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SOCIAL EQUITY**

LIFE WITHOUT PAROLE FOR SECOND-DEGREE MURDER IN PENNSYLVANIA

An Objective Assessment of Sentencing

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Contents

| | |
|------------------------------------------------------------------------------|----|
| List of Figures | 3 |
| Introduction | 4 |
| Pennsylvania's Clemency System | 9 |
| Methodology | 11 |
| Overview: The Second-Degree Population in Pennsylvania | 11 |
| I. Age | 12 |
| A. Age at the Time of Offense | 12 |
| Pennsylvania Second-Degree Population Data: Age at the Time of Offense | 12 |
| Discussion: Research and Context on Age at the Time of Offense | 17 |
| B. Current Age | 21 |
| Pennsylvania Second-Degree Population Data: Current Age | 21 |
| Discussion: Research and Context on Current Age | 24 |
| C. Summary: Age at the Time of Offense and Current Age | 26 |
| II. Time Served | 27 |
| Pennsylvania Second-Degree Data: Time Served | 27 |
| Discussion: Research and Context on Time Served | 31 |
| Summary: Time Served | 33 |
| III. Plea Bargaining | 34 |
| Pennsylvania Second-Degree Population Data: Plea Bargains | 34 |
| Discussion: Research and Context on Plea Bargaining | 40 |
| Summary: Plea Bargaining | 42 |
| Conclusion and Recommendations | 43 |
| Appendix | 45 |
| Methodology | 45 |
| Endnotes | 46 |

List of Figures

| | |
|---------------------------------------------------------------------------------------------------------------------------------|----|
| Figure 1: Age at the Time of Offense | 13 |
| Figure 2: Age at the Time of Offense by Race..... | 13 |
| Figure 3: Age at the Time of Offense by Percentage of Population | 14 |
| Figure 4: Percentage of Second-Degree Convictions by Race and by Age at the Time of Offense | 14 |
| Figure 5: Age and Co-Defendant(s) | 15 |
| Figure 6: Race and Co-Defendant(s) | 16 |
| Figure 7: Example of Typical Age-Crime Curve (L) Compared to Second-Degree Age at the Time of Offense Frequency (R)..... | 19 |
| Figure 8: Years Served and Current Age as of September 1, 2020..... | 20 |
| Figure 9: Current Age as of September 1, 2020..... | 22 |
| Figure 10: Current Age Averages by Location as of September 1, 2020 | 22 |
| Figure 11: Current Age Distribution by Location as of September 1, 2020 – Table..... | 22 |
| Figure 12: Current Age Distribution by Location as of September 1, 2020 – Chart..... | 23 |
| Figure 13: Current Age Averages by Race as of September 1, 2020 | 23 |
| Figure 14: Current Age Distribution by Race as of September 1, 2020 – Table..... | 23 |
| Figure 15: Current Age Distribution by Race as of September 1, 2020 – Chart..... | 24 |
| Figure 16: Years Served as of September 1, 2020..... | 28 |
| Figure 17: Years Served Distribution as of September 1, 2020 – Chart | 28 |
| Figure 18: Years Served Distribution as of September 1, 2020 – Table | 29 |
| Figure 19: Years Served by Race as of September 1, 2020..... | 29 |
| Figure 20: Co-Defendant Sentences of Confinement Less Than Life or Death – All Convictions | 30 |
| Figure 21: Co-Defendant Sentences of Confinement Less Than Life or Death – Third-Degree Murder and Voluntary Manslaughter | 30 |
| Figure 22: Potential Cost Savings Compared to Life Expectancy for Current Second-Degree Population..... | 33 |
| Figure 23: Plea Bargains – Geographic Variation..... | 34 |
| Figure 24: Plea Bargains – Pennsylvania Total by Race | 35 |
| Figure 25: Plea Bargains – Philadelphia County by Race | 36 |
| Figure 26: Plea Bargains – Allegheny County by Race | 36 |
| Figure 27: Plea Bargains – 65 Remaining Counties by Race | 36 |
| Figure 28: Plea Bargains – Felony Conviction Type..... | 37 |
| Figure 29: Plea Bargains – Comparison with Co-Defendants..... | 38 |
| Figure 30: Co-Defendant Sentence Outcomes by Percent – Table | 38 |
| Figure 31: Co-Defendant Sentence Outcomes by Percent – Chart | 39 |
| Figure 32: Co-Defendant Sentence Outcomes..... | 40 |

Second-Degree Murder in Pennsylvania: An Objective Assessment of Sentencing

Andrea Lindsay, MSW¹

Introduction

For decades, Pennsylvania has been among the most heavily incarcerated states in the country, both pro rata and in absolute numbers.² While the numbers have been going down in recent years, data from the Pennsylvania Department of Corrections' ("DOC") Bureau of Planning, Research, & Statistics indicate that the DOC had a total residential population of 47,959 people as of September 30, 2019.³ On that date, more than one in ten of them – 5,436 people – were serving life sentences without the possibility of parole, the second-highest population in the country.⁴ And of those, more than one in five – 1,166 people – had been sentenced to life without parole for second-degree murder.⁵

Unlike almost every other crime, second-degree murder – often called “felony murder” – does not describe an act but a situation: it applies when someone dies related to a felony. In Pennsylvania, that felony is defined as committing, attempting to commit, or fleeing from an act of robbery, burglary, kidnapping, rape, or arson.⁶

SECOND-DEGREE MURDER

Unlike almost every other crime, second-degree murder – often called “felony murder” – does not describe an act but a situation:

it applies when someone dies related to an event that is classified as a felony.

The death that occurs related to the felony does not need to be intentional and can be entirely accidental, as when the victim suffers a heart attack during or as a result of the felony.⁷ Moreover, the law applies equally to *all* individuals involved in the event, from the individual, called the principal, who most directly causes the death of the victim, to anyone who participates at any point in the felony.⁸

These others, called accomplices, could have stood outside a convenience store as the lookout to a robbery that escalated into a death, driven the “get-away” car, or helped to plan the felony with no idea that a gun or other weapon would be involved.⁹ This broad definition of “accomplice” further decouples the offense from the intention to cause harm to the victim, much less death – the prosecution must only prove that an individual had intended to participate in the felony, not that they expected it to escalate into the loss of life.¹⁰

ACCOMPLICES

The law applies equally to all individuals involved in the underlying felony, from the individual, called the principal, who most directly causes the death of the victim, to anyone who participates in the felony, called accomplices,

such as someone who stands outside a convenience store as the look-out to a robbery that escalates into a death, drives the “get-away” car, or helps to plan the felony with no knowledge that guns or other weapons would be involved.

Pennsylvania law specifies what the sentence for second-degree murder must be: life in prison without the possibility of parole.¹¹ Unlike most states with distinct second-degree murder statutes, in Pennsylvania, life without parole is mandatory.¹² As a result, it is one of the few states in the country where, during sentencing, judges and juries are not allowed by law to consider the circumstances of the crime or any specific context about the individual.

This means that life without parole must be imposed regardless of the nature of the offense, the level of the individual's involvement or culpability, their age, and/or any other factors contributing to why they acted the way they did – all of which are routinely considered for death penalty deliberations and sentencing for most other crimes. Doing so, as the Supreme Court has ruled repeatedly, is what “justice generally requires.”¹³

MANDATORY SENTENCING

Pennsylvania law specifies what the sentence for people convicted of second-degree murder must be: life imprisonment without the possibility of parole.

In Pennsylvania, individuals convicted of second-degree murder are also automatically denied eligibility for parole, foreclosing the hope of eventual release.¹⁴ Factors typically reviewed by the Parole Board after a certain number of years have passed for other crimes include evidence of rehabilitation and whether the concerns of public safety have been satisfied.¹⁵ For “lifers,” these factors are largely irrelevant. However, even with little institutional or external social incentives to motivate good behavior, numerous studies show that people serving life sentences are actually less involved in prison violence than those serving shorter sentences.¹⁶ Instead, they often act as a stabilizing, positive force within the prison environment itself.¹⁷

Due to the exclusion from parole eligibility, there are only two ways that a person sentenced to life in Pennsylvania can be released from prison before their death: the commutation (shortening) of the life sentence by the Governor upon unanimous recommendation from the Board of Pardons, and exoneration (being found innocent in a new trial).¹⁸ According to the National Registry of Exonerations, Pennsylvania had the second most exonerations in the United States in 2019 with 15 exonerees, all of whom were serving life sentences.¹⁹ For capital cases in which the death penalty was imposed – a sentence with many additional legal protections compared to life without parole – 4.1% of individuals on death row are estimated to have been wrongfully convicted.²⁰

There are only two ways that a person convicted to a life sentence in Pennsylvania can be released:

the commutation (shortening) of the life sentence by the Governor upon unanimous recommendation from the Board of Pardons, and exoneration.

In Pennsylvania, the population of people serving life without parole for second-degree murder today is old, and their incarceration is expensive. As of September 1, 2020, almost half (47.1%) of the people serving life for second-degree murder were age 50 and older. That is already double the percentage of those age 50 and older in the total DOC population.²¹ Due to incarceration's oft-studied and well-documented effects on the body, which accelerate physiological age, the DOC defines "geriatric" as those age 50 and older – which is also the age at which the ACLU estimates costs of incarceration double.²²

Today, on average, it costs almost \$50,000 a year – \$46,767 according to the DOC – to confine someone in state prison in Pennsylvania – "on average" because it costs less to confine someone who is young and healthy compared to someone who is elderly and/or has medical needs.²³ In 2004, the last time costs were published, the average annual cost to confine someone needing long-term care at SCI Laurel Highlands, a prison equipped to care for those who are geriatric and/or chronically ill, was \$63,500.²⁴ Adjusted for inflation, that cost today would be \$87,000 per person a year.²⁵ With no means of release, the life-sentenced geriatric population in the DOC will continue to grow in age, number, and costs over the coming decades prior to their deaths in prison.

On average, it costs

**\$46,767 a year to
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– “on average” because it costs less to confine someone who is young and healthy compared to someone who is elderly and/or has medical needs.

At the time of this study, the person in the second-degree population who has served the longest is currently 73 years old. He began his sentence in 1971 at the age of 24 for an offense he committed at the age of 22. Over the ensuing 49 years, Pennsylvania’s taxpayers have spent an estimated \$2.4 million on his incarceration. The data in this study raise the question whether continuing to confine him makes sense. This question is underscored by the well-accepted data, discussed in greater detail below, confirming that involvement in crime declines naturally with age, leading to diminishing concerns for public safety after decades of incarceration.²⁶

**Crime declines naturally with
age, leading to diminishing
concerns for public safety after
decades of incarceration.**

This paper reports on the first phase of the audit performed by Philadelphia Lawyers for Social Equity (“PLSE”) of the second-degree murder (shortened to “second-degree”) population currently incarcerated by the Commonwealth of Pennsylvania.²⁷ PLSE was requested to perform this audit by Pennsylvania’s Lieutenant Governor, the Honorable John Fetterman, who chairs the Pennsylvania Board of Pardons (“BOP”). While PLSE has spent almost a decade helping low-income Philadelphians clean up their criminal records and apply for pardons, it has never assisted anyone confined in state prisons. It therefore comes to this investigation without preconceived notions, assumptions, or bias about the second-degree population incarcerated across the state.

What is reported herein are objective data about population-level characteristics within the second-degree population, with specific attention given to initial sentencing, as well as findings that arise from that analysis. The goal is to provide Pennsylvania’s BOP and Governor with objective data by which they can discharge their constitutional duty to consider applications for commutation of life sentences from individuals who have been in prison for decades and demonstrated their suitability for release.

Pennsylvania’s Clemency System

The ultimate power to shorten sentences through pardons and commutation is vested in the Governor by the Constitution of Pennsylvania. This clemency power extends to “all criminal cases except impeachment,”

but no pardon shall be granted, nor sentence commuted, except on the recommendation in writing of a majority of the Board of Pardons, and in the case of a sentence of death or life imprisonment, on the unanimous recommendation in writing of the Board of Pardons, after full hearing in open session, upon due public notice.²⁸

The BOP is distinct from the judicial system and does not weigh in on questions of innocence or guilt. Instead, in its own words, its purpose is to “[determine] whether there are sufficient reasons to recommend mercy.”²⁹ In William W. Smithers’ *Treatise on Executive Clemency in Pennsylvania*, which the Pennsylvania Supreme Court has relied on as an authoritative source for interpreting pardoning powers, Smithers explains that a pardon is “an act of grace... [with an] exceedingly wide range [of] prerogative discretion to draw from,” including:

[s]tate policy, mercy, propriety of the law or the particular prosecution, kind and quantity of the punishment, the condition, history and prospects of the convict and the general security of the public.³⁰

Because the origin of the BOP is created by the state Constitution and not a statute, the Pennsylvania Supreme Court has held that the BOP is not subject to regulation, qualification, or limitation by the legislature or the courts.³¹ The only requirement beyond those appearing in the Constitution is that the BOP act in accordance with its own published regulations.³²

BOARD OF PARDONS

Because the origin of the BOP lies in the Commonwealth's Constitution and not a statute,

the Pennsylvania Supreme Court has held that the BOP is not subject to regulation, qualification, or limitation by the legislature or the courts.

These regulations provide that a public hearing on a clemency application for someone convicted of second-degree murder will be granted if the majority of the BOP – three of the five members – believes that the applicant merits a hearing.³³ If that occurs, then every member of the BOP is required to interview the applicant before the public hearing.³⁴ At the public hearing, the Constitution requires that a candidate serving a life sentence must receive a unanimous recommendation for clemency from the BOP.³⁵ If that occurs, then the Governor has the opportunity to consider shortening the sentence through granting a commutation.³⁶

Methodology

This report examines demographic information and public court dockets for the second-degree population as of September 25, 2019. The principal objective is to evaluate factors related to sentencing of second-degree murder, including age at the time of offense, race, felony convictions under the second-degree murder statute, whether the conviction was obtained via trial or plea agreement, and presence of co-defendants. One material fact, whether the individual was a principal or an accomplice, was not available in the court records; thus, an analysis of that factor and its possible significance to clemency determinations cannot be undertaken at this time.

As a result of this analysis, PLSE has identified four factors that provided objective reasons that the members of the BOP might all agree merit consideration for clemency. These factors are: (1) Age at the Time of Offense, (2) Current Age, (3) Time Served, and (4) Plea Bargaining. These four factors are discussed in the following sections, each of which begin with stating the data, followed by a discussion of what the data mean. A complete review of the methodology used in this report appears in the appendix.

Overview: The Second-Degree Population in Pennsylvania

The following characteristics that have emerged from this audit help to define the second-degree population in its entirety:

- As of September 25, 2019, 1,166 people were incarcerated in Pennsylvania for second-degree murder.
- The most common age at the time of offense was 19 (12.5% of the population).³⁷
- Over half (50.9%) were 21 and under at the time of offense. Almost three-quarters (73.3%) were 25 and under.
- As of September 1, 2020, their mean current age is 48.6 years old.
- The mean time served since the life sentence began is 21.9 years.³⁸
- Almost all (96.6%, or 1,126 in total) are men; just 3.4% (40) are women.
- Half (49.5%, or 577) were convicted in Philadelphia County, 12.5% (146) in Allegheny County (which includes Pittsburgh), and 5.1% (60) in Delaware County. The remaining 32.8% (380) were convicted in 48 other counties, and 0.3% (3) came from other states.³⁹
- Seven of ten (69.9%, or 815) are Black, while 20.6% (240) are White, 8.4% (98) are Hispanic/Latinx, 0.8% (9) are Asian, and 4 (0.3%) are Native American/Other.⁴⁰

I. Age

The following section explores age-related data in the second-degree population. While the great majority of those confined for second-degree murder were young at the time of the offense, the overall population today is old, and getting older. Age at the time of offense and current age are, of course, linked by time served, discussed in Section II.

