	5-99 years or life	No
	TEX. PENAL CODE ANN. § 28.03 (West 2011)	Criminal mischief causing property damage of \$200,000 or more.	5-99 years or life	No
	TEX. PENAL CODE ANN. § 33.05 (West 2011)	Tampering with an electronic voting machine.	5-99 years or life	No
	TEX. NAT. RES. CODE ANN. § 151.105 (West 2011), TEX. TAX CODE ANN. § 152.104 (West 2011)	Fraudulent actions by trustees of natural resources where value of property sold fraudulently is \$200,000 or more.	5-99 years or life	No
	TEX. PENAL CODE ANN. § 35.02 (West 2011)	Failure by car dealer to pay taxes of \$200,000 or more.	5-99 years or life	No
	TEX. PENAL CODE ANN. § 33A.02 (West 2011)	Unauthorized use of telecommunications service where value of services is \$200,000 or more.	5-99 years or life	No
	TEX. TAX CODE ANN. § 151.7032 (West 2011)	Intentional failure to pay taxes of \$200,000 or more.	5-99 years or life	No
	TEX. PENAL CODE ANN. § 33A.04 (West 2011)	Theft of telecommunications services where the value is \$200,000 or more.	5-99 years or life	No
	TEX. PENAL CODE ANN. § 32.45 (West 2011)	Misapplication of fiduciary property or property of financial institution where value is \$200,000 or more.	5-99 years or life	No
	TEX. PENAL CODE ANN. § 35A.02 (West 2011)	Medicaid fraud of \$200,000 or more or \$100,000 or more if actor was a high managerial agent or submitted 50 or more false claims.	5-99 years or life	No
	TEX. PENAL CODE ANN. §	Fraudulent use or possession of identifying information if offense	5-99 years or life	No

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
	TEX. PENAL CODE ANN. § 32.51 (West 2011)	involves 50 or more items of such information.	5-99 years or life	No
	TEX. PENAL CODE ANN. § 32.32 (West 2011)	False statement to obtain property or credit of \$200,000 or more.	5-99 years or life	No
	TEX. PENAL CODE ANN. § 31.04 (West 2011)	Theft of wireless service of \$200,000 or more.	5-99 years or life	No
TEXAS	TEX. PENAL CODE ANN. § 32.46 (West 2011)	Securing execution of document by deception where offense results in unlawful gain of \$200,000 or more.	5-99 years or life	No
	TEX. PENAL CODE ANN. § 36.05 (West 2011)	Tampering with a witness if the most serious offense charged in the proceeding is a capital felony.	5-99 years or life	No
	TEX. PENAL CODE ANN. § 25.01 (West 2011)	Bigamy if the person married is 16 years of age or younger.	5-99 years or life	No
	TEX. PENAL CODE ANN. § 39.02 (West 2011)	Misuse by a public servant of government property resulting in unlawful gain of \$200,000 or more.	5-99 years or life	No
	TEX. REV. CIV. STAT. ANN. art. 581, § 29 (West 2011)	Fraudulent practices in connection with offering securities where offense involves \$100,000 or more.	5-99 years or life	No
	TEX. NAT. RES. CODE ANN. § 151.052 (West 2011)	Unlawfully harvesting timber where value is \$200,000 or more.	5-99 years or life	No
	UTAH CODE ANN. § 76-3-203.1 (West 2012)	Specified 2nd-degree felonies in connection with a criminal street gang → 1st-degree felony. Specified felonies include theft of \$5,000 or more (UTAH CODE ANN. § 76-4-12 (West 2012)).	At least 5 years or up to life	No
	UTAH CODE ANN. § 76-8-306 (West 2012)	Obstruction of justice in a proceeding relating to an offense punishable by 15 years or more.	At least 20 years or up to life	No
VIRGINIA	VA. CODE ANN. § 54.1-2989 (West 2012)	Tampering with an advance directive or do not resuscitate order with intent to withhold life-prolonging procedures.	At least 20 years up to life	No
	VA. CODE ANN. § 18.2-162 (West 2012)	Damage or trespass to public services or utilities where death of another results due to exposure to radioactive materials.	At least 20 years up to life	

DISCRETIONARY LIFE			
LEGISLATIVELY VIOLENT			
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE
ALASKA STAT. ANN. § 12.55.125(c)(3) (West 2012)		Online enticement of minor or distribution of child pornography.	Up to 99 years; 5-15 year presumptive term
ALASKA STAT. ANN. §		Online enticement of minor.	Up to 99 years; 15-30 year

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
ALASKA	12.55.125(i)(2) (West 2012) ALASKA STAT. ANN. § 12.55.125(i)(4) (West 2012)	1st-degree indecent exposure; possession or distribution of child pornography; or attempt, conspiracy, or solicitation to commit distribution of child pornography.	presumptive term depending on age of victim Up to 99 years; 2-12 year presumptive term	No
ARIZONA	ARIZ. REV. STAT. ANN. § 13-705(B) (2012)	Adult convicted of manufacturing methamphetamine; physical injury to minor under 12 years of age.	20-year presumptive sentence or up to life	No
ARKANSAS	ARK. CODE ANN. § 5-74-104(a) (West 2012)	Class B “predicate felony offense” as part of 2 or more such offenses in concert with 2 or more others with respect to whom actor is a supervisor or manager → Class Y felony. “Predicate offense” is a “crime of violence” or “crime of pecuniary gain.” “Crime of violence”: any offense where actor knowingly caused or threatened death or physical injury to another. ARK. CODE ANN. § 5-74-103 (West 2012). Class B felonies include theft of wireless services of \$25,000 or more (ARK. CODE ANN. § 5-36-303 (West 2012)) and possession of explosives (ARK. CODE ANN. § 5-73-108 (West 2012)).	10-40 years or life	No
ARKANSAS	ARK. CODE ANN. § 5-74-104(b) (West 2012)	Class A “predicate felony offense” as part of 2 or more such offenses with 2 or more others with respect to whom actor is <i>not</i> a supervisor or manager → Class Y felony. “Predicate offense” is a “crime of violence” or “crime of pecuniary gain.” “Crime of violence”: any offense where actor knowingly caused or threatened death or physical injury to another. ARK. CODE ANN. § 5-74-103 (West 2012). Class A felonies include arson causing damage in excess of \$15,000 (ARK. CODE ANN. § 5-38-301 (West 2012)).	10-40 years or life	No
FLORIDA	ARK. CODE ANN. § 5-39-204 (West 2012) FLA. STAT. ANN. § 810.02(2)(c) (West 2012)	Armed residential burglary.	10-40 years or life	No
FLORIDA	FLA. STAT. ANN. § 775.087 (West 2012)	Burglary where actor is armed or causes property damage of \$1,000 or more.	Any term of years up to life	No
FLORIDA	FLA. STAT. ANN. § 790.23 (West 2012)	Carrying, displaying, or attempting to use a weapon during any first-degree felony (e.g., burglary (FLA. STAT. ANN. § 810.02 (West 2012))). Possession of a firearm, ammunition, or other specified devices by prohibited persons (such as former felons).	Any term of years up to life	No
HAWAII	FLA. STAT. ANN. § 775.087 (West 2012)	Carrying, displaying, or attempting to use any weapon during a first-degree felony (e.g., burglary (FLA. STAT. ANN. § 810.02 (West 2012))).	Any term of years up to life	No
HAWAII	HAW. REV. STAT. §§ 706-662, 706-661 (West 2012)	Class A felony committed because of the victim's race, ethnicity, religion, gender, sexual orientation, etc. Class A felonies include distribution of methamphetamine to a minor (HAW. REV. STAT. § 712-1240.7 (2012)) and burglary of a dwelling during a civil defense emergency or disaster relief period (HAW. REV. STAT. § 708-817)	Indeterminate life terms as maximum if court finds beyond a reasonable doubt that sentence is necessary to protect public safety	No

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
KENTUCKY	KY. REV. STAT. ANN. § 530.064 (West 2012) KY. REV. STAT. ANN. § 218A.1441 (West 2012)	Inducing a minor to engage in drug activity (other than activity involving marijuana); minor suffers injury. Permitting child to be present during manufacture of drugs; child dies as a result.	20-50 years or life	No
KENTUCKY	KY. REV. STAT. ANN. § 513.020 (West 2012)	1st-degree arson (occupied building or offender has reason to believe person is present or any person is seriously injured).	20-50 years or life	No
MASSACHUSETTS	MASS. GEN. LAWS ANN. ch. 266, § 14 (West 2012) MASS. GEN. LAWS ANN. ch. 265, § 21 (West 2012)	Armed burglary. Confining, injuring, wounding, or putting in fear any person for the purpose of stealing from a bank, safe, vault, etc.	Not less than 10 years up to life	No
MASSACHUSETTS	MASS. GEN. LAWS ANN. ch. 265 § 18C (West 2012).	Entry of dwelling knowing or having reason to know one or more persons is present while armed.	Any term of years up to life	No
MISSOURI	MO. ANN. STAT. § 569.040 (West 2012)	Arson where any person suffers serious bodily injury or death or arson in attempt to produce methamphetamine.	10-30 years or life	No
NEW JERSEY	MO. ANN. STAT. § 569.025 (West 2012)	Forcibly stealing any controlled substance from a pharmacy while armed or displaying what is or appears to be a weapon.	10-30 years or life	No
NEW YORK	N.J. STAT. ANN. §§ 2C:44-3(1), (9), N.J. STAT. ANN. § 2C:43-7 (West 2012)	Specified 1st-degree offense if offender used or possessed a stolen vehicle in connection with the offense. Qualifying offenses include manufacture, sale, etc. of, e.g., 25 pounds or more of marijuana or 5 ounces or more of methamphetamine. N.J. STAT. ANN. § 2C:35-5 (West 2012).	At least 20 years up to life	No
NORTH DAKOTA	N.J. STAT. ANN. §§ 2C:43-7, 2C:44-3 (West 2012)	1st-degree crime if "professional criminal" or offense committed for consideration. 1st-degree crimes include arson of a place of worship (N.J. STAT. ANN. § 2C:5-4 (West 2012)).	At least 20 years up to life	No
NEW YORK	N.Y. PENAL LAW § 150.20 (McKinney 2012)	Arson where another person is present and defendant knows that or the person's presence was a reasonable possibility.	15-25-year minimum term up to maximum term of life	No
NORTH DAKOTA	N.D. CENT. CODE ANN. § 12.1-32-09 (1)(e), (2)(a) (West 2011)	Class A felony where offender used a firearm, weapon, etc. during offense or flight. Class A felonies include financial exploitation of a disabled or elderly adult if the offense involves \$100,000 or more (N.D. CENT. CODE ANN. § 12.1-31-07.1 (West 2011)) and manufacture or sale of any amount of a Schedule I or II narcotic or methamphetamine (N.D. CENT. CODE ANN. (1)(a) (West 2011)).	Up to 30 years or LWOP	No
	OKLA. STAT. ANN. tit. 21, §	Use of incendiary device, explosive, etc.; personal injury results.	At least 7 years up to life	No

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
OKLAHOMA	1767.2 (West 2012) OKLA. STAT. ANN. tit. 21, § 849 (West 2012)	Wiring or equipping a vehicle or structure with explosives	At least 5 years up to life	No
RHODE ISLAND	R.I. GEN. LAWS ANN. § 11-8-1 (West 2012)	Simple burglary.	At least 5 years up to life	No
RHODE ISLAND	R.I. GEN. LAWS ANN. § 11-4-2 (West 2012)	Arson of occupied or recently occupied building.	At least 5 years up to life	No
SOUTH CAROLINA	S.C. CODE ANN. § 16-11-311 (2012)	Burglary while armed; of dwelling at night (unarmed); or by person with record for housebreaking.	At least 15 years up to life	No
TEXAS	TEX. PENAL CODE ANN. § 28.02 (West 2011)	Arson with intent to damage or destroy structure or specified buildings; bodily injury or death results.	5-99 years or life	No
TEXAS	TEX. PENAL CODE ANN. § 22.09 (West 2011)	Tampering with consumer product knowing it will be offered for sale or as a gift; serious bodily injury results.	5-99 years or life	No
UTAH	UTAH CODE ANN. § 30.02 (West 2011)	Burglary of a dwelling with intent to commit any felony other than theft.	5-99 years or life	No
UTAH	UTAH CODE ANN. § 76-3-203.1 (West 2012)	Specified 2nd-degree felonies in connection with a criminal street gang → 1st-degree felony. Specified felonies include armed burglary. UTAH CODE ANN. § 76-6-203 (West 2012).	At least 5 years up to life	No
UTAH	UTAH CODE ANN. § 76-5-112.5(2)(b), (2)(c)	Permitting a child or vulnerable adult to be exposed to or have contact with drugs or drug paraphernalia; death results.	At least 5 years up to life	No
UTAH	UTAH CODE ANN. § 76-6-203 (West 2012)	Armed burglary.	At least 5 years up to life	No
UTAH	UTAH CODE ANN. § 76-6-202 (West 2012)	2nd-degree offense → 1st-degree felony if: committed in or within 1,000 feet of an elementary or secondary school or vocational or postsecondary institution; in a building, park, or structure being used by a school; in or within 1,000 feet of a preschool or childcare facility; in a public park, amusement park, arcade, or recreation center; in or within 1,000 feet of a house of worship; mall, sports facility, stadium, arena, theater, movie house, playhouse, or parking lot or structure adjacent thereto; in or on the grounds of a library; in the presence of a person under 18; or for the purpose of facilitating, arranging, or causing the transport, delivery, etc., to an inmate or on the grounds of any correctional facility. 2nd-degree offenses include unarmed burglary of a dwelling. (UTAH CODE ANN. § 76-6-202 (West 2012)).	At least 5 years up to life	No
UTAH	UTAH CODE ANN. § 76-6-103 (West 2012)	Arson of a habitable structure or vehicle.	At least 5 years up to life	No
UTAH	UTAH CODE ANN. § 76-8-306 (West 2012)	Obstruction of justice where proceeding involves offense punishable by life or any term exceeding 15 years.	At least 5 years up to life	No

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
UTAH	UTAH CODE ANN. § 76-10-508.1 (West 2012)	Commission of 1st-degree "violent felony" while armed and wearing body armor. "Violent felonies" include armed burglary (UTAH CODE ANN. § 76-6-203 (West 2012)). Felony discharge of a firearm; serious bodily injury results.	At least 6 years up to life At least 5 years up to life	No No
VIRGINIA	UTAH CODE ANN. § 76-10-306 (West 2012)	Use of explosive in an attempt to commit a felony or injure another.	At least 5 years up to life	No
	VA. CODE ANN. § 18.2-89 (West 2012)	Armed nighttime burglary of a dwelling.	At least 20 years up to life	No
	VA. CODE ANN. § 18.2-90 (West 2012)	Entering a dwelling house while armed with intent to commit murder, robbery, or arson.	At least 20 years up to life	No
	VA. CODE ANN. § 18.2-92 (West 2012)	Armed breaking and entering of a dwelling with intent to commit a misdemeanor.	At least 20 years up to life	No
	VA. CODE ANN. § 18.2-93 (West 2012)	Armed breaking and entering of a bank with intent to commit larceny.	At least 20 years up to life	No
	VA. CODE ANN. § 18.2-289 (West 2012)	Possession or use of a machinegun in connection with a "crime of violence." "Crime of violence" includes burglary, housebreaking, and larceny (VA. CODE ANN. § 18.2-288 (West 2012)).	At least 20 years up to life	No
VIRGINIA	VA. CODE ANN. § 18.2-300 (West 2012)	Possession or use of a sawed-off shotgun or rifle during a crime of violence. "Crime of violence" includes burglary, housebreaking, and larceny (VA. CODE ANN. § 18.2-288 (West 2012)).	At least 20 years up to life	No

