



October 17, 2022

Sent via E-mail

United States Sentencing Commission
One Columbus Circle, NE
Suite 2 500, South Lobby
Washington, D.C. 20002 8002
Attention: Public Affairs – Priorities Comment

Comments on Proposed 2022-2023 Priorities of the United States Sentencing Commission

Dear Members of the Commission:

We write to share original research from the Drug Enforcement and Policy Center (DEPC) concerning federal drug sentences to assist the U.S. Sentencing Commission’s consideration of policy priorities for 2022–2023. The DEPC report, *Dealing in Lives: Imposition of Federal Life Sentences for Drugs from 1990–2020 (Dealing in Lives)*, documents federal life sentences imposed for drug trafficking over the last three decades, giving particular attention to defendant- and case-specific characteristics. It also provides a descriptive account of factors associated with those sentenced to life in prison in federal courts for drug offenses.

The full *Dealing in Lives* report includes many critical findings and data analyses that should inform your important efforts to advance and improve federal sentencing law and policy. We urge the Commission to give particularized attention to the DEPC report’s finding that federal defendants convicted of crack cocaine-related offenses were by far the most likely to be sentenced to life or de facto life in prison in the period from 1990 to 2020: defendants sentenced for crack cocaine were nearly 2.5 times more likely to be sentenced to life than defendants sentenced for powder cocaine, 3.75 times more likely than those sentenced for methamphetamine, and 4.3 times more likely than those sentenced for heroin. In part because the rates of these extreme prison sentences for crack offenses have been much higher, life and de facto life sentences for drug offenses in the federal system have been disproportionately imposed on Black and Hispanic individuals. As *Dealing in Lives* details, a staggering 62.4% of those sentenced to life for drug offenses in the federal system are Black, and an additional 22% are Hispanic.

The data and analyses in *Dealing in Lives* also spotlight how problematic sentencing laws and practices have contributed to the imposition of extreme prison terms and worrisome patterns in life sentence distribution. *Dealing in Lives* documents how the so-called “trial penalty” and mandatory

minimum sentencing provisions have played an especially significant role in the imposition of life or de facto federal life sentences for federal drug offenses. As the report details, an astonishing 72% percent of those sentenced to life or de facto life for drug trafficking had exercised their rights to trial (as compared to less than 5% of all federal defendants). In addition, virtually all of those sentenced to life and de facto life sentences (97%) were subject to a drug mandatory minimum sentencing provision and one-third of all people sentenced to life for drug trafficking were subject to a mandatory minimum *life* sentence.

Notably, a number of public policy groups have recently submitted a request to the Inter-American Commission on Human Rights seeking “a thematic hearing on life imprisonment in the Organization of American States (OAS) region”; that request presents significant arguments that the extensive use of life imprisonment sentences “violates fundamental human rights standards” and asserts that member states need to advance reforms “to ensure that their practices comply with applicable human rights standards.”¹ Beyond serious human rights concerns involved in the imposition of life prison terms on federal drug offenders, keeping elderly and infirm persons incarcerated for decades on end makes for bad policy that wastes taxpayer resources at the same time it wastes human lives.²

In our view, these issues and concerns should impact the U.S. Sentencing Commission’s development of its priorities in a number of ways. First, we encourage the Commission to continue to prioritize its long-standing efforts and advocacy for fairer sentences for crack offenses. Notably, the Commission’s respected analysis and advocacy questioning the 100-1 crack/powder sentencing disparity helped lay the foundation for passage of the Fair Sentencing Act of 2010. The data in *Dealing in Lives* suggest that the Fair Sentencing Act’s enactment and the Commission’s subsequent Guideline amendments contributed to a decline in the disproportionate rate in life sentences for crack offenses. But a significant disparity between crack and powder sentencing persists and the Commission should continue to seek to address it. Though only Congress can end the disparity reflected in federal statutory law—which it may be poised to do through the pending EQUAL Act—the Commission could and should on its own provide for crack/powder parity in the drug tables set forth in the Sentencing Guidelines.

In addition, we believe the data in *Dealing in Lives* is of particular significance and importance to at least the first two of the 13 potential priorities already set forth by the Commission. With respect to the first proposed priority—“Consideration of possible amendments to §1B1.13 (Reduction in Term of Imprisonment Under 18 U.S.C. § 3582(c)(1)(A) (Policy Statement))”—we suggest that revisions of §1B1.13 give particular attention to authorizing reductions of extreme drug sentencing terms, especially if and when a judge finds that a “trial penalty” or a mandatory minimum sentencing provision played a significant role at sentencing. With respect to the proposed second priority—“Consideration of possible amendments to §2D1.1”—we suggest the Commission take a broad view here of how best to “implement the First Step Act of 2018.” Among other elements, the sentencing reform provisions of the First Step Act shortened mandatory minimum sentences for certain drug offenses, eased the federal “three strikes” rule, and expanded the “drug safety-valve” to give judges more discretion to deviate from mandatory minimums when sentencing certain drug offenses. Collectively, these provisions amount to a clear and strong message that Congress has come to conclude that many of our federal drug sentencing laws have been categorically too severe. The data in *Dealing in Lives* reinforces this

¹ See Letter from The Sentencing Project, the American Civil Liberties Union and Penal Reform International to Dr. Tania Reneaum Panszi, Executive Secretary Inter-American Commission on Human Rights, Organization of American States (Aug. 15, 2022), available at <https://www.sentencingproject.org/publications/request-for-a-thematic-hearing-on-life-imprisonment-in-the-americas/>.

² See generally The Sentencing Project, *Nothing But Time: Elderly Americans Serving Life Without Parole* (June 2022), <https://www.sentencingproject.org/wp-content/uploads/2022/06/Nothing-But-Time-Elderly-Americans-ServingLife-Without-Parole.pdf>.

point and its documentation of extreme drug sentences justifies not only bold action by the Commission to address the undue severity of our drug sentencing laws, but also calls for efforts by the Commission to make any and all future reforms retroactive.

Though this Commission has much work ahead to address an array of pressing federal sentencing issues, we respectfully suggest that the imposition of the most extreme of all possible prison terms should always be considered a pressing concern. We hope you find the data and analyses in *Dealing in Lives* to be helpful in your work, and we appreciate the opportunity to share this DEPC report and our views with you.

Sincerely,



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FEBRUARY 2022

Dealing in Lives

Imposition of Federal
Life Sentences for Drugs
from 1990–2020



THE OHIO STATE UNIVERSITY
MORITZ COLLEGE OF LAW

DRUG ENFORCEMENT
AND POLICY CENTER



DRUG ENFORCEMENT AND POLICY CENTER

Dealing in Lives: Imposition of Federal Life Sentences for Drugs from 1990–2020

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Contents

Executive Summary	2
Introduction	3
I. Life and De Facto Life Sentences Imposed for Drugs in the Federal System.....	5
II. Drug Type of those Sentenced to Life in the Federal System	7
III. Case-Specific Characteristics	14
IV. Demographics of Those Sentenced to Life for Drugs	17
V. Geography of Life Sentences Imposed	20
VI. Conclusion	22
Appendix A. Methodology	23
Appendix B. Tables	24
Appendix C. U.S. Sentencing Table	34

¹ Dexter Ridgway, Research Associate, provided research assistance for this report. Data visualization made in Datawrapper.

EXECUTIVE SUMMARY

The “tough on crime” era of the 1980s and 1990s ushered in a growing reliance on prisons, the ratcheting up of sentence lengths, and a broader expansion of the criminal justice system. Life sentences, historically rarely imposed, became increasingly commonplace in the 1980s through the 2000s, contributing to the ballooning imprisoned population. While there are growing concerns about the increased use of life sentences in the United States, there has been limited empirical study of these sentences. This report seeks to fill this gap with a particular focus on the federal sentencing system and the imposition of life sentences for drug offenses. Specifically, the current report documents federal life sentences imposed for drug trafficking over the last three decades, taking a closer look at the defendant and case-specific characteristics, and providing a descriptive account of the factors that are associated with those sentenced to life in prison in federal courts.

Key Findings

1. After record highs in the 1990s and 2000s, the number and rate of life and de facto life sentences imposed have declined significantly over the last decade.

A set of federal sentencing laws enacted in the 1980s laid the foundation for a dramatic increase in the number of federal life sentences imposed for drug offenses over the next two decades. But, as early as the mid-1990s, legal reforms started to cut back on federal life sentences for drugs. Reforms starting in 2010 particularly accelerated the federal system’s move away from life sentences. In the decade between 2011-2020, federal courts imposed on average 60 life sentences for drug offenses, as compared to an average of 207 life sentences from 1991-2000 and 170 life sentences from 2001-2010.

2. Life and de facto life sentences for drug offenses in the federal system were disproportionately imposed on Black and Hispanic people.

The racial disparity in the imposition of life or de facto life sentences in the federal system for drug offenses is glaring. A staggering 62.4% of those sentenced to life for drugs in the federal system are Black, an additional 22% are Hispanic. The same disparity are found in the rates with which life sentences were imposed. Since 1990, Black defendants were sentenced to life in prison for drug offenses at the rate of 15.4 per 1,000, compared to just 4 white defendants per 1,000. These disparities hold across all drug types.

3. Defendants convicted of crack cocaine-related offenses were by far the most likely to be sentenced to life or de facto life in prison.

Defendants sentenced for crack cocaine were nearly 2.5 times as likely to be sentenced to life than defendants sentenced for powder cocaine, 3.75 times more likely than methamphetamine trafficking defendants, and 4.3 times as likely as heroin trafficking defendants. But while rates of life sentences have been consistently higher for crack cocaine relative to powder cocaine, the gap has significantly narrowed in recent years. Today, rates for both forms of cocaine are comparable and low relative to historic patterns.

4. Trial penalty and mandatory minimums seem to play a significant role when it comes to life or de facto federal life sentences for drug offenses.

An astonishing 72% percent of those sentenced to life or de facto life for drug trafficking went to trial relative to just 2-5% of all federal defendants in the United States. Those who were sentenced to life were more likely to have gone to trial than those who were sentenced to a de facto life sentence (73% and 64%). Virtually all of those sentenced to life and de facto life sentences (98%) for drugs were subject to a mandatory minimum sentence and 97% percent were subject to a drug mandatory minimum. One-third of all people sentenced to life for drug trafficking were sentenced to a drug mandatory minimum life sentence.

5. Those sentenced to life or de facto life for drug trafficking have substantially lower levels of educational attainment than the general U.S. population.

Forty-four percent of those sentenced to life or de facto life for drug trafficking never graduated from high school relative to just 25% of the U.S. population over the age of 25 in 1990 and 9% of the U.S. population over 25 in 2020. While 20% of the U.S. population had a college degree in 1990 and 38% did by 2020, just 1.9% of those sentenced to life in prison for drugs had graduated from college.

6. Five federal districts account for 25% of all life and de facto life drug trafficking sentences.

While some districts rarely impose life sentences for drugs, others have done so more routinely. The five districts that imposed the most drug trafficking life and de facto life sentences are Northern District of Florida (263), Southern District of Florida (246), Middle District of Florida (237), Eastern District of Virginia (218), and South Carolina (142), accounting for 25% of all federal life and de facto life drug trafficking sentences imposed during this period. However, the most common districts for imposing life sentences have evolved somewhat over time as life sentences have dropped and rates vary district to district.

INTRODUCTION

The “tough on crime” era ushered in a growing reliance on prisons, the ratcheting up of sentence lengths, and a broader expansion of the criminal justice system. The claim that imprisoning people for lengthy sentences would improve public safety guided reforms at both federal and state levels. Life sentences, historically rarely imposed, became increasingly commonplace in the 1980s through the 2000s, contributing to the ballooning of the imprisoned population. Today, the Sentencing Project reports that roughly 200,000 people are serving a life sentence or de facto life sentence – more than the *entire* prison population in 1970.² Life sentences, perceived to be a more humane alternative to the death penalty and once reserved for only those convicted of the most heinous violent acts, continue to be imposed on individuals convicted of drug trafficking, at times even on those with minor roles in the illicit drug economy.

While there are growing concerns about growth in the use of life sentences in the United States, there has been limited detailed empirical study of these sentences. This report seeks to fill this gap with a particular focus on the federal sentencing system and the imposition of life sentences for drug offenses. Specifically, the current report documents federal life sentences imposed for drug trafficking over the last three decades, taking a closer look at the defendant and case specific characteristics, and providing a descriptive account of the factors that are associated with those sentenced to life in prison in federal court.³

Notably, as briefly detailed below, a set of federal sentencing laws enacted in the 1980s laid the foundation for a dramatic increase in the number of federal life sentences imposed for drug offenses over the next two decades. But, as early as the mid-1990s, legal reforms started to cut back on the doctrines driving federal life sentences for drugs. Reforms starting in 2010 particularly accelerated the federal system’s move away from life sentences so that in recent years there have been 75% fewer life sentences for drugs imposed in the federal system than most years from 1990 to 2010.