A. Age at the Time of Offense

Previous research has analyzed age at the time individuals serving life sentences began their sentence in the DOC.⁴¹ Given the amount of time it can take between offense, arrest, prosecution, and sentencing while a defendant moves through the court system, age at the time of offense provides a more accurate indicator of an individual's developmental maturity at the time of the offense for which they were ultimately convicted.

Pennsylvania Second-Degree Population Data: Age at the Time of Offense

Age at the time of offense is known for 1,034 (88.7%) individuals in the second-degree population.⁴² The great majority – almost three-quarters – were 25 years old or younger at the time of their offense, and over half were 21 or younger.⁴³ 42.8% of the second-degree population were between the ages of 18 and 21 at the time of their offense.

Almost three-quarters were 25 years old or younger at the time of their offense, and over half were 21 or younger:

73.3% | **were age 25 or younger**

50.9% | **were age 21 or younger**

8.1% | **were age 18 or younger**

The following graph depicts the frequency distribution of age at the time of offense, which peaks at age 19 with 129 individuals (12.5% of the second-degree population where offense date is known).⁴⁴ As discussed in greater detail below, these data are important because they track the development of the brain, which does not fully mature until around age 25.⁴⁵

Age at the Time of Offense

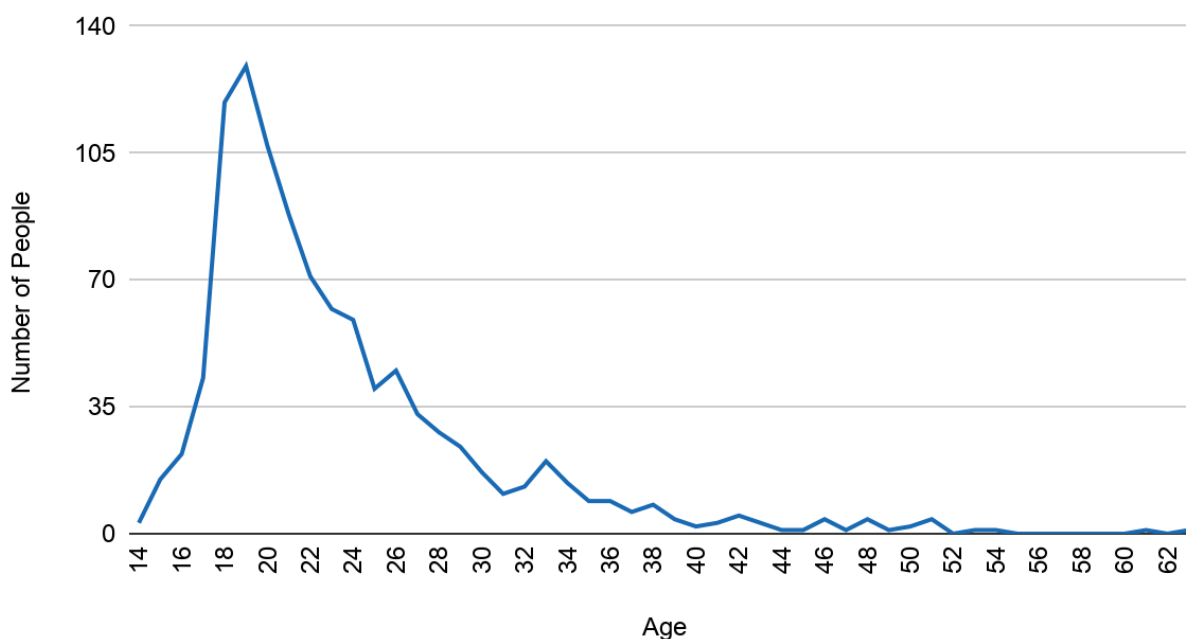


Figure 1: Age at the Time of Offense

There is some variation in average age at the time of offense based on racial group: Black and Hispanic/Latinx individuals were typically younger than White individuals, reflected in both the averages and distribution of the data.⁴⁶

Age at the Time of Offense by Race

| <i>N=Where Offense Date is Known</i> | <i>Percentage of Pop. Where Offense Date is Known</i> | <i>Percentage of Pop. 25 and Under at Time of Offense</i> | <i>Percentage of Pop. 21 and Under at Time of Offense</i> | Mean | Median | Mode |
|----------------------------------------------|-------------------------------------------------------------------|-----------------------------------------------------------------------|-----------------------------------------------------------------------|------|--------|------|
| Total (N=1034) | 88.7% | 73.3% | 50.9% | 23.4 | 21 | 19 |
| Black (N=749) | 91.9% | 77.3% | 54.2% | 22.8 | 21 | 19 |
| White (N=179) | 74.6% | 60.3% | 36.3% | 25.7 | 24 | 20 |
| Hispanic/Latinx (N=93) | 94.9% | 66.7% | 53.7% | 23.8 | 20 | 18 |
| Asian (N=9) | 100.0% | 77.8% | 44.4% | 25 | 22 | 21 |
| Native American/Other (N=4) | 100.0% | 25.0% | 25.0% | 29 | 30 | N/A |

Figure 2: Age at the Time of Offense by Race

Age at the Time of Offense by Percentage of Population

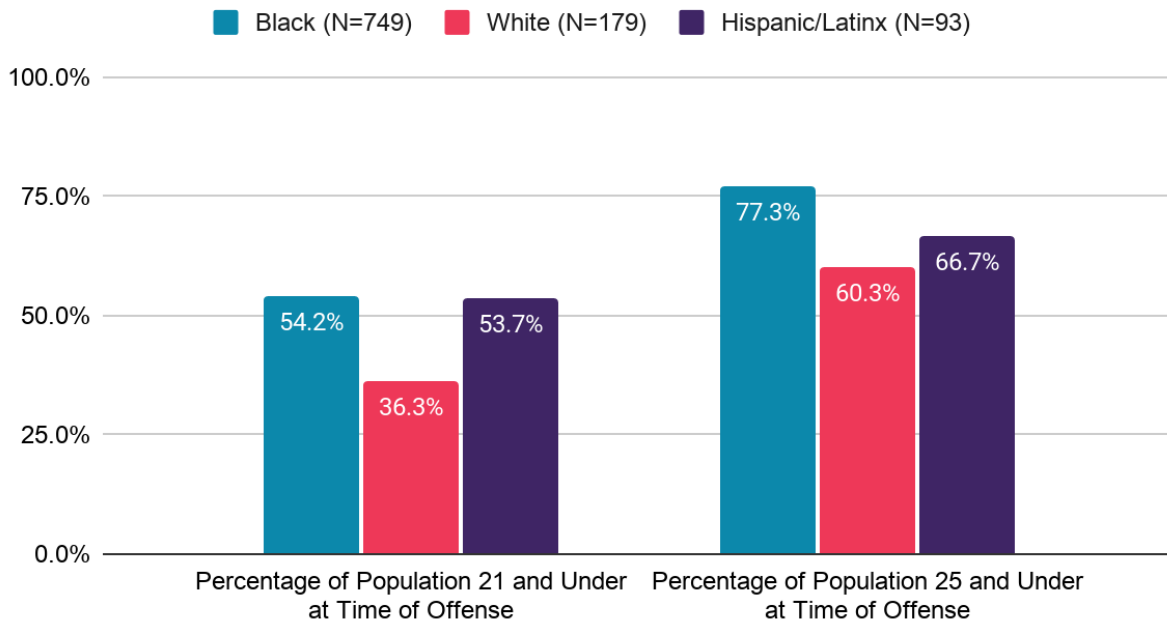


Figure 3: Age at the Time of Offense by Percentage of Population

The following chart shows the frequency of age at the time of offense adjusted to the percent of racial group. Age at the time of offense peaks (mode) for Hispanic/Latinx people at 18 (21.5% of the Hispanic/Latinx population), 19 for Black people (14.0% of the Black population), and 20 for White people (10.1% of the White population).

Percentage of Second-Degree Convictions by Race and by Age at the Time of Offense

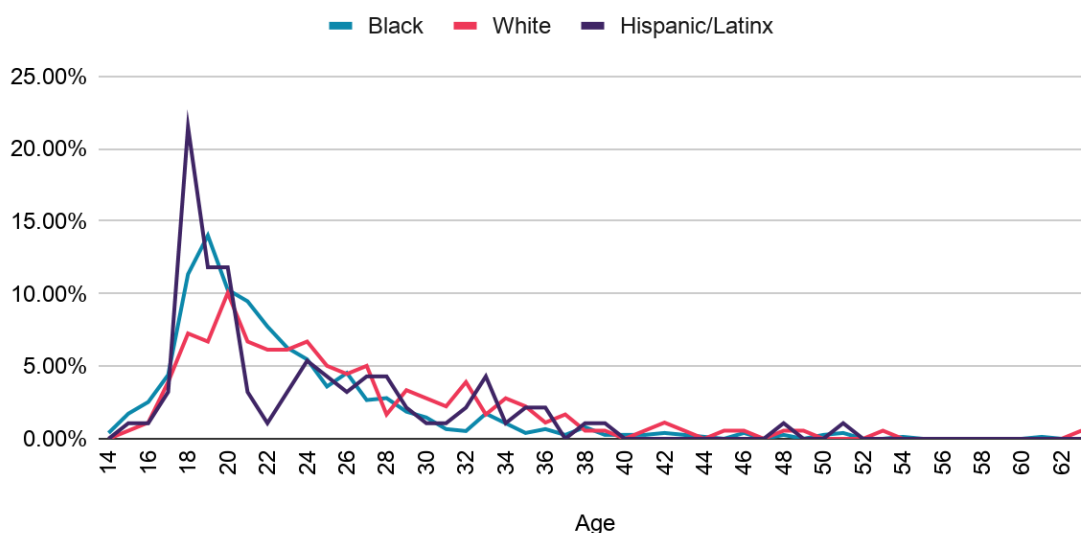


Figure 4: Percentage of Second-Degree Convictions by Race and by Age at the Time of Offense

Looking more deeply into the data, age at the time of offense has statistically significance in relationship to three different factors, which is also evident descriptively:

1. Plea bargaining is positively correlated with age.⁴⁷

- 13.2% of those 21 and under pleaded guilty.
- 17.0% of those between 22-25 pleaded guilty.
- 20.5% of those over 25 pleaded guilty.

Plea bargaining and age is discussed in greater detail in its own section below.

2. Those who were younger were more likely to act with others, while those who were older tended to act alone.⁴⁸

- 41.4% of those 21 and under had at least one co-defendant.
- 34.6% of those between 22-25 had at least one co-defendant.
- 23.6% of those over 25 had at least one co-defendant.

3. Among those with co-defendants, more people were involved in the offense for those age 25 and younger.⁴⁹

The number of co-defendants per case decreased with age – the older someone was, the less likely they were to have been part of a larger group. Put simply, as age increases, co-defendants decrease.

The relationship between younger age at the time of offense and co-defendants is further reflected in younger mean age and the distribution of the data, showing that the vast majority – over four out of five – of those who did not act alone were 25 and younger.

Age and Co-Defendant(s)

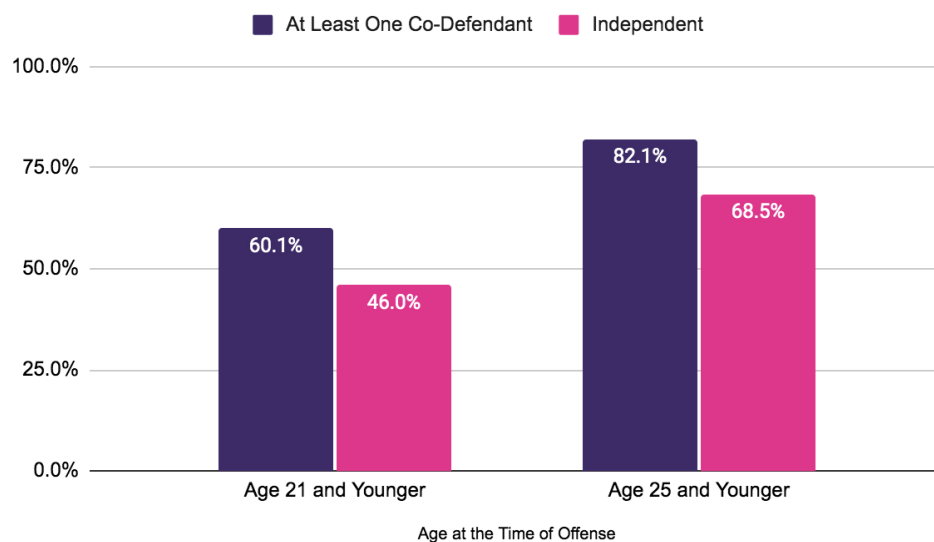


Figure 5: Age and Co-Defendant(s)

For individuals with at least one co-defendant, at the time of offense:⁵⁰

- **82.1% were age 25 and younger.**
- **60.1% were age 21 and younger.**
- **Their mean age was 22.0 years old.**⁵¹

In comparison, for individuals who had no known co-defendants, at the time of offense:⁵²

- **68.5% were age 25 and younger.**
- **46.0% were age 21 and younger.**
- **Their mean age was 24.2 years old.**⁵³

Because differences in age at the time of offense also vary by racial group, these data were analyzed using regression models to explore the relationship between age, co-defendants, and race. Across racial groups, age once again yielded a very significant result, indicating that lower ages at the time of offense are predictive of having one or more co-defendants.⁵⁴

However, the relationship between race and having at least one co-defendant is more variable:

- **39.8% of Black individuals had a co-defendant.**
- **32.3% of Hispanic/Latinx individuals had a co-defendant.**
- **14.8% of White individuals had a co-defendant.**

Race and Co-Defendant(s)

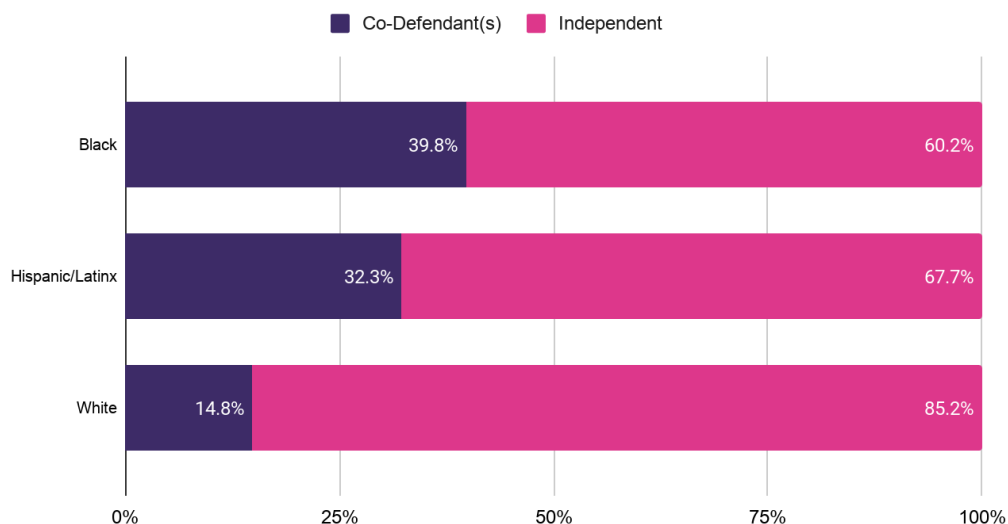


Figure 6: Race and Co-Defendant(s)

When analyzed using the regression model, there were no statistically significant results for Black and Hispanic/Latinx people with regard to co-defendants, meaning that being Black or Latinx is not predictive of either acting in a group or alone. However, being White is a key *negative* predictor of having a co-defendant, meaning that there is predictive confidence that a White individual did *not* have a co-defendant, even factoring in age.⁵⁵ This means that White people are much more likely to be independent actors than other racial groups, and, it follows, they are thus more likely to be principals.