## HABITUAL OFFENDER STATUTES

### MANDATORY LWOP

ALL CURRENT AND PREDICATE OFFENSES NONVIOLENT				
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
FEDERAL GOVERNMENT	21 U.S.C.A. § 841(b)(1)(A) (West 2010)	3rd or subsequent conviction for manufacture or sale of, e.g., 50 grams or more of methamphetamine or 250 grams or more of crack cocaine.	LWOP	Yes
	21 U.S.C.A. § 841(b)(1)(A) (West 2010)	2nd or subsequent conviction for manufacture, sale, etc. of, e.g., 50 grams or more of methamphetamine or 1,0000 kilograms or more.	LWOP	Yes
	21 U.S.C.A. §§ 860, 841(b)(1)(A) (West 2010)	3rd or subsequent conviction for manufacture, sale, etc. of any amount of any controlled substance in, on, or within 1,000 feet of any elementary, vocational or secondary school or any college, junior college, or university; or a playground, or public housing facility, or within 100 feet of a public or private youth center, public swimming pool, or video arcade facility.	LWOP	Yes
	21 U.S.C.A. §§ 849, 841(b)(1)(A) (West 2010)	3rd or subsequent conviction for distributing or possessing any amount of a controlled substance in, on, or within 1,000 feet of a truck stop or safety rest area.	LWOP	Yes
	21 U.S.C.A. §§ 859, 841(b)(1)(A) (West 2010)	3rd or subsequent distribution by a person 18 or older of any controlled substance to a person under 21 years of age.	LWOP	Yes
	21 U.S.C.A. §§ 861, 841(b)(1)(A) (West 2010)	3rd or subsequent, person 18 or older who hires, persuades, etc. any minor to participate or assist in any drug offense, or receives any controlled substance from a minor other than an immediate family member.	LWOP	Yes
	ALA. CODE § 13A-12-233 (2012)	2nd or subsequent conviction for "drug trafficking enterprise" (drug offense in concert with 5 or more others with respect to whom actor is an organizer, supervisor, etc. and from which actor obtains substantial income).	LWOP	Yes
	ALABAMA ALA. CODE §§ 13A-5-9(c)(4), 15-22-27.2 (2012)	Class A felony if actor has 3 or more prior felony convictions of any type, 1 or more of which is a Class A felony. Class A felonies include manufacture, sale, etc. of, e.g., 1 kilogram or more of cannabis or 28 grams or more of cocaine (ALA. CODE § 13A-12-231(2012); and sale by adult of any Schedule I-IV substance to a minor (ALA. CODE § 13A-12-215 (2012)).	LWOP	Yes

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
GEORGIA	GA. CODE ANN. § 17-10-7(c) (West 2012)	4th or subsequent felony conviction of any type (except purchase or possession of drugs or manufacture, sale, etc. of marijuana) → maximum term for offense of conviction without parole. Qualifying offenses include manufacture or sale of, e.g., any amount of any Schedule I or II substance (GA. CODE ANN. § 16-13-30(d) (West 2012)).	LWOP	Yes
ILLINOIS	730 ILL. COMP. STAT. ANN. 5/5-4.5-95, 5/3-3-3 (West 2012)	3rd or subsequent conviction for Class X felony. Class X felonies include manufacture or sale of, e.g., 15 grams or more of cocaine or 200 grams or more of amphetamine (720 ILL. COMP. STAT. ANN. 570/401 (West 2012)); manufacture or sale of, e.g., 1 gram or more of cocaine or heroin within 1,000 feet of a school or public housing (720 ILL. COMP. STAT. ANN. 570/400/407 (West 2012)); and identity theft of \$100,000 or more (720 ILL. COMP. STAT. ANN. 5/16-30 (West 2012)).	“Natural life” imprisonment (i.e., LWOP)	Yes
IOWA	IOWA CODE ANN. §§ 124.401D, 902.1 (West 2012)	2nd or subsequent sale or conspiracy or attempt to sell to minor by adult of any amount of methamphetamine.	LWOP	Yes
LA. REV. STAT. ANN. § 15:529.1(A)(3)(b) (2012)	3rd or subsequent conviction for any drug offense punishable by 10 years or more. Qualifying offenses include manufacture, sale, etc. of any amount of any Schedule I substance (including marijuana) (LA. REV. STAT. ANN. § 40:966 (2011)) and production of, e.g., cocaine base or methadone (LA. REV. STAT. ANN. § 40:967 (2011)).	LWOP	Yes	
LOUISIANA	LA. REV. STAT. ANN. § 15:529.1(A)(4)(b) (2012)	Any drug violation punishable by 10 years or more if actor has 3 or more prior felony convictions, 2 or more of which are drug offenses. Qualifying offenses include manufacture, sale, etc. of any amount of any Schedule I substance (including marijuana) (LA. REV. STAT. ANN. § 40:966 (2011)) and production of, e.g., cocaine base or methadone (LA. REV. STAT. ANN. § 40:967 (2011)).	LWOP	Yes
LA. REV. STAT. ANN. 15:529.1(A)(3)(b) (2011)	3rd or subsequent conviction for crime punishable by 12 years or more. Nonviolent qualifying offenses include money laundering of \$20,000 or more (LA. REV. STAT. ANN. § 14:230 (2011)); and communicating false information of a planned arson (LA. REV. STAT. ANN. § 14:52 (2011)).	LWOP	Yes	
LA. REV. STAT. ANN. 15:529.1(A)(4)(b) (2011)	Any crime punishable by 12 years or more if actor has 3 or more prior felony convictions, 2 or more of which are for crimes punishable by 12 years or more. Nonviolent qualifying offenses include money laundering of \$20,000 or more (LA. REV. STAT. ANN. § 14:230 (2011)); and communicating false information of a planned arson (LA. REV. STAT. ANN. § 14:52 (2011)).	LWOP	Yes	

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
MICHIGAN	MICH. COMP. LAWS ANN. § 333.7413(1) (West 2012)	2nd or subsequent conviction for manufacture, sale, etc. of, e.g., 50 grams or more of heroin or cocaine or attempt or conspiracy to commit same.	LWOP	Yes
OKLAHOMA	OKLA. STAT. ANN. tit. 63, § 2-415(D)(3) (West 2012)	3rd or subsequent conviction for manufacture, sale, etc. of, e.g., 25 pounds or more of marijuana or 10 grams or more of heroin.	LWOP	Yes

DISCRETIONARY LWOP				
ALL CURRENT AND PREDICATE OFFENSES NONVIOLENT				
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
FEDERAL GOVERNMENT	21 U.S.C.A. § 860 (West 2006)	2nd or subsequent conviction for manufacture, sale, etc. of any amount of any controlled substance in, on, or within 1,000 feet of any elementary, vocational or secondary school or any college, junior college, or university, or a playground, or public housing facility, or within 100 feet of a public or private youth center, public swimming pool, or video arcade facility.	LWOP	No
ALABAMA	ALA. CODE § 13A-5-9(c)(3) (2012)	2nd or subsequent conviction for engaging in a continuing criminal drug enterprise. Class A felony if actor has 3 or more prior felony convictions of any type. Class A felonies include manufacture, sale, etc. of, e.g., 1 kilogram or more of cannabis or 28 grams or more of cocaine (ALA. CODE § 13A-12-231 (2012)); and sale by adult of any Schedule I-IV substance to a minor (ALA. CODE § 13A-12-215 (2012)).	At least 30 years or up to LWOP	No
ARKANSAS	ARK. CODE ANN. §§ 54-501(a)(1)(A), 16-93-613 (West 2012)	Class Y felony <i>other</i> than serious felonies involving violence or felony involving violence if actor has 1-4 prior felonies of any type. Class Y felonies include manufacture of methamphetamine (ARK. CODE ANN. § 5-64-423 (West 2012)); and manufacture, sale, etc. of, e.g., 200 grams or more of cocaine or other Schedule I or II substance (including marijuana) (ARK. CODE ANN. § 5-64-440 (West 2012)).	10-60 years or up to LWOP	No
	ARK. CODE ANN. §§ 54-501(b)(1)(A), 16-93-613 (West 2012)	Class Y felony <i>other</i> than serious felonies involving violence or felony involving violence if 4 or more prior felonies of any type. Class Y felonies include manufacture of any methamphetamine (ARK. CODE ANN. § 5-64-423 (West 2012)); and manufacture, sale, etc. of, e.g., 200 grams or more of cocaine or other Schedule I or II substance (including marijuana) (ARK. CODE ANN. § 5-64-440 (West 2012)).	10-60 years or up to LWOP	No

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
DELAWARE	DEL. CODE ANN. tit. 11, § 4214(a) (West 2012)	4th or subsequent conviction for any felony.	Up to LWOP	No
LOUISIANA	L.A. REV. STAT. ANN. §§ 15:529.1(A)(4)(a), 15:574.4(B) (2011)	4th or subsequent conviction for any felony.	At least 20 years up to LWOP	No
	MO. ANN. STAT. § 195.218(2) (West 2012)	Sale of any amount of any drug in, on, or within 1,000 feet of public housing or government assisted housing if actor has 2 or more prior felony drug convictions of any type.	10-30 years or life; any term imposed must be without parole	No
	MO. ANN. STAT. § 195.292 (West 2012)	2nd or subsequent conviction for distribution of any amount of any controlled substance to a minor.	10-30 years or life; any term imposed must be without parole	No
MISSOURI	MO. ANN. STAT. §§ 195.296, 195.222 (West 2012)	Manufacture, sale, etc. of, e.g., 30 kilograms or more of marijuana or 30 grams or more of heroin if actor has 1 or more prior felony drug convictions.	10-30 years or life; any term imposed must be without parole	No
	MO. ANN. STAT. §§ 195.295(3), 195.223 (West 2012)	Possession, purchase, etc. of, e.g., 90 grams or more of heroin or 300 or more marijuana plants if actor has 1 or more prior felony drug convictions.	10-30 years or life; any term imposed must be without parole	No
	MO. ANN. STAT. §§ 195.295(2), 195.223 (West 2012)	Possession, purchase, etc. of, e.g., 2 grams or more of cocaine base or 30 kilograms or more of marijuana if actor has 2 or more prior felony drug convictions.	10-30 years or life; any term imposed must be without parole	No
	MO. ANN. STAT. §§ 195.291(2), 195.211 (West 2012)	Manufacture, sale, etc. of any amount of any drug except 5 grams or less of marijuana if actor has 2 or more prior drug convictions of any type.	10-30 years or life; any term imposed must be without parole	No
NEVADA	NEV. REV. STAT. ANN. § 207.010 (West 2011)	4th or subsequent conviction for any felony.	LWOP, life with 10-year mandatory minimum, or 25 years with 10-year mandatory minimum	No
SOUTH DAKOTA	S.D. CODIFIED LAWS §§ 22-7-8.1, 22-6-1, 24-15.4 (2012)	Class 2 felony if actor has 3 or more prior convictions for any felony (other than crimes of violence) → penalty for Class C felony. Class 2 felonies include distribution or possession with intent to distribute 1 pound or more of marijuana (S.D. CODIFIED LAWS § 22-42-7 (2012)) and burglary of a dwelling while armed or at night (S.D. CODIFIED LAWS § 22-32-1 (2012)).	Any term of years up to LWOP	No
	S.D. CODIFIED LAWS §§ 22-7, 22-6-1, (2012)	Class 1 felony if actor has 1 or more prior felony convictions of any type → penalty for Class C felony. Class 1 felonies include a 2nd or subsequent conviction for commission of any felony while armed (S.D. CODIFIED LAWS § 22-14-12 (2012)).	Any term of years up to LWOP	No

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
VIRGINIA	VA. CODE ANN. §§ 18.2-248.1(D), 53.1-151(B2) (West 2012)	3rd or subsequent conviction for sale, distribution, etc. of any amount of marijuana.	Not less than 5 years or up to life (if life imposed, LWOP)	No
	VA. CODE ANN. §§ 18.2-248(C), 53.1-151(B2) (West 2012).	3rd or subsequent conviction for manufacture, sale, etc. of any amount of any Schedule I or II controlled substance.	Not less than 10 years or up to life (if life imposed, LWOP)	No
	VA. CODE ANN. §§ 18.2-248(C1), 53.1-151(B2) (West 2012)	3rd or subsequent conviction manufacture, sale, etc. of any amount of methamphetamine.	Not less than 10 years or up to life (if life imposed, LWOP)	No

MANDATORY LIFE				
ALL CURRENT AND PREDICATE OFFENSES NONVIOLENT				
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
ALABAMA	ALA. CODE § 13A-5-9(c)(3) (2012)	Class A felony if actor has 3 or more prior felony convictions of any type. Class A felonies include manufacture, sale, etc. 1 kilogram or more of cannabis or 28 grams or more of cocaine (ALA. CODE § 13A-12-231 (2012)) and sale of any amount of any Schedule I-IV substance to a minor (ALA. CODE § 13A-12-215 (2012)).	Life or LWOP	Life mandatory; LWOP discretionary
	ALA. CODE § 13A-5-9(b)(3) (2012)	Class A felony if actor has 2 or more prior felony convictions of any type. Class A felonies include manufacture, sale, etc. 1 kilogram or more of cannabis or 28 grams or more of cocaine (ALA. CODE § 13A-12-231 (2012)) and sale of any amount of any Schedule I-IV substance to a minor (ALA. CODE § 13A-12-215 (2012)).	Life or any term not less than 99 years	Yes
COLORADO	COLO. REV. STAT. ANN. § 18-1.3-801(1) (West 2012)	Class 1 or 2 felony (except burglary) if actor has 2 prior convictions for class 1 or 2 felonies (including burglary). Class 2 felonies include a 2nd or subsequent conviction for manufacture or sale of any Schedule I or II substance (COLO. REV. STAT. ANN. § 18-18-405 (West 2012)); and racketeering (COLO. REV. STAT. ANN. § 18-17-105 (West 2012)).	Life; 40-year mandatory minimum	Yes
GEORGIA	GA. CODE ANN. § 17-10-7(a) (West 2012)	Felony punishable by life if actor has 1 or more prior felony conviction of any type. Qualifying offenses include 3rd or subsequent conviction for manufacture or sale of any Schedule I or II substance (GA. CODE ANN. § 16-13-30(d), (l) (West 2012)) and perjury in a death penalty proceeding (GA. CODE ANN. § 16-10-70 (West 2012)).	Life unless judge suspends or probates the maximum sentence	Yes

