

FAIR PUNISHMENT PROJECT



FACT SHEET: NONVIOLENT LIFE WITHOUT PAROLE¹

In recent years, criminal justice reform efforts throughout the nation have been gathering momentum. Citizens and lawmakers across the political spectrum are increasingly rejecting lengthy, punitive terms of incarceration for nonviolent offenses.² In many jurisdictions, legislators are repealing laws imposing mandatory minimum sentences, revising guidelines imposing draconian penalties for narcotics possession and distribution, and modifying habitual offender laws to exclude nonviolent drug and property offenses. The shift reflects the recognition that lifetime prison terms, once considered an appropriate and effective response to a wide range of offenses, are wasteful and cruel. In many jurisdictions, these reform efforts have eliminated life without parole sentences for nonviolent offenses. However, in some jurisdictions, these laws -- relics of a widely-abandoned ideology -- remain on the books. A summary of the laws permitting nonviolent life without parole sentences (“NVLWOP”) is set forth below.

STATUTORY AUTHORIZATION FOR NONVIOLENT LIFE WITHOUT PAROLE

JURISDICTIONS THAT DO NOT AUTHORIZE NONVIOLENT LIFE WITHOUT PAROLE SENTENCES (29):

Alaska
California
Colorado
Connecticut
Hawaii
Idaho
Indiana
Kansas

¹ The Fair Punishment project wants to thank Jennifer Turner and Will Bunting at the American Civil Liberties Union for their valuable research in this area, which resulted in the 2013 report, *A LIVING DEATH: LIFE WITHOUT PAROLE FOR NONVIOLENT OFFENSES* (Vanita Gupta *et al.* eds., 2013), available at <https://www.aclu.org/files/assets/111813-lwop-complete-report.pdf>

² We define an offense as “nonviolent” if it does not involve the use or threat of physical force or violence against another person. *See Solem v. Helm*, 463 U.S. 277, 298 (1983) (Helm’s offense “involved neither violence nor threat of violence to any person.”). In addition, offenses that are sexual in nature or result in the death of another person, regardless of whether proof of force is required, are considered “violent.”

Kentucky
Maine
Maryland
Massachusetts
Minnesota
Missouri
Montana
Nebraska
New Hampshire
New Jersey
New Mexico
New York
Ohio
Oregon
Rhode Island
Tennessee
Texas
Utah
Vermont
Washington
West Virginia

JURISDICTIONS AUTHORIZING NONVIOLENT LIFE WITHOUT PAROLE (“NVLWOP”) SENTENCES, AND RELEVANT STATUTORY PROVISIONS (23):

FEDERAL GOVERNMENT:

Nonviolent offenses punishable by LWOP:

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| 18 U.S.C. § 225 | Organizing or supervising a continuing financial crimes enterprise and receiving \$5 million or more in gross receipts over a 2-year period. |
| 21 U.S.C. § 841(b)(1)(A) | Manufacturing/distributing, possession with intent to sell, etc. narcotics over statutory thresholds (e.g., 1 kg heroin, 5 kg cocaine, 280 g cocaine base, 50 g methamphetamine). |
| 21 U.S.C. § 848 (b) | Directing or managing a "continuing criminal enterprise" relating to drugs where, the enterprise manufactured, sold, e.g., more than 30 kg heroin, 150 kg cocaine, 8.4kg cocaine base, etc. OR received more than \$10 million in gross receipts over a 12-month period has mandatory LWOP. |

18 U.S.C. § 924 (o) Conspiring with two or more others to possess or use a firearm during any drug trafficking offense, if the firearm is a machinegun or is equipped with a silencer.

Statutory provisions authorizing NVLWOP for repeat offenders:

18 U.S.C. §924(c) Second or subsequent conviction for possessing for using a firearm during any drug trafficking offense, if the firearm is a machinegun or destructive device or is equipped with a silencer, results in mandatory LWOP.

18 U.S.C. §924(e) "Armed Career Criminal" Act (ACCA) makes a life sentence permissible (discretionary) if the person is convicted of any offense involving unlawful firearms possession or transportation and has three or more prior convictions for a "serious drug offense" or "violent felony."

A "violent felony" includes crimes involving the use, attempted use, or threatened use of physical force against the person or property of another, burglary, arson and use of explosives.

18 U.S.C. § 3559 If defendant convicted of "serious violent felony" and has one or more prior convictions for either another "serious violent felony" or "serious drug offense," LWOP is mandatory. Serious violent felonies include robbery, carjacking, and possession of firearms in relation to drug trafficking offenses. Serious drug offenses include engaging in continuing criminal drug enterprise and manufacturing or distributing narcotics over statutory thresholds.