Discussion: Research and Context on Age at the Time of Offense

The age of the individual at the time of offense is a material factor for evaluating the second-degree population for two different, but related, reasons:

- 1. A very well-established body of medical and behavioral science research has confirmed that ongoing adolescent brain development continues until the mid-twenties;**
- 2. While individuals who are older at the time of offense have greater neurological and developmental maturity, younger and therefore less culpable defendants serve the longest sentences.**

Analysis of the 1,034 individuals in the second-degree population where age at the time of offense is known demonstrates that both factors are statistically significant in their own right with regard to plea bargaining and co-defendants. Taken together, they raise concerns that the U.S. Supreme Court has found troubling.

- 1. Individuals experience ongoing neurological development through their mid-twenties. Until that point, younger ages are associated with heightened risk-taking, susceptibility to peer pressure, and limited ability to anticipate consequences for one's actions.**

For more than a century, the law in the United States has recognized that minors should not be held to the same level of responsibility for their actions as adults.⁵⁶ This was first expressed in 1899 with the establishment of the first juvenile court, and the practice spread rapidly thereafter.⁵⁷ Since then, the law has become abundantly clear that juveniles cannot and should not be held to the same standards of culpability as adults.⁵⁸ It has been within the past twenty years, however, that these data have become dispositive in the fixing of criminal sentences.

In the landmark decision *Miller v. Alabama* (2012), the United States Supreme Court declared unconstitutional mandatory life without parole sentences for people under the age of 18 at the time of offense. In doing so, the Court cited the body of scientific research summarized in an amicus brief submitted by the American Psychological Association, the American Psychiatric Association, and the National Association of Social Workers.⁵⁹ That document emphasized that adolescents: (1) are more likely to engage in risky behavior and less able to predict and evaluate the consequences of that behavior; (2) are more susceptible to peer pressure than older adults; and (3) exhibit a strong capacity to change as a simple result of ongoing developmental and psychosocial maturation.⁶⁰

The age of 18 used by the Court in this decision was not indicated by the developmental sciences; rather, it was the common legislatively-determined jurisdictional limit of the juvenile courts. While 18 is the age that separates juvenile from adult court, brain development and maturation is a process. The courts have long held that “youth is more than a chronological fact.”⁶¹ In *Roper v. Simmons* (2005), the U.S. Supreme Court was very specific in noting that “[t]he qualities that distinguish juveniles from adults do not disappear when an individual turns 18.”⁶² In *Miller*, the Court characterized the “most [fundamental]” holding of *Graham v. Florida* (2010), which banned life without parole in non-homicide cases for those under the age of 18 at the time of their offense, as the fact that “youth matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole.”⁶³ Furthermore, the neuroscience cited in these cases supports that adolescence is a developmental phase that continues beyond one’s 18th birthday and well into one’s twenties.⁶⁴

AGE-CRIME CURVE

Neuroscience has bolstered the findings from criminology that

offending patterns follow the age-crime curve:

the prevalence of criminal behavior rises sharply in late childhood, peaks in the late teenage years (ages 15-19), and declines steadily from the early twenties onward.

Over the last eight years, the scientific evidence supporting these conclusions has grown all the more documented and accepted.⁶⁵ It is now well established in the scientific literature that adolescent brain development continues until approximately age 25, when the prefrontal cortex reaches maturation.⁶⁶ Neuroscience has further bolstered the findings from criminology that offending patterns follow the age-crime curve, which shows that the prevalence of criminal behavior rises sharply in late childhood, peaks in the late teenage years (ages 15-19), and declines steadily from the early twenties onward.⁶⁷

Evidence strongly suggests that crime declines naturally with age, especially after someone reaches the age of 40 – including those who have histories of engaging in serious, persistent, and even violent crime in their youth.⁶⁸ This “aging out” process leads to fewer crimes committed by older adults who are not incarcerated, as well as diminishing concerns for public safety for those who presently are.⁶⁹

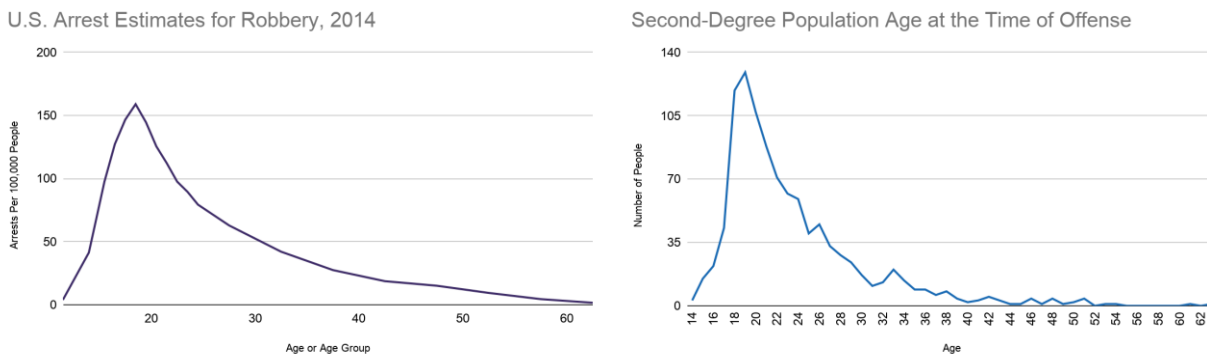


Figure 7: Example of Typical Age-Crime Curve (L) Compared to Second-Degree Age at the Time of Offense Frequency (R)⁷⁰

Consider Figure 7, which compares the U.S. Arrest Estimates for Robbery by age group with the second-degree population’s frequency distribution of age at the time of offense. Robbery was selected as the example in the above chart because that is the underlying felony for which the greatest number of people in the second-degree population were convicted – over four out of five (86.0%) people serving life sentences for second-degree murder in Pennsylvania were involved in a robbery.⁷¹

While factors related to youthfulness are characteristic of most of the second-degree population, increased susceptibility to peer pressure is especially important in the case of second-degree murder. This is because the statute applies equally to both principals and accomplices – that is, to anyone who acts in a group of two or more people. As the above data related to co-defendants show, the younger someone was at the time of offense, the more likely they were to have one or more co-defendants.

Put another way, four out of five people in the second-degree population who acted in a group were 25 and younger, further illustrating an aspect of developmental immaturity among adolescents and the influence of group behavior.

2. Because they are sentenced to life without parole earlier, people who are younger at the time of the offense are punished more severely.

Even though youth is a factor that is related developmentally to the offense, life sentences ultimately punish people who are younger more harshly. This was noted by the U.S. Supreme Court in *Graham v. Florida* (2010), which eliminated juvenile life without parole for non-homicide cases. In that case, the Court noted that young people “on average serve more years and a greater percentage of [their] life in prison” such that “a 16-year-old and a 75-year-old each sentenced to life without parole receive the same punishment in name only.”⁷²

Years Served and Current Age

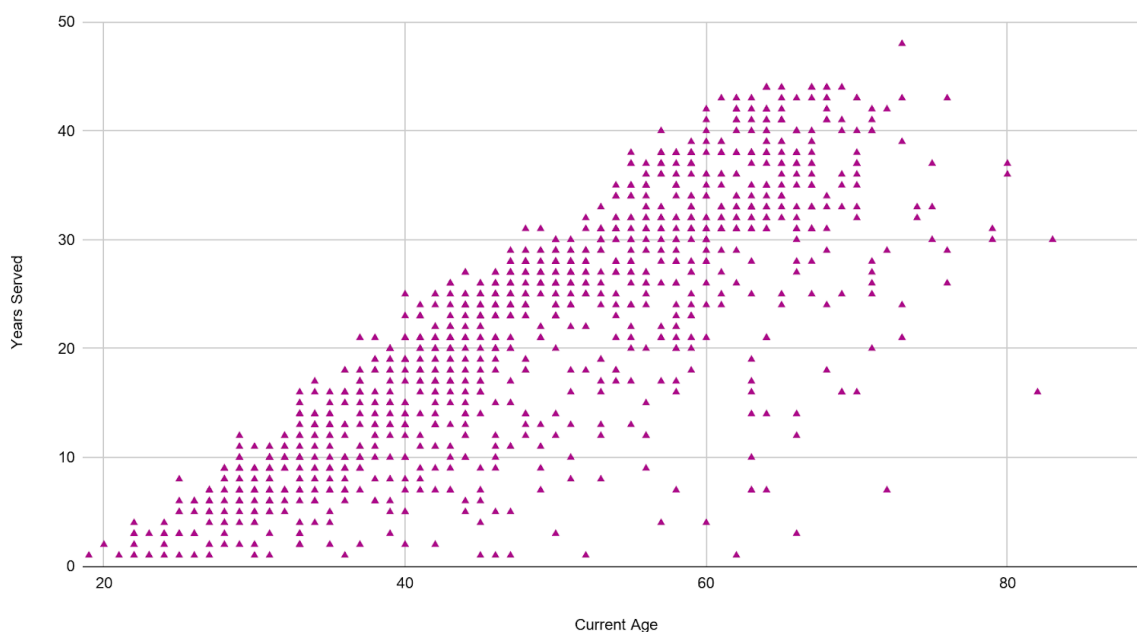


Figure 8: Years Served and Current Age as of September 1, 2020

If the point of a life sentence is simply to ensure that an individual is removed from society forever, then the number of years in prison is not relevant to questions faced by public officials on the subject of release. However, if the point of life sentences is to eliminate threats to public safety – that is, such that the punishment is long enough to prevent additional crimes from being committed by the same people – the developmental factors that characterized recklessness in youth no longer apply into one’s forties and beyond.

Furthermore, if the point of life sentences is deterrence – that is, that the punishment is sufficiently harsh enough to prevent crime in the first place – the same developmental factors that characterize youth clearly limit life sentences’ efficacy for nearly three-quarters of the second-degree population given that youth are much more likely to act impulsively with little foresight into consequences.⁷³ And finally, if the point is to make the punishment fit the crime, as a social or moral matter, then the disparity in the length of sentences imposed on those with reduced developmental acuity compared to those who are older is clear. It is made more so by the overwhelming evidence that individuals “age out” of crime. Violent behavior in youth is not a clear indicator of irrevocable incorrigibility, nor that an individual will pose the same risk of engaging in violence forever. This latter point is further developed below.

B. Current Age

The previous section examines age – specifically younger age – as a factor that may have contributed to the offense and thus helps to define the second-degree population. It follows from the above data that people who were committed to prison when they were young and have been there for decades are, today, relatively old. In this section, we examine the current ages of individuals in the second-degree population.

Pennsylvania Second-Degree Population Data: Current Age

Currently, among the second-degree population:



The following graph shows the distribution of the ages of the second-degree population as of September 1, 2020:

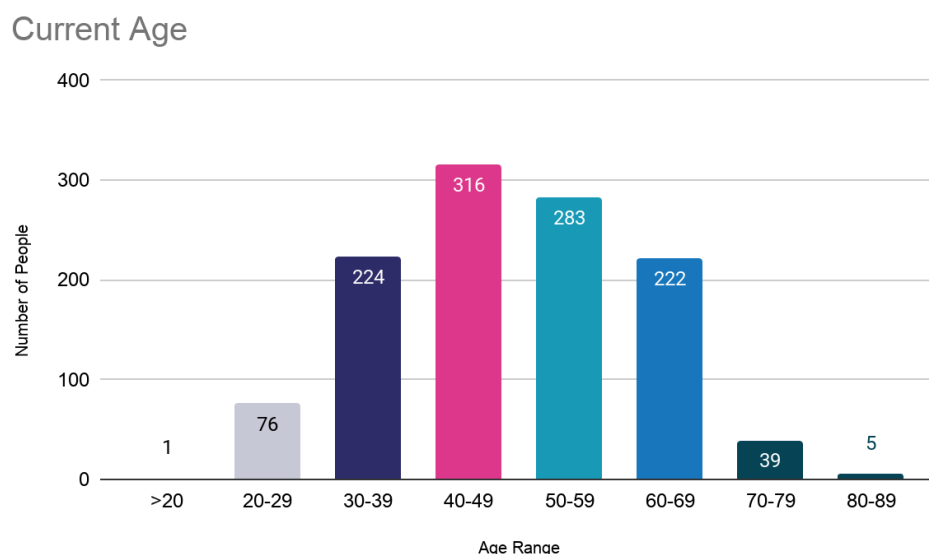


Figure 9: Current Age as of September 1, 2020

There is some variation in average age across population groups. On average, individuals from Philadelphia are 2.0 - 3 years older than the statewide average (depending on whether the mean or median is used), 4.4 - 5 years older than those from Allegheny County, and 3.8 - 6 years older than those from the remaining 65 counties, which is also reflected in the data distribution.

Current Age Averages by Location

| Age calculated as of 9/1/2020 | Mean | Median | Mode |
|----------------------------------|-------------|-----------|-----------|
| Statewide (N=1,166) | 48.6 | 48 | 43 |
| Philadelphia County (N=577) | 50.6 | 51 | 47 |
| Allegheny County (N=146) | 46.2 | 46 | 55 |
| 65 Remaining Counties (N=443) | 46.8 | 45 | 43 |

Figure 10: Current Age Averages by Location as of September 1, 2020

Current Age Distribution by Location

| Age calculated as of 9/1/2020 | Percentage of Population 40+ | Percentage of Population 50+ | Percentage of Population 60+ | Percentage of Population 70+ |
|----------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|
| Statewide (N=1,166) | 74.2% | 47.1% | 22.8% | 3.8% |
| Philadelphia County (N=577) | 80.1% | 54.1% | 27.1% | 3.8% |
| Allegheny County (N=146) | 66.4% | 42.5% | 15.8% | 3.4% |
| 65 Remaining Counties (N=443) | 69.1% | 39.7% | 19.6% | 4.3% |

Figure 11: Current Age Distribution by Location as of September 1, 2020 – Table

Current Age Distribution by Location

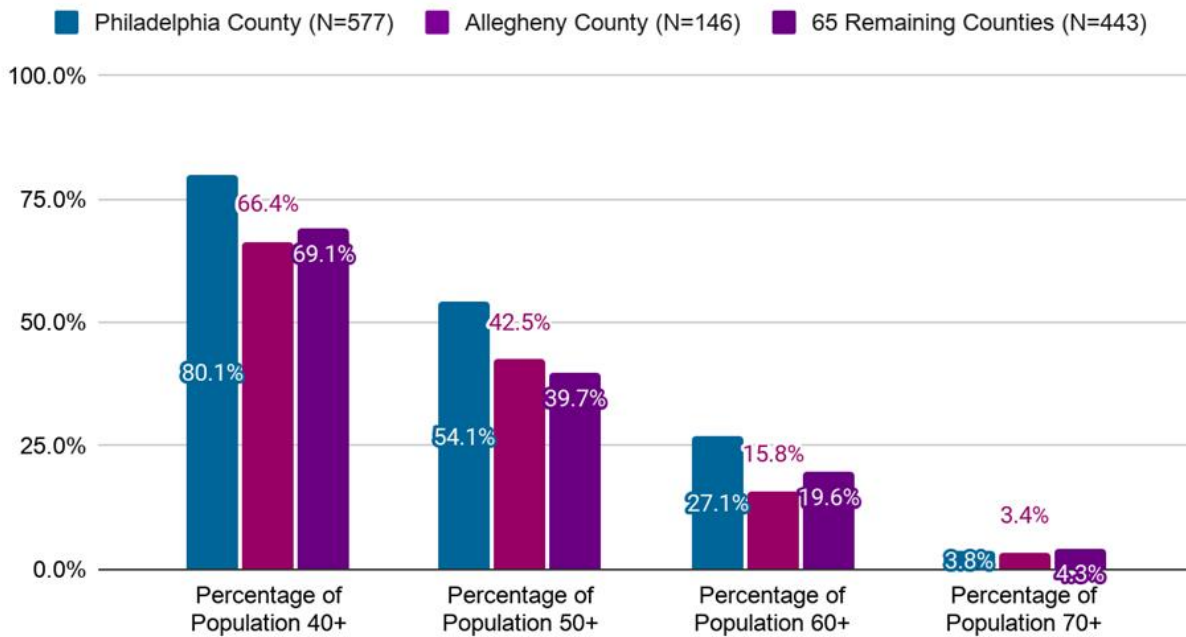


Figure 12: Current Age Distribution by Location as of September 1, 2020 – Chart

There is also variation in current age based on race, which is reflected both in the average age and the distribution of the data, showing that White individuals are generally older than other groups. This reflects, at least in part, that White individuals are older than other groups at the time of offense.