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
MASSACHUSETTS	MASS. GEN. LAWS ANN. ch. 279, § 25(a) (West 2012)	Felony punishable by life if actor has 2 or more prior felony convictions, provided each prior felony resulted in a sentence of at least 3 years. Qualifying offenses include counterfeiting coin (MASS. GEN. LAWS ANN. ch. 267, § 17 (West 2012)) and armed night-time dwelling burglary (MASS. GEN. LAWS ANN. ch. 266, § 14 (West 2012))	Life	Yes
NEVADA	NEV. REV. STAT. ANN. § 200.730 (West 2011)	2nd or subsequent conviction for possession of a visual representation of sexual conduct of a person under 16.	Life; 1-year mandatory minimum	Yes
WEST VIRGINIA	W. VA. CODE ANN. § 61-11-18(c) (West 2012)	3rd or subsequent conviction for any felony.	Life	Yes

DISCRETIONARY LIFE				
ALL CURRENT AND PREDICATE OFFENSES NONVIOLENT				
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
	ALA. CODE § 13A-5-9(a)(3) (2012)	Class A felony if actor has 1 or more prior felony conviction of any type. Class A felonies include manufacture, sale, etc. 1 kilogram or more of cannabis or 28 grams or more of cocaine (ALA. CODE § 13A-12-23.1 (2012)) and sale of any amount of any Schedule I-IV substance to a minor (ALA. CODE § 13A-12-21.5 (2012)).	15-99 years or life	No
	ALA. CODE § 13A-5-9(a)(2) (2012)	Class B felony if actor has 1 or more prior felony convictions of any type. Class B felonies include sale of any amount of any Schedule I-IV substance (ALA. CODE § 13A-12-21 (2012)) and unarmed burglary of a dwelling (ALA. CODE § 13A-7-6 (2012)).	10-99 years or life	No
ALABAMA	ALA. CODE § 13A-5-9(b)(2) (2012)	Class B felony if actor has 2 or more prior felony convictions of any type. Class B felonies include sale of any amount of any Schedule I-IV substance (ALA. CODE § 13A-12-21 (2012)) and unarmed burglary of a dwelling (ALA. CODE § 13A-7-6 (2012)).	15-99 years or life	No
	ALA. CODE § 13A-5-9(b)(1) (2012)	Class C felony if actor has 2 or more prior felony convictions of any type. Class C felonies include simple possession of controlled substances (ALA. CODE § 13A-12-21.2 (2012)) and unarmed burglary of any structure (ALA. CODE § 13A-7-7 (2012)).	10-99 years or life	No
	ALA. CODE § 13A-5-9(c)(1) (2012)	Class C felony if actor has 3 or more prior felony convictions of any type. Class C felonies include simple possession of controlled substances (ALA. CODE § 13A-12-21.2 (2012)) and unarmed burglary of any structure (ALA. CODE § 13A-7-7 (2012)).	15-99 years or life	No

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
ALABAMA	ALA. CODE § 13A-5-9(c)(2) (2012)	Class B felony if actor has 3 or more prior felony convictions of any type. Class B felonies include sale of any amount of any Schedule I-IV substance (ALA. CODE § 13A-12-21 (2012)) and unarmed burglary of a dwelling (ALA. CODE § 13A-7-6 (2012)).	Not less than 20 years or life	No
FLORIDA	FLA. STAT. ANN. § 775.084(1)(a)-(4)(a) (West 2012)	1st-degree or life felony (except simple possession of drugs) if actor has 2 or more prior felony convictions of any type, 1st-degree felonies include manufacture, sale, etc. of, e.g., 25 pounds or more of marijuana or 28 grams or more of cocaine (FLA. STAT. ANN. § 893.135 (West 2012)) and burglary causing property damage of \$1,000 or more (FLA. STAT. ANN. § 810.02(2)(C) (West 2012)).	Up to life	No
GEORGIA	GA. CODE ANN. § 16-13-30(d), (1) (West 2012)	2nd or subsequent conviction for manufacture, sale, etc. of any amount of any Schedule I or II substance.	10-40 years or life	No
HAWAII	HAW. REV. STAT. § 706-662 (West 2012)	Class A felony if actor has 2 or more prior felony convictions of any type. Class A felonies include distribution of methamphetamine to a minor (HAW. REV. STAT. § 712-7-240.7 (2012)) and burglary of a dwelling during a civil defense emergency or disaster relief period (HAW. REV. STAT. § 708-8-17 (2012)).	Up to indeterminate life term is court finds beyond a reasonable doubt that an extended term is necessary to protect public safety	No
IDAHO	IDAHO CODE ANN. § 37-2739A (West 2012)	Distributing drugs if actor has 1 or more prior drug convictions.	At least 3 years up to life	No
KY.	IDAHO CODE ANN. § 37-2739B(b)(1) (West 2012)	2nd or subsequent conviction for manufacture, sale, etc. of, e.g., any amount of any Schedule I narcotic.	At least 5 years up to life	No
KENTUCKY	IDAHO CODE ANN. § 19-2514 (West 2012)	3rd or subsequent conviction for any felony.	At least 5 years up to life	No
	KY. REV. STAT. ANN. §§ 532.080(3), (6)-(7), 439.3401(2) (West 2012)	Class A or B felony if actor has 2 or more prior felony convictions and actor is at least 21 and was at least 18 when all prior offenses were committed. Class B felonies include 2nd or subsequent conviction for manufacture or sale of, e.g., 4 grams or more of cocaine or 2 grams or more of heroin (KY. REV. STAT. ANN. § 218A.1412 (West 2012)) and armed burglary (KY. REV. STAT. ANN. § 511.020 (West 2012)).	20-50 years or life with 10-year mandatory minimum	No
	KY. REV. STAT. ANN. §§ 532.080(2) and (5), 439.3401(2) (West 2012)	Class A or B felony if actor has 1 or more prior felony conviction and actor is at least 21 and was at least 18 when all prior offenses were committed → Class A penalty. Class B felonies include 2nd or subsequent conviction for manufacture or sale of, e.g., 4 grams or more of cocaine or 2 grams or more of heroin (KY. REV. STAT. ANN. § 218A.1412 (West 2012)) and armed burglary (KY. REV. STAT. ANN. § 511.020 (West 2012)).	20-50 years or life with 10-year mandatory minimum	No
	KY. REV. STAT. ANN. § 250.991(2)-(5) (West 2012)	2nd or subsequent conviction for possession of anhydrous ammonia with intent to manufacture methamphetamine.	20-50 years or life with 10-year mandatory minimum	No

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
<b>KENTUCKY</b>	KY. REV. STAT. ANN. § 514.030 (West 2012)	2nd or subsequent conviction for theft of anhydrous ammonia with intent to manufacture methamphetamine.	20-50 years or life with 10-year mandatory minimum	No
	KY. REV. STAT. ANN. § 218A.1.432 (West 2012)	2nd or subsequent conviction for manufacturing methamphetamine.	20-50 years or life with 10-year mandatory minimum	No
<b>MICHIGAN</b>	MICH. COMP. LAWS ANN. § 769.12 (West 2012)	Felony punishable by 5 or more years if actor has 2 or more prior felony convictions (any type other than drug). Qualifying offenses include counterfeiting coin (MICH. COMP. LAWS ANN. § 750.260 (West 2012)) and breaking and entering of any structure (MICH. COMP. LAWS ANN. § 750.110 (West 2012)).	Any term up to life	No
	MICH. COMP. LAWS ANN. §§ 769.10(1)(b), 769.11(1)(b) (West 2012)	2nd or 3rd or subsequent conviction for any felony (other than drug felonies) punishable by life. Qualifying offenses include counterfeiting exposure (MICH. COMP. LAWS ANN. § 750.260 (West 2012)) and indecent exposure (MICH. COMP. LAWS ANN. § 750.335a (West 2012)).	Life or any term of years	No
<b>MISSISSIPPI</b>	MISS. CODE ANN. § 41-29-142(2) (West 2011)	2nd or subsequent conviction for manufacture, sale, etc. of any amount of any drug in, on, or within 1,500 feet of a public or private elementary, vocational or secondary school or any church, public park, ballpark, public gym, youth center, or movie theater; or within 1,000 feet of a public or private elementary, vocational, or secondary school or any church, public park, ballpark, public gym, youth center or movie theater.	At least 3 years up to life	No
	MO. ANN. STAT. § 195.285(2) (West 2012)	Possession of any amount of any controlled substance (except 35 grams or less of marijuana) if actor has 2 or more prior felony drug convictions.	10-30 years or life	No
<b>MISSOURI</b>	MO. ANN. STAT. § 558.016 (West 2012)	Class A or B felony if actor has 2 or more prior felony convictions of any type. Class B felonies include manufacture, sale, etc. of, e.g., 8 grams or more of cocaine base or 30 kilograms or more of marijuana (MO. ANN. STAT. § 195.223) (West 2012)) and armed burglary (MO. ANN. STAT. § 569.160 (West 2012)).	10-30 years or life	No
	MO. ANN. STAT. § 195.295(1) (West 2012)	Possession, purchase, etc. of, e.g., 2 grams or more of cocaine base or 30 kilograms or more of marijuana if actor has 1 or more prior felony drug conviction.	10-30 years or life	No
<b>MONTANA</b>	MO. ANN. STAT. § 195.291 (West 2012)	2nd or subsequent conviction for manufacture, sale, etc. of any amount of any drug (except 5 grams or less of marijuana).	10-30 years or life	No
	MONT. CODE ANN. § 46-18-50(1) (West 2011)	2nd or subsequent conviction for any felony if previous felony was punishable by 1 year or more.	At least 5 years up to 100 years	No
	MONT. CODE ANN. § 46-18-50(2) (West 2011)	3rd or subsequent conviction for any felony where actor is at least 21.	At least 10 years up to 100 years	No

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
<b>MONTANA</b>	MONT. CODE ANN. § 45-5-504 (West 2011)	3rd or subsequent conviction for indecent exposure.	5-100 years or life	No
	MONT. CODE ANN. § 45-9-110(3) (West 2011)	2nd or subsequent conviction for manufacture of any Schedule I or II substance except marijuana.	At least 20 years up to life	No
	MONT. CODE ANN. § 45-9-110(3) (West 2011)	3rd or subsequent conviction for manufacture of any Schedule I or II substance except marijuana.	At least 40 years up to life	No
	MONT. CODE ANN. § 45-9-101(3) (West 2011)	2nd or subsequent conviction for sale of any Schedule I or II substance except marijuana.	At least 20 years up to life	No
<b>NEBRASKA</b>	MONT. CODE ANN. § 45-9-101(5) (West 2011)	3rd or subsequent, sale of any Schedule I or II substance to a minor.	40 years up to life	No
	NEB. REV. STAT. ANN. § 28-1206 (West 2012)	2nd or subsequent conviction for possession of a weapon by prohibited persons (e.g., felons and fugitives).	At least 20 years up to life	No
	NEB. REV. STAT. ANN. § 28-416(4)-(5), (16) (West 2012)	2nd or subsequent conviction for manufacture, sale, etc. by adult of e.g., 28 grams of cocaine or methamphetamine to a person under 8; in, on, or within 1,000 feet of a public or private elementary, vocational, or secondary school, community college, public or private college, junior college, or university, or playground, or within 100 feet of a public or private youth center, public pool, or video arcade.	At least 20 years up to life	No
<b>NEVADA</b>	NEV. REV. STAT. ANN. § 453.334 (West 2011)	2nd or subsequent conviction for sale of any amount of any drug to a minor.	Life with 5-year mandatory minimum or 15 years with 5-year mandatory minimum	No
	NEV. REV. STAT. ANN. § 200.730 (West 2011)	2nd or subsequent conviction for possession of a visual representation depicting sexual conduct of a person under 16.	Not less than 1 year up to LWOP	No
	NEV. REV. STAT. ANN. § 207.010 (West 2011)	4th or subsequent conviction for any felony.	LWOP; life with 10-year mandatory minimum; or 25 years with 10-year mandatory minimum	No
<b>NEW JERSEY</b>	N.J. STAT. ANN. §§ 2C:44-3(a), 2C:44-7 (West 2012)	1st-degree crime if actor has 2 or more prior felony convictions of any type and actor is at least 21, 1st-degree crimes include manufacture, sale, etc. of, e.g., 5 ounces or more of heroin or 25 pounds or more of marijuana (N.J. STAT. ANN. § 2C:35-5 (West 2012)) and maintaining a premises for production of controlled substances (N.J. STAT. ANN. § 2C:35-4 (West 2012)).	At least 20 years up to life (if leader of narcotics network, ineligible for parole for 30 years)	No
	N.J. STAT. ANN. §§ 2C:43-6(b), (g), 2C:44-7 (West 2012)	1st-degree specified offense if actor has 1 or more prior specified offenses. Triggering offenses include manufacture, sale, etc. of, e.g., 5 ounces or more of heroin or 25 pounds or more of marijuana (N.J. STAT. ANN. § 2C:35-5 (West 2012)). Predicate offenses include same of, e.g., ½ ounce of heroin or 5 pounds of marijuana. <i>Id.</i>	At least 20 years up to life with 5-year mandatory minimum	No

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
NEW YORK	N.Y. PENAL LAW § 70.10 (McKinney 2012)	3rd or subsequent conviction for any felony if actor was sentenced to 1 year or more for all predicate felonies.	Up to life if found that best serve the public interest	No
NORTH DAKOTA	N.D. CENT. CODE ANN. § 12.1-32-09 (West 2012)	Class A felony if actor has 2 or more prior felony convictions for any felony Class C or above. Class A offenses include creation or sale of any amount of Schedule I or II narcotic (N.D. CENT. CODE ANN. § 19-03-1-23(2)(a) (West 2011)). Class B felonies include creation or sale of any amount of any Schedule I-III substance ( <i>id.</i> at § 1(b)) and burglary of dwelling at night or while armed (N.D. CENT. CODE ANN. § 12-1-22-02 (West 2011)).	Up to life	No
OKLAHOMA	OKLA. STAT. ANN. tit. 63, § 2-41.5(D)(2) (West 2012); OKLA. STAT. ANN. tit. 21, § 62.1 (West 2012)	Possession, sale, manufacture, etc. of, e.g., 25 pounds or more of marijuana or 28 grams or more of cocaine if actor has 1 or more prior convictions for same or other drug offenses.	At least 3 times the minimum term for the offense of conviction up to life	No
OKLAHOMA	OKLA. STAT. ANN. tit. 21, § 51.1(C) (West 2012)	3rd or subsequent conviction for any felony.	At least 3 times the minimum term for the offense of conviction up to life	No
OKLAHOMA	OKLA. STAT. ANN. tit. 21, § 51.1(A)(2) (West 2012)	2nd or subsequent conviction for any felony if current felony is punishable by 5 years or more. Qualifying offenses include grand larceny (\$500 or more) (OKLA. STAT. ANN. tit. 21, § 1705 (West 2012)).	At least 2 times the minimum term for the offense of conviction up to life	No
TEXAS	TEX. PENAL CODE ANN. §§ 12.42(b), 12.32 (West 2011)	2nd-degree felony if actor has 1 or more prior felony conviction (other than state jail felony) → punishment for 1st-degree, 2nd-degree felonies include sale of 5 pounds or more of marijuana (TEX. HEALTH & SAFETY CODE ANN. § 481.120 (West 2011)) and unarmed burglary of a dwelling (TEX. PENAL CODE ANN. § 30.02 (West 2011)).	5-99 years or life	No
UTAH	TEX. PENAL CODE ANN. § 12.42(c)(1) (West 2011)	1st-degree felony if actor has 1 or more prior felony convictions (other than state jail felony). 1st-degree felonies include sale of 50 pounds or more of marijuana (TEX. HEALTH & SAFETY CODE ANN. § 481.120 (West 2011)) and theft of \$200,000 or more (TEX. PENAL CODE ANN. § 31.04 (West 2011)).	15-99 years or life	No
UTAH	UTAH CODE ANN. § 58-37-8(1)(b) (West 2012)	2nd or subsequent conviction for manufacture, sale, etc. of, e.g., any amount of any Schedule I or II substance → 1st-degree.	At least 5 years up to life	No
UTAH	UTAH CODE ANN. § 58-37-8(2)(b)(i), (2)(c) (West 2012)	2nd or subsequent conviction for, e.g., possession or use of 100 pounds or more of marijuana → 1st-degree.	At least 5 years up to life	No