There are many federal sentencing policy and practice stories embedded in these data concerning the imposition of federal life sentences for drugs from 1990 to 2020, only some of which can be reviewed here. The goal of this initial paper is to thoroughly detail and describe the basic demographics and case-characteristics of these sentences in order to provide a firm factual foundation for discussion of the past and present policies and their practical implications. Using the individual offender data file collected and published by the United States Sentencing Commission (USSC), this report begins in Part I by detailing trends in life sentences over time during the period from 1990 to 2020. Part II examines trends by drug type; Part III provides an account of the case-specific details of those sentenced to life. Part IV delves into the demographics of those sentenced to life followed by the geography of life sentences imposed in Part V.

² “No End In Sight: America’s Enduring Reliance on Life Imprisonment” by Ashley Nellis <https://www.sentencingproject.org/publications/no-end-in-sight-americas-enduring-reliance-on-life-imprisonment/>

³ See “No End In Sight: America’s Enduring Reliance on Life Imprisonment” by Ashley Nellis at the Sentencing Project for more information on those currently serving life sentences throughout all of our nation’s criminal justice systems.

Brief History of Modern Federal Legal Developments Impacting Imposition of Drug Sentences

Year	Policy	Description
1984	Comprehensive Crime Control Act	Congress abolished parole for federal defendants through the Comprehensive Crime Control Act in 1984. ⁴ After going into effect, those sentenced to federal prison no longer had the opportunity to demonstrate rehabilitation to a parole board and subsequently regain their freedoms. Consequently, life sentences imposed after this law became effective are life without parole (LWOP) sentences. The Comprehensive Crime Control Act also established the United States Sentencing Commission responsible for creating the federal sentencing guidelines. ⁵
1986	Anti-Drug Abuse Act	In 1986, after scarce debate and deliberation, Congress passed the Anti-Drug Abuse Act substantially expanding the list of drug offenses eligible for mandatory minimums and created a 100 to 1 disparity between the weight of crack cocaine and powder cocaine triggering lengthy mandatory prison terms. Under the new law, just five grams of crack cocaine would trigger a mandatory five-year prison sentence while it would take 100 times more powder cocaine (500 grams) to trigger the same sentence. The U.S. Sentencing Commission used the minimum prison terms in the Anti-Drug Abuse Act as the floor on which it based its drug sentencing guideline, which drove up the average sentence length for federal drug offenses and increased the population of people serving long federal sentences for drug offenses.
Sept. 1994	Federal Violent Crime Control and Law Enforcement Act	The Federal Violent Crime Control and Law Enforcement Act of 1994, more commonly known as the 1994 Crime Bill, created tougher sentences for a variety of crimes and provided funds for states to expand prisons and policing. Key provisions enhanced penalties for drug trafficking by calling for the U.S. Sentencing Commission to amend the federal guidelines to increase sentences for drug dealing in "drug-free" zones and on other additional factors.
Nov. 1994	U.S. Sentencing Guidelines Amendment 505	The U.S. Sentencing Commission, concerned that drug quantities alone were serving as the basis for requiring the imposition of extreme prison terms according to the then-mandatory federal drug sentencing guidelines, sets an upper limit on the Drug Quantity Table so that other aggravating factors would be required in a drug offense in order for the Guidelines to recommend a functional or actual life sentence.
2005	United States V. Booker	In a 5-4 supreme court ruling, <i>United States V. Booker</i> , the Supreme Court ruled that the mandatory guidelines violated the Fifth and Sixth Amendments and ultimately decided to resolve the constitutional problems by declaring the sentencing ranges set forth in the sentencing guidelines to be advisory rather than mandatory.

⁴ Passed in 1984 and went into effect for individuals convicted of offenses committed after November 1st, 1987.

⁵ The United States Sentencing Guidelines went into effect in November 1987, but legal challenges to their use in federal courts were not resolved until 1989. See *Mistretta v. United States*, 488 U.S. 361 (1989).

Year	Policy	Description
2007	U.S. Sentencing Guidelines Amendments 706 and 711	The U.S. Sentencing Commission, concerned about the severity and inequities of crack sentences, lowers the base offense levels associated with certain crack quantities to lower applicable guideline ranges by two levels. These amendments are made retroactive.
2010-2014	Fair Sentencing Act, further guideline amendments and Holder Memorandum	<p>In 2010, the Fair Sentencing Act (FSA) reduced the 100:1 weight ratio disparity to 18:1, ended the five-year mandatory minimum for possession of crack cocaine, and ordered the U.S. Sentencing Commission to revise its guidelines accordingly. The new crack guidelines created by Guideline's amendment 750 are made retroactive.</p> <p>Also in 2010, Attorney General Eric Holder issues a memorandum advising prosecutors to exercise discretion to encourage charges are fair and reasonable. Thereafter, in 2013, Eric Holder issues a memorandum advising prosecutors to not specify drug weight in cases of low-level non-violent defendants to avoid triggering mandatory minimums.</p> <p>In 2014, the U.S. Sentencing Commission, concerned about the severity and inequities of all drug sentences, lowers the base offense levels associated with all drug quantities to lower applicable guideline ranges by two levels. These amendments are made retroactive.</p>
2018	First Step Act	In 2018, the First Step Act was passed and made the Fair Sentencing Act's changes to crack sentencing terms retroactive. The First Step Act also reduced some mandatory life terms for aggravated drug offending down to a mandatory 25 years. Additionally, the First Step Act increased the number of days individuals can earn for "good time credits" and allowed "earned time credits" through participation in rehabilitative and vocation programs. However, these earned credits are categorically ineligible to those sentenced to life.

I. LIFE AND DE FACTO LIFE SENTENCES IMPOSED FOR DRUGS IN THE FEDERAL SYSTEM

A. Defining Who is Sentenced to Life for Drugs

For the purposes of this report, a defendant is identified as having received a life sentence for drugs if their primary offense is reported by the USSC to be drug trafficking, manufacturing, distribution, selling, smuggling, or possession with intent to sell -- henceforth "drug trafficking" or "drugs".⁶ A defendant may have committed more than one offense, but they are only considered to be a drug trafficking defendant if drug trafficking is determined to be their *primary* offense at sentencing.⁷ Life sentences are simply defined as those who received a life sentence. While there is no strict and agreed upon definition of a de facto life

⁶ The definition of a crime category adopted by the USSC is set forth as: "Primary type of crime for the case generated mainly from the primary guideline and then the count of conviction with the highest statutory maximum."

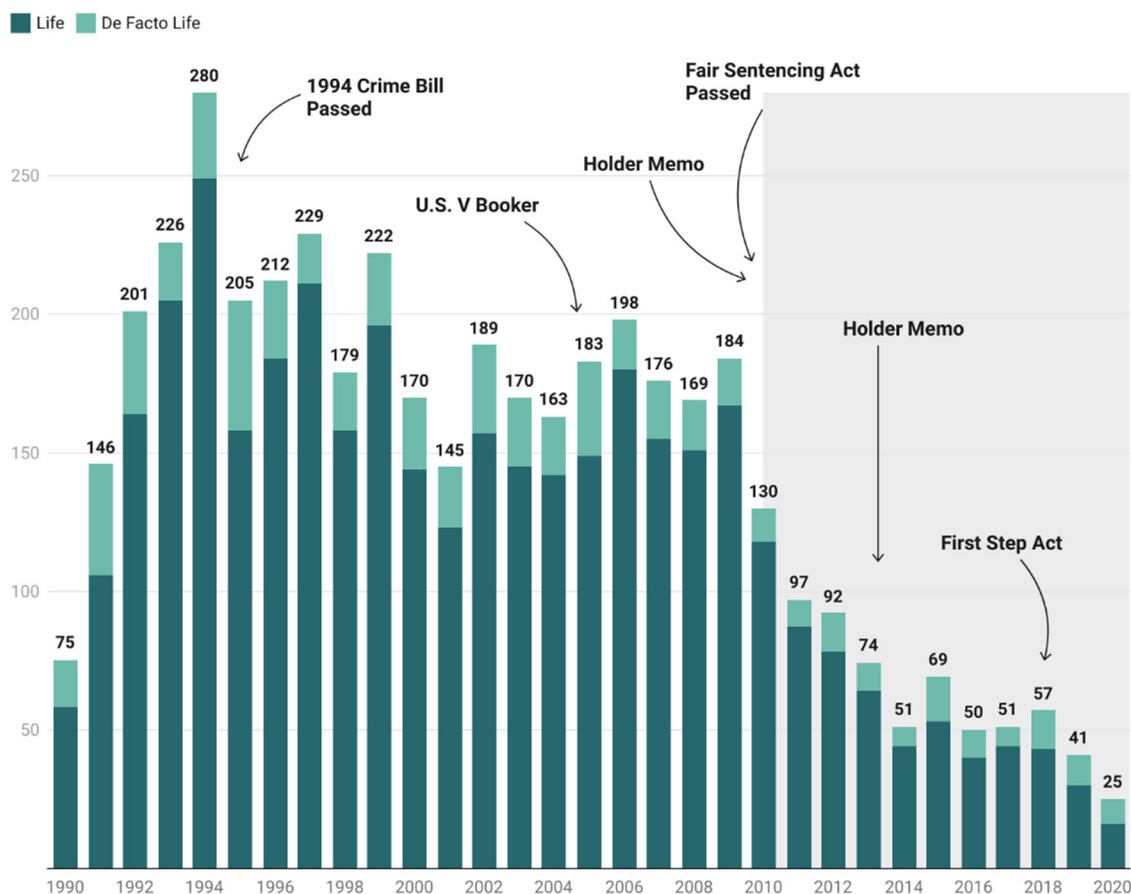
⁷ One person in the sample was convicted of a drug communication facilities offense, or the illegal use of a communication facility to traffic drugs, and not coded as a drug trafficking defendant.

sentence, USSC uses a sentence of 470 months (39.2 years) and above as the threshold for “de facto life” sentence.⁸ Likewise, drawing on the USSC’s definition, this report uses a 470-month sentence to define “de facto” life sentences.⁹ See Appendix A for more information on the methodology and Appendix B for tables of data presented in this report.

B. Life Sentences Imposed for Drugs from 1990-2020

Since 1990, 4,459 people have been sentenced to a federal life or “de facto” life sentence in the United States for drugs. Specifically, 3819 persons received a life sentence, with an additional 640 sentenced to a de facto life for drug trafficking (range from 470 months to 3,360 months - 280 years), meaning that the vast majority (86%) of drug lifers were sentenced in federal court to formal life in prison. All of those sentenced to life are serving life sentences without parole (LWOP), because parole has been abolished in the federal system, though the de facto lifers are able to earn a small reduction in the sentencing terms based on good behavior in prison.¹⁰

Figure 1. Number of Federal Drug Life and De Facto Life Sentences Imposed Each Year



The 1990s were marked by a rapid growth and large total number of federal drug life sentences. In 1990, 75 life and de facto life sentences for drugs were imposed. Yet, just four years later in 1994, the same year the 1994 Crime Bill was passed, nearly four

⁸ Schmitt, G. R., & Konfrst, H. J. (2015). *Life Sentences in the Federal System*. United States Sentencing Commission. Retrieved November 21, 2021, from https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20150226_Life_Sentences.pdf

⁹ Unless otherwise specified, life sentences throughout this report include de facto life sentences.

¹⁰ Those serving de facto life sentences may be released early for good behavior. However, good behavior credits cannot exceed 54 days a year (roughly 15% of the sentence imposed). Meaning that those sentenced to a de facto life sentence of 40 years may, at best, be released after 34 years of imprisonment.

times as many drug defendants were sentenced to life and de facto life. An average of 198 life sentences were imposed each year in the 1990s and this trend largely continued into the next decade. From 2000 to 2009, an average of 175 people were sentenced to life or de facto life for drugs each year.