Current Age Averages by Race

| Age calculated as of 9/1/2020 | Mean | Median | Mode |
|------------------------------------------|------|--------|------|
| Black (N=815) | 47.7 | 47 | 33 |
| White (N=240) | 53.4 | 55 | 64 |
| Hispanic/Latinx (N=98) | 44.8 | 44 | 43 |
| Asian, Native American, and Other (N=13) | 45.9 | 44 | 35 |

Figure 13: Current Age Averages by Race as of September 1, 2020

Current Age Distribution by Race

| Age calculated as of 9/1/2020 | Percentage of Population 40+ | Percentage of Population 50+ | Percentage of Population 60+ | Percentage of Population 70+ |
|------------------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|
| Black (N=815) | 70.7% | 45.0% | 20.9% | 3.3% |
| White (N=240) | 85.8% | 63.3% | 36.3% | 7.1% |
| Hispanic/Latinx (N=98) | 73.5% | 27.6% | 8.2% | N/A |
| Asian, Native American, and Other (N=13) | 84.6% | 23.1% | 7.7% | N/A |

Figure 14: Current Age Distribution by Race as of September 1, 2020 – Table

Current Age Distribution by Race

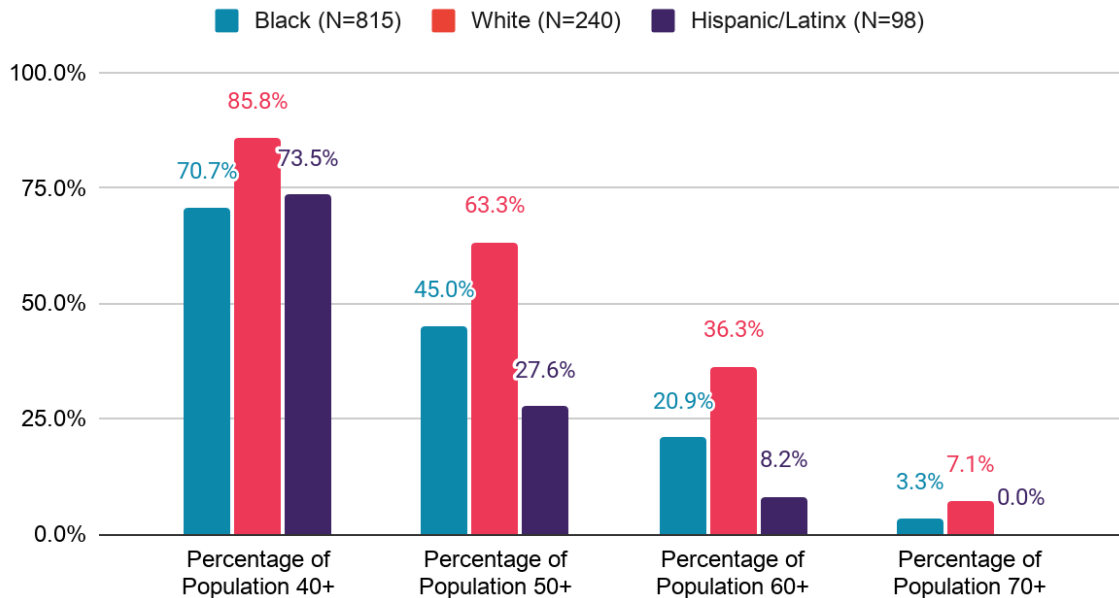


Figure 15: Current Age Distribution by Race as of September 1, 2020 – Chart

Discussion: Research and Context on Current Age

The relationship between age and crime has been well established for at least two hundred years, with findings consistently showing that crime rises sharply in one's early to mid-teens, peaks in the late teens, and declines steadily thereafter.⁷⁴ This is not only generally true, but also true for crimes of violence.

Following the age-crime curve, recidivism is inversely proportional to age – the older someone is at the time of their release, the less likely they are to be re-incarcerated for a new offense.⁷⁵ Even those who have been convicted of violent crimes “age out” of crime, suggesting that prior involvement in violence is not a good predictor of future criminal behavior.⁷⁶ In fact, in a comprehensive review of recidivism data published in 2020, researchers concluded that individuals who had been incarcerated for having committed crimes of violence were *less* likely to commit new offenses than those released for less serious crimes, and this was especially true for older individuals serving time for homicide.⁷⁷ While the data showed lower recidivism overall, some data suggested that those who did commit new crimes were more likely to commit crimes of violence, although across studies, the repeat homicide rate was at or below 1%.⁷⁸ The influence of aging on behavior can also be seen within prison populations: the data show that individuals sentenced to life without parole and other long sentences who have served 10 years or more act as a stabilizing force within the prison environment itself.⁷⁹

In another recent study of recidivism in Oregon, older individuals across original conviction-type were rearrested at a much lower rate than individuals in their twenties, which the report authors attributed to greater maturity and/or deterrence resulting from a past punishment.⁸⁰

The older someone is at the time of their release, the less likely they are to be reincarcerated for a new offense.

That involvement with crime decreases with age was further shown in a 2005 report issued by the Pennsylvania Joint State Government Commission on geriatric and seriously ill incarcerated people.⁸¹ With particular relevance to this study, it considered the issue of aging in prison and life without parole sentences. Reviewing data from the Pennsylvania Board of Probation and Parole, it found that there was a new conviction rate of just 1.4% for parolees released at the age of 50 or older – the age analyzed due to the report’s focus on geriatric incarceration – over the follow-up study period of 10 to 22 months.⁸² Furthermore, in their review of data on the 285 parolees commuted from life sentences at the time of their report, the Joint Commission also found the recidivism rate for those convicted of a new crime was 2.5% overall, and just 1.0% for those paroled at the age of 50 or older.⁸³

Considering these findings, including considerations of cost and safety, the Joint Commission recommended that judges and juries be allowed to sentence individuals to 25 years to life for both first- and second-degree murder, rather than simply mandate life sentences for everyone.⁸⁴ For those who committed their crime before the age of 21, the report recommended that they become eligible for parole at the age of 45 provided they served a minimum of 25 years of their life sentence.⁸⁵

These findings from 2005 are consistent with the results of another more recent path-breaking study fifteen years later of the recidivism of individuals who were sentenced to life without parole for crimes they committed under the age of 18 (“juvenile lifers”) but who were later released on parole following the Supreme Court’s ruling in *Miller*. The study followed 174 former juvenile lifers in Pennsylvania who had been released on parole, ranging in age from 35 to 68, for an average period of 21 months. It found that only two – just 1.1% – were subsequently convicted of a new offense, neither of which meets the BOP’s definition of a crime of violence.⁸⁶

RECIDIVISM

A study followed 174 former juvenile lifers who had been released on parole, ranging in age from 35 to 68 for an average period of 21 months since their release, finding that only two –

just 1.1% – were convicted of a new offense, neither of which was a crime of violence.

Daftary-Kapur, T. & Zottoli, T. (2020). *Resentencing of Juvenile Lifers: The Philadelphia Experience*.

This is not just an indication that there is no risk to public safety: the savings in correctional costs for those who were released included in that study were projected to be a minimum of \$9.5 million in just the first ten years.⁸⁷ Because there is a far greater number of people meeting similar criteria in the second-degree population, those savings could be even more today, estimated below.

C. Summary: Age at the Time of Offense and Current Age

Age at the time of offense and age at the time of review for the purpose of commutation are significant factors in assessing an applicant’s risk of recidivism. Because the prefrontal cortex has not fully matured, younger people – age 25 or younger at the time of offense – more often respond to impulse than planning, and they are more susceptible to both peer pressure and aggressive action. As the U.S. Supreme Court has also noted, younger individuals have a strong capacity to change as a simple result of normative developmental maturation.⁸⁸

Because people “age out” of crime by their 40s, recidivism rates also go down over time, and acts of violence are hardly ever repeated. Data are now well-established that older people, and especially those over the age of 50, have very low risks of recidivism, with particular respect to repeated crimes of violence. As discussed below, keeping people in prison who have aged out of crime costs the Commonwealth millions of dollars every year.

II. Time Served

Between age at the time of offense and age at the time of this study lies the number of years each individual has been incarcerated, known as “time served.” Judicially-determined sentences of confinement are typically expressed in ranges (e.g., 10-20 years), and parole then works to shorten those sentences once the minimum is reached for those deemed appropriate for release. For second-degree murder, parole is not available, and the sentence is “for life” – that is, until death. This section analyzes the length of time that people have served for second-degree murder so far, and then compares those terms to the amount of time served by co-defendants involved in the same felony but who were convicted of crimes other than second-degree murder.

Pennsylvania Second-Degree Data: Time Served

As of September 1, 2020, the second-degree population had served a collective total of

25,527 years in
prison so
far, averaging out to **21.9**
years served per person.

The following chart shows the distribution of time served for the second-degree population, which naturally skews toward fewer years served after a certain threshold as decades of incarceration eventually eclipse life expectancy and individuals die in prison.

Years Served as of September 1, 2020

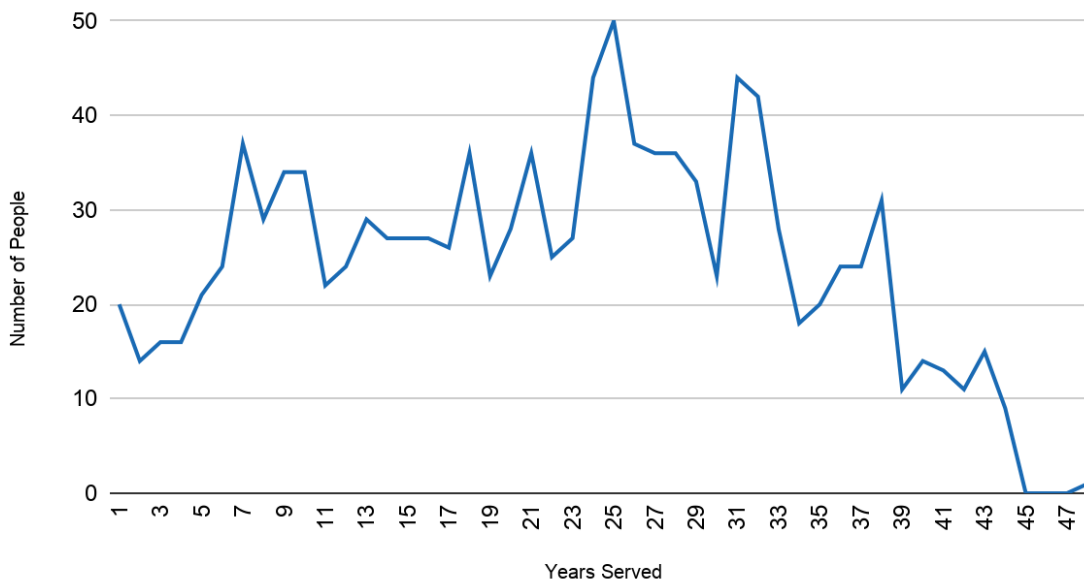


Figure 16: Years Served as of September 1, 2020

It is also possible to look at time served based on what percentage of the population has been incarcerated longer than various reference points of years served.

Years Served as Percentage of Population

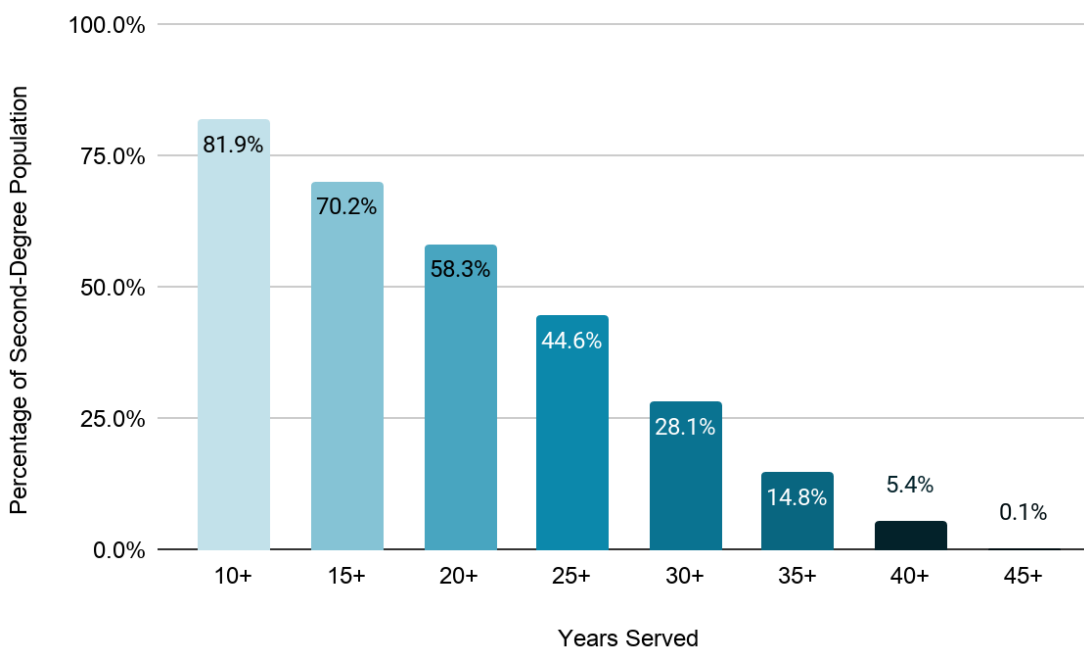


Figure 17: Years Served Distribution as of September 1, 2020 – Chart

Years Served Distribution

| | 10+ | 15+ | 20+ | 25+ | 30+ | 35+ | 40+ | 45+ |
|----------------------------------------|-------|-------|-------|-------|-------|-------|------|------|
| Percentage of Second-Degree Population | 81.9% | 70.2% | 58.3% | 44.6% | 28.1% | 14.8% | 5.4% | 0.1% |

Figure 18: Years Served Distribution as of September 1, 2020 – Table

The amount of time served varies by racial group. The most common number of years served for Black individuals in the second-degree population is 31 years (mode), compared to 24 and 25 years for White and Hispanic/Latinx individuals, respectively. However, White people, on average, have served 2.6 years longer than the overall mean and have the highest median number of years served. This is largely because the smaller population of White people allows outliers to have greater significance in computing the mean and median.