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
VERMONT	VT. STAT. ANN. tit. 13, § 11 (West 2012)	4th or subsequent conviction for any felony.	Any term up to and including life	No
	VA. CODE ANN. § 18.2-248. (d) (West 2012)	3rd or subsequent conviction for sale or distribution of any amount of marijuana.	At least 5 years up to life	No
	VA. CODE ANN. § 18.2-248(C) (West 2012)	2nd or subsequent conviction for manufacture or sale of, e.g., any amount of any Schedule I or II substance.	At least 5 years up to life; At least 10 years up to life for 3rd or subsequent	No
VIRGINIA	VA. CODE ANN. § 18.2-248(C)(1) (West 2012)	2nd or subsequent conviction for manufacture or sale of any amount of methamphetamine.	At least 10 years up to life; at least 10 years with 3-year mandatory minimum for 3rd or subsequent.	No
	VA. CODE ANN. §§ 18.2-515, 18.2-1(0)(b) (West 2012)	2nd or subsequent conviction for any racketeering violation → Class 2 felony.	At least 20 years up to life	No

MANDATORY LWOP				
ALL CURRENT AND PREDICATE OFFENSES ARE LEGISLATIVELY VIOLENT				
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
FEDERAL GOVERNMENT	18 U.S.C.A. § 924(c) (West 2006)	2nd or subsequent conviction for possession or use of a machinegun or destructive device during a crime of violence. “Crime of violence” includes any offense involving the use or threat of force against the person or property of another or involves a substantial risk that physical force against the person or property will be used.	LWOP	Yes
ARKANSAS	ARK. CODE ANN. § 54-501(d)(1) (West 2012)	“Serious violent felony” if actor has 2 or more prior convictions for same or 1 or more “serious violent felonies” and 1 or more “serious drug offenses.” “Serious violent felony” includes possession of a firearm; extortion; and any other crime that involves the use or threat of force against the person of another or a substantial risk that such force will be used. “Serious drug offense” includes, e.g., manufacture or sale of, e.g., .280 grams or more of cocaine base or 1,000 kilograms or more of marijuana (21 U.S.C.A. § 841(b)(1)(A) (West 2006)). Class Y “felony involving violence” if actor has 2 or more prior convictions for any “felony involving violence.” Qualifying triggering offenses include armed home burglary; qualifying predicate offenses include criminal use of prohibited weapons.	LWOP unless commuted to term of years	Yes

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
DELAWARE	DEL. CODE ANN. tit. 11, § 4214 (West 2012)	3rd or subsequent conviction for specified offenses, including unarmed home burglary; and manufacture or delivery of, e.g., 10 grams or more of cocaine or 2 grams or more of marijuana.	LWOP	Yes
	FLA. STAT. ANN. § 775.084(1)(c), (4)(c) (West 2012)	Specified felony punishable by life if actor has 2 or more prior convictions for specified felonies. Triggering offenses include armed burglary; predicate offenses include armed burglary; arson; and unlawful throwing of a destructive device or bomb.	LWOP	Yes
FLORIDA	FLA. STAT. ANN. § 775.084(1)(d), (4)(d) (West 2012)	Specified 1st-degree or life felony if actor has 3 or more prior convictions for specified felonies. Triggering offenses include armed burglary; predicate offenses include unarmed burglary and simple arson.	LWOP	
	FLA. STAT. ANN. § 775.082(9) (West 2012)	Specified felony punishable by life if committed within 3 years of release from imprisonment for a crime punishable by 1 or more or while on escape status. Specified offenses punishable by life include armed burglary and arson.	LWOP	Yes
IOWA	IOWA CODE ANN. §§ 90 IA.2(4), 90 IA.1(1) (West 2012)	3rd or subsequent conviction for “sexually predatory offense.” Sexually predatory offenses include, e.g., enticing a minor and pandering involving a minor.	LWOP	Yes
	IOWA CODE ANN. §§ 90 IA.2(6), 90 IA.1(1) (West 2012)	Person placed in transitional release program who is subsequently convicted of a “sexually predatory” or “sexually violent” offense. “Sexually predatory offenses” include enticing a minor. “Sexually violent offenses” include burglary with sexual intent and child endangerment.	LWOP	Yes
LOUISIANA	LA. REV. STAT. ANN. §§ 14:94(F), 14:20(B) (2011)	2nd or subsequent conviction for intentional or negligent discharge of a machinegun or firearm during any “crime of violence” or drug trafficking offense. “Crimes of violence” include burglary, extortion, and purse snatching.	LWOP	Yes
MARYLAND	MD. CODE ANN. CRIM. LAW § 14-101 (West 2012)	“Crime of violence” or any other crime punishable by 12 years or more if actor has 3 or more prior felonies, 2 or more of which are “crimes of violence.” “Crimes of violence” include burglary, extortion, and purse snatching.	LWOP	Yes
MASSACHUSETTS	MASS. GEN. LAWS ANN. ch. 279, § 25(b) (West 2012)	3rd or subsequent conviction for “crimes of violence.” “Crimes of violence” include arson and use of a handgun in the commission of any felony or crime of violence.	LWOP (but eligible for parole if prisoner is 65 or older and has served at least 15 years)	Yes
		4th or subsequent conviction for “crimes of violence,” if actor was convicted and sentenced to at least 3 years for each of the prior offenses. Qualifying offenses include armed burglary and entry of a dwelling while armed.	LWOP	Yes

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
NORTH CAROLINA	N.C. GEN. STAT. ANN. §§ 14-7.7, 14-7.2 (West 2012)	3rd or subsequent conviction for “violent felony,” “Violent felonies” include all Class A-E felonies, including manufacture or sale of any amount of any drug in a school zone (N.C. GEN. STAT. ANN. § 90-95(e)(8), (e)(10) (West 2012)) and burglary of an unoccupied dwelling (N.C. GEN. STAT. ANN. § 14-51 (West 2012)).	LWOP	Yes
OREGON	OR. REV. STAT. §§ 137.719, 181.594(5) (West 2012)	3rd or subsequent “felony sex crime.” “Sex crimes” include contributing to the sexual delinquency of a minor, 1st-degree possession of child pornography, and burglary with intent to commit a sex-related felony.	LWOP (but court may depart based on findings of substantial and compelling reasons)	Yes
SOUTH CAROLINA	S.C. CODE ANN. § 17-25-45(B)(1) (2012)	3rd or subsequent conviction for “serious offense.” “Serious offenses” include manufacture or sale of any amount of any drug in a school zone, unarmed burglary, and theft from a person using an ATM.	LWOP	Yes
	S.C. CODE ANN. § 17-25-45(B)(2) (2012)	Conviction for “serious offense” if actor has 2 or more prior convictions for “most serious offenses.” “Most serious offenses” include armed burglary; “serious offenses” include trafficking in controlled substances and safekeeping.	LWOP	Yes
TENNESSEE	TENN. CODE ANN. § 40-35-120(a)(1)-(2), (g) (West 2012)	2nd or subsequent conviction for “most serious offense.” “Most serious offense” includes armed burglary and 1st-degree arson.	LWOP	Yes
VIRGINIA	V.A. CODE ANN. § 19.2-297.1 (West 2012)	“Most serious offense” if actor has 2 or more prior convictions for “serious offenses.” “Most serious offenses” include armed burglary; “serious offenses” include trafficking in controlled substances and theft from a person using an ATM.	LWOP	Yes
WASHINGTON	WASH. REV. CODE ANN. §§ 9.94A.030, 9.94A.570 (West 2012)	3rd or subsequent conviction for “violent offense.” “Violent offenses” include aggravated arson (1 or more person present or firefighter or emergency personnel suffers serious bodily injury) and promotion of child pornography.	LWOP	Yes

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
WISCONSIN	WIS. STAT. ANN. § 939.62(2m)(b)(1), (2m)(c) (West 2012)	3rd or subsequent "serious felony." "Serious felony" includes manufacture or sale of, e.g., 40 grams of cocaine; and burglary of a dwelling.	LWOP	Yes
	WIS. STAT. ANN. § 939.62(2m)(b)(2), (2m)(c) (West 2012)	2nd or subsequent "serious child sex offense." "Serious child sex offense" includes possession or distribution of child pornography and child enticement.	LWOP	Yes

DISCRETIONARY LWOP				
ALL CURRENT AND PREDICATE OFFENSES ARE LEGISLATIVELY VIOLENT				
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
FEDERAL GOVERNMENT	18 U.S.C.A. § 924(e) (West 2006)	Any offense involving unlawful firearm possession or transportation if actor has 3 or more prior "serious drug offenses" or "crimes of violence." "Crimes of violence" include burglary and any offense that has as an element the use, attempt, or threat of force against the person or property of another.	At least 15 years up to LWOP	No
DISTRICT OF COLUMBIA	D.C. CODE § 22-1804a (2012)	3rd or subsequent "crime of violence." "Crime of violence" includes burglary; extortion; and gang recruitment by force or intimidation.	At least 15 years up to LWOP	No
ARKANSAS	ARK. CODE ANN. § 5-4-501(c)(1) (West 2012)	2nd or subsequent "serious felony involving violence." "Serious felony involving violence" includes armed home burglary.	40-80 years up to LWOP	No
INDIANA	IND. CODE ANN. § 35-50-2-8.5(a) (West 2012)	Class A "felony involving violence" if actor has 3 or more prior "felony involving violence." "Felony involving violence" includes armed home burglary (qualifies as triggering offense).	At least 40 years up to LWOP	No
NEVADA	NEV. REV. STAT. ANN. § 207.012 (West 2011)	3rd or subsequent conviction for specified felonies. Specified offenses include armed burglary; dealing in cocaine in a school zone; and arson for pecuniary gain.	Up to LWOP	No
PENNSYLVANIA	42 PA. CONS. STAT. ANN. § 9714 (West 2012)	3rd or subsequent "crime of violence." "Crime of violence" includes drug delivery resulting in death; and burglary of an occupied dwelling.	LWOP; life with 10-year mandatory minimum; or 25 years with 10-year mandatory minimum	No

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
RHODE ISLAND	R.I. GEN. LAWS ANN. §§ 11-47-3.2, 11-47-2 (West 2012)	3rd or subsequent conviction for “using” a firearm during a “crime of violence.” “Crime of violence” includes breaking and entering, unarmed burglary, and most controlled substance offenses.	Life or LWOP after considering aggravating and mitigating circumstances	Life mandatory; LWOP discretionary
SOUTH DAKOTA	S.D. CODIFIED LAWS §§ 22-7-8, 22-1-2, 24-1-5-4 (2012)	4th or subsequent conviction for “crime of violence” → Class C felony. “Crime of violence” includes armed burglary, arson, and any other felony during which perpetrator was armed.	Maximum of LWOP	No

MANDATORY LIFE				
ALL CURRENT AND PREDICATE OFFENSES ARE LEGISLATIVELY VIOLENT				
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
ALASKA	ALASKA STAT. ANN. §§ 12.55.125(0)(3)(E), 12.55.186(16) (West 2012)	Specified offense if actor has 3 or more prior felony convictions, 2 or more of which are for “sexual felonies.” Triggering offenses include online enticement of a minor and distribution of child pornography. “Sexual felonies” include distribution or possession of child pornography and 1st-degree indecent exposure.	99 years	Yes
ALASKA	ALASKA STAT. ANN. §§ 12.55.125(0)(2)(F), 12.55.185(16) (West 2012)	Specified offense if actor has 3 or more prior felony convictions, 2 or more of which are for “sexual felonies.” Specified offenses include online enticement of a minor. “Sexual felonies” include distribution or possession of child pornography and 1st-degree indecent exposure.	99 years	Yes
ALASKA	ALASKA STAT. ANN. §§ 12.55.125(0)(4)(F), 12.55.185(16) (West 2012)	Specified offense if factor has 3 or more prior felonies, 2 or more of which are for “sexual felonies.” Specified offenses include 1st-degree indecent exposure and possession or distribution of child pornography. “Sexual felonies” include distribution or possession of child pornography and 1st-degree indecent exposure.	99 years	Yes
ALASKA	ALASKA STAT. ANN. §§ 12.55.125(0)(4)(E), 12.55.185(16) (West 2012)	Specified offense if factor has 2 or more prior “sexual felonies.” Specified offenses include 1st-degree indecent exposure and possession of child pornography. “Sexual felonies” include distribution or possession of child pornography and 1st-degree indecent exposure.	99 years	Yes
ARIZONA	ARIZ. REV. STAT. ANN. § 13-705(I) (2012)	Specified 1st-degree dangerous crime against children if actor has 2 or more “predate felonies.” Triggering offenses include manufacturing methamphetamine causing injury to a minor under 14 and involving minors in drug offenses. Predicate offenses include attempts to commit same.	Life; 35-year mandatory minimum	Yes

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
ARIZONA	ARIZ. REV. STAT. ANN. § 13-706(A) (2012)	Adult convicted of 3rd or subsequent "serious offense" (not drug offenses). "Serious offense" include involving minors in drug offenses; and unarmed dwelling burglary.	Life; 25-year mandatory minimum	Yes
COLORADO	COLO. REV. STAT. ANN. §§ 18-1.3-801(1), 18-1.3-406(2) (West 2012)	"Adult convicted of 3rd or subsequent "aggravated or violent felony." "Aggravated or violent felonies" include armed burglary of an occupied structure; participating in a criminal syndicate; and participating in a criminal gang.	Life; 35-year mandatory minimum	Yes
GEORGIA	GA. CODE ANN. § 16-11-160(a)(1), (d) (West 2012)	Class 3 "crime of violence." If actor has 2 or more prior class 3 "crimes of violence," "crimes of violence" include armed burglary; extortion; and any offense in which the actor used or possessed a firearm.	Life; 40-year mandatory minimum	Yes
NEW YORK	N.Y. PENAL LAW § 70.08 (McKinney 2012)	2nd or subsequent conviction for possession or using a machinegun, sawed-off shotgun, or similar weapon during specified offenses. Specified offenses include manufacture or sale of any amount of any drug; arson of lands; and criminal gang activity.	Life	Yes
RHODE ISLAND	R.I. GEN. LAWS ANN. §§ 11-47-3.2(a)(3), 11-47-2 (West 2012)	2nd or subsequent conviction for "using" a firearm during a "crime of violence." "Crime of violence" includes unarmed burglary, breaking and entering, and most controlled substance offenses.	Indeterminate sentence, maximum of which is life and minimum of which depends on the offense	Yes
TEXAS	TEX. PENAL CODE ANN. § 47-3.2(a)(2) (West 2012)	3rd or subsequent conviction for "using" a firearm during a "crime of violence." "Crime of violence" includes unarmed burglary, breaking and entering, and most controlled substance offenses.	Life	Life mandatory; LWOP discretionary
	TEX. GOV. CODE ANN. § 12.42(e)(2) (West 2011); TEX. GOV. CODE ANN. § 508.145(c) (West 2011)	2nd or subsequent conviction for specified offenses. Specified offenses include burglary with intent to commit a sex crime against a child; employment harmful to a child; possession of child pornography; or receiving a financial benefit from any of the above.	Life; 35-year mandatory minimum	Yes