21 U.S.C. § 841(b)(1)(B) If defendant is convicted of manufacturing or distributing narcotics over statutory thresholds (e.g. 100g heroin, 500g cocaine, 28g cocaine base, 5 g methamphetamine) after being convicted of a prior drug-related felony, LWOP is possible sentence (discretionary).

21 U.S.C. § 860 A second or subsequent conviction for distributing or manufacturing a controlled substance in or near a school or public housing may result in an LWOP sentence (discretionary).

ALABAMA:

Nonviolent offenses punishable by LWOP:

Ala. Code § 13A-12-231 Selling or manufacturing narcotics over statutory thresholds (e.g., 1000 lbs cannabis, 10 kilos cocaine, 56g heroin, etc.)

Ala. Code § 13A-12-233 Operating a "drug trafficking enterprise."

Statutory provisions authorizing NVLWOP for repeat offenders:

- Ala. Code § 13A-5-9 If convicted of three prior felonies and commits a Class A felony, must be sentenced to life or LWOP.
If convicted of three prior felonies, including one that is a Class A felony, and commits a Class A felony, must be sentenced to LWOP.
Class A felonies include: Sale, manufacture or possession of narcotics over statutory thresholds (e.g., 2.2 lbs. cannabis, 28g cocaine, 4g heroin, etc.); sale of controlled substances to minors; 1st degree manufacture of narcotics.
- Ala. Code § 13A-12-233 A person convicted a second time of engaging in a drug trafficking enterprise must receive LWOP.
- Ala. Code § 15-22-27.2 If a life sentence is imposed for a Class A felony after a conviction for a previous Class A felony, the sentence becomes LWOP.

ARIZONA:

Nonviolent offenses punishable by LWOP:

- A.R.S. § 13-3410 A person convicted of a serious drug offense who committed the offense as a leader of an organized drug enterprise or a manager or supervisor thereof must receive LWOP (mandatory).
“Serious drug offense” means possession or sale of precursor chemicals (A.R.S. § 13-3404.01); possession of marijuana for sale and related offenses (A.R.S. § 13-3405(A)(2)-(4)); possession for sale of dangerous drug and related offenses (A.R.S. § 13-3407(A)(2)-(7)); possession for sale of certain amounts narcotic drugs and related offenses (A.R.S. § 13-3408(A)(2)-(7)); felony possession, use, etc. of prescription only drugs; and involving or using minors in controlled substance offenses (A.R.S. § 13-3409).

ARKANSAS:

Nonviolent offenses punishable by LWOP:

- A.C.A. § 5-4-401 Class Y felonies may be punished by life in prison.
- A.C.A. § 16-93-613 A person sentenced to life for any Class Y, Class A, or Class B felony is not eligible for parole unless the sentence is commuted to a term of years by executive clemency.
- A.C.A. § 5-39-204 Aggravated residential burglary (occupied burglary while defendant armed with a dangerous weapon) is a Class Y felony.
- A.C.A. § 5-64-422 Sale of cocaine or methamphetamine over threshold amounts is Class Y felony.

- A.C.A. § 5-64-423 Manufacture of methamphetamine over threshold amounts is a Class Y felony.
- A.C.A. § 5-64-440 Trafficking in controlled substances is a Class Y felony.

DELAWARE:

Statutory provisions authorizing NVLWOP for repeat offenders:

- 11 Del. C. § 4214 Life without parole authorized (discretionary) for conviction of a “Title 11” violent offense, if the defendant has previously been convicted of either two or three other felonies, depending on the nature of the prior offenses.
- 11 Del.C. § 4201 Title 11 violent felonies include 1st and 2nd degree burglary, several different types of firearm offenses, racketeering, and 1st-degree arson (which can occur when there is a reasonable possibility that a person is present).

DISTRICT OF COLUMBIA:

Statutory provisions authorizing NVLWOP for repeat offenders:

- DC ST § 22-1804a Third or subsequent conviction for a "crime of violence" may receive up to LWOP. "Crime of violence" includes simple burglary (DC ST §§ 22-801, 22-4501, 23-1331).