Average Years Served by Race

| | Mean | Median | Mode |
|-----------------------------|-------------|-----------|-----------|
| Total (N=1166) | 21.9 | 23 | 25 |
| Black (N=815) | 21.6 | 23 | 31 |
| White (N=240) | 24.5 | 25 | 24 |
| Hispanic/Latinx (N=98) | 18.6 | 20 | 25 |
| Asian (N=9) | 18.1 | 19 | 21 |
| Native American/Other (N=4) | 10.8 | 8 | N/A |

Figure 19: Years Served by Race as of September 1, 2020

In comparison to the ongoing life sentences of those in the second-degree population, the lengths of discretionary sentences that were imposed on co-defendants provide a further metric for evaluating what prosecutors and judges believed an appropriate penalty for others involved in the same felony related to the loss of life.

These data were available for consideration in 1,039 of 1,166 cases. There was at least one co-defendant in 364 (35.0%) of those cases, involving 508 unique co-defendants overall. Sentence lengths were migrated or otherwise unavailable for 26 of those, yielding 482 total co-defendants whose sentence lengths are known for analysis. Of those, 160 (33.2% of co-defendants) received a sentence of confinement less than life without parole or death. Note that sentences of life without parole, death, probation only, and no penalty are excluded from sentence-length calculation due to the inability to scale multiple variables. As such, referencing the “Co-Defendant Sentence Outcomes” table (below, Figure 32) may provide an additional indication of how common sentences of confinement less than life or death are relative to punishments for other categories of crimes that involved the loss of life.

Co-Defendant Sentences of Confinement Less Than Life or Death: All Convictions

| | Number of Co-Defendants | Trial | Guilty Plea | Comparison Group: Trial Penalty |
|----------------------------------------------------------------------------------------|-------------------------|--------------------|--------------------|---------------------------------|
| Number Sentenced to Confinement Less Than Life or Death | 160 | 40 | 120 | 97 |
| Percentage of Co-Defendants Per Group Sentenced to Confinement Less Than Life or Death | 33.2% (out of 482) | 12.6% (out of 317) | 72.7% (out of 165) | 74.0% (out of 131) |
| Average Lower Limit | 8.3 years | 8.3 years | 8.3 years | 8.7 years |
| Average Midpoint | 13.6 years | 13.1 years | 13.8 years | 14.7 years |
| Average Upper Limit | 19.0 years | 18.0 years | 19.3 years | 20.3 years |

Figure 20: Co-Defendant Sentences of Confinement Less Than Life or Death – All Convictions

As the above table shows, of the 160 co-defendants who received a prison sentence less than life without parole or death:⁸⁹

- **8.3 years was the average lower limit,**
- **13.6 years was the average midpoint, and**
- **19.0 years was the average upper limit.**

Summarized below, sentence lengths of confinement less than life or death were also calculated for the 113 co-defendants convicted of third-degree murder or voluntary manslaughter in particular – the most serious crimes involving the loss of life after first- and second-degree murder.

Co-Defendant Sentences of Confinement Less Than Life or Death: Third-Degree Murder and Voluntary Manslaughter

| | Number of Co-Defendants | Trial | Guilty Plea | Comparison Group: Trial Penalty |
|----------------------------------------------------------------------------------------|-------------------------|-------------------|--------------------|---------------------------------|
| Number Sentenced to Confinement Less Than Life or Death | 113 | 18 | 95 | 76 |
| Percentage of Co-Defendants Per Group Sentenced to Confinement Less Than Life or Death | 23.4% (out of 482) | 5.7% (out of 317) | 57.6% (out of 165) | 58.0% (out of 131) |
| Average Lower Limit | 9.6 years | 11.3 years | 9.3 years | 10.0 years |
| Average Midpoint | 15.9 years | 17.6 years | 15.6 years | 17.0 years |
| Average Upper Limit | 22.1 years | 23.9 years | 21.8 years | 23.5 years |

Figure 21: Co-Defendant Sentences of Confinement Less Than Life or Death – Third-Degree Murder and Voluntary Manslaughter

Of the 95 individuals who pleaded guilty to either third-degree murder or voluntary manslaughter:

9.3 | years was the average lower limit

15.6 | years was the average midpoint

21.8 | years was the average upper limit

Discussion: Research and Context on Time Served

National data from the U.S. Department of Justice show that individuals sentenced for murder or non-negligent manslaughter served an average (mean) of 15.0 years in state prison before their release, and the median years served was 13.4 years.⁹⁰ Nationwide, 70% of those sentenced for murder or non-negligent manslaughter served less than 20 years in prison before their release.⁹¹

Specific to Pennsylvania, all individuals involved in any stage of a felony that related to the loss of life are eligible to receive the mandatory penalty of life without parole if convicted of second-degree murder due to accomplice liability. Yet the above data show that one-third of all co-defendants prosecuted for an offense connected to a second-degree murder conviction received a prison sentence less than life without parole or death.

This establishes a point of comparison to how much time the second-degree population has served, and barring intervention, will likely continue to serve, until their deaths in prison. While this investigation was unable to calculate how long the periods of confinement for co-defendants actually were due to the likelihood of early release on parole, the maximum sentences provide a conservative measure of comparison.

The average amount of time served to date by the second-degree population – 21.9 years – is already almost three years longer than the average *upper* limit of 19.0 years among all co-defendants, and it is just shy of the 22.1 years *upper* limit for all co-defendants convicted of third-degree murder and voluntary manslaughter. Compared to third-degree murder and voluntary manslaughter convictions among co-defendants, more than half of the second-degree population (52.8%) has already served longer than the *upper* limit of 22 years, and more than four out of five people (84.8%) have served longer than the average *lower* limit of nine years.

It should be noted that the recommended sentencing guidelines for third-degree murder in Pennsylvania were increased in 1995 from 10-20 years to 20-40 years.⁹² Almost half (46.7%) of the second-degree population were sentenced before those guidelines went into effect. For them, there is an even greater likelihood that their co-defendants who were convicted of lesser crimes have already been released.

The difference in sentencing outcomes and years served between individuals in the second-degree population and their co-defendants have significant cost implications.⁹³ Consider, for instance, two individuals who both enter the DOC for a murder conviction at 26 years old – one serving a life sentence for second-degree murder, the other serving 22 years for third-degree murder or voluntary manslaughter. The difference in costs of confinement (using current cost estimates) would be \$1,555,069, or roughly \$1.6 million.⁹⁴

While costs are subject to change over time, using current estimated costs, the amount of money spent to incarcerate the current second-degree population is \$1.21 billion, so far.⁹⁵ This amount averages out to over \$1 million per person already (\$1,041,208). Assuming costs and life expectancy stay the same, the projected cost to the Commonwealth of a life sentence that begins at age 26 – the mean age of entry into the DOC for second-degree murder – and ends at age 79 – the average life expectancy used by many courts related to juvenile life without parole – is \$2.6 million.

Because current time served data are “moment in time” – that is, a total as of a specific date – they do not provide any way of projecting the actual additional amount of time that will be served when the life sentences end – that is, upon an individual’s death in prison. Calculated using the average life expectancy of 79 years, the 1,166 individuals currently serving life sentences for second-degree murder will remain in prison, on average, another 30 years each at the collective cost of \$1.76 billion.

Costs Savings Compared to Average Life Expectancy for Current Second-Degree Population

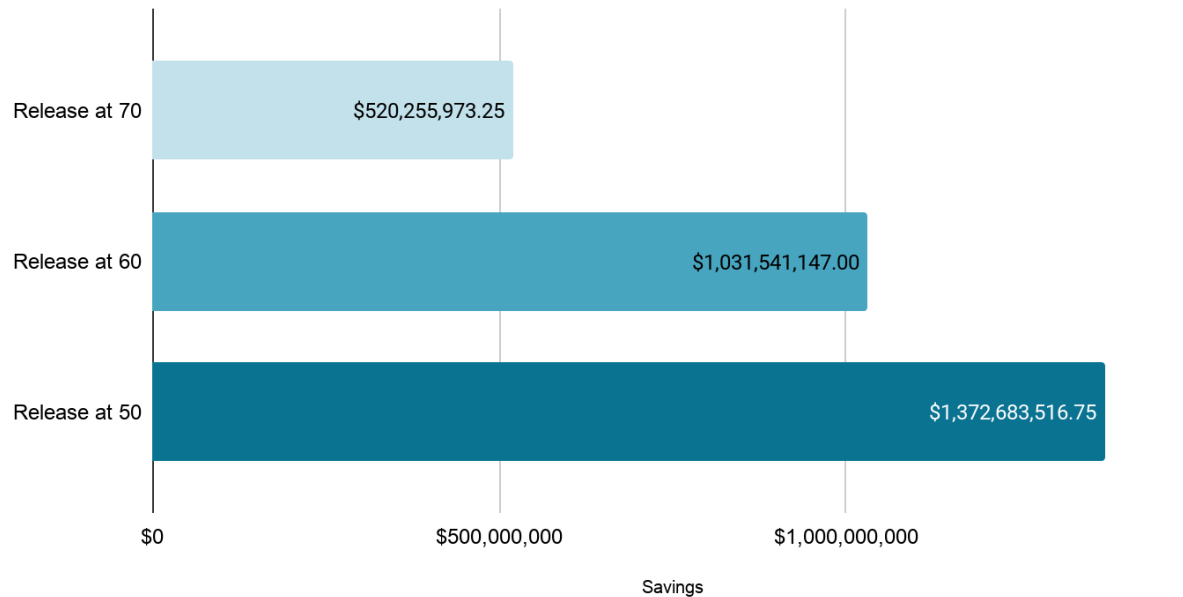


Figure 22: Potential Cost Savings Compared to Life Expectancy for Current Second-Degree Population

Summary: Time Served

Time served data are telling. Those who are serving life sentences for second-degree murder have already spent, on average, 21.9 years in prison. Using the average life expectancy in the U.S. of 79 years old, those currently serving life sentences will be in prison, on average, for another 30 years at the cost to the Commonwealth of at least \$1.7 billion.

Co-defendants who were involved in the same exact felony in which someone died – that is, people who could have been convicted of second-degree murder for the same event, but weren't – are sentenced to far shorter prison terms. Even without reference to release decisions for co-defendants made by the Board of Probation and Parole, 63 individuals (5.4%) in the second-degree population have served longer than the current statutory recommended maximum for third-degree murder of 40 years, and 680 individuals (58.3%) have served longer than the previous maximum of 20 years.⁹⁶

For crimes involving judicially-imposed sentences, individuals are typically given the opportunity to demonstrate their rehabilitation and suitability for release after a certain number of years. That not only allows the state to monitor and refine the amount of public funds that are allocated to the particular government service, but also furthers reformation, a major objective of the criminal justice system.

That is precisely the assessment that the BOP and the Governor undertake for those serving life sentences who are seeking release via commutation – a review it has typically undertaken only after a greater number of years have been served than by others convicted for crimes involving a person’s death, and for far fewer individuals.

III. Plea Bargaining

There are different reasons why individuals might choose to plead guilty to an offense that will require them to spend the rest of their lives in prison. While the full details and context of the plea deals related to the second-degree population are not publicly available, we analyzed public court dockets and plea bargaining using several reference points: the jurisdiction where the conviction was obtained; the defendant’s race; whether the defendant was facing a charge of first-degree murder; what their felony conviction was; and, if applicable, whether their co-defendant(s) pleaded guilty or went to trial. Although this list is not exhaustive for why individuals may plead guilty, several factors from the sentencing process related to plea bargaining have emerged from the data and are examined below.

Pennsylvania Second-Degree Population Data: Plea Bargains

Statewide, of the 975 individuals (83.6% of the second-degree population) for whom plea data were obtained, 154 (15.8%) pleaded guilty to second-degree murder. The remaining 821 (84.2%) opted to go to trial. Viewed geographically, there are significant differences.

Plea Bargains: Geographic Variation

| <i>N=Where Plea Data Are Known</i> | Percentage of Population Where Plea Data Are Known | Percentage of Known Population that Pleaded Guilty |
|------------------------------------|-------------------------------------------------------|-------------------------------------------------------|
| Statewide (N=975) | 83.6% | 15.8% |
| Philadelphia County (N=558) | 96.7% | 11.1% |
| Allegheny County (N=108) | 74.0% | 9.3% |
| 65 Remaining Counties (N=309) | 69.8% | 26.5% |

Figure 23: Plea Bargains – Geographic Variation

The rates of plea bargaining in the two largest cities were far less than elsewhere in the state:

9.3% | in Allegheny County (which includes Pittsburgh)

11.1% | in Philadelphia County

26.5% | in all other counties

While availability of plea data varied, there are also significant differences in conviction rates due to plea bargaining by race. These differences held at all geographic levels analyzed, statewide and inter-county.

Plea Bargains: Pennsylvania Total by Race

| <i>N=Where Plea Data Are Known</i> | Percentage of Population Where Plea Data Are Known | Percentage of Known Population that Pleaded Guilty |
|------------------------------------------|----------------------------------------------------|----------------------------------------------------|
| Black (N=726) | 89.1% | 11.4% |
| White (N=146) | 60.8% | 36.3% |
| Hispanic/Latinx (N=90) | 91.8% | 17.8% |
| Asian, Native American, and Other (N=13) | 100.0% | 15.4% |

Figure 24: Plea Bargains – Pennsylvania Total by Race

Statewide, White people pleaded guilty two times as often as Hispanic/Latinx people, and over three times as often as Black people.

Across each county-level jurisdiction analyzed, White people pleaded guilty at least 1.6 times more often (in the 65 counties excluding Philadelphia and Allegheny counties) and as much as 4.7 times more often (Allegheny County) than Black or Hispanic/Latinx people.⁹⁷

Plea Bargains: Philadelphia County

| <i>N=Where Plea Data Are Known</i> | Percentage of Population Where Plea Data Are Known | Percentage of Known Population that Pleaded Guilty |
|-----------------------------------------|----------------------------------------------------|----------------------------------------------------|
| Black (N=476) | 96.4% | 10.7% |
| White (N=31) | 100.0% | 22.6% |
| Hispanic/Latinx (N=43) | 97.7% | 9.3% |
| Asian, Native American, and Other (N=8) | 100.0% | 0.0% |

Figure 25: Plea Bargains – Philadelphia County by Race

Plea Bargains: Allegheny County

| <i>N=Where Plea Data Are Known</i> | Percentage of Population Where Plea Data Are Known | Percentage of Known Population that Pleaded Guilty |
|-----------------------------------------|----------------------------------------------------|----------------------------------------------------|
| Black (N=93) | 77.0% | 6.5% |
| White (N=13) | 56.5% | 30.8% |
| Hispanic/Latinx (N=1) | 100.0% | 0.0% |
| Asian, Native American, and Other (N=1) | 100.0% | 0.0% |

Figure 26: Plea Bargains – Allegheny County by Race

Plea Bargains: 65 Remaining Counties

| <i>N=Where Plea Data Are Known</i> | Percentage of Population Where Plea Data Are Known | Percentage of Known Population that Pleaded Guilty |
|-----------------------------------------|----------------------------------------------------|----------------------------------------------------|
| Black (N=157) | 78.5% | 16.6% |
| White (N=102) | 54.8% | 41.2% |
| Hispanic/Latinx (N=46) | 86.8% | 26.1% |
| Asian, Native American, and Other (N=4) | 100.0% | 50.0% |

Figure 27: Plea Bargains – 65 Remaining Counties by Race

Pennsylvania’s “Clean Slate” Act seals (removes from public databases) charges that did not result in convictions (called “non-conviction data”), but it has not been uniformly implemented in all counties through all years. As a result, it is not possible in all cases to determine what other crimes defendants were charged with that might have affected their decision to go to trial or accept a plea deal. While limited, the data that are available, however, demonstrate a positive and statistically significant correlation between pleading guilty and the presence of a first-degree murder charge.⁹⁸ Furthermore, racial differences also persisted in plea bargaining when isolating for first-degree murder charges on the dockets: White people who had at least one first-degree murder charge pleaded guilty 2.6 times more often than Black people who had at least one first-degree murder charge.