DISCRETIONARY LIFE				
ALL CURRENT AND PREDICATE OFFENSES ARE LEGISLATIVELY VIOLENT				
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
DISTRICT OF COLUMBIA	D.C. CODE § 22-1804a (2012)	3rd or subsequent conviction for “crime of violence.” “Crime of violence” includes burglary; extortion; and gang recruitment by force or intimidation.	At least 15 years up to LWOP	No
ARKANSAS	ARK. CODE ANN. § 5-4-501(c)(1) (West 2012)	2nd or subsequent “serious felony involving violence.” “Crime of violence” includes armed home burglary.	40-80 years or LWOP	No
ARKANSAS	ARK. CODE ANN. § 5-4-501 (2012)	Class A “felony involving violence” if actor has or more prior “felony involving violence.” “Felony involving violence” includes “felony involving violence.” “Felony involving violence” includes armed home burglary (qualifies as triggering offense) and attempt to commit same.	40-80 years or LWOP	No
CALIFORNIA	CAL. PENAL CODE § 667.75 (West 2012)	3rd or subsequent conviction for offenses relating to involving minors in drug offenses.	At least 17 years up to life	No
CONNECTICUT	CONN. GEN. STAT. ANN. § 53a-40(a)(1), (b) (West 2012)	3rd or subsequent conviction for specified offense. Specified offenses include unarmed burglary of a dwelling at night; home invasion; and 1st-degree arson.	At least 3 times the minimum term or up to life	No
MASSACHUSETTS	MASS. GEN. LAWS ANN. ch. 266, § 14 (West 2012)	2nd or subsequent conviction for burglary of a home while armed with a firearm, shotgun, rifle, machete, or assault weapon.	At least 20 years up to life	No
NEVADA	NEV. REV. STAT. ANN. § 207.012 (West 2011)	3rd or subsequent conviction for specified offenses. Specified offenses include allowing a child to be present during the production of drugs (not marijuana); armed burglary; and racketeering.	LWOP; life with 10-year mandatory minimum; or 25 years with 10-year mandatory minimum.	No
NEW JERSEY	N.J. STAT. ANN. §§ 2C:43-6(e), 2C:44-7 (West 2012)	1st-degree specified offenses where actor used or possessed a machinegun or assault firearm if actor has or more prior specified offense where actor used or possessed a machinegun or assault firearm. Triggering offenses include manufacture, sale, etc. of, e.g., 5 ounces or more of heroin or 25 pounds or more of marijuana. Predicate offenses include burglary, escape, and possession of a weapon for unlawful purposes.	At least 20 years up to life	No
UTAH	OKLA. STAT. ANN. tit. 63, § 2-403(B) (West 2012)	2nd or subsequent conviction for robbery of any controlled substance from a distributor.	At least 5 years up to life	No
RHODE ISLAND	R.I. GEN. LAWS ANN. §§ 11-47-3(3), 11-47-2 (West 2012)	3rd or subsequent conviction for carrying a dangerous weapon during a “crime of violence.” “Crimes of violence” include burglary; breaking and entering; and most controlled substances offenses.	At least 15 years up to life	No
RHODE ISLAND	R.I. GEN. LAWS ANN. §§ 11-47-3.1(3), 11-47-2 (West 2012)	3rd or subsequent conviction for carrying a stolen firearm during a “crime of violence.” “Crimes of violence” include burglary; breaking and entering; and most controlled substances offenses.	At least 20 years up to life	No

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
UTAH	UTAH CODE ANN. §§ 76-3-203.5, 76-3-203(1) (West 2012)	1st-degree "violent felony" if actor has 2 or more prior "violent felonies." 1st-degree violent felonies include armed burglary and aggravated arson; predicate violent felonies include extortion to disrupt a judicial proceeding.	At least 5 years up to life	No
	UTAH CODE ANN. §§ 76-4-40(1)(4)(a), 76-3-203(1) (West 2012)	2nd or subsequent conviction for enticing a minor with intent to commit a sexual felony.	At least 5 years up to life	No
VERMONT	VT. STAT. ANN. tit. 13, § 11a (West 2012)	3rd or subsequent "crime of violence." "Crimes of violence" include arson causing death.	Any term of years up to life	No

MANDATORY LWOP				
CURRENT OFFENSE MAY BE NONVIOLENT BUT PREDICATE OFFENSES MUST BE LEGISLATIVELY VIOLENT				
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
ALASKA	ALASKA STAT. ANN. §§ 12.55.125(0), 33.16.090(a)(1) (West 2012)	Class A or "unclassified" felony if 2 or more prior "most serious offenses." Class A felonies include distribution of any amount of any drug to a minor, and sale or possession of any amount of methamphetamine. "Most serious offenses" include arson and online enticement of a minor.	99 years	Yes
LOUISIANA	LA. REV. STAT. ANN. §§ 15:529.1(a)(3)(b), 14:2(B) (2011)	Crime punishable by 12 or more years if actor has 3 or more prior felonies, 2 or more of which are "crimes of violence." "Crimes of violence" include burglary, purse snatching, and extortion. Crimes punishable by 12 or more years include looting (LA. REV. STAT. ANN. § 14:62.5 (2011)) and computer tampering (LA. REV. STAT. ANN. § 14:73.7 (2011)).	LWOP	Yes
MISSISSIPPI	MISS. CODE ANN. § 99-19-83 (2011)	Any felony if actor has 2 or more prior felonies, one or more of which was a "crime of violence" and both of which resulted in a sentence of at least 1 year. "Crimes of violence" has been held to include unarmed burglary of a dwelling ( <i>Brown v. State</i> , No. 2010-KA-00352-COA, So.3d (Miss. Ct. App., June 21, 2011)).	LWOP	Yes

<b>MANDATORY LIFE</b>				
<b>CURRENT OFFENSE MAY BE NONVIOLENT BUT PREDICATE OFFENSES MUST BE LEGISLATIVELY VIOLENT</b>				
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
CALIFORNIA	CAL. PENAL CODE §§ 667, 667.5, 1192.7(c) (West 2012)	2 <sup>o</sup> “serious” or “violent” felonies if actor is subsequently convicted of of 2 times the normal term unless convicted of, e.g., sale, possession, or transportation of 1 kilogram or more of, e.g., cocaine or heroin; manufacture of 3 gallons or more of PCP, or actor used or possessed a firearm during the offense. “Serious offenses” include selling any amount of cocaine to a minor; simple burglary; and participation in a criminal street gang. “Violent felonies” include any offense armed burglary of an occupied dwelling; and extortion.	Life with 25-year mandatory minimum	Yes
COLORADO	COLO. REV. STAT. ANN. § 18-1.3-801 (West 2012)	Class 1 or 2 felony (except burglary) if actor has 2 or more prior convictions for Class 1 or 2 felonies or class 3 <sup>o</sup> “crimes of violence.” Class 2 felonies include controlled substance robbery from a pharmacy and 2nd or subsequent conviction for manufacture or sale of any Schedule I or II substance. “Crimes of violence” include any offense while armed; arson; and extortion.	Life; 40-year mandatory minimum	Yes

<b>MANDATORY LWOP</b>				
<b>CURRENT OFFENSE LEGISLATIVELY VIOLENT BUT PREDICATE OFFENSES MAY BE NONVIOLENT</b>				
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
FEDERAL GOVERNMENT	18 U.S.C.A. § 3559(c) (West 2006)	“Serious violent felony” if actor has 2 or more prior convictions for same or 1 or more “serious violent felonies” and 1 or more “serious drug offenses.” “Serious violent felony” includes possession of a firearm; extortion; and any other crime that involves the use or threat of force against the person of another or a substantial risk that such force will be used. “Serious drug offense” includes, e.g., manufacture or sale of, e.g., 280 grams or more of cocaine base or 1,000 kilograms or more of marijuana (21 U.S.C.A. § 841(b)(1)(A) (West 2006)).	LWOP	Yes
DELAWARE	DEL. CODE ANN. tit. 11, § 4214(a) (West 2012)	Felony punishable by life if actor has 3 or more prior felony convictions of any type. Felonies punishable by life include offenses relating to sale, receipt, etc. of explosives where death results (DEL. CODE ANN. tit. 16, § 7113 (West 2012)).	LWOP	Yes

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
LOUISIANA	LA. REV. STAT. ANN. §§ 15:529.1(A)(3)(b), 14:2(B) (2011)	"Crime of violence" or other crime punishable by 12 or more years if actor has 2 or more prior felony convictions for crimes punishable by 12 years or more. "Crimes of violence" include burglary, purse snatching, and extortion. Crimes punishable by 12 or more years include looting (LA. REV. STAT. ANN. § 14:62.5 (2011)) and computer tampering (LA. REV. STAT. ANN. § 14:73.7 (2011)).	LWOP	Yes
WYOMING	WYO. STAT. ANN. §§ 6-10-201, 6-10-30 (c), 6-1-104(a)(xii) (West 2012)	"Violent felony" if actor has 3 or more prior felony convictions of any type. "Violent felonies" include simple arson and armed burglary.	LWOP	Yes

DISCRETIONARY LWOP				
CURRENT OFFENSE LEGISLATIVELY VIOLENT BUT PREDICATE OFFENSES MAY BE NONVIOLENT				
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
FEDERAL GOVERNMENT	18 U.S.C.A. § 924(e) (West 2006)	Any offense involving unlawful firearm possession or transportation if actor has 3 or more prior "serious drug offenses" or "crimes of violence." "Crimes of violence" include burglary and any offense that has as an element the use, attempt, or threat of force against the person or property of another.	At least 15 years up to LWOP	No
ARKANSAS	ARK. CODE ANN. §§ 54-501(a)(1)(B), 1-6-93-613 (West 2012)	Class Y "serious felony involving violence" if actor has 1 or more prior felony convictions of any type. Triggering offenses include armed home burglary.	10-60 years or LWOP	No
KENTUCKY	ARK. CODE ANN. §§ 54-501(a)(1)(C), 1-6-93-613 (West 2012)	Class Y "felony involving violence" if actor has 1 or more prior felony convictions of any type. Triggering offenses include armed home burglary.	10-60 years up to LWOP	No
	KY. REV. STAT. ANN. §§ 250.991(2), (3), 439.3401 (West 2012)	2nd or subsequent conviction for possession of anhydrous ammonia with intent to manufacture methamphetamine → Class A felony.	20-50 years or LWOP	No
	KY. REV. STAT. ANN. §§ 514.030(2)(b), 439.3401 (West 2012)	2nd or subsequent conviction for theft of anhydrous ammonia with intent to manufacture methamphetamine → Class A felony.	20-50 years or life	No
	KY. REV. STAT. ANN. §§ 218A.432(2), 439.3401 (West 2012)	2nd or subsequent conviction for manufacture of any amount of methamphetamine → Class A felony.	20-50 years or life	No

<b>MANDATORY LIFE</b>				
<b>CURRENT OFFENSE LEGISLATIVELY VIOLENT BUT PREDICATE OFFENSES MAY BE NONVIOLENT</b>				
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
COLORADO	COLO. REV. STAT. ANN. § 18-1.3-801(2.5) (West 2012)	Person previously sentenced as an habitual offender (who received sentence of less than life (can be for entirely nonviolent offenses)) who is thereafter convicted of a “crime of violence.” “Crimes of violence” include armed burglary, extortion; and escape.	Life; 40-year mandatory minimum	Yes

<b>DISCRETIONARY LIFE</b>				
<b>CURRENT OFFENSE LEGISLATIVELY VIOLENT BUT PREDICATE OFFENSES MAY BE NONVIOLENT</b>				
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
FLORIDA	FLA. REV. STAT. ANN. § 775.084(1)(b), (4)(b) (West 2012)	Specified 1st-degree or life felony if actor has 1 or more prior felony convictions of any type. Specified offenses include armed burglary and unlawful throwing or placing of a destructive device or bomb.	At least 15 years up to life	No
KY.	KY. REV. STAT. ANN. § 532.080(2), (5) (West 2012)	Class B felony if actor has 1 or more prior felony convictions of any type → Class A felony. Class B felonies include 2nd or subsequent conviction for manufacture or sale of e.g., 4 grams or more of cocaine or 2 grams or more of heroin (KY. REV. STAT. ANN. § 218A.1412 (West 2012)) and armed burglary (KY. REV. STAT. ANN. § 511.020 (West 2012)).	20-50 years or life	No
KENTUCKY	KY. REV. STAT. ANN. § 250.091(2), (3) (West 2012)	2nd or subsequent conviction for possession of anhydrous ammonia with intent to manufacture methamphetamine → Class A felony.	20-50 years or life	No
MISSOURI	KY. REV. STAT. ANN. § 514.630(2)(b) (West 2012)	2nd or subsequent conviction for theft of anhydrous ammonia with intent to manufacture methamphetamine → Class A felony.	20-50 years or life	No
	KY. REV. STAT. ANN. § 218A.1432(2) (West 2012)	2nd or subsequent conviction for manufacture of any amount of methamphetamine → Class A felony.	20-50 years or life	No
	KY. REV. STAT. ANN. § 558.016(4) (West 2012)	Class A or B felony in which actor endangered or threatened the life of another or inflicted or threatened serious bodily injury if actor has 1 or more prior convictions for Class A or B felonies. Class A felonies include sale of any amount of any drug in a school zone (except 5 grams or less of marijuana); Class B felonies include unarmed burglary of a dwelling.	10-30 years or life	No

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
OKLAHOMA	OKLA. STAT. ANN. tit. 21, § 51.1(A)(1) (West 2012)	"Violent felony" punishable by 5 years or more if actor has 1 or more prior felony convictions of any type. "Violent felonies" include armed burglary; 1st-degree arson; criminal syndication; and extortion.	At least 10 years up to life	No
	OKLA. STAT. ANN. tit. 21, § 51.1(B) (West 2012)	"Violent felony" if actor has 2 or more prior felony convictions of any type. "Violent felonies" include armed burglary; 1st-degree arson; criminal syndication; and extortion.	At least 20 years up to life	No

MANDATORY LWOP				
CURRENT OFFENSE MUST BE VIOLENT BUT PREDICATE OFFENSES MAY BE NONVIOLENT				
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
MISSISSIPPI	MISS. CODE ANN. § 99-19-81 (West 2011)	Felony punishable by life if actor has 2 or more prior felony convictions of any type. Triggering offenses include armed robbery (MISS. CODE ANN. § 97-3-79 (West 2011)).	LWOP	Yes