FLORIDA:

Nonviolent offenses punishable by LWOP:

- § 893.135, Fla. Stat. Sale, purchase, manufacture, delivery, or possession of controlled substances in excess of certain statutory thresholds must receive life (mandatory).
- § 810.02(2)(c), Fla. Stat. Burglary of occupied dwelling or structure with damage is over 1000 dollars is punishable by life (discretionary).
- § 810.02(2)(b), Fla. Stat. Burglary where person is or becomes armed with a firearm or deadly weapon during the offense is punishable by life.
- § 874.10, Fla. Stat. Organizing or managing criminal gang-related activity is a 1st-degree felony punishable by life.
- § 843.167, Fla. Stat. Intercepting or knowingly using an intercepted police radio communication to assist in committing a crime or escaping detection during the commission of a 1st-degree felony may be punished by a life sentence.
- §§ 775.087(1) and 893.135, Fla. Stat. Drug trafficking (any qualifying quantity) while in possession of a firearm or deadly weapon is punishable by life.
- §§ 775.087(1) and 893.13(c), Fla. Stat. Sale of narcotics (except marijuana) within 1000 feet of a school / child care facility / church while in possession of a firearm or deadly weapon is punishable by life.
- § 921.002(1)(e), Fla. Stat. Parole eliminated for all noncapital felonies

Statutory provisions authorizing NVLWOP for repeat offenders:

- § 775.084, Fla. Stat. Any person with 2 prior felonies, last within 5 years of current offense, who is charged with any felony other than simple drug possession qualifies as a “habitual felony offender.” Any person with one conviction for a violent felony within 5 years of the current offense qualifies as a “habitual violent felony offender.” These enhancements increase the potential punishment for any 1st degree felony to life. Nonviolent first-degree felonies include drug trafficking and sale of narcotics within 1000 feet of a school/child care facility/church (see note above).
- § 775.082, Fla. Stat. Any individual committing a qualifying offense within 3 years of release from prison is a prison release reoffender (PRR) and MUST be sentenced to the maximum penalty for that offense. Armed burglary; Burglary causing damage > \$1000 are qualifying offenses that carry a mandatory life sentence for a PRR.
- § 921.002(1)(e), Fla. Stat. Parole eliminated for all noncapital felonies

GEORGIA:

Statutory provisions authorizing NVLWOP for repeat offenders:

- Ga. Code Ann. § 16-11-160 A person facing a second conviction for possessing or using a machinegun, sawed-off shotgun, or gun with a silencer during the commission or attempt of sale or manufacture of any controlled substance or who wears a bulletproof vest during any felony involving manufacture or delivery of controlled substances or trafficking in certain controlled substances must receive “life” (mandatory).
- Ga. Code Ann. § 16-11-133. A person who has a prior conviction for certain serious violent offenses who is subsequently convicted two or more times of possessing or having within reach a firearm during the commission of certain controlled substance offenses must receive “life” (mandatory).
- Ga. Code Ann. § 16-13-30. A person convicted a second or subsequent time of manufacture or delivery of, e.g., any amount of any Schedule I controlled substance may receive a “life” sentence (discretionary).
- Ga. Code Ann. § 17-10-7 If a person is sentenced to “life” as a recidivist on a fourth or greater felony, he is ineligible for parole. This provision, in combination with those cited above, can result in a LWOP sentence.

ILLINOIS:

Statutory provisions authorizing NVLWOP for repeat offenders:

730 ILCS 5/5-4.5-95 An offender convicted of a third or subsequent Class X felony is a "habitual criminal" and must be sentenced to natural life imprisonment (no possibility of parole per §5/3-3-3(d)). Class X felonies include, but are not limited to: manufacture, delivery, or possession with intent to manufacture or deliver controlled substances (amounts specified by type); possessing 15 or more grams of methamphetamine; firearms trafficking if prior conviction; aggravated insurance fraud; theft of property over \$100,000 in value from school, place of worship, or gov't property; theft of property exceeding \$1 million in value.

IOWA:

Statutory provisions authorizing NVLWOP for repeat offenders:

I.C.A. § 124.401D A person convicted a second or subsequent offense of conspiring to manufacture for delivery or delivery or possession with intent to deliver to a minor any amount of methamphetamine is guilty of a Class "A" felony. Class "A" felonies must receive LWOP (mandatory) unless the governor commutes the sentence. I.C.A. § 902.1.

LOUISIANA:

Statutory provisions authorizing NVLWOP for repeat offenders:

LSA-R.S. 15:529.1 For third felony that is a crime of violence, a violation of the Uniform Controlled Substances Act punishable by 10 years or more (this includes simple possession of Schedule I narcotics), or any other felony punishable by 12 years or more, penalty shall be LWOP (mandatory).
For fourth felony of any type, may be sentenced to LWOP (discretionary) .
Variety of nonviolent crimes are punishable by 12 years or more (simple burglary, simple arson, some credit card fraud, computer tampering, possession of a firearm by a convicted felon, perjury, etc.).