Overall, the category of felony conviction had little bearing on plea bargaining rates, except for arson: those convicted of arson pleaded guilty more than two times as often as any other felony conviction.

Plea Bargains: Felony Conviction Type

| | Arson | Burglary | Kidnapping | Robbery | Sexual ⁹⁹ |
|------------------------------------|-------|----------|------------|---------|----------------------|
| Percentage with Context Conviction | 5.1% | 19.6% | 5.2% | 86.0% | 2.4% |
| Percentage that Plead Guilty | 23.1% | 10.0% | 10.0% | 10.7% | 11.1% |

Figure 28: Plea Bargains – Felony Conviction Type

Recalling that plea bargaining increased with age at the time of offense, a regression model was performed looking at the relationship between felony conviction type, race, plea bargaining, and age. Isolating robbery and burglary – the two felony convictions that had the largest sample sizes – did not lead to any new significance, meaning that race, rather than the felony type or age alone, had the largest predictive impact on plea bargaining.¹⁰⁰ In this case, being Black or Latinx was predictive of going to trial.

There were also differences in plea bargaining based on presence of co-defendants. Individuals with co-defendants pleaded guilty 11.4% of the time, compared with a plea rate of 18.6% for individuals without co-defendants, a 63.2% increase. This finding is also statistically significant: acting independently was correlated with a higher incidence of taking a plea.¹⁰¹

Recalling the earlier data and discussion on time served, a deeper examination of plea bargaining rates among individuals in the second-degree population compared to known co-defendants is also a useful metric in evaluating what paths others took and the outcomes they received for involvement in the same underlying felony. There are statistically significant correlations in the rate of plea bargains between the second-degree population and their co-defendants: the co-defendant group was positively correlated with pleading guilty, with significant difference from the second-degree population, which was more associated with going to trial.¹⁰²

501 co-defendants were identified whose plea bargaining data were available. Of those, 35.1% (176 individuals) pleaded guilty, a rate that is 2.2 times greater than the plea bargaining rate for the second-degree population – 15.8% of whom pleaded guilty. This difference in plea bargaining rates between the second-degree population and their co-defendants increases across all geographic areas analyzed and is as high as 3.0 times greater in Allegheny County. Of particular interest, 68.2% of co-defendants – almost seven out of ten – in jurisdictions outside of Philadelphia and Allegheny County pleaded guilty.

Plea Bargains: Second-Degree Population Compared to Co-Defendants

| <i>N=Where Plea Data Are Known</i> | Percentage of Population Where Plea Data Are Known | Percentage of Known Population That Pleaded Guilty | Number of Co- Defendants Where Plea Data Are Known | Percentage of Co-Defendants Where Plea Data Are Known | Percentage of Known Co- Defendants Who Pleaded Guilty |
|--------------------------------------------|----------------------------------------------------------------|----------------------------------------------------------------|----------------------------------------------------------------|-------------------------------------------------------------------|-------------------------------------------------------------------|
| Statewide (N=975) | 83.6% | 15.8% | 501 | 98.6% | 35.1% |
| Philadelphia County (N=558) | 96.7% | 11.1% | 417 | 99.5% | 30.2% |
| Allegheny County (N=108) | 74.0% | 9.3% | 18 | 94.7% | 27.8% |
| 65 Remaining Counties (N=309) | 69.8% | 26.5% | 66 | 94.3% | 68.2% |

Figure 29: Plea Bargains – Comparison with Co-Defendants

One possible reason for these differences is the fact that, among co-defendants, pleading guilty was much more likely to result in a sentence less than life without parole or death than for co-defendants who went to trial. In fact, co-defendants most often received a sentence less than life without parole or death if they pleaded guilty whereas their co-defendant – the person in the second-degree population – went to trial. This is an example of what the literature calls the “Trial Penalty.” The heightened risk of going to trial for the person in the second-degree population is indicated by “Comparison Group: Trial Penalty” in the following table, meaning the co-defendant pleaded guilty and the person convicted of second-degree murder did not.

Co-Defendant Outcomes: Trial, Guilty Plea, and Trial Penalty Comparison Group

| <i>N=Where Both Plea Data and Sentence Length Are Known</i> | Percentage That Received Penalty Less Than Life or Death | Percentage That Received Life or Death |
|--------------------------------------------------------------------|-------------------------------------------------------------|-------------------------------------------|
| Total Co-Defendant Population: Guilty Plea and Trial (N=482) | 36.5% | 63.5% |
| Co-Defendant Trial (N=317) | 13.9% | 86.1% |
| Co-Defendant Guilty Plea (N=165) | 80.0% | 20.0% |
| Comparison Group: Trial Penalty (N=131) | 83.2% | 16.8% |
| Main Second-Degree Population: Guilty Plea and Trial (N=975) | 0.0% | 100.0% |

Figure 30: Co-Defendant Sentence Outcomes by Percent – Table

Co-Defendant Sentence Outcomes Compared to Main Population

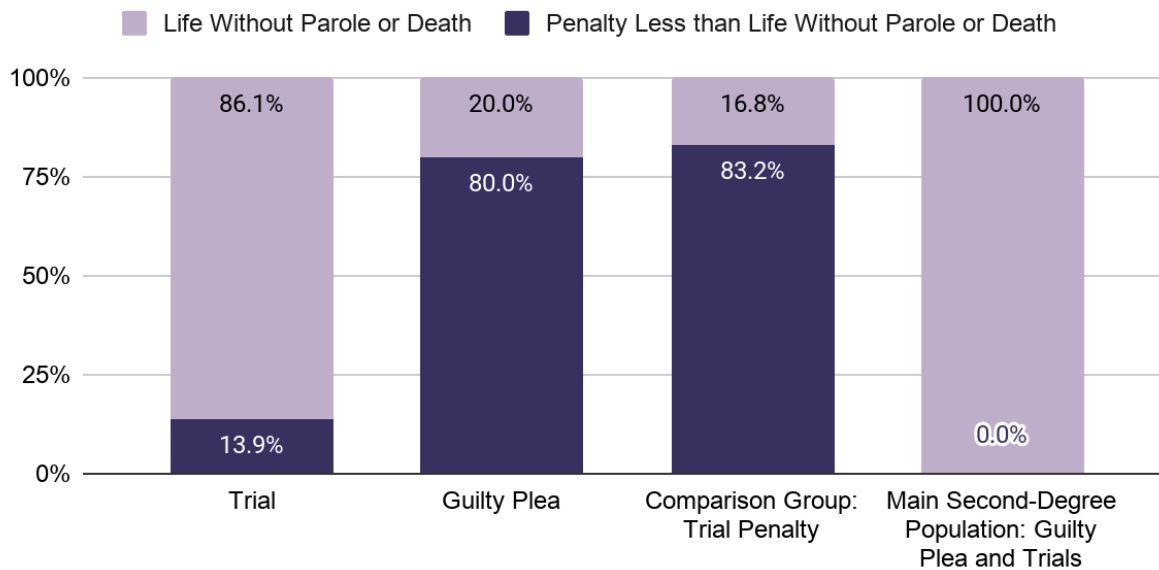


Figure 31: Co-Defendant Sentence Outcomes by Percent – Chart

80.0% of co-defendants who pleaded guilty received a sentence less than life without parole or death, compared to only 13.9% of co-defendants who went to trial. This means that co-defendants who pleaded guilty received a penalty less than life or death 5.8 times more often than co-defendants who went to trial. For the trial penalty comparison group, the rate of receiving a penalty less than life or death increases to 6.0 times higher than for co-defendants who went to trial.

Co-defendants who pleaded guilty received a penalty less than life or death 5.8 times more often than co-defendants who went to trial.

Co-Defendant Sentence Outcomes

| <i>N=Where Both Plea Data and Sentence Length Are Known</i> | Total Co-Defendant Population | Trial | Guilty Plea | Comparison Group: Trial Penalty |
|-------------------------------------------------------------|-------------------------------|-------|-------------|---------------------------------|
| Total N* Not Including Migrated Sentences | 482 | 317 | 165 | 131 |
| Death Penalty | 12 | 11 | 1 | 1 |
| Life Without Parole* Includes JLWOP | 294 | 262 | 32 | 21 |
| Confinement Less Than Life Without Parole | 160 | 40 | 120 | 97 |
| Probation Only | 11 | 0 | 11 | 11 |
| No Penalty | 5 | 4 | 1 | 1 |

Figure 32: Co-Defendant Sentence Outcomes

Discussion: Research and Context on Plea Bargaining

Most crimes leave the sentences to the judge or the jury, and the statutes provide only guidelines – minimums and maximums that are recommended, not binding. By contrast, statutory law in Pennsylvania for second-degree murder requires that all individuals convicted of the offense – by trial and by plea agreement – receive a mandatory life penalty and excludes them from parole eligibility.¹⁰³

Who gets convicted of second-degree murder compared to other crimes – both greater and lesser – for involvement in the victim’s death depends upon choices made by three parties: the prosecutor, the defendant (and the defendant’s attorney), and the judge.¹⁰⁴ As with other crimes, a significant percentage of convictions for second-degree murder result from plea bargains negotiated among the three.

PLEA BARGAINING

Statutory law in Pennsylvania for second-degree murder requires that all individuals convicted of the offense – by trial or by plea agreement –

receive a mandatory life penalty, which is excluded from parole eligibility.

In effect, mandatory sentences take the sentencing authority away from the judge and put it in the hands of the prosecutor, who has sole discretion over both the decision to seek the death penalty and whether to offer a plea bargain (as well as its initial terms).¹⁰⁵ While further investigation is warranted regarding the second-degree population in particular, previous research has noted that the decision to plead guilty depends on the probability of conviction at trial, the severity of the crime, the availability of resources to pursue a trial, and the risk-aversiveness of the defendant.¹⁰⁶

The difference in penalty between first- and second-degree murder – the former is a capital offense eligible for the death penalty, the latter is not – could incentivize individuals in the second-degree population to plead guilty as one example of the trial penalty. As defined earlier, the trial penalty refers to the harsher sentence that a defendant receives after going to trial, compared to the more lenient sentence that may have been imposed via plea deal.¹⁰⁷ In other words, the seriousness of the charge – and the potential for a more severe punishment – creates the incentive to plead guilty, regardless of the facts of the case or the circumstances of the individual. This incentive to plead guilty to avoid the trial penalty has also been shown to extend to those who are innocent. According to the Innocence Project, 11% of the people later exonerated by DNA evidence originally pleaded guilty.¹⁰⁸

In Pennsylvania, the death penalty may be pursued against individuals guilty of first-degree murder, but not of second-degree murder, or any lesser offense involving someone's death (third-degree murder, manslaughter, and so on).¹⁰⁹ In order for the penalty for first-degree murder to be elevated to a capital offense (i.e., eligible for the death penalty), a jury must determine the presence of at least one of ten aggravating circumstances. One of those ten – enough by itself to make the crime a capital offense – is whether the “defendant committed a killing while in the perpetration of a felony.”¹¹⁰

As a matter of definition, then, anyone convicted of second-degree murder could have been convicted of a capital offense and faced the death penalty had the prosecutor pursued the crime as a capital case. In this instance, the prosecutor's decision to identify the crime as a capital offense would be the cause of the trial penalty. Previous research has found that the threat of the death penalty increases the probability of pleading guilty by roughly 20%.¹¹¹

The trial penalty may also be evident in differences in punishments between individuals in the second-degree population and their co-defendants. In this case, co-defendants who pleaded guilty were 5.8 times more likely to receive a punishment less than the mandatory life sentence or death than co-defendants who went to trial. In fact, co-defendants who pleaded guilty were even more likely to receive a penalty less than life or death if at least one of their co-defendants went to trial and was convicted of second-degree murder.

Among the 16 co-defendants (out of 482) who received either probation only or no penalty, 12 (75.0% of those 16) were connected to an individual in the second-degree population who went to trial and were subsequently convicted. These differences in plea bargaining rates between the second-degree population and co-defendants might indicate cooperation between the co-defendant who took the plea and the prosecutor in exchange for testimony or evidence that could increase the likelihood of securing a conviction during the second-degree murder trial. In this case, the imposition of a life sentence on the individual in the second-degree population could well be due to the attitude of the prosecutor in relation to co-defendants or the strategy of the defense attorney rather than the seriousness of the conduct of the defendant.¹¹²

The data reviewed in this study do not point conclusively toward the source(s) of differences in plea bargaining both across racial groups and between the second-degree population and their co-defendants. Given that plea bargaining increased with age, it is worth exploring the role that developmental maturity, nature of involvement, and/or the circumstances of the crime may play in the decision to go to trial, especially regarding possible differences between principals and accomplices.

Summary: Plea Bargaining

Given the stakes when involved in an event that results in someone's death, plea bargaining is clearly important. These decisions surrounding the court process were often made decades ago, such that many co-defendants who received lesser penalties through plea agreement have subsequently been released. Moreover, in light of the data that plea bargaining increased with age, the majority of the decisions to plead guilty or pursue a jury trial were made by individuals in the second-degree population who were not yet developmentally or neurologically mature. Further investigating the role that plea bargaining plays in homicide cases in Pennsylvania as it relates to the second-degree population – both who is included, and who is not – is worthy of future attention.

Plea bargaining often plays an important role in mitigating the worst outcomes for the defendant. For individuals who pleaded guilty to second-degree murder, that worst outcome could have been the death penalty; for many co-defendants, it could have been life without parole. Both instances are examples of the trial penalty in action, raising important questions about how individuals end up in the second-degree population, such as the nature of their involvement and the judicial and social context in which these life-or-death decisions were made.

Conclusion and Recommendations

Pennsylvania is a national exception in its use of life without parole as a sentence for crime, and more particularly, in its statutory framework mandating that sentence for second-degree murder.

For three-quarters of the second-degree population, the convictions reviewed in this study mark the beginning of decades of incarceration that is ongoing today for crimes they committed before reaching full neurological and developmental maturity. For more than half of that same population, their crimes occurred prior to their 22nd birthday.

For the three out of five people in the second-degree population who have already served more than 20 years of their life sentence, these decades of confinement largely lead them to surpass the age of 40 – the age at which there is a material reduction in the risk of recidivism or any reason to fear for public safety. This report now furthers that discussion by adding that many of their co-defendants, rather than serve the duration of their lives in prison, are being released after serving far fewer years.

COMMUTATION

Commutation is a process that exists to evaluate who an individual is today,

what potential benefits they could add to their families and communities should they be released, and the fiscal costs that could be saved by the Commonwealth if their sentence were reduced.

While individual factors specific to each case remain essential to any consideration of whether someone ought to be released from prison on parole – a determination first entrusted to the Board of Pardons and then to the Governor – the data analyzed in this report support the following factors of consideration:

- Youthful age (that is, age 25 and younger) at the time of offense, especially in instances where the individual may have been an accomplice or otherwise motivated by group behavior, which has a strong relationship to their neurological development at the time of offense;
- Number of years served, using 20 years as a benchmark because it would exceed the average midpoint of co-defendant sentences as well as the threshold age-range at which individuals “age out” of crime for the majority of the second-degree population;
- Age at the time of release, using 50 as a conservative indicator of when people have aged out of crime, and 40 as the age when the data indicate almost no likelihood of repeated crimes of violence; and
- The jurisdiction in which the penalty was imposed, whether the prosecutor was seeking the death penalty, and whether the conviction was obtained by plea agreement – and here, too, the age of the defendant at the time of offense – all of which may indicate a reason for the sentence other than the incorrigibility of the defendant.