DISCRETIONARY LIFE				
CURRENT OFFENSE MUST BE VIOLENT BUT PREDICATE OFFENSES MAY BE NONVIOLENT				
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
NEW YORK	N.Y. PENAL LAW § 70.06 (McKinney 2012)	Class A-II felony if actor has 1 or more prior felony convictions of any type. Class A-II felonies include predatory sexual assault (N.Y. PENAL LAW § 130.95 (McKinney 2012))	Up to maximum of life	No
NORTH CAROLINA	N.C. GEN. STAT. ANN. § 15A-1340.17 (West 2012)	Class B1 felony if actor has 14 or more "prior record points" and offense is aggravated. Aggravating offenses include inducing others, commission of offense for pecuniary benefit. Class B1 felonies include 1st-degree sexual offense (e.g., by force) (N.C. GEN. STAT. ANN. § 14-27.4 (West 2012)). Nonviolent offenses could serve as predicate offenses under this provision.	Up to maximum of life	No

<b>MANDATORY LWOP</b>				
<b>CURRENT OFFENSE MUST BE VIOLENT BUT PREDICATE OFFENSES MAY BE LEGISLATIVELY VIOLENT</b>				
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
ARKANSAS	ARK. CODE ANN. § 5.4-501(c)(3) (West 2012)	Rape or 1st-degree sexual assault involving a victim under 14 if actor has 1 or more prior convictions for “serious felonies involving violence.” “Serious felonies involving violence” include armed home burglary and arson.	LWOP	Yes
KANSAS	KAN. STAT. ANN. § 21-6626 (West 2012)	Specified sexually violent crime if actor has 2 or more prior convictions for sexually violent crimes. Triggering offenses include rape, aggravated incest, and attempt to commit a sexually violent offense. Predicite offenses include indecent solicitation of a child and any other offense found beyond a reasonable doubt to have been sexually motivated.	LWOP	Yes

<b>MANDATORY LIFE</b>				
<b>CURRENT OFFENSE MUST BE VIOLENT BUT PREDICATE OFFENSES MAY BE LEGISLATIVELY VIOLENT</b>				
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
ALASKA	ALASKA STAT. ANN. §§ 12.55.125(y)(F), 12.55.195(16) (West 2012)	Specified offense if actor has 3 or more prior felony convictions, 2 or more of which are for “sexual felonies.” Triggering offenses include 1st-degree sexual assault and 1st-degree sexual abuse of a minor. “Sexual felonies” include indecent exposure and distribution or possession of child pornography.	99 years	Yes
OHIO	OHIO REV. CODE ANN. §§ 2929.14(B)(2)(b), 2929.01(CC) (West 2011-2012)	“Offense of violence” punishable by life if actor has 2 or more prior convictions for “offenses of violence.” Triggering offenses include rape (OHIO REV. CODE ANN. §§ 2907.02 (West 2011-2012)). Predicite offenses include extortion; armed burglary; and simple arson.	Life	Yes

<b>MANDATORY LIFE</b>				
<b>CURRENT OFFENSE MUST BE VIOLENT BUT PREDICATE OFFENSES MAY BE LEGISLATIVELY VIOLENT</b>				
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
CONNECTICUT	CONN. GEN. STAT. ANN. § 53a-40(a)(2) (West 2012)	Specified offense if actor has 2 or more prior convictions for specified offenses. Triggering offenses include 1st- or 3rd-degree sexual assault with a firearm. Predicate offenses include armed or unarmed burglary, arson, and attempts to commit same.	3 times the normal minimum term up to life	No
MARYLAND	Md. CODE ANN., CRIM. LAW § 14-101(d) (West 2012)	"Crime of violence" punishable by life if actor has 2 or "crimes of violence." Triggering offenses include sexual assault and murder. Predicate offenses include arson of a dwelling.	At least 25 years up to life	No
	N.J. STAT. ANN. §§ 2C:43-7.1(b), 2C:43-7 (West 2012)	1st-degree specified offense if actor has 2 or more prior convictions for assault. Predicate offenses include aggravated sexual assault. Triggering offenses include 2nd-degree burglary and possession of a weapon for unlawful purposes.	At least 20 years up to life	No
NEW JERSEY	N.J. STAT. ANN. §§ 2C:44-3(d), 2C:43-7 (West 2012)	1st-degree specified offense committed while using or possessing a firearm if actor has 1 or more prior convictions for specified offenses while using or possessing a firearm. Triggering offenses include robbery and aggravated sexual assault. Predicate offenses include burglary, escape, and possession of a weapon for unlawful purposes.	At least 20 years up to life	No
	N.J. STAT. ANN. §§ 2C:44-3(a), 2C:44-7 (West 2012)	Aggravated manslaughter, kidnapping, or aggravated sexual assault if actor has 2 or more prior convictions for 1st-3rd degree crimes and actor is at least 21.	At least 30 years up to life	No
	N.J. STAT. ANN. § 2C:43-7 (West 2012)	1st-degree kidnapping if actor has 2 or more prior convictions for 1st through 3rd-degree crimes and actor is at least 21.	At least 30 years up to life	No

  

<b>MANDATORY LWOP</b>				
<b>ALL CURRENT AND PREDICATE OFFENSES MUST BE VIOLENT</b>				
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
GEORGIA	Ga. CODE ANN. § 17-10-7(b) (West 2012)	2nd or subsequent conviction for "serious violent felony." "Serious violent felonies include murder, manslaughter, robbery, rape, kidnapping, aggravated child molestation, and aggravated sexual battery.	LWOP	Yes
ILLINOIS	720 ILL. COMP. STAT. ANN. 5/10-2 (West 2012)	2nd or subsequent conviction for aggravated kidnapping (e.g., while masked or for ransom).	LWOP	Yes

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
<b>IOWA</b>	IOWA CODE ANN. § 901A.2(5) (West 2012)	2nd or subsequent conviction for sexual abuse of a person under 12.	LWOP	Yes
	MINN. STAT. ANN. § 609.106 (West 2012)	1st-degree murder if actor has 1 or more prior conviction for a "heinous crime." "Heinous crimes" are 1st through 3rd-degree murder; 1st-degree assault; and 1st- through 3rd-degree criminal sexual conduct.	LWOP	Yes
<b>MINNESOTA</b>	MINN. STAT. ANN. § 609.3455(2) (West 2012)	1st or 2nd-degree criminal sexual conduct if actor has 1 or more prior convictions for 1st- through 3rd-degree criminal sexual conduct with a "heinous element." "Heinous elements" include torture and causation of serious bodily injury.	LWOP	Yes
	MINN. STAT. ANN. § 609.3455(4) (West 2012)	Conviction for 1st- through 4th-degree criminal sexual conduct or criminal sexual predatory conduct if actor has, e.g., 2 or more prior convictions for sex offenses. "Sex offense" is 1 st through 5th-degree criminal sexual conduct and criminal predatory sexual conduct.	LWOP	Yes
<b>MISSOURI</b>	MO. ANN. STAT. § 558.018 (West 2012)	2nd or subsequent conviction for specified sexual offenses. Specified offenses are rape, 1st-degree statutory rape, forcible sodomy, 1st-degree statutory sodomy, and attempts to commit same.	LWOP	Yes
<b>MONTANA</b>	MONT. CODE ANN. § 46-18-219(1)(b) (West 2011)	3rd or subsequent conviction for specified offenses. Specified offenses include murder, manslaughter, robbery, kidnapping, and aggravated promotion of prostitution (e.g., of a minor).	LWOP	Yes
<b>NEW HAMPSHIRE</b>	N.H. REV. STAT. ANN. § 651:6(III)(c), (III)(f) (West 2012)	2nd or subsequent conviction for aggravated felonious sexual assault.	LWOP	Yes
<b>NEW JERSEY</b>	N.J. STAT. ANN. § 2C:43-7.1(a) (West 2012)	3rd or subsequent conviction for specified offenses. Specified offenses are kidnapping, sexual assault, robbery, carjacking, murder, and manslaughter.	LWOP	Yes
<b>NEW MEXICO</b>	N.M. STAT. ANN. § 31-18-25(B) (West 2012)	2nd or subsequent conviction for 1st- or 2nd-degree rape where victim was under 13 each time.	LWOP	Yes
<b>NORTH CAROLINA</b>	N.C. GEN. STAT. ANN. 15A-1340.16B (West 2012)	statutory rape with a victim who is 13 or under.	LWOP	Yes
	TENN. CODE ANN. § 40-35-120(a)(1), (g) (West 2012)	2nd or subsequent conviction for "violent offense." "Violent offenses include especially aggravated burglary (any victim suffers serious bodily injury), especially aggravated kidnapping (any victim suffers serious bodily injury), and aggravated sexual exploitation of a minor.	LWOP	Yes
<b>TENNESSEE</b>	TENN. CODE ANN. § 40-35-120(a)(3), (g) (West 2012)	2nd or subsequent "violent offense." "Violent offenses" include especially aggravated kidnapping (any victim suffers serious bodily injury) and especially aggravated robbery (any victim suffers serious bodily injury), and manslaughter.	LWOP	Yes

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
TENNESSEE	TENN. CODE ANN. § 40-35-120(a)(5)-(6), (g) (West 2012)	2nd or subsequent “violent offense.” “Violent offenses” include especially aggravated robbery (any victim suffers serious bodily injury), especially aggravated burglary (any victim suffers serious bodily injury), and aggravated sexual exploitation of a minor.	LWOP	Yes
TEXAS	TEX. PENAL CODE ANN. § 12.42(c)(4) (West 2011)	2nd or subsequent conviction for continuous trafficking of persons, continuous sexual abuse of a child, or aggravated sexual assault.	LWOP	Yes
WEST VIRGINIA	W. VA. CODE ANN. § 61-11-18(b) (West 2012)	2nd or subsequent conviction for 1st- or 2nd-degree murder or 1st-degree sexual assault.	LWOP	Yes

### DISCRETIONARY LWOP

ALL CURRENT AND PREDICATE OFFENSES MUST BE VIOLENT				
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
TEXAS	TEX. PENAL CODE ANN. §§ 12.42(c)(3), 12.31 (West 2011)	Aggravated sexual assault if actor has 1 or more prior convictions for aggravated sexual assault against a victim under 14 or a victim under 14 where the offense results in serious bodily injury.	Life, LWOP, or the death penalty	Life mandatory; LWOP and death penalty discretionary
WISCONSIN	WIS. STAT. ANN. § 939.61(8)(b) (West 2012)	2nd or subsequent conviction for 1st- or 2nd-degree sexual assault.	Maximum of LWOP	No

### MANDATORY LIFE

ALL CURRENT AND PREDICATE OFFENSES MUST BE VIOLENT				
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
CONNECTICUT	CONN. GEN. STAT. ANN. § 53a-40(b), (i) (West 2012)	2nd or subsequent conviction for 1st- through 3rd-degree sexual assault or 1st- through 3rd-degree aggravated sexual assault with a firearm.	Life	Yes
GEORGIA	GA. CODE ANN. § 16-5-44.1 (West 2012)	2nd or subsequent conviction for armed carjacking.	Life	Yes

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
NEW HAMPSHIRE	N.H. REV. STAT. ANN. § 651:6(I)(H)(e), (III)(f)	3rd or subsequent conviction for felonious sexual assault.	Life	Yes
NEW MEXICO	N.M. STAT. ANN. § 31-18-23(A) (West 2012)	3rd or subsequent conviction for “violent felony,” “Violent felony” includes armed robbery resulting in great bodily harm; kidnapping resulting in great bodily harm; and shooting at or from a vehicle resulting in great bodily harm.	Life	Yes
TEXAS	TEX. PENAL CODE ANN. §§ 12.42(c)(3), 12.31 (West 2011)	Aggravated sexual assault if actor has 1 or more prior convictions for aggravated sexual assault against a victim under 14 or a victim under 14 where the offense results in serious bodily injury.	Life, LWOP, or the death penalty	Life mandatory; LWOP and death penalty discretionary

#### DISCRETIONARY LIFE

ALL CURRENT AND PREDICATE OFFENSES MUST BE VIOLENT				
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
MAINE	ME. REV. STAT. ANN. tit. 17-A, § 1252(4-B) (2008)	2nd or subsequent conviction for gross sexual assault, rape, attempted murder by sexual assault, or murder by sexual assault.	Any term of years up to life	No
	MASS. GEN. LAWS ANN. ch. 265, § 52 (West 2012)	2nd or subsequent conviction for human trafficking.	At least 10 years up to life	No
	MASS. GEN. LAWS ANN. ch. 265, § 19 (West 2012)	2nd or subsequent conviction for unarmed robbery of a person 60 or older.	At least 2 years up to life	No
	MASS. GEN. LAWS ANN. ch. 265, § 24B (West 2012)	2nd or subsequent conviction for assault on a child under 16 with intent to commit rape if actor is 8 or older.	At least 15 years up to life	No
	MASS. GEN. LAWS ANN. ch. 265, § 22(b) (West 2012)	2nd or subsequent conviction for rape.	Any term of years up to life	No
MASSACHUSETTS	MASS. GEN. LAWS ANN. ch. 265, § 22(b) (West 2012)	2nd or subsequent conviction for rape while armed.	At least 15 years up to life	No
	MASS. GEN. LAWS ANN. ch. 265, § 17 (West 2012)	2nd or subsequent conviction for robbery while armed with a firearm, shotgun, rifle, machinegun or assault weapon	At least 15 years up to life	No
	MASS. GEN. LAWS ANN. ch. 265, § 24 (West 2012)	2nd or subsequent conviction for assault with intent to commit rape while armed with a firearm, shotgun, rifle, machinegun or assault weapon	At least 20 years up to life	No

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
OKLAHOMA	OKLA. STAT. ANN. tit. 21, §§ 867(B), 62.1 (West 2012)	2nd or subsequent conviction for trafficking in children.	At least 3 years up to life	No
VERMONT	VT. STAT. ANN. tit. 13, § 11a (West 2012)	3rd or subsequent conviction for a "crime of violence." "Crimes of violence" include assault and robbery causing injury, kidnapping, maiming, and 1st-degree unlawful restraint.	Any term of years up to life	No

MANDATORY LWOP				
ALL CURRENT AND PREDICATE OFFENSES MAY BE NONVIOLENT DRUG OFFENSES				
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
FEDERAL GOVERNMENT	21 U.S.C.A. § 841(b)(1)(A) (West 2010) 21 U.S.C.A. § 841(b)(1)(A) (West 2010) 21 U.S.C.A. §§ 860, 841(b)(1)(A) (West 2010)	3rd or subsequent conviction for manufacture or sale of, e.g., 50 grams or more of methamphetamine or 280 grams or more of crack cocaine. 2nd or subsequent conviction for manufacture, sale, etc. of, e.g., 50 grams or more of methamphetamine or 1,000 kilograms or more... 3rd or subsequent conviction for manufacture, sale, etc. of any amount of a controlled substance in or within 1,000 feet of an elementary, vocational, or secondary school or college, junior college, or university, or playground, or public housing facility; or within 100 feet of a youth center, public swimming pool, or video arcade facility.	LWOP	Yes
ALABAMA	21 U.S.C.A. §§ 849, 841(b)(1)(A) (West 2010) 21 U.S.C.A. §§ 859, 841(b)(1)(A) (West 2010) 21 U.S.C.A. §§ 861, 841(b)(1)(A) (West 2010) ALA. CODE § 13A-12-233 (2012) ALA. CODE §§ 13A-5-9(c)(4), 15-22-27.2 (2012)	3rd or subsequent conviction for sale or possession any amount of a controlled substance in or within 1,000 feet of a truck stop or rest area. 3rd or subsequent distribution by a person 18 or older of any controlled substance to a person under 21 years of age. 3rd or subsequent, adult who hires, persuades, etc. any minor to participate or assist in any drug offense or receives any controlled substance from a minor other than an immediate family member. 2nd or subsequent "drug trafficking enterprise" (in concert with 5 or more others with respect to whom actor is an organizer, supervisor, etc. and from which actor obtains substantial income). Class A felony if actor has 3 or more prior felony convictions of any type, 1 or more of which is a Class A felony. Class A felonies include manufacture, sale, etc. of, e.g., 1 kilogram or more of cannabis or 28 grams or more of cocaine (ALA. CODE § 13A-12-231 (2012); and sale by adult of any Schedule I-IV substance to a minor (ALA. CODE § 13A-12-215 (2012)).	LWOP	Yes