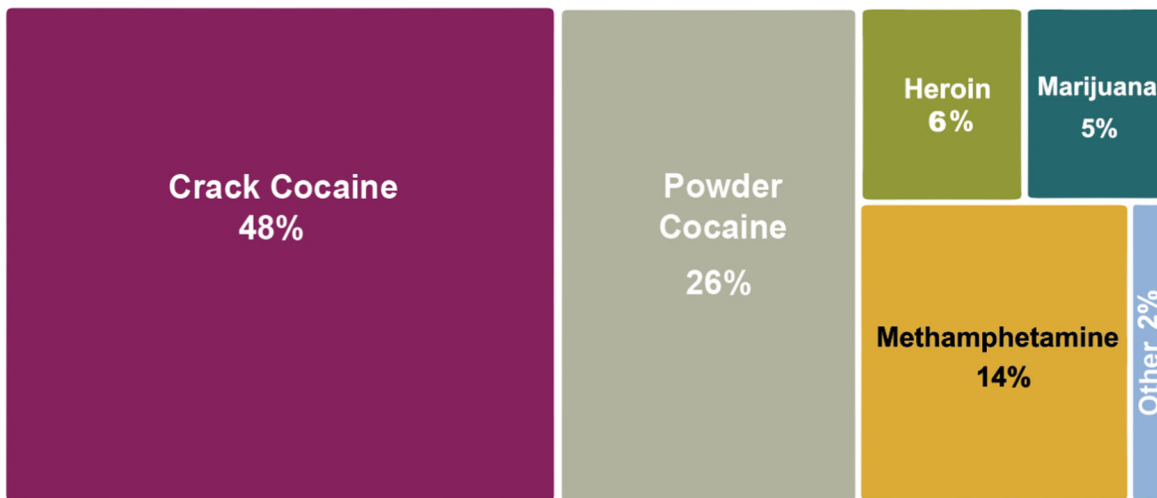
However, since 2010 and coinciding with the passage of the Fair Sentencing Act and the subsequent memorandums issued by U.S. Attorney General Eric Holder aimed to reduce sentence disparities and curtail lengthy sentences for low-level defendants, drug life sentences dropped precipitously. But while the number of people sentenced to life or de facto life has declined significantly in recent years, in 2020, there was still one person, on average, sentenced to life or de facto life in federal prison for drugs roughly every other week.

II. DRUG TYPE OF THOSE SENTENCED TO LIFE IN THE FEDERAL SYSTEM

The USSC defines primary drug type as the drug that incurs the highest penalty. While a defendant may be convicted of trafficking more than one drug, the information below reflects the primary drug type for which the individual was sentenced. Drug type data is not available for 1990 and 1991, so all drug type information is specific to 1992-2020.

Crack cocaine is the most common drug type associated with life sentences imposed for drug trafficking over this 28-year period (1,989 or 48%), followed by powder cocaine (1,075 or 26%) and methamphetamine (597 or 14%). Collectively, these three drugs account for 88% of all federal drug trafficking life and de facto life sentences over the last three decades. Interestingly, federal courts have imposed roughly the same number of life sentences for marijuana as they have for heroin in the past 28 years (just over 200).

Figure 2. Drug Type of those Sentenced to Life for Drugs in Federal Courts



A. Rates of Life Sentences Imposed by Drug Type

While the total number of crack cocaine life sentences imposed by federal courts is remarkably high, so too are the *rates* of receiving a life sentence for crack cocaine. Of every 1,000 crack cocaine trafficking defendants, 18.4 have been sentenced to life (1.8%) compared to 7.5 per 1,000 powder cocaine defendants (0.75%) and 4.9 per 1,000 methamphetamine defendants (0.49%).

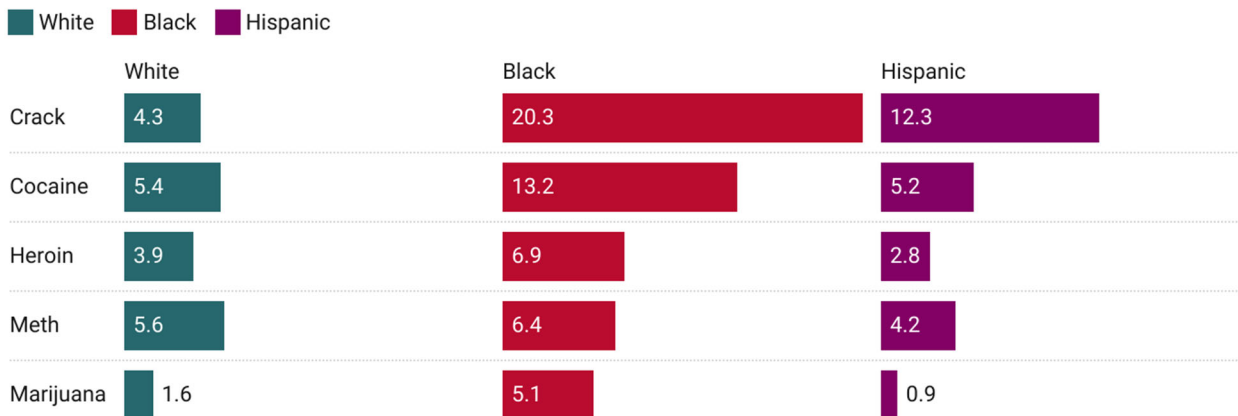
Table 1. Rates of Life Sentences Imposed Per 1,000 Sentences by Drug Type

Drug Type	Rate
Crack	18.4 per 1,000
Cocaine	7.5 per 1,000
Methamphetamine	4.9 per 1,000
Heroin	4.3 per 1,000
Marijuana	1.4 per 1,000

Put another way, defendants sentenced for crack cocaine were nearly 2.5 times as likely to be sentenced to life than defendants sentenced for powder cocaine, 3.75 times more likely than methamphetamine trafficking defendants, and 4.3 times as likely as heroin trafficking defendants.

For all drug types, rates of life sentences per 1,000 sentences are higher for Black defendants than for white and Hispanic defendants. No rates are as high as rates of life sentences among Black defendants sentenced for crack cocaine (20.3 per 1,000). Moreover, rates across drug type and race also illuminate stark differences. For example, the rate of life sentences for Black defendants trafficking marijuana is higher than the rate among white defendants trafficking crack cocaine or heroin (5.1 per 1,000 compared to 4.3 per 1,000 and 3.9 per 1,000). Lastly, rates are similar by drug type for Hispanic and white defendants apart from crack cocaine wherein 12.3 Hispanic defendants are sentenced to life relative to 4.3 per 1,000 white defendants.

Figure 3. Rates of Federal Life Sentences Imposed for Drugs by Race and by Drug Type Per 1,000 Sentences from 1992-2020



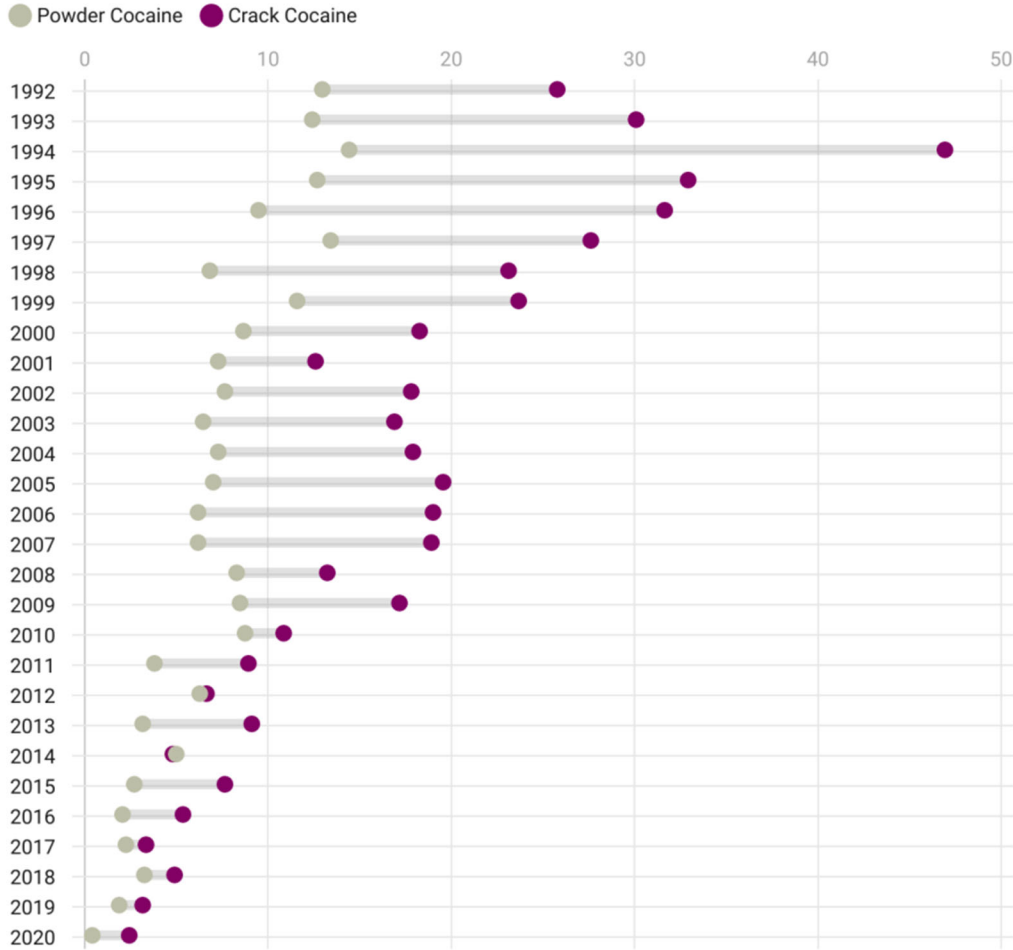
B. A Closer Look: Life Sentences by Drug Type and Race

Life Sentences for Crack and Powder Cocaine

While life sentences for crack cocaine exceed rates for other drug types, there has been a considerable change over time. Of every 1,000 federal crack cocaine sentences in 1994, 46.9 resulted in a life sentence. In other words, nearly 5 percent of people prosecuted for federal crack cocaine offenses in 1994 were sentenced to life relative to 1.4 percent of powder cocaine prosecutions in the same year. Rates of life sentences for crack cocaine remained high throughout the 1990s and 2000s but have tapered over the past decade. Moreover, while rates of life sentences have been consistently higher for crack cocaine

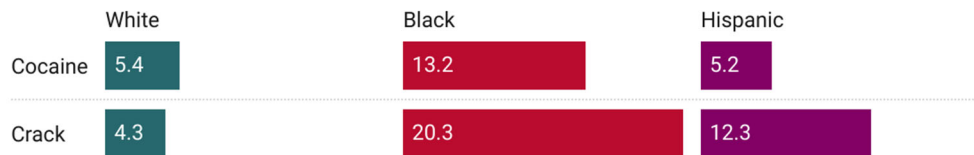
relative to powder cocaine, the gap has significantly narrowed in recent years. Today, rates for both forms of cocaine are comparable and low relative to historic patterns.

Figure 4. Rates of Life Sentences Imposed Per 1,000 Crack and Powder Cocaine Sentences



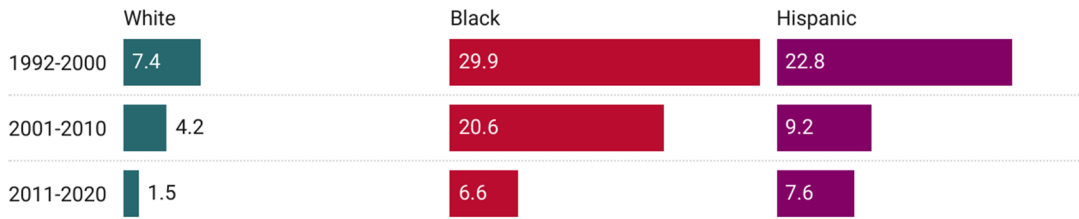
There are stark racial differences in the rates of life sentences for both powder and crack cocaine. Specifically, rates of life sentences for crack and powder cocaine are higher among Black defendants than for white defendants. Out of over 1,000 Black defendants sentenced for crack cocaine, 20.3 (2.0%) have been sentenced to life relative to 4.3 (0.4%) out of every 1,000 white defendants. Among those sentenced for cocaine trafficking, a larger proportion of Black defendants receive life sentences than white defendants. Among Hispanic defendants, rates of life sentences among those convicted of trafficking crack cocaine stand at 12.3 per 1,000 (1.2%).