These factors are important to consider not just in terms of the equities and fundamental fairness of the system, but also because they have immediate and staggering implications for public budgets at a time when public funds are limited and could be made available for other important public purposes.

While the mandatory nature of life without parole removed discretion at the time of sentencing, it is without question that the Board of Pardons, and the Governor, are vested by the Pennsylvania Constitution with the power to “override” the decision of the legislature in fixing the appropriate penalty for those who have been involved in felonies that resulted in someone’s death decades ago and are transformed people today. This report provides many instances that the Board of Pardons not only could properly exercise its discretion and recommend clemency, but should.

Appendix

Methodology

This audit includes a review of data from the public court records of each individual in the second-degree population, along with basic demographic data provided to the BOP by the DOC. Data were collected using the public electronic database maintained by the Administrative Office of the Pennsylvania Courts (“AOPC”).¹¹³ To verify that the docket was for the second-degree murder conviction for which the individual is currently incarcerated, court dockets located on the AOPC web portal were matched by four factors – name, date of birth, county in which the underlying felony occurred (“committing county”), and sentence date.¹¹⁴ Court dockets were unable to be analyzed for 127 individuals (10.9%) in the second-degree population due to errors in the AOPC database or the records were so old that they were not included in the AOPC database.¹¹⁵

Court dockets were obtained and reviewed for 89.1% (1,039) of the second-degree population. Of those, 35.0% (364) included at least one joined co-defendant, comprising a secondary co-defendant population of 508 unique individuals and 603 co-defendants included in this analysis overall.

Coded data were analyzed using SPSS Statistics software and sorted by committing county, race, and geographic parameters.¹¹⁶ Frequencies, cross tabulations, and measures of central tendency were calculated from both the DOC data and that which was located in the AOPC public records. Descriptive, correlational, and regression analyses were performed to identify possible trends in the data.

Additionally, supplementary data were collected for co-defendants who were formally linked on the second-degree docket as a related case. Individuals possibly involved in the same offense (e.g., two individuals in the second-degree population with the same offense date and similar charges) were coded as co-defendants only if they were officially joined on the docket(s). This distinction is important because there is a high probability of others involved in the same offense who were excluded from this analysis, either because they were not recorded on the original docket as a linked case or they were not prosecuted (e.g., an individual whose charges were dropped for offering witness testimony to aid in prosecution).

Sample sizes vary based on the availability of located dockets and the completeness of a particular data point on each located docket due to original coding by the courts and/or migrated data. When variable, data tables include a comparison between the overall second-degree population and the percentage of located dockets where a specific variable is known to evaluate the completeness of the data.¹¹⁷

Endnotes

¹ Andrea Lindsay is Lead Researcher and Mitigation Specialist for Philadelphia Lawyers for Social Equity (PLSE). She was assisted in data analysis by Clara Rawlings, BA, PLSE Program Assistant; with editing by Carl (Tobey) Oxholm III, JD, MPP, Executive Director of PLSE; and she received supervision from Ryan Allen Hancock, JD, one of the founders of PLSE and the author of “The Double Bind: Obstacles to Employment and Resources for Survivors of the Criminal Justice System” (2012), *University of Pennsylvania Journal of Law and Social Change* 15. PLSE wishes to acknowledge and thank the Pennsylvania Board of Pardons and its Secretary Brandon Flood for providing the data needed to conduct this audit, as well as The Heinz Endowments for its grant to PLSE to fund this research and report. PLSE also wishes to thank Robb Leef for assisting with design and Ed Looram for design management; Rachael Stewart, JD, for her assistance with legal research; Gwendolyn Ljung-Baruth and Andria Modica for their help with primary data collection; and Susannah Ayscue, Isabella Falzone, Jamie Klein, Tarik Kose, Sydney Meyer, and Ben Roebuck for their assistance double-checking the data.

² Prison Policy Initiative. (2018). *Pennsylvania Profile*. <https://www.prisonpolicy.org/profiles/PA.html>

³ At the time of this review, the most recent monthly report indicates a total residential population of 42,325 as of August 31, 2020, a 11.78% decrease. Pennsylvania Department of Corrections, Bureau of Planning, Research, & Statistics. (2019, September 30). *Pennsylvania Department of Corrections Monthly Population Report*. [Data set].

<https://www.cor.pa.gov/About%20Us/Statistics/Documents/Monthly%20Population%20Reports/Mtpop1909.pdf>.

⁴ Nellis, A. (2013). *Life Goes On: The Historic Rise in Life Sentences in America*. The Sentencing Project. <https://www.sentencingproject.org/publications/life-goes-on-the-historic-rise-in-life-sentences-in-america>

⁵ Data as of September 25, 2019 provided to the BOP by the DOC.

⁶ 18 Pa.C.S. § 2502(b); 18 Pa.C.S. § 2502(d). For the purposes of this report, “deviate sexual intercourse by force or threat of force” is included under the category of rape.

⁷ See *Commonwealth v. Cotton*, 338 Pa. Super. 20, 487 A.2d 830 (Pa.Super. 1984).

⁸ 18 Pa.C.S. § 306.

⁹ See *Commonwealth v. Olds*, 322 Pa. Super. 442 (Pa.Super. 1983); *Commonwealth v. Joseph*, 451 Pa. 440 (Pa. 1973); *Commonwealth v. Laudemberger*, 715 A.2d 1156 (Pa.Super. 1998).

¹⁰ See *Commonwealth v. Yuknavich*, 448 Pa. 502 (Pa. 1972).

¹¹ 18 Pa.C.S.A. § 1102(b); 61 Pa. C.S. § 6137(a).

¹² 18 Pa.C.S.A. § 1102(b); See *Commonwealth v. Cornish*, 471 Pa. 256 (Pa. 1977), 370 A.2d 291; *Commonwealth v. Middleton*, 467 A.2d 841 (Pa.Super. 1983).

¹³ See *Pennsylvania ex rel. Sullivan v. Ashe*, 302 U.S. 51, 55 (1937).; *Gregg v. Georgia*, 428 U.S. 153 (1976).; *Zant v. Stephens*, 462 U.S. 862 (1983).

¹⁴ 61 Pa. C.S. § 6137(a).

¹⁵ 61 Pa. C.S. § 6102

¹⁶ Flanagan, T. (1980). Time served and institutional misconduct: Patterns of involvement in disciplinary infractions among long-term and short-term inmates. *Journal of Criminal Justice*, 8(6), 357-67.

[https://doi.org/10.1016/0047-2352\(80\)90111-7](https://doi.org/10.1016/0047-2352(80)90111-7); Cunningham, M., Reidy, T., & Sorenson, J. (2005). An Actuarial Model for Assessment of Prison Violence Risk Among Maximum Security Inmates. *Assessment* 12, 40-49. <https://doi.org/10.1177/1073191104272815>

¹⁷ Cunningham, M. & Sorenson, J. (2006). Nothing to Lose? A Comparative Examination of Prison Misconduct Rates Among Life-Without-Parole and Other Long-Term High-Security Inmates. *Criminal Justice and Behavior* 33(6), 683-705. <https://doi.org/10.1177%2F0093854806288273>

¹⁸ Pa. Const. art. IV, § 9; 71 P.S. § 299.

¹⁹ Newkirk Center for Science & Society at the University of California Irvine, the University of Michigan Law School, and Michigan State University College of Law. (2020). The National Registry of Exonerations Annual Report. https://www.law.umich.edu/special/exoneration/Documents/Exonerations_in_2019.pdf

²⁰ Gross, S., O'Brien, B., Hu, C., & Kennedy, E. (2014). Rate of False Conviction of Criminal Defendants Who Are Sentenced to Death. *Proceedings of the National Academy of Sciences*, 111(20), 7230-7235. <https://doi.org/10.1073/pnas.1306417111>

²¹ DOC Population over 50: 23.3%; FY 20-21 PA DOC Budget Testimony. <https://www.cor.pa.gov/About%20Us/Statistics/Documents/Budget%20Documents/Budget%20Testimony%202020-21.pdf>

²² General Assembly of the Commonwealth of Pennsylvania. Joint State Government Commission. (2005). *Report of the Advisory Committee on Geriatric and Seriously Ill Inmates*; American Civil Liberties Union. (2012). *At America's Expense: The Mass Incarceration of the Elderly*. <https://www.aclu.org/report/americas-expense-mass-incarceration-elderly>

²³ Estimates provided to the Secretary of the Board of Pardons by the DOC.

²⁴ See p. 1-2: General Assembly of the Commonwealth of Pennsylvania. Joint State Government Commission. (2005). *Report of the Advisory Committee on Geriatric and Seriously Ill Inmates*.

²⁵ Calculated from June 2004 to October 2020 using the U.S. Bureau of Labor Statistics CPI Inflation Calculator: https://www.bls.gov/data/inflation_calculator.htm.

²⁶ Sampson, R., & Laub, J. (2003). Life-Course Desisters? Trajectories of Crime Among Delinquent Boys Followed to Age 70. *Criminology* 41(3), 555-592. <https://doi.org/10.1177%2F0002716205280075>

²⁷ PLSE's mission is to "[provide] free legal advice and representation to low-income Philadelphia residents whose criminal records are holding them back from achieving their social and career potentials. PLSE seeks a more equitable social environment for those with criminal records through individual representation, strategic litigation, community education, research and advocacy. PLSE does this by seeking expungements in criminal court and pardons from the Governor; educating elected, business, and community leaders; empowering and organizing under-resourced communities; and leading legislative, administrative and systemic reform."

²⁸ Pa. Const. art. IV, § 9(a). The pardon power was originally granted to William Penn by King James II in the original Charter of March 4, 1681; and it appeared in the first Constitution (then called the "Frame of Government") of Pennsylvania adopted on September 28, 1776. The Board of Pardons was added by constitutional amendment in 1872. Since then, amendments have been adopted that changed its composition and size. Of relevance to this report, the constitution was amended in 1997 to require unanimous votes in cases of commuting sentences of death or life in prison.

²⁹ Pennsylvania Board of Pardons. (n.d.). Function of the Board. Accessed November 17, 2020. <https://www.bop.pa.gov/Board-Information/Pages/Function-of-the-Board.aspx>

³⁰ See *Commonwealth v. Williams*, 129 A.3d 1199, 1214-15 (Pa. 2015).; p. 69-70, p. 160 of Smithers, W. (1909). *Treatise on Executive Clemency in Pennsylvania*.

³¹ See *Commonwealth ex rel. Cater v. Myers*, 194 A.2d 185, 187 (Pa. 1963).

³² See *Commonwealth v. Michael*, 56 A.3d 899, 903 (Pa. 2012).; *Commonwealth v. Sutley*, 474 Pa. 256 (Pa. 1977).; *Commonwealth v. Button*, 332 Pa. Super. 239 (Pa. Super. Ct. 1984).; *Commonwealth v. Gaito*, 277 Pa. Super. 404 (Pa. Super. Ct. 1980).

³³ 37 Pa. Code § 81.231(a) provides: "For prisoners serving life sentences or sentences for crimes of violence, a vote by a majority of the Board is required to grant a public hearing. In all other cases, except capital cases, two votes are required for a public hearing to be granted."

³⁴ *Id.* at 37 Pa. Code § 81.232(a): "If a public hearing is granted to an applicant who is serving a sentence of death, life or a sentence for murder, voluntary manslaughter, attempt to commit murder or attempt to commit voluntary manslaughter, each member of the Board will interview the applicant prior to the public hearing."

³⁵ *Id.* at 37 Pa. Code § 81.301(a): “An application for a pardon or commutation of a death or life imprisonment sentence must be approved at a public hearing by a unanimous vote of the members, prior to delivery of the written recommendation to the Governor for a decision.”

³⁶ Pa. Const. art. IV, § 9(a).

³⁷ Offense date is known for 1,034 (88.7%) people in the second-degree population.

³⁸ Time calculated from September 1, 2020.

³⁹ 16 counties had 0 people serving life without parole for second-degree murder: Crawford, Jefferson, Greene, Columbia, Tioga, Somerset, Clinton, Perry, Potter, Juniata, Snyder, Susquehanna, Fulton, Montour, Sullivan, and Cameron.

⁴⁰ The DOC did not further specify the racial categories “Asian” and “Other”.

⁴¹ Cozzens, Q & Grote, B. (2018). *A Way Out: Abolishing Death By Incarceration in Pennsylvania*. Abolitionist Law Center.

⁴² The remaining 132 individuals were excluded from this analysis either because their docket was not available or no offense date was listed on their docket.

⁴³ Individuals who were sentenced to mandatory life without parole for second-degree murder for a crime committed under the age of 18 are eligible for a new sentence following *Miller* (2012) and *Montgomery v. Louisiana* (2016), which made *Miller* retroactive. These individuals have been included in the audit because the focus of the review is factors related to sentencing for the crime of second-degree murder, which remain pertinent regardless of whether one has received a new sentence. 84 individuals in the second-degree population whose public records were located were younger than 18 at the time of the offense. One had a migrated disposition, five had not yet been re-sentenced, and four received a new sentence of life without parole. The remaining 74 received an average minimum sentence length of 30.5 years, with a standard deviation of 6.9 years, at which point they would be eligible for review by the Parole Board.

⁴⁴ It merits mentioning that this age (19) is just slightly beyond the jurisdiction of the juvenile court, where the Supreme Court has ruled that life sentences are unconstitutional.

⁴⁵ Arain, M., Haque, M., Johal, L., Mathur, P., Nel, W., Rais, A., Sandhu, R. & Sharma, S. (2012). Maturation of the Adolescent Brain. *Neuropsychiatric Disease and Treatment*. 9, 449-61. <https://doi.org/10.2147/NDT.S39776>

⁴⁶ Data on individuals identified as Asian, Native American, and Other are also included in the data table but have comparatively small sample sizes. A special report on race, being released simultaneously, considers race and the second-degree population more fully.

⁴⁷ Positive correlation ($R = 0.087$, $p = 0.007$) between age and plea bargaining.

⁴⁸ Negative correlation ($R = -0.152$, $p = 0.000$) between age and having at least one co-defendant.

⁴⁹ Negative correlation ($R = -0.124$, $p = 0.000$) between age and quantity of co-defendants.

⁵⁰ Age at the time of offense was known for 363 people who had co-defendants (99.7% of those with a co-defendant identified).

⁵¹ $SD = 5.38$

⁵² Age at the time of offense was known for 670 people who had no known co-defendants (99.3% of those with no co-defendants identified).

⁵³ $SD = 7.20$

⁵⁴ Regression with race and age at the time of offense with having a co-defendant. Adjusted $R^2 = 0.052$. Age at time of offense $t = -4.118$, $p = 0.000^{**}$

⁵⁵ Regression: race and age at time of offense and their impact on having a co-defendant. Adjusted $R^2 = 0.052$. Race: White and Co-defendant: Yes or No $t = -5.665$, $p = 0.000^{**}$

⁵⁶ See *Thompson v. Oklahoma*, 487 U.S. 815 (1988).; *Graham v. Florida*, 560 U.S. 48 (2010).

⁵⁷ Center on Juvenile and Criminal Justice (n.d.). *Juvenile Justice History*. Accessed November 17, 2020. <http://www.cjcj.org/education1/juvenile-justice->

history.html#:~:text=First%20established%20in%201899%20in,to%20a%20juvenile%20justice%20system.