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
GEORGIA	GA. CODE ANN. § 17-10-7(c) (West 2012)	4th or subsequent felony conviction of any type (except purchase or possession of drugs or manufacture, sale, etc. of marijuana) → maximum term for offense of conviction without parole. Qualifying offenses include manufacture or sale of, e.g., any amount of any Schedule I or II substance (GA. CODE ANN. § 16-13-30(d) (West 2012)).	LWOP	Yes
ILLINOIS	730 ILL. COMP. STAT. ANN. 5/5-4.5-95, 5/3-3-3 (West 2012)	3rd or subsequent conviction for Class X felony; Class X felonies include manufacture or sale of, e.g., 15 grams or more of cocaine or 200 grams or more of amphetamine (720 ILL. COMP. STAT. ANN. 5/70/40) (West 2012); and manufacture or sale of, e.g., 1 gram or more of cocaine or heroin within 1,000 feet of a school or public housing (720 ILL. COMP. STAT. ANN. 5/70/40/7 (West 2012)).	"Natural life" imprisonment (i.e., LWOP)	Yes
IOWA	IOWA CODE ANN. §§ 124.40(1D), 902.1 (West 2012)	2nd or subsequent, sale or conspiracy or attempt to sell to minor by adult of any amount of methamphetamine.	LWOP	Yes
LOUISIANA	L.A. REV. STAT. ANN. § 15:529.1(A)(3)(b) (2012)	3rd or subsequent conviction for any drug offense punishable by 10 years or more. Qualifying offenses include simple possession of any amount of any Schedule I substance or a 3rd or subsequent conviction for simple possession of any amount of marijuana (L.A. REV. STAT. ANN. § 40:966(C), (E) (2011)); and manufacture or sale of any amount of any Schedule I or II substance (L.A. REV. STAT. ANN. § 40:967(B) (2011)).	LWOP	Yes
MICHIGAN	L.A. REV. STAT. ANN. § 15:529.1(A)(4)(b) (2012)	Drug crime punishable by 10 years or more if actor has 3 or more prior felony convictions, 2 or more of which are drug offenses punishable by 10 years or more. Qualifying offenses include simple possession of any amount of any Schedule I substance or a 3rd or subsequent conviction for simple possession of any amount of marijuana (L.A. REV. STAT. ANN. § 40:966(C), (E) (2011)); and manufacture or sale of any amount of any Schedule I or II substance (L.A. REV. STAT. ANN. § 40:967(B) (2011)).	LWOP	Yes
OKLAHOMA	OKLA. STAT. ANN. tit. 63, § 2-415(D)(3) (West 2012)	2nd or subsequent conviction for intentional or negligent discharge of a firearm during any drug trafficking offense.	LWOP	Yes
MICHIGAN	MICH. COMP. LAWS ANN. § 333.7413(1) (West 2012)	2nd or subsequent conviction for manufacture, sale, etc. of, e.g., 50 grams or more of heroin or cocaine or attempt or conspiracy to commit same.	LWOP	Yes
OKLAHOMA	OKLA. STAT. ANN. tit. 63, § 2-415(D)(3) (West 2012)	3rd or subsequent conviction for manufacture, sale, etc. of, e.g., 25 pounds or more of marijuana or 10 grams or more of heroin.	LWOP	Yes

DISCRETIONARY LWOP				
		ALL CURRENT AND PREDICATE OFFENSES MAY BE NONVIOLENT DRUG OFFENSES		
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
FEDERAL GOVERNMENT	21 U.S.C.A. § 860 (West 2006)	2nd or subsequent conviction for manufacture, sale, etc. of any amount of any controlled substance in, on, or within 1,000 feet of any elementary, vocational, or secondary school or any college, junior college, or university; or a playground, or public housing facility, or within 100 feet of a public or private youth center; public swimming pool, or video arcade facility.	LWOP	No
	21 U.S.C.A. § 848(a) (West 2006)	2nd or subsequent conviction for engaging in a continuing criminal drug enterprise.	At least 30 years or up to LWOP	No
ALABAMA	ALA. CODE § 13A-5-9(c)(3) (2012)	Class A felony if actor has 3 or more prior felony convictions of any type. Class A felonies include manufacture, sale, etc. of, e.g., 1 kilogram or more of cannabis or 28 grams or more of cocaine (ALA. CODE § 13A-12-23(1) (2012)); and sale by adult of any Schedule I-IV substance to a minor (ALA. CODE § 13A-12-215 (2012)).	Life or LWOP	Life mandatory; LWOP discretionary
	ARK. CODE ANN. §§ 54-501(a)(1)(A), 16-93-613 (West 2012)	Class Y felony other than serious felony involving violence or felony involving violence if actor has 1-4 prior felonies of any type. Class Y felonies include manufacture of methamphetamine (ARK. CODE ANN. § 5-64-423 (West 2012)); and manufacture, sale, etc. of, e.g., 200 grams or more of cocaine or other Schedule I or II substance (including marijuana) (ARK. CODE ANN. § 5-64-440 (West 2012)).	10-60 years or up to LWOP	No
ARKANSAS	ARK. CODE ANN. §§ 54-501(b)(1)(A), 16-93-613 (West 2012)	Class Y felony other than serious felony involving violence or felony involving violence if 4 or more prior felonies of any type. Class Y felonies include manufacture of any methamphetamine (ARK. CODE ANN. § 5-64-423 (West 2012)); and manufacture, sale, etc. of, e.g., 200 grams or more of cocaine or other Schedule I or II substance (including marijuana) (ARK. CODE ANN. § 5-64-440 (West 2012)).	10-60 years or up to LWOP	No
	DEL. CODE ANN. tit. 11, § 4214(a) (West 2012)	4th or subsequent conviction for any felony, including, e.g., possession of, e.g., 1,500 grams or more of marijuana, 10 grams or more of cocaine, or 2 or more grams of any opiate including morphine or heroin (DEL. CODE ANN. tit. 16, §§ 4755, 4751C (West 2012)).	Up to LWOP	No
KENTUCKY	KY. REV. STAT. ANN. §§ 250.991(2)-(3), 439.3401 (West 2012)	2nd or subsequent conviction for possession of anhydrous ammonia with intent to manufacture methamphetamine.	20-50 years or life with 10-year mandatory minimum	No
	KY. REV. STAT. ANN. §§ 514.030, 439.3401 (West 2012)	2nd or subsequent conviction for theft of anhydrous ammonia with intent to manufacture methamphetamine.	20-50 years or life with 10-year mandatory minimum	No

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
KENTUCKY	KY. REV. STAT. ANN. §§ 218A.1432, 439.3401 (West 2012)	2nd or subsequent conviction for manufacturing methamphetamine.	20-50 years or life with 10-year mandatory minimum	No
LOUISIANA	LA. REV. STAT. ANN. §§ 15:529.1(A)(4)(a), 15:574.4(B) (2011)	4th or subsequent conviction for any felony, including, e.g., simple possession of any amount of any Schedule I substance or a 2nd or subsequent conviction for simple possession of any amount of marijuana (LA. REV. STAT. ANN. § 40:966(C)). (E) (2011).	At least 20 years up to LWOP	No
	MO. ANN. STAT. § 195.218(2) (West 2012)	Sale of any amount of any drug in, on, or within 1,000 feet of public housing or government assisted housing if actor has 2 or more prior felony drug convictions of any type.	10-30 years or life; any term imposed must be without parole	No
	MO. ANN. STAT. § 195.292 (West 2012)	2nd or subsequent conviction for distribution of any amount of any controlled substance to a minor.	10-30 years or life; any term imposed must be without parole	No
MISSOURI	MO. ANN. STAT. §§ 195.296, 195.222 (West 2012)	Manufacture, sale, etc. of, e.g., 30 kilograms or more of marijuana or 30 grams or more of heroin if actor has 1 or more prior felony drug convictions.	10-30 years or life; any term imposed must be without parole	No
	MO. ANN. STAT. §§ 195.295(3), 195.223 (West 2012)	Possession, purchase, etc. of, e.g., 90 grams or more of heroin or 500 or more marijuana plants if actor has 1 or more prior felony drug convictions.	10-30 years or life; any term must be without parole	No
	MO. ANN. STAT. §§ 195.295(2), 195.223 (West 2012)	Possession, purchase, etc. of, e.g., 2 grams or more of cocaine base or 30 kilograms or more of marijuana if actor has 2 or more prior felony drug convictions.	10-30 years or life; any term must be without parole	No
	MO. ANN. STAT. §§ 195.291, 195.211 (West 2012)	Manufacture, sale, etc. of any amount of a drug except 5 grams or less of marijuana if actor has 2 or more prior drug convictions of any type.	10-30 years or life; any term must be without parole	No
NEVADA	NEV. REV. STAT. ANN. § 207.010 (West 2011)	4th or subsequent conviction for any felony, including, e.g., simple possession (not for purposes of sale) any amount of a Schedule I-LV substance (except 1 ounce or less of marijuana) (NEV. REV. STAT. ANN. § 453.336 (West 2011)).	LWOP, life with 10-year mandatory minimum, or 25 years with 10-year mandatory minimum.	No
SOUTH DAKOTA	S.D. CODIFIED LAWS §§ 22-7.81,122-6-1,24-15-4 (2012)	Class 2 felony if actor has 3 or more prior felony convictions) → Class C felony. Class 2 felonies include distribution or possession with intent to distribute 1 pound or more of marijuana (S.D. CODIFIED LAWS § 22-42-7 (2012)). Predicate offenses include possession of 2 ounces or more of marijuana (S.D. CODIFIED LAWS § 22-42-6 (2012)).	Any term of years up to LWOP	No
	S.D. CODIFIED LAWS §§ 22-7,22-6-1, (2012)	Class 1 felony if actor has 1 or more prior felony convictions of any type → Class C felony. Class 1 felonies include a 2nd or subsequent conviction for commission of any felony while armed (S.D. CODIFIED LAWS § 22-14-12 (2012)). Predicate offenses include possession of 2 ounces or more of marijuana (S.D. CODIFIED LAWS § 22-42-6 (2012)).	Any term of years up to LWOP	No

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
VIRGINIA	VA. CODE ANN. §§ 18.2-248.1(D), 53.1-151(B2) (West 2012)	3rd or subsequent conviction for sale, distribution, etc. of any amount of marijuana.	Not less than 5 years or up to life (if life imposed, LWOP)	No
	VA. CODE ANN. §§ 18.2-248(C), 53.1-151(B2) (West 2012).	3rd or subsequent conviction for manufacture, sale, etc. of any amount of any Schedule I or II controlled substance.	Not less than 10 years or up to life (if life imposed, LWOP)	No
	VA. CODE ANN. §§ 18.2-248(C1), 53.1-151(B2) (West 2012)	3rd or subsequent conviction manufacture, sale, etc. of any amount of methamphetamine.	Not less than 10 years or up to life (if life imposed, LWOP)	No

MANDATORY LIFE				
ALL CURRENT AND PREDICATE OFFENSES MAY BE NONVIOLENT DRUG OFFENSES				
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
ALABAMA	ALA. CODE § 13A-5-9(c)(3) (2012)	Class A felony if actor has 3 or more prior felony convictions of any type. Class A felonies include manufacture, sale, etc. 1 kilogram or more of cannabis or 28 grams or more of cocaine (ALA. CODE § 13A-12-231 (2012)) and sale of any amount of any Schedule I-IV substance to a minor (ALA. CODE § 13A-12-215 (2012)).	Life or LWOP	Life mandatory; LWOP discretionary
	ALA. CODE § 13A-5-9(b)(3) (2012)	Class A felony if actor has 2 or more prior felony convictions of any type. Class A felonies include manufacture, sale, etc. 1 kilogram or more of cannabis or 28 grams or more of cocaine (ALA. CODE § 13A-12-231 (2012)) and sale of any amount of any Schedule I-IV substance to a minor (ALA. CODE § 13A-12-215 (2012)).	Life or any term not less than 99 years	Yes
COLORADO	COLO. REV. STAT. ANN. § 18-1.3-801(1) (West 2012)	Class 1 or 2 felony (except burglary) if actor has 2 prior convictions for class 1 or 2 felonies (including burglary). Class 2 felonies include a 2nd or subsequent conviction for manufacture or sale of any Schedule I or II substance (COLO. REV. STAT. ANN. § 18-18-405 (West 2012)); and consumption or receipt of GHB or ketamine (COLO. REV. STAT. ANN. § 18-13-123 (West 2012)).	Life; 40-year mandatory minimum	Yes
GEORGIA	GA. CODE ANN. § 17-10-7(a) (West 2012)	Felony punishable by life if actor has 1 or more prior felony conviction of any type. Qualifying offenses include 2nd or subsequent conviction for manufacture or sale of any Schedule I or II substance (GA. CODE ANN. § 16-13-3(b)(1), (1) (West 2012)).	Life unless judge suspends or probates the maximum sentence	Yes

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
WEST VIRGINIA	W. VA. CODE ANN. § 61-11-18(c) (West 2012)	3rd or subsequent conviction for any felony, including, e.g., manufacture or sale of any amount of any Schedule I-IV controlled substance (W. VA. CODE ANN. § 60A-4-401 (West 2012)).	Life	Yes