Figure 5. Rates of Life Sentences Imposed Per 1,000 Sentences for Crack and Powder by Race and Ethnicity



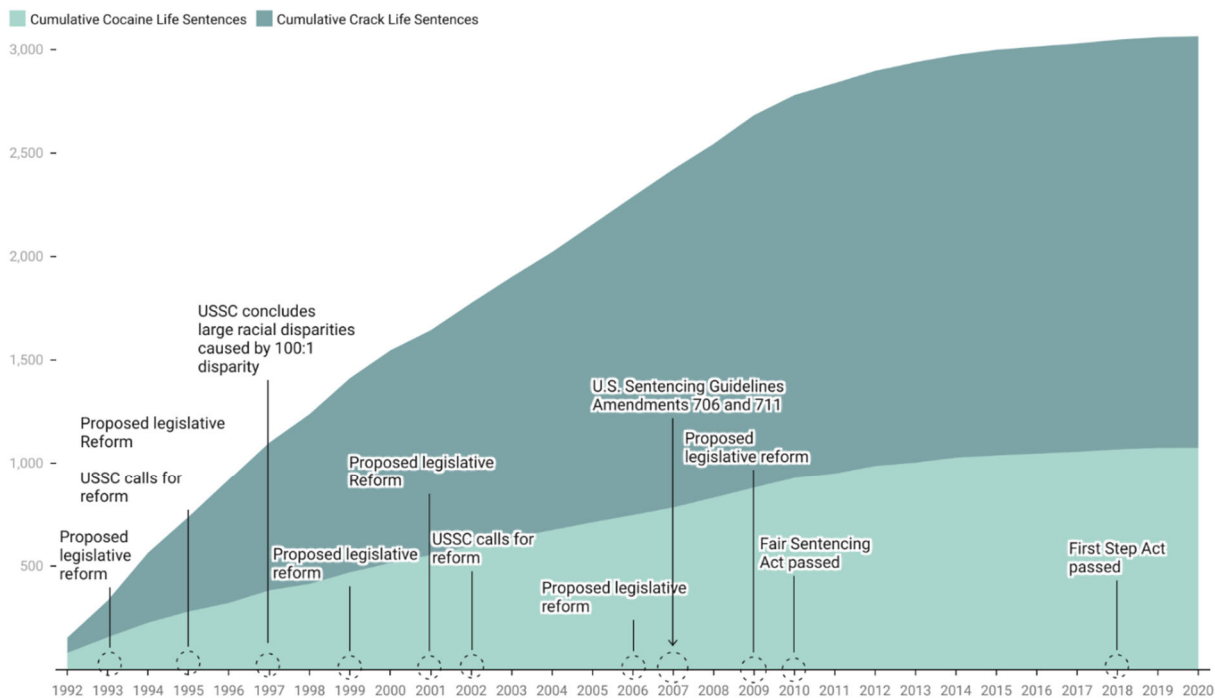
Rates of crack cocaine life sentences have declined over time for white, Black, and Hispanic defendants alike. However, in each decade, rates have remained higher for Black and Hispanic defendants relative to white defendants.

Figure 6. Rates of Life Sentences Imposed Per 1,000 Sentences for Crack Cocaine by Race, Ethnicity, and Decade



Since the 1990s, the United States Sentencing Commission called for adjustments to the 100:1 disparity in the weights triggering certain sentences for crack and powder cocaine offenses, beginning with the first of a series of reports to Congress in 1995.¹¹ Though numerous bills were introduced to address the sentencing disparity, legislation was not passed until 2010, and the number of people sentenced to life for crack cocaine continued to grow. However, in 2007 the United States sentencing guidelines amendments 706 and 711 lowered the base offense level for certain crack quantities and made these changes retroactive. The 2010 Fair Sentencing Act finally addressed the 100:1 disparity by reducing it to 18:1, and the 2018 First Step Act gave full retroactive effect to this change. Since the passage of the Fair Sentencing Act, a number of persons are still being sentenced to life for crack cocaine, but the number is significantly lower than in the previous decades.

Figure 7. Cumulative Crack and Powder Cocaine Life Sentences Imposed and Timeline of Select Reform Efforts

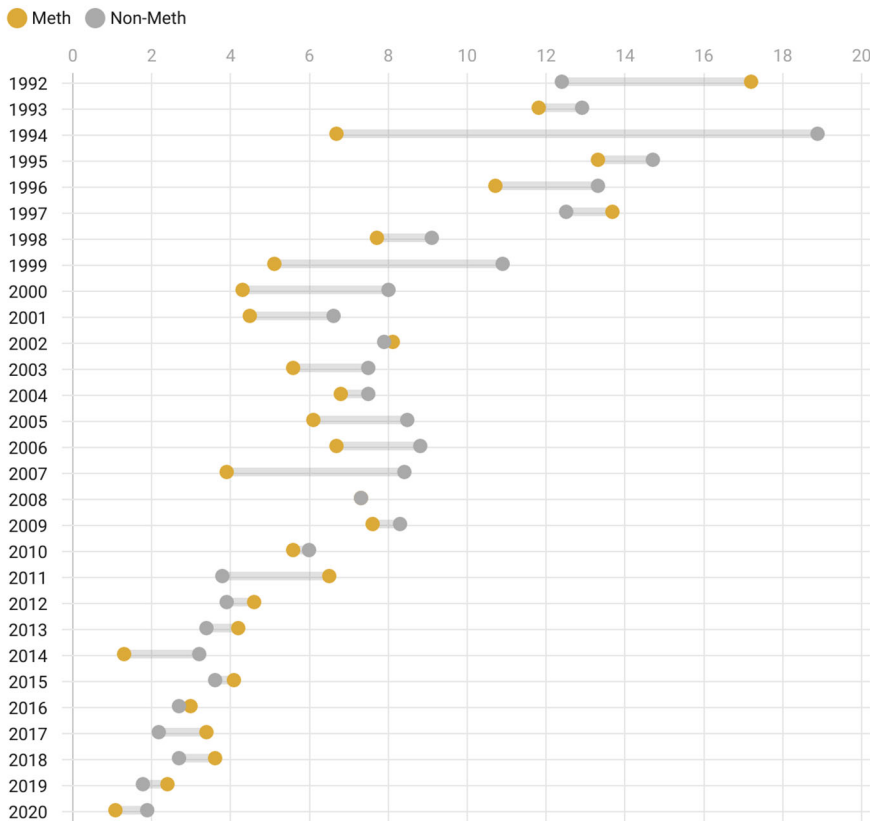


¹¹ 1995 Report to the Congress: Cocaine and Federal Sentencing Policy <https://www.ussc.gov/research/congressional-reports/1995-report-congress-cocaine-and-federal-sentencing-policy>; 1997 Report to the Congress: Cocaine and Federal Sentencing Policy: <https://www.ussc.gov/research/congressional-reports/1997-report-congress-cocaine-and-federal-sentencing-policy>; 2002 Report to the Congress: Federal Cocaine Sentencing Policy: <https://www.ussc.gov/research/congressional-reports/2002-report-congress-federal-cocaine-sentencing-policy>

Life Sentences for Meth

On average, over the past thirty years, 4.9 out of every 1,000 methamphetamine sentences have resulted in a life sentence imposed though rates have varied considerably over time. In 1992, 17.2 out of every 1,000 defendants (1.7%) sentenced for methamphetamine were sentenced to life. By 2020, this rate had dropped to 1.1 per 1,000 defendants (0.1%).

Figure 8. Rates of Life Sentences Imposed Per 1,000 Sentences for Meth Relative to All Other Drugs



Distinct from other drug types, white defendants make up the majority of those sentenced to life for methamphetamines. Fifty-five percent of those sentenced to life for methamphetamines are white, 39% are Hispanic, and 6% are Black. Nonetheless, rates are still slightly higher for Black defendants when compared to others. Of every 1,000 white defendants sentenced for methamphetamine 5.6 are sentenced to life relative to 6.4 among Black defendants and 4.2 among Hispanic defendants.

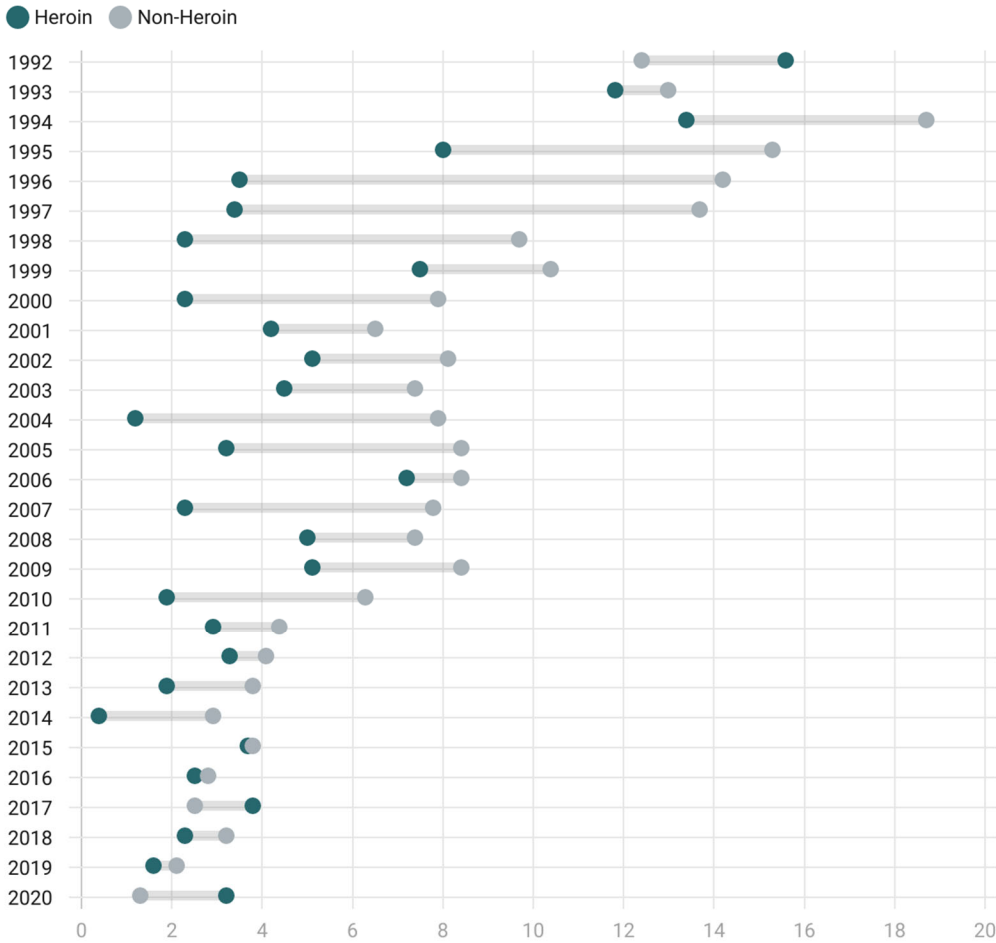
Figure 9. Rates of Life Sentences Imposed Per 1,000 Methamphetamine Sentences by Race and Ethnicity



Life Sentences for Heroin

Life sentences for heroin account for roughly 5% of all life sentences during the period from 1990 to 2020. In most years, the rate of being sentenced to life for trafficking heroin is lower relative to the average for all drug types. However, over the past decade, the rate is comparable to the rate among all drugs while still being low relative to historic trends.

Figure 10. Rate of Life Sentences Imposed Per 1,000 Heroin Sentences Relative to All Other Drugs



Of the 230 people sentenced to life for trafficking heroin, 52% were Black, 35% were Hispanic and 12% were white. Among every 1,000 Black defendants sentenced for heroin, 6.9 were sentenced to life relative to 3.9 white defendants and 2.8 Hispanic defendants.

Figure 11. Rates of Life Sentences Imposed Per 1,000 Heroin Sentences by Race and Ethnicity



Life Sentences for Marijuana

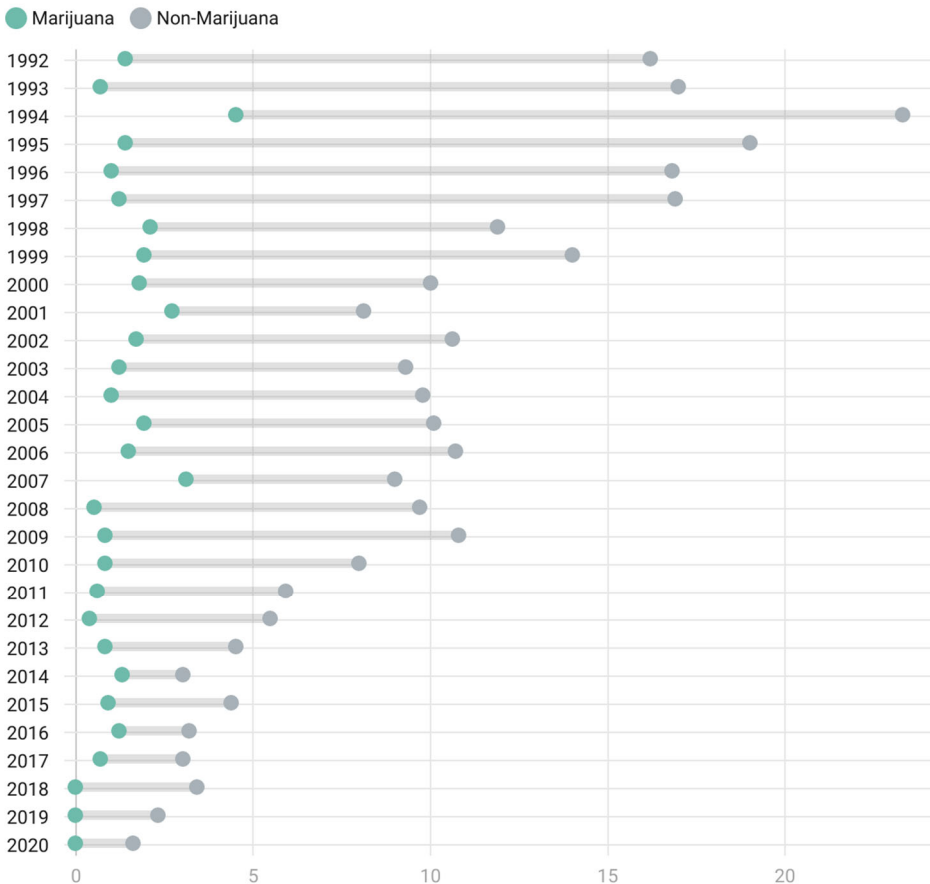
The racial composition of those sentenced to life for marijuana is 40% Hispanic, 31% white, 28% Black over the period from 1992 to 2020. However, the rates of life sentences for marijuana are higher for Black defendants than for white and Hispanic defendants. Out of every 1,000 Black defendants sentenced in federal courts for marijuana over this period, 5.1 (0.5%) have been sentenced to life relative to 1.6 per 1,000 white defendants (0.16%) and 0.9 per 1,000 Hispanic defendants (0.09%).