⁵⁸ See *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016).; *Adams v. Alabama*, 136 S. Ct. 1796 (2016).; *Tatum v. Arizona*, 137 S. Ct. 11 (2016).; *Evans-García v. United States*, 744 F.3d 235 (Cir. 2014).

⁵⁹ *Miller v. Alabama*, 567 U.S. 460 (2012).

⁶⁰ Brief for the American Psychological Association, American Psychiatric Association, and National Association of Social Workers as Amici Curiae in Support of Petitioners, *Miller v. Alabama*, 567 U.S. 460 (2012). & *Jackson v. Hobbs*, 181 L.Ed 2d 395 (2011) (Nos. 10-9646, 10-9647), <https://www.apa.org/about/offices/ogc/amicus/miller-hobbs.pdf>

⁶¹ *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

⁶² *Roper v. Simmons*, 543 U.S. 551 (2005).

⁶³ *Miller v. Alabama*, 567 U.S. 460 (2012).

⁶⁴ *Miller v. Alabama*, 567 U.S. 460 (2012).

⁶⁵ Cohen, A., Breiner, K., Steinberg, L., Bonnie, R., Scott, E., Taylor-Thompson, K., Rudolph, M., Chein, J., Richeson, J., Heller, A., Silverman, M., Dellarco, D., Fair, D., Galván, A., & Casey, B. (2016). When Is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts. *Psychological Science* 27(4), 549-62. doi: 10.1177/0956797615627625.; Cohen, A. & Casey, B. (2014). Rewiring Juvenile Justice: The Intersection of Developmental Neuroscience and Legal Policy. *Trends in Cognitive Sciences*, 18, 63–65. <https://doi.org/10.1016/j.tics.2013.11.002>

⁶⁶ Steinberg, L. (2008). A Social Neuroscience Perspective on Adolescent Risk-taking. *Developmental Review* 28(1), 78-106. <https://doi.org/10.1016/j.dr.2007.08.002>; Arain, M., Haque, M., Johal, L., Mathur, P., Nel, W., Rais, A., Sandhu, R. & Sharma, S. (2012). Maturation of the Adolescent Brain. *Neuropsychiatric Disease and Treatment*. 9, 449-61. <https://doi.org/10.2147/NDT.S39776>

⁶⁷ Farrington, D. (1986). Age and Crime. *Crime and Justice* 7, 189-250. <http://www.jstor.org/stable/1147518>; Loeber, R. & Farrington, D. (2014). Age-Crime Curve. *Encyclopedia of Criminology and Criminal Justice*, 12-18. https://doi.org/10.1007/978-1-4614-5690-2_474

⁶⁸ Sampson, R., & Laub, J. (2003). Life-Course Desisters? Trajectories of Crime Among Delinquent Boys Followed to Age 70. *Criminology* 41(3), 555-592. <https://doi.org/10.1177%2F0002716205280075>

⁶⁹ Piquero, A., Jennings, W., & Barnes, J. (2012). Violence in Criminal Careers: A Review of the Literature from a Developmental Life-Course Perspective. *Aggression and Violent Behavior*, 17(3), 171-179. <https://doi.org/10.1016/j.avb.2012.02.008>

⁷⁰ Snyder, H., Cooper, A., Mulako-Wangota, J. Bureau of Justice Statistics. Generated using the Arrest Data Analysis Tool at www.bjs.gov. Accessed December 16, 2020.

⁷¹ Robbery was a context charge for 720 of the 906 located court dockets where contextual felonies were listed.

⁷² *Graham v. Florida*, 560 U.S. 48 (2010)

⁷³ Arain, M., Haque, M., Johal, L., Mathur, P., Nel, W., Rais, A., Sandhu, R. & Sharma, S. (2012). Maturation of the Adolescent Brain. *Neuropsychiatric Disease and Treatment*. 9, 449-61. <https://doi.org/10.2147/NDT.S39776>

⁷⁴ Farrington, D. (1986). Age and Crime. *Crime and Justice* 7, 189-250. <http://www.jstor.org/stable/1147518>

⁷⁵ U.S. Department of Justice. Bureau of Justice Statistics. (1983). *Recidivism Among Released Prisoners 1983: [United States]*.; U.S. Department of Justice. Bureau of Justice Statistics. (2002). *Recidivism of Prisoners Released in 1994*.

⁷⁶ Sampson, R., & Laub, J. (2003). Life-Course Desisters? Trajectories of Crime Among Delinquent Boys Followed to Age 70. *Criminology* 41(3), 555-592. <https://doi.org/10.1177%2F0002716205280075>

⁷⁷ Prescott, J., Pyle, B., & Starr, S. (2020). Understanding Violent-Crime Recidivism. *Notre Dame Law Review* 4, 1643-1698.

⁷⁸ Prescott, J., Pyle, B., & Starr, S. (2020). Understanding Violent-Crime Recidivism. *Notre Dame Law Review* 4, 1643-1698.

⁷⁹ Cunningham, M. & Sorenson, J. (2006). Nothing to Lose? A Comparative Examination of Prison Misconduct Rates Among Life-Without-Parole and Other Long-Term High-Security Inmates." *Criminal Justice and Behavior* 33(6), 683-705. <https://doi.org/10.1177%2F0093854806288273>

⁸⁰ Criminal Justice Commission. State of Oregon Statistical Analysis Center. (2019). 2018 SAC Grant Report: Recidivism with Extended Follow-Up Periods and Hazard Analysis.

⁸¹ General Assembly of the Commonwealth of Pennsylvania. Joint State Government Commission. (2005). *Report of the Advisory Committee on Geriatric and Seriously Ill Inmates*.

⁸² See p. 81: General Assembly of the Commonwealth of Pennsylvania. Joint State Government Commission. (2005). *Report of the Advisory Committee on Geriatric and Seriously Ill Inmates*. Of the seven people (out of 492 parolees) with new convictions, the two with possible violent convictions (using the BOP definition) – assault and robbery – had mental health issues. The other five offenses were forgery, retail theft, possession of a firearm by a felon, criminal mischief, and grand larceny.

⁸³ See p. 81-82: General Assembly of the Commonwealth of Pennsylvania. Joint State Government Commission. (2005). *Report of the Advisory Committee on Geriatric and Seriously Ill Inmates*.

⁸⁴ See p. 85: General Assembly of the Commonwealth of Pennsylvania. Joint State Government Commission. (2005). *Report of the Advisory Committee on Geriatric and Seriously Ill Inmates*.

⁸⁵ See p. 86: General Assembly of the Commonwealth of Pennsylvania. Joint State Government Commission. (2005). *Report of the Advisory Committee on Geriatric and Seriously Ill Inmates*.

⁸⁶ Daftary-Kapur, T. & Zottoli, T. (2020). *Resentencing of Juvenile Lifers: The Philadelphia Experience*. <https://digitalcommons.montclair.edu/cgi/viewcontent.cgi?article=1084&context=justice-studies-facpubs>. One person was convicted of Contempt and the other for Robbery in the Third Degree. Robbery of the third-degree does not meet the BOP's definition of crimes of violence: See 37 Pa. Code § 81.202.

⁸⁷ Daftary-Kapur, T. & Zottoli, T. (2020). *Resentencing of Juvenile Lifers: The Philadelphia Experience*. <https://digitalcommons.montclair.edu/cgi/viewcontent.cgi?article=1084&context=justice-studies-facpubs>

⁸⁸ *Miller v. Alabama*, 567 U.S. 460 (2012).

⁸⁹ Discretionary sentences are given in terms of ranges (e.g., 10-20 years). For example, using the example of 10-20 years, sentence lengths were calculated using the average lowerlimit (10), average midpoint (15), and average maximum (20).

⁹⁰ U.S. Department of Justice, Bureau of Justice Statistics. (2018). *Time Served in State Prison, 2016*. <https://www.bjs.gov/content/pub/pdf/tssp16.pdf>

⁹¹ U.S. Department of Justice, Bureau of Justice Statistics. (2018). *Time Served in State Prison, 2016*. <https://www.bjs.gov/content/pub/pdf/tssp16.pdf>

⁹² 18 Pa.C.S.A. § 1102(d) currently sets the recommended penalty for third-degree murder, the most serious of homicide charges after first- and second-degree murder, at a maximum of 40 years, yet the average for these co-defendants is significantly lower. This is likely because the previous recommendation was 10-20 years – see H.B. 16, Pa. Gen. Assembly. 1st Sp. Sess. (Pa. 1995).

⁹³ While much attention has been paid to escalating financial costs, thousands of families and hundreds of communities across Pennsylvania also bear the weight of the social costs of life imprisonment. For example, researchers have increasingly made the connection between public health and mass incarceration's concentrated effects on poor communities of color, which may contribute to widening health inequality both within the U.S. and compared to other countries. See Wideman, C., & Wang, E. (2017). Mass Incarceration, Public Health, and Widening Inequality in the USA. *The Lancet* 389(10077), 1464-1474. [https://doi.org/10.1016/S0140-6736\(17\)30259-3](https://doi.org/10.1016/S0140-6736(17)30259-3); Blankenship, K., Del Rio Gonzalez, A., Keene, D., Groves, A., Rosenberg, A. (2018). Mass Incarceration, Race Inequality, and Health: Expanding Concepts and Assessing Impacts on Well-Being. *Social Science and Medicine* 215, 45-52. doi: 10.1016/j.socscimed.2018.08.042

⁹⁴ Calculated using the average annual cost per year of \$46,767 provided by the DOC to the Secretary of Board of Pardons.

⁹⁵ Calculated using the average annual cost per year of \$46,767 with the average annual medication costs for those 50 years old and older, \$3,630.75, added for each estimated year served per person at the age of 50 and older. Life expectancy data from the National Vital Statistics Reports has been used in court cases around the country related to juvenile life without parole and rulings in *Miller and Graham*. See e.g., *Casiano v. Commissioner of Correction*, 317 Conn. 52, 57-58, 115 A.3d 1031, 1035 (2015); *People v. Mendez*, 188 Cal.App.4th 47, 114 Cal.Rptr.3d 870, 882 (2010).

⁹⁶ H.B. 16, Pa. Gen. Assembly. 1st Sp. Sess. (Pa. 1995).

⁹⁷ It is worth noting that the data from Allegheny County is less complete (74.0%) than for Philadelphia (96.7%) and is known for even fewer White people (56.5%) within that population, raising the possibility that this finding is less representative of the population overall.

⁹⁸ $R = 0.083$, $p = 0.009$. Act 56 of 2018, otherwise known as the “Clean Slate Act” can be found at <https://www.legis.state.pa.us/cfdocs/Legis/LI/uconsCheck.cfm?txtType=HTM&yr=2018&sessInd=0&smthLwInd=0&act=56>. The Clean Slate Act amended 18 Pa. C.S. §§ 9121 & 9122 and 42 Pa.C.S. §§ 6307(b) & 6308(b).

⁹⁹ Includes rape or deviate sexual intercourse by force or threat of force.

¹⁰⁰ Race was a significant predictor of plea outcome (Black $t = -5.488$, $p = 0.000$; Hispanic/Latinx $t = -2.481$, $p = 0.013$); age at the time of offense was not significant ($t = 1.289$, $p = 0.198$); felony conviction was not significant (Robbery $t = 0.480$, $p = 0.632$; Burglary $t = -0.976$, $p = 0.329$).

¹⁰¹ Correlation for plea and co-defendants: $R = -0.095^{**}$, $p = 0.003$.

¹⁰² Group was significantly correlated with plea outcome ($r = 0.218$, $p = 0.000$). Using a χ^2 Goodness of Fit test with the second-degree population frequency as the expected plea frequency, the difference observed in the co-defendant population is $\chi^2 = 140.709$, $p = 0.000$.

¹⁰³ 18 Pa.C.S.A. § 1102(b); 61 Pa.C.S.A. § 3903.

¹⁰⁴ 234 Pa. Code § 590.

¹⁰⁵ Bright, S. (2015). The Role of Race, Poverty, Intellectual Disability, and Mental Illness in the Decline of the Death Penalty. *University of Richmond Law Review* 49(671), 671-692.

¹⁰⁶ Landes, W. (1971). An Economic Analysis of the Courts. *The Journal of Law and Economics* 14(1), 61-107.

¹⁰⁷ National Association of Criminal Defense Lawyers. (2018). *The Trial Penalty: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save It*. <https://www.nacdl.org/Document/TrialPenaltySixthAmendmentRighttoTrialNearExtinct>

¹⁰⁸ Cooper, G., Meterko, V., & Gadtaula, P. (2019). Innocents Who Plead Guilty: An Analysis of Patterns in DNA Exoneration Cases. *Federal Sentencing Reporter* 31(4-5), 234-238. <https://doi.org/10.1525/fsr.2019.31.4-5.234>.

¹⁰⁹ 42 Pa.C.S. § 9711.

¹¹⁰ 42 Pa.C.S. § 9711.

¹¹¹ Thaxton, S. (2013). Leveraging Death. *The Journal of Law & Criminology* 103(2), 475-552.

¹¹² The audit was unable to control for attorney type from the public dockets, but differing legal advice is also worthy of further investigation.

¹¹³ <https://ujportal.pacourts.us/>

¹¹⁴ The AOPC website maintains Pennsylvania’s Unified Judicial System, a free website that allows the public to access court dockets, court summaries, and other information related to the court process. Some information from these dockets may be either partially or fully migrated, archived, sealed, or otherwise expunged, yielding somewhat different sample sizes based on analyzed metrics. Matched court dockets needed to include at least one murder conviction but did not need to specify “murder of the

second degree” due to inconsistencies in charging of second-degree murder and coding by court clerks by jurisdiction over time.

¹¹⁵ The AOPC website lists general statistics on migrated data by county:

<https://ujportal.pacourts.us/RefDocuments/CPCMSCaseLoad.pdf>.

¹¹⁶ The full data collected and reviewed by the audit include the following categories of information: date of birth; committing county; race; assigned sex; sentence date; reception date; information from dockets from Court of Common Pleas, including offense date, arrest date, number of charges, each murder charge and result, contextual felonies, whether the conviction was by trial or plea agreement; and linked co-defendant(s) docket information, including any murder charge(s) and result(s), their highest penalty for a murder conviction if applicable or the highest penalty for a non-murder-conviction, and whether the conviction was by trial or plea agreement. Murder charges were coded for the following statutes: 18 § 2501 §§ A, 18 § 2502 §§ A, 18 § 2502 §§ B, 18 § 2502 §§ C, 18 § 2503 §§ A1, and 18 § 2504 §§ A. Notably, 18 § 2504 §§ A, voluntary manslaughter, does not constitute a crime of violence under 37 Pa. Code § 81.202. Felonies were recorded and coded for the following statutes from the dockets: Robbery (18 § 3701 §§ A1 I-IV, 18 § 3701 §§ A2, and 18 § 3702 §§ A); Burglary (18 § 3502 §§ A); Homicide (18 § 2503 §§ A1, 18 § 2504 §§ A, 18 § 2603 §§ A); Sexual Offenses (18 § 3121 §§ A1, 18 § 3121 §§ A3, 18 § 3121, 18 § 3121 §§ 2, 18 § 3121 §§ 6, 18 § 3122.1, 18 § 3123, 18 § 3123 §§ 1, 18 § 3123 §§ 2, 18 § 3123 §§ 5, 18 § 3123 §§ A6, 18 § 3124.1, 18 § 3125 §§ 1); Kidnapping (18 § 2901, 18 § 2901 §§ A1-3); and Arson (18 § 3301, 18 § 3301 §§ A11-II, 18 § 3301 §§ A2).

¹¹⁷ I.e., If there is a large difference between the percentage of the population where a variable is known and the total subsection of that population, then conclusions drawn from the data may be less likely to be representative of the population overall.