DISCRETIONARY LIFE				
ALL CURRENT AND PREDICATE OFFENSES MAY BE NONVIOLENT DRUG OFFENSES				
JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
ARKANSAS	ARK. CODE ANN. §§ 5.4-501(a)(1)(A), 16-93-613 (West 2012)	Class Y felony <i>other</i> than serious felony involving violence or felony involving violence if actor has 1-4 prior felonies of any type. Class Y felonies include manufacture of methamphetamine (ARK. CODE ANN. § 5-64-42.3 (West 2012); and manufacture, sale, etc. of, e.g., 200 grams or more of cocaine or other Schedule I or II substance (including marijuana) (ARK. CODE ANN. § 5-64-440 (West 2012)).	10-60 years or up to LWOP	No
	ARK. CODE ANN. §§ 5.4-501(b)(1)(A), 16-93-613 (West 2012)	Class Y felony <i>other</i> than serious felony involving violence or felony involving violence if 4 or more prior felonies of any type. Class Y felonies include manufacture of any methamphetamine (ARK. CODE ANN. § 5-64-42.3 (West 2012)); and manufacture, sale, etc. of, e.g., 200 grams or more of cocaine or other Schedule I or II substance (including marijuana) (ARK. CODE ANN. § 5-64-440 (West 2012)).	10-60 years or up to LWOP	No
	ALA. CODE § 13A-5-9(a)(3) (2012)	Class A felony if actor has 1 or more prior felony conviction of any type. Class A felonies include manufacture, sale, etc. 1 kilogram or more of cannabis or 28 grams or more of cocaine (ALA. CODE § 13A-12-23.1 (2012)) and sale of any amount of any Schedule I-IV substance to a minor (ALA. CODE § 13A-12-215 (2012)).	15-99 years or life	No
	ALA. CODE § 13A-5-9(a)(2) (2012)	Class B felony if actor has 1 or more prior felony convictions of any type. Class B felonies include sale of any amount of any Schedule I-IV substance (ALA. CODE § 13A-12-211 (2012)) and unarmed burglary of a dwelling (ALA. CODE § 13A-7-6 (2012)).	10-99 years or life	No
ALABAMA	ALA. CODE § 13A-5-9(b)(2) (2012)	Class B felony if actor has 2 or more prior felony convictions of any type. Class B felonies include sale of any amount of any Schedule I-IV substance (ALA. CODE § 13A-12-211 (2012)).	15-99 years or life	No
	ALA. CODE § 13A-5-9(b)(1) (2012)	Class C felony if actor has 2 or more prior felony convictions of any type. Class C felonies include simple possession of controlled substances (ALA. CODE § 13A-12-212 (2012)).	10-99 years or life	No

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
<b>ALABAMA</b>	ALA. CODE § 13A-5-9(c)(1) (2012)	Class C felony if actor has 3 or more prior felony convictions of any type. Class C felonies include simple possession of controlled substances (ALA. CODE § 13A-12-2(2) (2012)) and unarmed burglary of any structure (ALA. CODE § 13A-7-7 (2012)).	15-99 years or life	No
	ALA. CODE § 13A-5-9(c)(2) (2012)	Class B felony if actor has 3 or more prior felony convictions of any type. Class B felonies include sale of any amount of any Schedule I-IV substance (ALA. CODE § 13A-12-21 (2012)) and unarmed burglary of a dwelling (ALA. CODE § 13A-7-6 (2012)).	Not less than 20 years or life	No
<b>FLORIDA</b>	FLA. STAT. ANN. § 775.084(1)(a), (4)(a) (West 2012)	Class B felonies include sale of any amount of any Schedule I-IV substance (ALA. CODE § 13A-7-6 (2012)). 1st-degree or life felony (except simple possession of drugs) if actor has 2 or more prior felony convictions of any type. 1st-degree felonies include manufacture, sale, etc. of e.g., 25 pounds or more of marijuana or 28 grams or more of cocaine (FLA. STAT. ANN. § 893.135 (West 2012)).	Up to life	No
<b>GEORGIA</b>	GA. CODE ANN. § 16-13-30(d). (1) (West 2012)	2nd or subsequent conviction for manufacture, sale, etc. of any amount of any Schedule I or II substance.	10-40 years or life	No
	HAW. REV. STAT. § 706-662 (West 2012)	Class A felony if actor has 2 or more prior felony convictions of any type. Class A felonies include distribution of methamphetamine to a minor (HAW. REV. STAT. § 712-1240.7 (2012)).	Up to indeterminate life term is court finds beyond a reasonable doubt that an extended term is necessary to protect public safety	No
<b>HAWAII</b>	IDaho CODE ANN. § 37-2739A (West 2012)	Distributing drugs if actor has 1 or more prior drug convictions.	At least 3 years up to life	No
	IDaho CODE ANN. § 37-2739B(b)(1) (West 2012)	2nd or subsequent conviction for manufacture, sale, etc. of, e.g., any amount of any Schedule I narcotic.	At least 5 years up to life	No
<b>IDAHO</b>	IDaho CODE ANN. § 19-2514 (West 2012)	3rd or subsequent conviction for any felony, including, e.g., manufacture or sale of any amount of any Schedule I-IV substance (including marijuana) (IDAHO CODE ANN. § 37-2732 (West 2012)).	At least 5 years up to life	No
	KY. REV. STAT. ANN. §§ 532.080(3), (6)-(7), 439.3401(2) (West 2012)	Class A or B felony if actor has 2 or more prior felony convictions and actor is at least 21 and was at least 18 when all prior offenses were committed. Class B felonies include 2nd or subsequent conviction for manufacture or sale of, e.g., 4 grams or more of cocaine or 2 grams or more of heroin (KY. REV. STAT. ANN. § 218A.1412 (West 2012)).	20-50 years or life with 10-year mandatory minimum	No
<b>KENTUCKY</b>	KY. REV. STAT. ANN. §§ 532.080(2) and (5), 439.3401(2) (West 2012)	Class A or B felony if actor has 1 or more prior felony conviction and actor is at least 21 and was at least 18 when all prior offenses were committed → Class A penalty. Class B felonies include 2nd or subsequent conviction for manufacture or sale of, e.g., 4 grams or more of cocaine or 2 grams or more of heroin (KY. REV. STAT. ANN. § 218A.1412 (West 2012)).	20-50 years or life with 10-year mandatory minimum	No

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
KENTUCKY	KY. REV. STAT. ANN. § 250.99(2)-(3) (West 2012)	2nd or subsequent conviction for possession of anhydrous ammonia with intent to manufacture methamphetamine.	20-50 years or life with 10-year mandatory minimum	No
	KY. REV. STAT. ANN. § 514.030 (West 2012)	2nd or subsequent conviction for theft of anhydrous ammonia with intent to manufacture methamphetamine.	20-50 years or life with 10-year mandatory minimum	No
	KY. REV. STAT. ANN. § 218A.1432 (West 2012)	2nd or subsequent conviction for manufacturing methamphetamine, of any drug, in or within 1,500 feet of a public or private elementary, vocational or secondary school or any church, public park, ballpark, public gym, youth center or movie theater; or 1,000 feet of a public or private elementary, vocational, or secondary school or any church, public park, ballpark, public gym, youth center or movie theater.	20-50 years or life with 10-year mandatory minimum	No
MISSISSIPPI	MISS. CODE ANN. § 41-29-142(2) (West 2011)	2nd or subsequent conviction for manufacture, sale, etc. of any amount of any drug, in or within 1,500 feet of a public or private elementary, vocational or secondary school or any church, public park, ballpark, public gym, youth center or movie theater; or 1,000 feet of a public or private elementary, vocational, or secondary school or any church, public park, ballpark, public gym, youth center or movie theater.	At least 3 years up to life	No
	MO. ANN. STAT. § 195.285(2) (West 2012)	Possession of any amount of any controlled substance (except 35 grams or less of marijuana) if actor has 2 or more prior felony drug convictions.	10-30 years or life	No
	MO. ANN. STAT. § 558.016 (West 2012)	Class A or B Felony if actor has 2 or more prior felony convictions. Class B felonies include manufacture, sale, etc. of, e.g., 8 grams or more of cocaine base or 30 kilograms or more of marijuana (MO. ANN. STAT. § 195.223) (West 2012).	10-30 years or life	No
MISSOURI	MO. ANN. STAT. § 195.295(1) (West 2012)	Possession, purchase, etc. of, e.g., 2 grams or more of cocaine base or 30 kilograms or more of marijuana if actor has 1 or more prior felony drug conviction.	10-30 years or life	No
	MO. ANN. STAT. § 195.291 (West 2012)	2nd or subsequent conviction for manufacture, sale, etc. of any amount of any drug (except 5 grams or less of marijuana).	10-30 years or life	No
	MONT. CODE ANN. § 45-9-110(3) (West 2011)	2nd or subsequent conviction for manufacture of any Schedule I or II substance except marijuana.	At least 20 years up to life	No
MONTANA	MONT. CODE ANN. § 45-9-110(3) (West 2011)	3rd or subsequent conviction for manufacture of any Schedule I or II substance except marijuana.	At least 40 years up to life	No
	MONT. CODE ANN. § 45-9-101(3) (West 2011)	2nd or subsequent conviction for sale of any Schedule I or II substance except marijuana.	At least 20 years up to life	No
	MONT. CODE ANN. § 45-9-101(5) (West 2011)	2nd or subsequent conviction for sale of any Schedule I or II substance to a minor.	40 years up to life	No
	MONT. CODE ANN. § 46-18-501 (West 2011)	2nd or subsequent conviction for any felony if previous conviction was punishable by 1 year or more. Qualifying offenses include, e.g., sale of any amount of any narcotic drug or opiate (MONT. CODE ANN. § 45-9-10 (West 2011)).	Up to 100 years	No

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
NEBRASKA	NEB. REV. STAT. ANN. § 28-416(4)-(5), (16) (West 2012)	2nd or subsequent conviction for manufacture, sale, etc. by adult of, e.g., 28 grams of cocaine or methamphetamine to a person under 18, in, on, or within 1,000 feet of a public or private elementary, vocational, or secondary school, community college, public or private college, junior college, or university, or playground, or within 100 feet of a public or private youth center, public pool, or video arcade.	At least 20 years up to life	No
NEVADA	NEV. REV. STAT. ANN. § 453.334 (West 2011)	2nd or subsequent conviction for sale of any amount to a minor.	Life with 5-year mandatory minimum or 15 years with 5-year mandatory minimum LWOP; life with 10-year mandatory minimum; or 25 years with 10-year mandatory minimum	No
NEW JERSEY	N.J. STAT. ANN. §§ 2C:44-3(a), 2C:44-7 (West 2012)	4th or subsequent conviction for any felony, including, e.g., manufacture or sale of any amount of a Schedule I or II substance (N.J. STAT. ANN. § 453.321 (West 2011)).	At least 20 years up to life if leader of narcotics network, ineligible for parole for 30 years	No
NORTH DAKOTA	N.D. CENT. CODE ANN. § 12.1-32-09 (West 2012)	1st-degree crime if actor has 2 or more prior felony convictions of any type and actor is at least 21. 1st-degree crimes include manufacture, sale, etc. of, e.g., 5 ounces or more of heroin or 25 pounds or more of marijuana (N.J. STAT. ANN. § 2C:35-5 (West 2012)) and maintaining a premises for production of controlled substances (N.J. STAT. ANN. § 2C:35-4 (West 2012)).	At least 20 years up to life with 25-year mandatory minimum	No
OKLAHOMA	OKLA. STAT. ANN. tit. 63, § 2-415(D)(2) (West 2012); OKLA. STAT. ANN. tit. 21, § 62.1 (West 2012)	1st-degree specified offense if actor has 1 or more prior specified offenses. Triggering offenses include manufacture, sale, etc. of, e.g., 5 ounces or more of heroin or 25 pounds or more of marijuana (N.J. STAT. ANN. § 2C:35-5 (West 2012)). Predicate offenses include same of, e.g., ½ ounce of heroin or 5 pounds of marijuana. <i>Id.</i>	Up to life	No
OKLAHOMA	OKLA. STAT. ANN. tit. 21, § 51.1(C) (West 2012)	Class A felony if actor has 2 or more prior felony convictions for any felony Class C or above. Class A offenses include creation or sale of any amount of Schedule I or II narcotic (N.D. CENT. CODE ANN. § 19-03-1-23(2)(a) (West 2011)). Class B felonies include creation or sale of any amount of any Schedule I-III substance ( <i>id.</i> at § 1(b)) and burglary of dwelling at night or while armed (N.D. CENT. CODE ANN. § 12.1-22-02 (West 2011)).	At least 3 times the minimum term for the offense of conviction up to life	No
OKLAHOMA	OKLA. STAT. ANN. tit. 63, § 2-415(D)(2) (West 2012); OKLA. STAT. ANN. tit. 21, § 62.1 (West 2012)	Possession, sale, manufacture, etc. of, e.g., 25 pounds or more of marijuana or 28 grams or more of cocaine if actor has 1 or more prior convictions for same or other drug offenses.	At least 3 times the minimum term for the offense of conviction up to life	No

JURISDICTION	STATUTE	DESCRIPTION	SENTENCE	LIFE OR LWOP MANDATORY?
OKLAHOMA	OKLA. STAT. ANN. tit. 21, § 51.1(A)(2) (West 2012)	2nd or subsequent conviction for any felony if current felony is punishable by 5 years or more. Qualifying offenses include possession or sale of 25 pounds or more of marijuana or 28 grams or more of cocaine. OKLA. STAT. ANN. tit. 63, § 2-41.5(D) (West 2012).	At least 2 times the minimum term for the offense of conviction up to life	No
TEXAS	OKLA. STAT. ANN. tit. 63, § 2-403(A) (West 2012); OKLA. STAT. ANN. tit. 21, § 62.1 (West 2012)	2nd or subsequent conviction for larceny or theft of any amount of any drug.	At least 10 years up to life	
UTAH	TEX. PENAL CODE ANN. §§ 12.42(b), 12.32 (West 2011)	2nd-degree felony if actor has 1 or more prior felony conviction (other than state jail felony) → punishment for 1st-degree, 2nd-degree felonies include sale of 5 pounds or more of marijuana (TEX. HEALTH & SAFETY CODE ANN. § 481.120 (West 2011)) or 1 gram or more of cocaine or heroin (TEX. HEALTH & SAFETY CODE ANN. § 481.112 (West 2011)).	5-99 years or life	No
VERMONT	TEX. PENAL CODE ANN. § 12.42(e)(1) (West 2011)	1st-degree felony if actor has 1 or more prior felony convictions (other than state jail felony). 1st-degree felonies include sale of 50 pounds or more of marijuana (TEX. HEALTH & SAFETY CODE ANN. § 481.120 (West 2011)) or 4 grams or more of cocaine or heroin (TEX. HEALTH & SAFETY CODE ANN. § 481.112 (West 2011)).	15-99 years or life	No
VIRGINIA	UTAH CODE ANN. § 58-37-8(1)(b) (West 2012)	2nd or subsequent conviction for manufacture, sale, etc. of, e.g., any amount of any Schedule I or II substance → 1st-degree.	At least 5 years up to life	No
	UTAH CODE ANN. § 58-37-8(2)(b)(i), (2)(c) (West 2012)	2nd or subsequent conviction for, e.g., possession or use of 100 pounds or more of marijuana → 1st-degree.	At least 5 years up to life	No
	VT. STAT. ANN. tit. 13, § 11 (West 2012)	4th or subsequent conviction for any felony, including, e.g., unlawful possession of 2 ounces or more of marijuana (VT. STAT. ANN. tit. 18, § 430 (West 2012)).	Any term up to and including life	No
	VA CODE ANN. § 18.2-248. (1d) (West 2012)	3rd or subsequent conviction for sale or distribution of any amount of marijuana.	At least 5 years up to life	No
	VA CODE ANN. § 18.2-248(C) (West 2012)	2nd or subsequent conviction for manufacture or sale of, e.g., any amount of any Schedule I or II substance.	At least 5 years up to life; At least 10 years up to life for 3rd or subsequent	No
	VA CODE ANN. § 18.2-248(C1) (West 2012)	2nd or subsequent conviction for manufacture or sale of any amount of methamphetamine.	At least 10 years up to life; at least 10 years with 3-year mandatory minimum for 3rd or subsequent.	No
	VA. CODE ANN. §§ 18.2-515, 18.2-10(b) (West 2012)	2nd or subsequent conviction for any racketeering violation → Class 2 felony.	At least 20 years up to life	No