Figure 12. Rate of Life Sentences Imposed Per 1,000 Marijuana Sentences by Race and Ethnicity



The rate of life sentences for marijuana are comparatively low relative to the rate for other drug types. Yet, since 1992, 203 people have been sentenced to life for the trafficking of marijuana. In total, over the past three decades, federal courts have imposed roughly the same number of life sentences for heroin as have been imposed for marijuana.

Figure 13. Rates of Life Sentences Imposed Per 1,000 Marijuana Sentences Relative to Average Per 1,000 for all other Drugs



The number and rate of marijuana life sentences have fluctuated from year to year with the highest rate occurring in 1994. Since the first state legalized medical marijuana (California) in 1996, 176 people have been sentenced to life for marijuana in federal courts. Twenty-one of these people were sentenced after the first states legalized recreational marijuana in 2012. However, no single person has been sentenced to life for marijuana in federal courts from 2018 to 2020.

III. CASE-SPECIFIC CHARACTERISTICS

A. Criminal History and Crime Severity

The Sentencing Reform Act called for the USSC to consider including a range of factors in developing guidelines for the sentencing of defendants related to both the particulars of the offense and the characteristics of the offender. The guidelines that were created by the USSC provide for sentencing ranges determined primarily by an individual’s criminal history and the offense level (the severity of the offense) (see Appendix C). An individual’s “criminal history category” under the guidelines is determined by summing up the number of points determined by the guidelines’ criminal history rules. For example, an individual will receive three “points” for each prior imprisonment term exceeding thirteen months.¹²

Among those sentenced to life, nearly all (95%) of people sentenced to life or de facto life for drug trafficking have at least some prior contact with the criminal justice system (e.g., arrest, charges, convictions). Roughly 36% fall into the highest criminal history category, Category VI, which corresponds to 13 or more criminal history points. Yet, 20% of people sentenced to life from 1990 to 2020 fell into the lowest criminal history category, meaning they had 0 or 1 criminal history points and essentially no serious criminal history.

Table 2. Criminal History of Those Sentenced to Life for Drug Offenses from 1990 to 2020

Final Criminal History Category	Percent
I	20
II	8
III	16
IV	11
V	8
VI	36

Criminal histories of drug trafficking defendants sentenced to life have evolved over time. Specifically, in the 1990s a greater share of those sentenced to life had a very limited prior criminal history and fewer had extremely lengthy criminal histories relative to later decades. In comparison, in the last decade, roughly half of those sentenced to life fall within a criminal history category V or VI, relative to roughly one-third of those sentenced to life in the 1990s.

¹² https://www.ussc.gov/sites/default/files/pdf/training/primers/2021_Primer_Criminal_History.pdf

Table 3. Criminal History Categories by Decade

Criminal History Score	1990-2000	2001-2010	Percent change from '90s to '00s	2011-2020	Percent change from '90s to '10s
I	25%	15%	-10.8%	18%	-7.2%
II	9%	6%	-3.0%	9%	-0.0%
III	18%	15%	-3.7%	13%	-5.1%
IV	11%	12%	1.1%	11%	-0.2%
V	7%	9%	1.9%	10%	3.1%
VI	29%	44%	14.5%	39%	9.4%

In addition to the criminal history of the defendant, each offense is assigned a base level offense type which serves as a starting point to determine the severity of the offense. The final offense level is then determined after accounting for specifics of the offense and other adjustments. The mean final offense level of those sentenced to life or de facto life for drugs is 40, which corresponds to a lengthy sentence or life sentence in the guidelines' recommended sentencing ranges (dependent on the individual's criminal history).¹³ Specifically, among those sentenced to life for drugs, the average offense level of 40 means the guideline recommended range of imprisonment was somewhere between 292 months (24.3 years) to life dependent on the individual's criminal history.

For drug offenses, the weight of drugs is a central factor used to determine the severity of the offense. While a drug mule tasked with transporting large amounts of a drug plays a smaller role in the larger trafficking organization, these defendants may receive a lengthy recommended sentence as a result of the weight of drugs because the guidelines do not place as much emphasis on their position in the larger organizational structure. Likewise, many mandatory minimum sentencing provisions are tied directly to the weight of drugs involved in the offense and don't permit a judge to consider the relative culpability of the defendant in a larger drug organization.

B. Mandatory Minimums

Mandatory minimum sentences are penalties required by federal statute that will be imposed on a defendant if convicted of an offense that carries a mandatory minimum sentence and if characteristics of the offense or the defendant's criminal history meet the statutory criteria that require a particular sentencing term.

Virtually all of those sentenced to life and de facto life sentences (98%) for drugs were subject to a mandatory minimum sentence and 97% percent were subject to a *drug* mandatory minimum. One-third of all people sentenced to life for drug trafficking were sentenced to a drug mandatory minimum life sentence.

Those sentenced to life or de facto life in the 1990s were much *less likely* to have been convicted of an offense with a mandatory drug life sentence than today. Specifically, in 1990, 23% of those sentenced to life in the 1990s had a mandatory drug life sentence relative to 34% of those sentenced from 2000-2009, and 46% of those sentenced from 2010-2020. In other words, relative to those sentenced in later years, those sentenced in the 1990s were more likely to have received a life sentence despite not being convicted of an offense that carried a mandatory minimum life sentence.

¹³ The average offense level under the guidelines among those sentenced to life has remained relatively consistent over time (40.9 in the 1990s, 39.1 2000-2009, and 39.4 from 2010-2020).

Table 4. Sentence Length of Drug Mandatory Minimum Sentences Imposed among Those Sentenced to Life or De Facto Life for Drugs

Drug Mandatory Minimum Sentence	Percent
0 months	3.22%
3 months	0.03%
12 months (1 year)	0.11%
60 months (5 years)	2.59%
120 months (10 years)	48.80%
180 months (15 years)	0.13%
240 months (20 years)	12.19%
300 months (25 years)	0.03%
360 months (30 years)	0.05%
420 months (35 years)	0.03%
780 (65 years)	0.03%
Life	32.81%

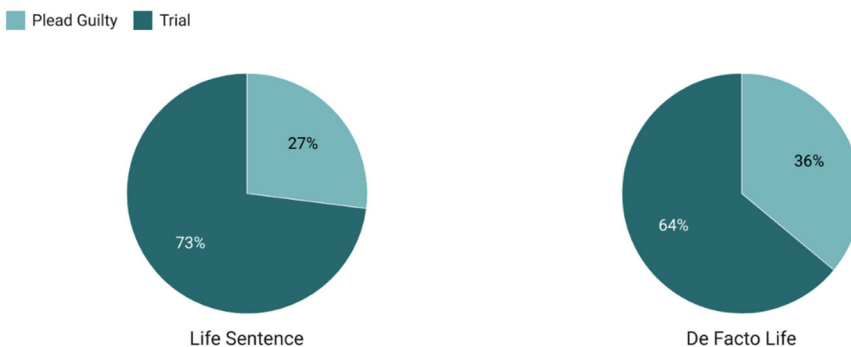
In addition to drug mandatory minimums, roughly 20% of those sentenced to life for drugs had a mandatory gun sentence imposed.¹⁴ However, only 2% of people received a gun mandatory minimum that exceeded the de facto life sentence threshold, and many were significantly shorter. Indeed, roughly half of gun mandatory minimum sentences imposed were for 5 years (60 months). In other words, while some of those sentenced to life for drugs are convicted of gun mandatory minimums, drug mandatory minimums are a central driver of most drug life and de facto life sentences.

There are limited options for a defendant to avoid mandatory minimum sentences. A defendant can try to qualify for a limited statutory safety valve, which allows the judge to sentence the defendant to a sentence below the mandatory minimum. However, the safety valve was intended to provide relief to drug trafficking defendants charged with low-level criminal activity and a limited criminal history leaving the safety valve out of reach for nearly all defendants facing a drug life sentence. In addition, a prosecutor may offer a reduced sentence in exchange for a guilty plea. Yet, notably, one-third of those sentenced to life for drugs from 1990 to 2020 had plead guilty.

C. Trial and Plea Agreements

An astonishing 72% percent of those sentenced to life or de facto life for drug trafficking exercised their right to trial. In comparison, only 2-5% of all sentenced federal defendants in the United States chose to go to trial. Those who were sentenced to life were more likely to have gone to trial than those who were sentenced to a de facto life sentence (73% and 64%).

Figure 14. Percent of People Exercising Their Right to Trial Among Those Sentenced to Life or De Facto Life for Drugs in Federal Court from 1991-2020



¹⁴ The application of gun mandatory minimums to drug defendants receiving life sentences was relatively consistent across decades.

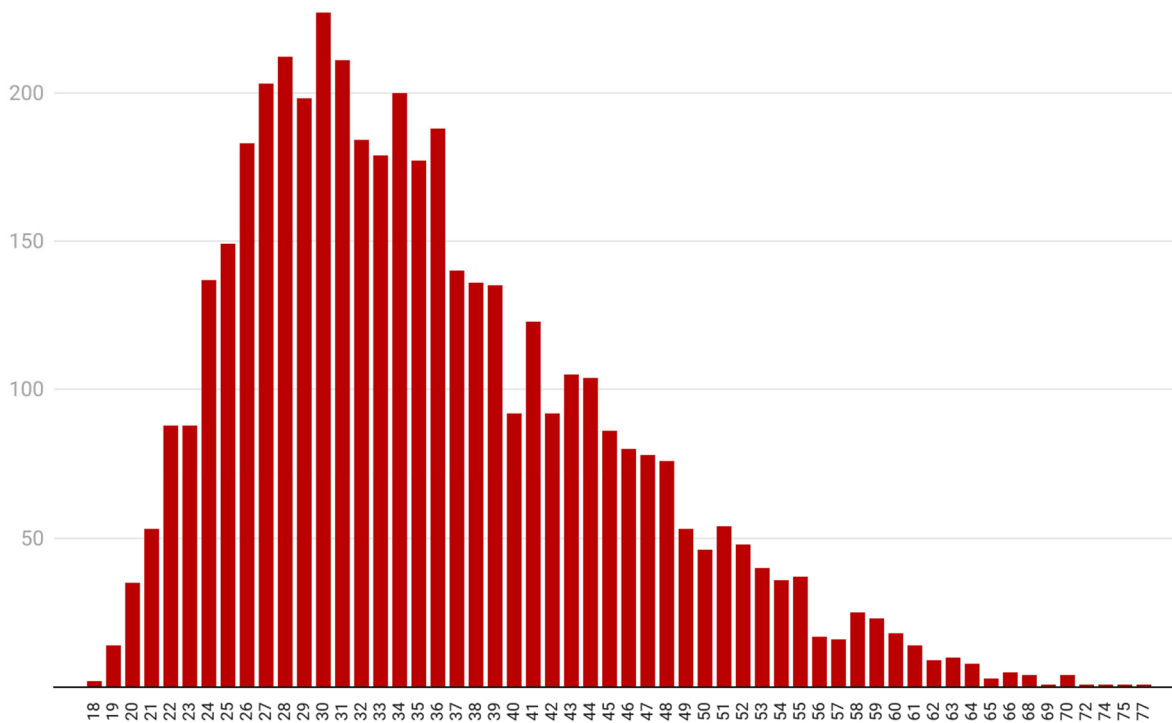
The decision to go to trial can have meaningful consequences for a defendant. The “trial penalty” or “trial tax” is one of the most robust findings in sentencing research in all settings. The “trial penalty” is the observation that those who go to trial are more likely to be imprisoned and more likely to receive longer sentences relative to those who plead guilty for similar offenses. For decades in both state and federal courts, data shows that increasingly fewer people are exercising their rights to trial and the disparity in sentences between those who plead guilty and those who go to trial has widened.¹⁵

IV. DEMOGRAPHICS OF THOSE SENTENCED TO LIFE FOR DRUGS

Defendants sentenced to life or de facto life sentences for drugs are overwhelmingly male (98%). The average age of defendants at the time of sentencing is 35.5 years old with a range of 18-77 years old. For those sentenced to de facto life, the average defendant would be 75 years old after completion of their imposed sentence, slightly exceeding the life expectancy of men born in this cohort.¹⁶

A. Age

Figure 15. Distribution of the Age of Defendants at Sentencing



B. Race and Ethnicity

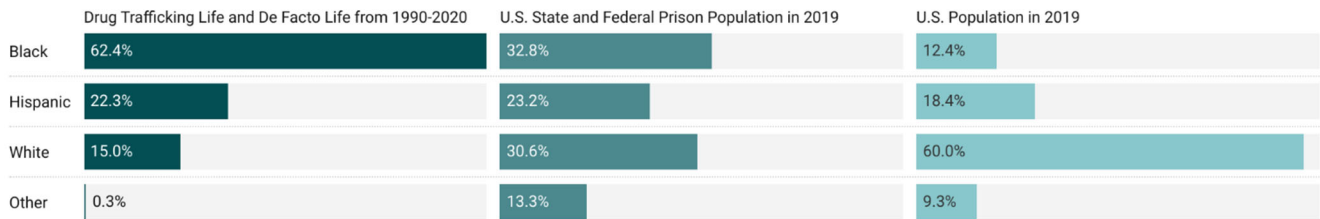
Racial disparities in the composition of defendants sentenced to life for drugs are particularly stark. Life sentences for drugs are rarely imposed on white defendants and disproportionately imposed on Black defendants. While 12.4% of the U.S. population is Black, a staggering 62.4% of those sentenced to life or de facto life for drug trafficking are Black.

¹⁵ Johnson, B. D. (2019). Trials and tribulations: The trial tax and the process of punishment. *Crime and Justice*, 48(1), 313-363.

¹⁶ Center for Disease Control and Prevention. (2021, November 1). *CDC Life Tables*. Life Tables. Retrieved from https://www.cdc.gov/nchs/products/life_tables.htm#life

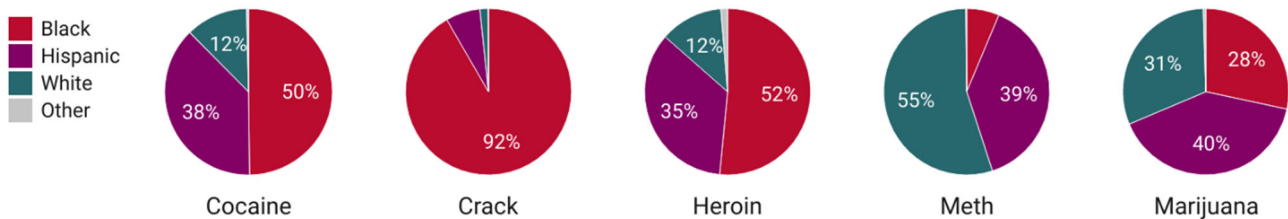
Moreover, while Black people are overrepresented in state and federal prisons, they are particularly overrepresented among drug life and de facto life sentences. Black defendants account for 32.8% of the U.S. imprisoned population and 62.4% of those sentenced to a drug life or de facto life sentence.

Figure 16. Racial Demographics of Those Sentenced to Life for Drug Trafficking Relative to the State and Federal Prison Population and the U.S. Population¹⁷



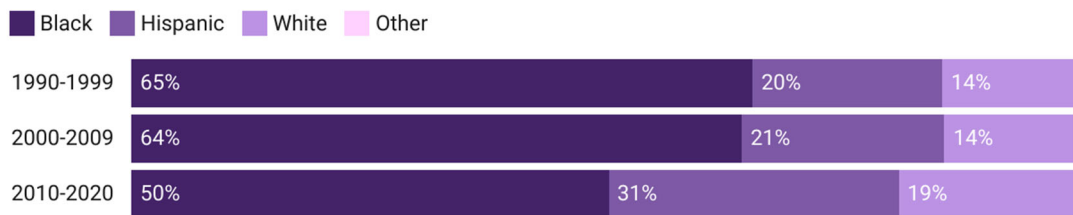
For nearly every drug type, those sentenced to life are disproportionately Black. Methamphetamines are the only drug type in which most of the defendants sentenced to life are white. However, as noted in Part II, rates of life sentences for meth are slightly higher for Black defendants.

Figure 17. Racial and Ethnic Demographics of those Sentenced to Life for Drugs by Drug Type



While the racial demographics of those sentenced to life for drugs remain disproportionately Black, the demographic composition has evolved somewhat over time. In the 1990s, 65% of all people sentenced to life or de facto life for drugs were Black relative to 64% Black from 2000-2009 and 50% from 2010-2020. As the proportion of Black defendants has declined, the proportion of Hispanic defendants has grown. In the last decade, Hispanic people accounted for 31% of all life and de facto life sentences, up from 21% in the 1990s and 20% in the early 2000s.

Figure 18. Racial and Ethnic Demographics of those Sentenced to Life for Drugs by Decade

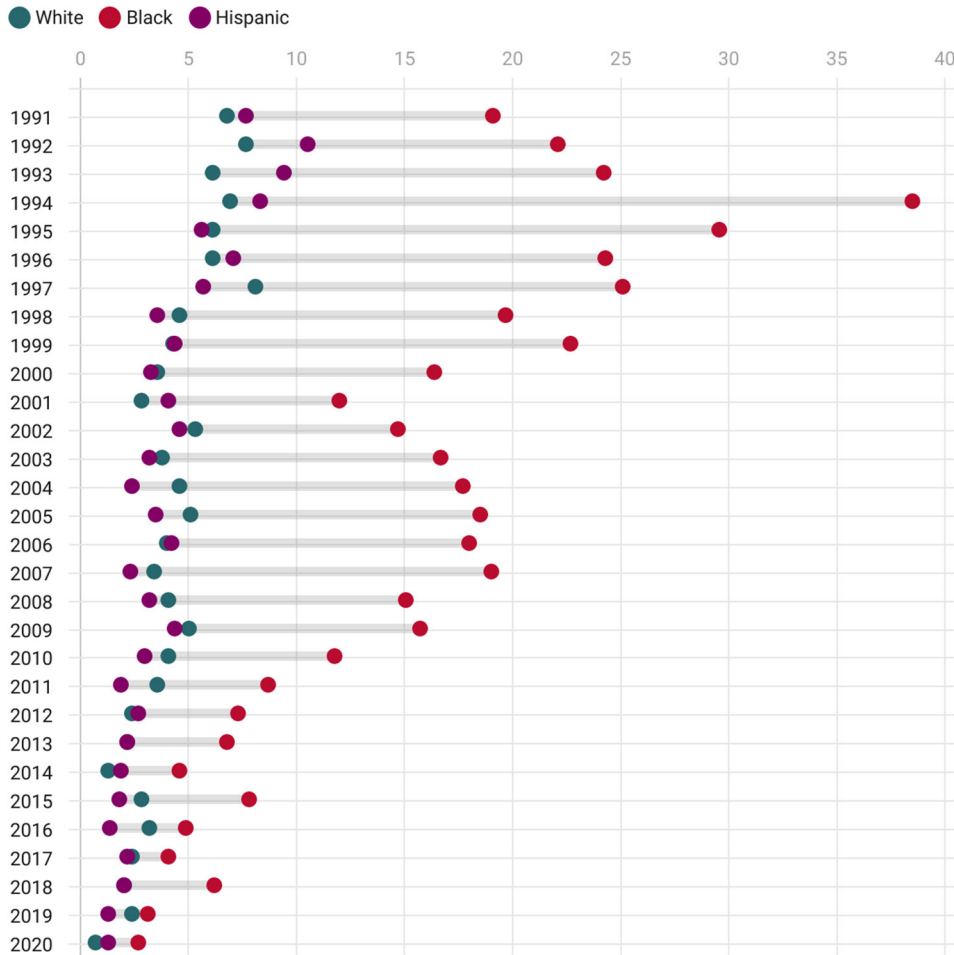


Rates of life sentences remain higher for Black defendants relative to white and Hispanic defendants for every year throughout this time period. However, the gap has narrowed considerably in recent years as life sentences have declined. For comparison,

¹⁷ U.S. Department of Justice. (2020, October). Prisoners in 2019. Retrieved November 10, 2020, from <https://bjs.ojp.gov/content/pub/pdf/p19.pdf>

in 1994, 38.5 per 1,000 Black defendants sentenced for drug trafficking received a life sentence (3.85%). In the same year, 6.9 per 1,000 white defendants (0.69%) received a life sentence and 8.3 per 1,000 Hispanic defendants (0.83%). By 2020, these rates dropped to 2.7 per 1,000 Black defendants (0.27%) relative to 0.7 per 1,000 white defendants (0.07%) and 1.3 per 1,000 Hispanic defendants (0.13%).

Figure 19. Rate of Life Sentences Imposed Per 1,000 Sentences by Race and Ethnicity Over Time



C. Citizenship

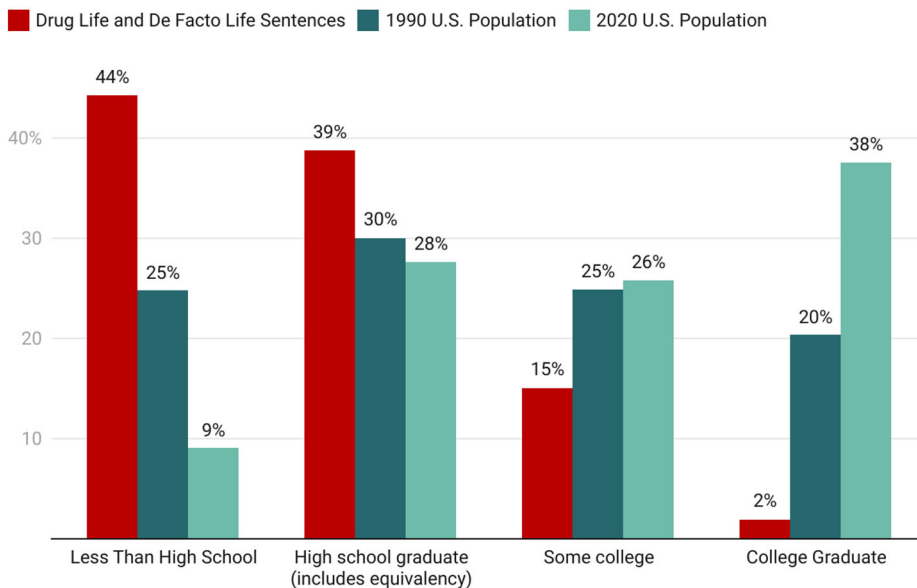
The majority of those sentenced to a life or de facto life sentence for drugs are United States citizens (87%). Mexican citizens account for an additional 5.0% of life and de facto life sentences. Other countries of citizenship include Cuba (1.6%), Colombia (1.6%), and Jamaica (1.5%). No other country of origin exceeds 1% of those sentenced to life or de facto life.

E. Educational Attainment

Those sentenced to life or de facto life for drug trafficking have substantially lower levels of educational attainment than the general U.S. population. Forty-four percent of those sentenced to life or de facto life for drug trafficking never graduated from high school relative to just 25% of the U.S. population over age 25 in 1990 and 9% of the U.S. population over 25 in 2020.¹⁸

While 20% of the U.S. population had a college degree in 1990 and 38% did by 2020, just 1.9% of those sentenced to life in prison for drugs had graduated from college. In other words, 98.1% of those sentenced to spend the rest of their lives in prison for drugs do not have a college degree and many have less than a high school education.

Figure 20. Highest Level of Educational Attainment of those Sentenced to Life for Drugs in Federal Court from 1990-2020 Relative to the U.S. Population in 1990 and 2020



F. Dependent Children

Three-fourths of people sentenced to life for drugs in the federal system have at least one dependent child who they support. On average, the mean number of dependent children among people sentenced to life or de facto life for drugs is 2.1.¹⁹ There are roughly 9,400 dependent children who have had a parent receive a federal life sentence for drugs in the last three decades.

V. GEOGRAPHY OF LIFE SENTENCES IMPOSED

While some districts rarely impose life sentences for drugs, others have done so more routinely. The top five districts for the number of drug trafficking life and de facto life sentences imposed are Northern District of Florida (263), Southern District of Florida (246), Middle District of Florida (237), Eastern District of Virginia (218), and South Carolina (142). Federal courts in these five districts account for 25% of all federal life and de facto life drug trafficking sentences imposed during this period.

The most common districts for imposing life sentences have evolved somewhat over time as life sentences have dropped (see Table 5). For example, the South District of Florida in the 1990s imposed more life sentences for drugs than any other district. Yet, from 2010 to 2020, the district fell off the top ten districts and imposed only ten life sentences over the 11-year period.

¹⁸ U.S. Census Bureau, Current Population Survey, 2020 Annual Social and Economic Supplement and Social Explorer Dataset (SE), Census 1990, Social Explorer; U.S. Census Bureau

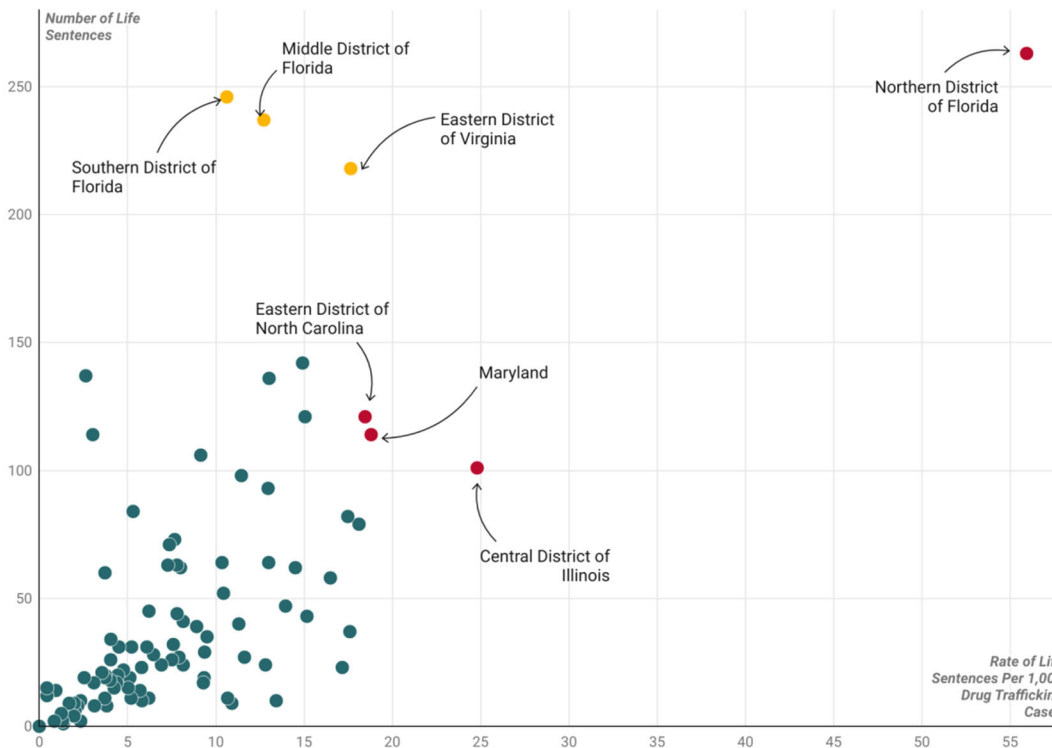
¹⁹ Data on dependents not reported in the year 1990 and thus excluded.

Table 5. Districts by Decade of Those Sentenced to Life

Rank	1990-1999		2000-2010		2010-2020	
1	Florida South	152	Florida North	130	Texas North	44
2	Virginia East	138	Florida South	84	Texas West	38
3	Florida Middle	137	South Carolina	79	Illinois Central	38
4	Florida North	109	Florida Middle	70	Florida Middle	30
5	North Carolina East	67	Virginia East	68	South Carolina	28
6	Illinois North	60	Texas West	58	Louisiana East	25
7	Pennsylvania East	59	North Carolina West	55	Texas East	25
8	Alabama South	58	Illinois Central	52	North Carolina East	24
9	Texas North	54	Maryland	47	Florida North	24
10	North Carolina West	53	Puerto Rico	45	Texas South	22

The figure below shows the raw number and rate of life sentences per 1,000 drug trafficking cases by the district over this period. Notable, the Northern District of Florida is an outlier both in terms of the raw number of life sentences imposed and in terms of the rate. Out of every 1,000 defendants sentenced in this district, 56 were sentenced to life. In other words, roughly one in every twenty people sentenced in the Northern District of Florida received a life sentence. See *Figure 21* for other select districts with high numbers and/or rates of life sentences.

Figure 21. Number of Federal Life Sentences Imposed for Drugs and Rate Per 1,000 Drug Trafficking Cases by District from 1990-2020



The Y-axis represents the raw number of drug life sentences in each district. The X-axis represents the rate of drug life sentences per 1,000 drug trafficking cases in each district. Data drawn from federal drug cases from 1990-2020.

VI. CONCLUSION

Bar the death penalty, no punishment is more severe than a life sentence in prison without the possibility of parole. The past thirty years of life sentences for drug offenses in federal court reflects a population of predominantly Black men with limited education sentenced to die in prison. The cost of a life sentence comes at a profound human cost. Nearly 4,500 people have been sentenced to life for drugs in federal courts in America since 1990 and roughly half were sentenced for crack cocaine. While life sentences are becoming an exceedingly rare punishment for drug trafficking in the federal system, they are still regularly imposed and, barring some form of relief, those sentenced to life for drugs remain imprisoned until they ultimately pass away.

Moreover, the cost to incarcerate someone for the remainder of their life comes at an extraordinarily financial cost. At an annual cost of \$37,449 a year²⁰, each person sentenced to the minimum threshold (39.2 years) for a de facto life sentence would cost \$1.47 million to incarcerate for the duration of their sentence. While some individuals will serve longer sentences than the threshold of a de facto life sentences and some fortunate others may be released early via a clemency grant or other means, if each person sentenced to life and de facto for drug offenses in the past 30 years served 39.2 years, the cost to U.S. taxpayers will be over \$6.5 billion in order to incarcerate these individuals.

Since 2010, the number of life sentences for drug offenses in federal courts has declined significantly. In addition, the Sentencing Project reports that 1,509 people are currently imprisoned for life for drug offenses in the federal system, which is just over a third of the total life sentences imposed from 1990 to 2020.²¹ A complete accounting of what became of all these life sentences and of the fate of the other two-thirds of those sentenced to life is beyond the scope of this initial paper. In all likelihood, a significant portion of this group passed away in prison. But it is also likely that a considerable number were able to benefit from the U.S. Sentencing Commission's retroactive guideline amendments for crack and other drugs which started in 2007. Further, both President Obama and President Trump granted clemency to a number of persons serving federal life sentences for drugs. And the 2018 First Step Act enabled another set of defendants sentenced for crack to secure retroactive resentencing and provided new procedures that enabled some life-sentenced defendants to secure a sentence reduction through the procedures commonly known as "compassionate release."

But while the number of life sentences being imposed has declined in recent years and various forms of relief (e.g., resentencing, clemency, compassionate release) have become more common, those sentenced to life for drugs in the federal system past, present and future still can expect to spend every day of the remainder of their lives behind bars barring some form of relief. As will be discussed in a future paper, how we ought to respond to these realities should never lose sight of the extreme deprivation of liberty that these sentences represent.²²

²⁰ Annual Determination of Average Cost of Incarceration Fee (COIF) for FY 2018 COIF, which was \$37,449. See Bureau of Prisons, Annual Determination of Average Cost of Incarceration Fee (2019): <https://www.federalregister.gov/documents/2019/11/19/2019-24942/annual-determination-of-average-cost-of-incarceration-fee-coif>

²¹ "No End In Sight: America's Enduring Reliance on Life Imprisonment" <https://www.sentencingproject.org/publications/no-end-in-sight-americas-enduring-reliance-on-life-imprisonment/>. The sentencing project uses a slightly more conservative 50-year threshold for de facto life sentences.

²² Our forthcoming research continued to examine this topic in greater detail by modeling the relationship between extra-legal (e.g., race, age) and legally relevant (e.g., criminal history) factors and the odds of receiving a life sentence during this three-decade period.

APPENDIX A. METHODOLOGY

This report used publicly available data from the United States Sentencing Commission's Monitoring of Federal Criminal Sentences Individual Offender datafiles for fiscal years 1990-2020.²³ Individuals were included in the sample if they met two criteria: 1) their offense type was a drug offense and 2) their sentence was a life sentence or exceeded 470 months (life sentence).

Life and De Facto Life: Sentence length and life sentences were determined using the USSC variable "TOTPRISN."

Primary Offense Type: The USSC adopted new offense type variables during this period and, as such, the offense type variable used to capture drug life and de facto life sentences changed over time. "OFFTYPE" was the primary offense type variable until 1998. The variable "OFFTYPE2" was the primary offense type variable for years 1999 and 2009. "OFFGUIDE" was the primary offense type variable used from 1999-2009. From 2010-2017, "OFFTYPSEB" was the primary offense type variable. Starting in 2018, USSC used "OFFGUIDE" for publications.

OFFTYPE – "Primary offense type for the case, based upon grouped values of offense code"

OFFTYPE2 – "Primary offense type variable used in the FY1999 through FY2009 Sourcebook tables (this field is replaced by OFFTYPSEB in FY2010). Primary offense type for the case generated from the count of conviction with the highest statutory maximum (in case of a tie, the count with the highest statutory minimum is used)."

OFFGUIDE – "Primary type of crime for the case generated mainly from the primary guideline and then the count of conviction with the highest statutory maximum. See OFFTYPE2 for offense types used in USSC Sourcebook FY1999-FY2009 and OFFTYPSEB for offense types used in USSC Sourcebook FY2010-FY2017. This field available FY2018-present. Commission publications use OFFGUIDE starting in FY2018."

OFFTYPSEB – "Primary offense type variable used in the FY2010 through FY2017 Sourcebook tables (this field replaces OFFTYPE2 although OFFTYPE2 is still available on the datafile through FY2017). This variable is based on the count of conviction with the highest statutory maximum (in case of a tie, the count with the highest statutory minimum is used). Note that since the primary offense type is derived from statutes of conviction it may not match up logically with the primary guideline (or any of the guidelines applied)."

Drug life and de facto life sentence defendants had a primary offense type coded as "drug trafficking, manufacturing, or importing" (N=4,458) or "drug communication facilities" (N=1) as primary offense type used in a particular year. However, retired "primary offense type" variables are often still available for some time after being retired as the "primary" offense type variable. In the instances when more than one primary drug type variable is available, these defendants were cross-checked against other primary offense type variables. In all instances of more than one variable available, each defendant was consistently coded as a "drug trafficking, manufacturing, or importing" or "drug communication facilities" across current and former primary offense type variables. No defendant was sentenced to life or de facto life for drug possession.

²³ <https://www.ussc.gov/research/datafiles/commission-datafiles#individual> and <https://www.icpsr.umich.edu/web/ICPSR/series/83>

APPENDIX B. TABLES

Figure 3. Number of Federal Drug Life and De Facto Life Sentences Imposed Each Year

Individuals are receiving a de facto life sentence if their sentence length is 470 months or longer. Those coded by the USSC as receiving a life sentence are coded as “life.”

Fiscal Year	De Facto Life	Life	Total
1990	17	58	75
1991	40	106	146
1992	37	164	201
1993	21	205	226
1994	31	249	280
1995	47	158	205
1996	28	184	212
1997	18	211	229
1998	21	158	179
1999	26	196	222
2000	26	144	170
2001	22	123	145
2002	32	157	189
2003	25	145	170
2004	21	142	163
2005	34	149	183
2006	18	180	198
2007	21	155	176
2008	18	151	169
2009	17	167	184
2010	12	118	130
2011	10	87	97
2012	14	78	92
2013	10	64	74
2014	7	44	51
2015	16	53	69
2016	10	40	50
2017	7	44	51
2018	14	43	57
2019	11	30	41
2020	9	16	25
Total	640	3,819	4,459

Figure 2. Drug Type of those Sentenced to Life for Drugs in Federal Courts

Drug Type	Percent
Cocaine	25.71
Crack	47.57
Heroin	5.5
Marijuana	4.86
Meth	14.3
Other	2.06

Drug type data not available in 1990 and 1991.

Figure 3. Rates of Federal Life Sentences Imposed for Drugs by Race and by Drug Type Per 1,000 Sentences from 1992-2020

Race/Ethnicity	Cocaine	Crack	Heroin	Marijuana	Meth
White	5.4	4.3	3.9	1.6	5.6
Black	13.2	20.3	6.9	5.1	6.4
Hispanic	5.2	12.3	2.8	0.9	4.2

Figure 4. Rates of Life Sentences Imposed Per 1,000 Crack and Powder Cocaine Sentences

Fiscal Year	Crack	Cocaine
1992	25.8	13
1993	30.1	12.4
1994	46.9	14.4
1995	32.9	12.7
1996	31.6	9.5
1997	27.6	13.4
1998	23.1	6.8
1999	23.7	11.6
2000	18.3	8.7
2001	12.6	7.3
2002	17.8	7.7
2003	16.9	6.5
2004	17.9	7.3
2005	19.6	7
2006	19	6.2
2007	18.9	6.2
2008	13.2	8.3

2009	17.2	8.5
2010	10.9	8.8
2011	8.9	3.8
2012	6.7	6.3
2013	9.1	3.2
2014	4.8	5
2015	7.7	2.7
2016	5.4	2.1
2017	3.4	2.3
2018	4.9	3.3
2019	3.2	1.9
2020	2.4	0.4

Figure 6. Rates of Life Sentences Per 1,000 Sentences for Crack Cocaine by Race, Ethnicity, and Decade

Decade	White	Black	Hispanic
1992-2000	7.4	29.9	22.8
2001-2010	4.2	20.6	9.2
2011-2020	1.5	6.6	7.6

Figure 8. Rates of Life Sentences Imposed Per 1,000 Sentences for Meth Relative to All Other Drugs

Fiscal Year	Meth	All Other Drugs
1992	17.2	12.4
1993	11.8	12.9
1994	6.7	18.9
1995	13.3	14.7
1996	10.7	13.3
1997	13.7	12.5
1998	7.7	9.1
1999	5.1	10.9
2000	4.3	8
2001	4.5	6.6
2002	8.1	7.9
2003	5.6	7.5
2004	6.8	7.5
2005	6.1	8.5
2006	6.7	8.8

2007	3.9	8.4
2008	7.3	7.3
2009	7.6	8.3
2010	5.6	6
2011	6.5	3.8
2012	4.6	3.9
2013	4.2	3.4
2014	1.3	3.2
2015	4.1	3.6
2016	3	2.7
2017	3.4	2.2
2018	3.6	2.7
2019	2.4	1.8
2020	1.1	1.9

Figure 10. Rate of Life Sentences Imposed per 1,000 Heroin Sentences Relative to All Other Drugs

Fiscal Year	Heroin	Non-Heroin
1992	15.6	12.4
1993	11.8	13.0
1994	13.4	18.7
1995	8.0	15.3
1996	3.5	14.2
1997	3.4	13.6
1998	2.3	9.6
1999	7.5	10.3
2000	2.3	7.8
2001	4.2	6.3
2002	5.1	7.8
2003	4.5	7.1
2004	1.2	7.6
2005	3.2	8.1
2006	7.2	8.2
2007	2.3	7.6
2008	5.0	7.2
2009	5.1	8.0
2010	1.9	5.9
2011	2.9	4.2

2012	3.3	3.9
2013	1.9	3.5
2014	0.4	2.7
2015	3.7	3.5
2016	2.5	2.7
2017	3.8	2.5
2018	2.3	3.2
2019	1.6	2.2
2020	3.2	1.3

Figure 13. Rates of Life Sentences per 1,000 Marijuana Sentences Relative to Average per 1,000 for all other Drugs

Fiscal Year	Marijuana	Non-Marijuana
1992	1.4	16.2
1993	0.7	17
1994	4.5	23.3
1995	1.4	19
1996	1	16.8
1997	1.2	16.9
1998	2.1	11.9
1999	1.9	14
2000	1.8	10
2001	2.7	8.1
2002	1.7	10.6
2003	1.2	9.3
2004	1	9.8
2005	1.9	10.1
2006	1.5	10.7
2007	3.1	9
2008	0.5	9.7
2009	0.8	10.8
2010	0.8	8
2011	0.6	5.9
2012	0.4	5.5
2013	0.8	4.5
2014	1.3	3
2015	0.9	4.4

2016	1.2	3.2
2017	0.7	3
2018	0	3.4
2019	0	2.3
2020	0	1.6

Table 3. Criminal History Categories by Decade

Criminal History Score	1990-2000	Percent change from '90s to '00s	2001-2010	Percent change from '90s to '10s	2011-2020
I	25.34	-10.75	14.59	-7.22	18.12
II	9.25	-3.01	6.24	-0.02	9.23
III	18.26	-3.73	14.53	-5.08	13.18
IV	10.93	1.13	12.06	-0.22	10.71
V	6.74	1.85	8.59	3.14	9.88
VI	29.48	14.52	44	9.4	38.88

Table 4. Sentence Length of Drug Mandatory Minimum Sentences Imposed among Those Sentenced to Life or De Facto Life for Drugs

Data on drug mandatory minimums was not reported from 1990-1993. Thus, results reflect drug mandatory minimums from 1994-2020.

Drug Mandatory Minimum	Freq.	Percent
0 months	122	3.22
3 months	1	0.03
12 months (1 year)	4	0.11
60 months (5 years)	98	2.59
120 months (10 years)	1,850	48.8
180 months (15 years)	5	0.13
240 months (20 years)	462	12.19
300 months (25 years)	1	0.03
360 months (30 years)	2	0.05
420 months (35 years)	1	0.03
780 (65 years)	1	0.03
Life	1,244	32.81

Figure 14. Percent of People Exercising Their Right to Trial Among Those Sentenced to Life or De Facto Life for Drugs in Federal Court from 1991-2020

Type	Life and De Facto Life	Life Sentence	De Facto Life
Guilty Plea	28.04%	26.69%	36.17%

Trial	71.96%	73.31%	63.83%
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Figure 16. Racial Demographics of Those Sentenced to Life for Drug Trafficking Relative to the State and Federal Prison Population and the U.S. Population²⁴

The USSC provides three variables on race and ethnicity. First, they provide a variable “MONRACE” which includes white/Caucasian, Black, white Hispanic, Black Hispanic, American Indian or Alaskan Native, Asian or Pacific Islander, Hispanic (race not specified), and other. In addition to this variable, USSC provides a variable “HISPORIG” which provides whether or not the defendant is Hispanic. In 1997, a variable “NEWRACE” was introduced which combines the “MONRACE” and “HISPORIG” variables. However, this variable is not available across all years. Using the Census 2020 categorization of race, I constructed a variable for all years using the categories Black non-Hispanic, Hispanic, white non-Hispanic, American Indian or Alaskan Native non-Hispanic, Asian non-Hispanic, and other. Only a small number of defendants were Asian, American Indian, or Alaskan Native. As such, I collapsed those categories into the “other race” category.

Race	Drug Trafficking Life and De Facto Life	U.S. State and Federal Prison Population	U.S. Population
Black	62.38%	32.8%	12.4%
Hispanic	22.27%	23.2%	18.4%
White	15.03%	30.6%	60%
Other	0.32%	13.3%	9.3%

Figure 17. Racial and Ethnic Demographics of those Sentenced to Life for Drugs by Drug Type

Race/Ethnicity	Cocaine	Crack	Heroin	Meth	Marijuana
White	12.01	1.56	12.23	54.85	30.85
Black	49.81	91.64	51.53	6.35	28.36
Hispanic	37.8	6.7	34.93	38.63	40.3
Other	0.37	0.1	1.31	0.17	0.5

Figure 18. Racial and Ethnic Demographics of those Sentenced to Life for Drugs by Decade

Race	1990-1999	2000-2009	2010-2020
White (non-Hispanic)	14.48%	13.98%	19%
Black (non-Hispanic)	65.34%	64.21%	50.2%
Hispanic	19.98%	21.35%	30.53%
Other	0.2%	0.46%	0.27%

²⁴ Race missing for 22 defendants.

Figure 19. Rate of Life Sentences Imposed Per 1,000 Sentences by Race and Ethnicity Over Time

Fiscal Year	white	Black	Hispanic
1991	6.8	19.1	7.7
1992	7.7	22.1	10.5
1993	6.1	24.2	9.4
1994	6.9	38.5	8.3
1995	6.1	29.6	5.6
1996	6.1	24.3	7.1
1997	8.1	25.1	5.7
1998	4.6	19.7	3.6
1999	4.3	22.7	4.4
2000	3.6	16.4	3.3
2001	2.8	12	4.1
2002	5.3	14.7	4.6
2003	3.8	16.7	3.2
2004	4.6	17.7	2.4
2005	5.1	18.5	3.5
2006	4	18	4.2
2007	3.4	19	2.3
2008	4.1	15.1	3.2
2009	5	15.7	4.4
2010	4.1	11.8	3
2011	3.6	8.7	1.9
2012	2.4	7.3	2.7
2013	2.2	6.8	2.2
2014	1.3	4.6	1.9
2015	2.8	7.8	1.8
2016	3.2	4.9	1.4
2017	2.4	4.1	2.2
2018	2	6.2	2
2019	2.4	3.1	1.3
2020	0.7	2.7	1.3

Figure 20. Highest Level of Educational Attainment of those Sentenced to Life for Drugs in Federal Court from 1990-2020 Relative to the U.S. Population in 1990 and 2020

Education level was constructed using the “EDUC” variable. In 1997, the USSC introduced a new variable, “NEWEDUC,” which collapsed the “EDUC” variable into four categories. To construct an education variable for all years, I used the USSC criteria for constructing the NEWEDUC variable to capture education within these four categories across this time period. Education is missing for 191 defendants.

Highest Level of Education Attainment	Drug Life and De Facto Life Defendants	1990	2020
Less Than High School	44.28%	24.76%	9.06%
High school graduate (includes equivalency)	38.75%	29.99%	27.61%
Some college	15.04%	24.91%	25.80%
College Graduate	1.92%	20.34%	37.52%

Table 5. Districts by Decade of Those Sentenced to Life

1990-1999

District	Frequency
Florida South	152
Virginia East	138
Florida Middle	137
Florida North	109
North Carolina East	67
Illinois North	60
Pennsylvania East	59
Alabama South	58
Texas North	54
North Carolina West	53

2000-2010

District	Frequency
Florida North	130
Florida South	84
South Carolina	79
Florida Middle	70
Virginia East	68
Texas West	58
North Carolina West	55
Illinois Central	52
Maryland	47
Puerto Rico	45

2010-2020

District	Frequency
Texas North	44
Texas West	38
Illinois Central	38
Florida Middle	30
South Carolina	28
Louisiana East	25
Texas East	25
North Carolina East	24
Florida North	24
Texas South	22

APPENDIX C. U.S. SENTENCING TABLE²⁵

Ch. 5 Pt. A

SENTENCING TABLE
(in months of imprisonment)

Offense Level	Criminal History Category (Criminal History Points)					
	I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
1	0-6	0-6	0-6	0-6	0-6	0-6
2	0-6	0-6	0-6	0-6	0-6	1-7
3	0-6	0-6	0-6	0-6	2-8	3-9
4	0-6	0-6	0-6	2-8	4-10	6-12
5	0-6	0-6	1-7	4-10	6-12	9-15
6	0-6	1-7	2-8	6-12	9-15	12-18
7	0-6	2-8	4-10	8-14	12-18	15-21
8	0-6	4-10	6-12	10-16	15-21	18-24
9	4-10	6-12	8-14	12-18	18-24	21-27
10	6-12	8-14	10-16	15-21	21-27	24-30
11	8-14	10-16	12-18	18-24	24-30	27-33
12	10-16	12-18	15-21	21-27	27-33	30-37
13	12-18	15-21	18-24	24-30	30-37	33-41
14	15-21	18-24	21-27	27-33	33-41	37-46
15	18-24	21-27	24-30	30-37	37-46	41-51
16	21-27	24-30	27-33	33-41	41-51	46-57
17	24-30	27-33	30-37	37-46	46-57	51-63
18	27-33	30-37	33-41	41-51	51-63	57-71
19	30-37	33-41	37-46	46-57	57-71	63-78
20	33-41	37-46	41-51	51-63	63-78	70-87
21	37-46	41-51	46-57	57-71	70-87	77-96
22	41-51	46-57	51-63	63-78	77-96	84-105
23	46-57	51-63	57-71	70-87	84-105	92-115
24	51-63	57-71	63-78	77-96	92-115	100-125
25	57-71	63-78	70-87	84-105	100-125	110-137
26	63-78	70-87	78-97	92-115	110-137	120-150
27	70-87	78-97	87-108	100-125	120-150	130-162
28	78-97	87-108	97-121	110-137	130-162	140-175
29	87-108	97-121	108-135	121-151	140-175	151-188
30	97-121	108-135	121-151	135-168	151-188	168-210
31	108-135	121-151	135-168	151-188	168-210	188-235
32	121-151	135-168	151-188	168-210	188-235	210-262
33	135-168	151-188	168-210	188-235	210-262	235-293
34	151-188	168-210	188-235	210-262	235-293	262-327
35	168-210	188-235	210-262	235-293	262-327	292-365
36	188-235	210-262	235-293	262-327	292-365	324-405
37	210-262	235-293	262-327	292-365	324-405	360-life
38	235-293	262-327	292-365	324-405	360-life	360-life
39	262-327	292-365	324-405	360-life	360-life	360-life
40	292-365	324-405	360-life	360-life	360-life	360-life
41	324-405	360-life	360-life	360-life	360-life	360-life
42	360-life	360-life	360-life	360-life	360-life	360-life
43	life	life	life	life	life	life

Guidelines Manual (November 1, 2018) □ 407

²⁵ <https://guidelines.ussc.gov/chapters/5/parts/>