MICHIGAN:

Statutory provisions authorizing NVLWOP for repeat offenders:

M.C.L.A. § 333.7413 A person facing a second or subsequent conviction for manufacturing, delivering, or merely possessing more than 50 grams of most controlled substances, e.g., cocaine, heroin, methamphetamine, prescription opiates, or conspiring to same must receive LWOP (mandatory).

MISSISSIPPI:

Nonviolent offenses punishable by LWOP:

Miss. Code Ann. § 41-29-139(g) "Aggravated trafficking" of 200 g or more of Schedule I or II controlled substances (but not marijuana or synthetic cannabinoids) may be punished by LWOP (discretionary).

Statutory provisions authorizing NVLWOP for repeat offenders:

Miss. Code Ann. § 99-19-83 A person convicted of any felony who has two or more prior felony convictions, one of which was a "crime of violence" and both of which actually resulted in imprisonment of one year or more, must receive LWOP (mandatory).

NEVADA:

Statutory provisions authorizing NVLWOP for repeat offenders:

N.R.S. § 207.010 A person facing a fourth or subsequent conviction for any felony is a "habitual criminal" and may receive LWOP (discretionary).

N.R.S. § 207.012 A person facing a third or subsequent conviction for an enumerated offense is a "habitual felon" and may receive LWOP (discretionary). Nonviolent enumerated offenses include arson (§ 205.010), armed burglary (§ 205.060), armed home invasion (§ 205.067), burglary with explosives (§ 205.075), and use or possession of explosives during the commission of a felony (§ 202.820).

NORTH CAROLINA:

Statutory provisions authorizing NVLWOP for repeat offenders:

N.C.G.S.A. § 14-7.7 A person facing a third or subsequent conviction for "violent felonies" is a "violent habitual felon" and must receive LWOP (mandatory). "Violent felonies" for this provision include ALL "Class A through E felonies." This incorporates several nonviolent felonies, including, e.g., theft and embezzlement of large amounts of \$\$ (over 100k), sale of drugs to minors, trafficking in narcotics, sale of narcotics within 300 feet of a school.

NORTH DAKOTA:

Nonviolent offenses punishable by LWOP:

NDCC § 19-03.1-23.1 Class A drug offenses (relating to manufacture or delivery of Schedule I or II narcotics or methamphetamine (§ 19-03.1-23)) are punished as Class AA offenses if they involve aggravating factors, such as manufacture or delivery in or near a school, quantities of drugs over statutory thresholds, distribution to a minor, or use of a firearm during the offense.

NDCC § 12.1-32-01 Class AA offenses may be punished by up to life without parole.

OKLAHOMA:

Statutory provisions authorizing NVLWOP for repeat offenders:

63 Okl.St. Ann. § 2-415(D) If a person convicted of drug trafficking has previously been convicted of two or more controlled substances felony violations, may be punished by up to life without parole (discretionary). If each of the two prior offenses are drug trafficking offenses (this is the third), LWOP is mandatory.

PENNSYLVANIA:

Statutory provisions authorizing NVLWOP for repeat offenders:

42 Pa.C.S.A. § 9714 A person facing a third or subsequent conviction for a “crime of violence” is a habitual offender. Habitual offenders generally receive a 25-year minimum sentence. However, a court may depart from the 25-year term and impose LWOP (discretionary) if it determines that 25 years is insufficient to protect public safety. “Crime of violence” includes burglary of an occupied dwelling (armed or unarmed).

SOUTH CAROLINA:

Nonviolent offenses punishable by LWOP:

SC ST § 16-11-311. First degree burglary, including armed burglary, burglary at night, and third and subsequent convictions for burglary.

Statutory provisions authorizing NVLWOP for repeat offenders:

SC ST § 17-25-45(A) A person convicted of a “most serious offense” must receive LWOP (mandatory) if he has (a) 1 prior conviction for a “most serious offense” or (b) 2+ prior convictions for “serious offenses.” Nonviolent “most serious offenses” include first-degree burglary (§ 16-11-311)(armed burglary, burglary at night) and first-degree arson (§ 16-11-110(A)).

SC ST § 17-25-45(B) A person convicted of a “serious offense” must receive LWOP (mandatory) if he has 2+ prior convictions for “most serious offenses” or “serious offenses.” Nonviolent “serious offenses” include trafficking of controlled substances (§ 44-53-370(e)), distribution or manufacture of controlled substances near a school (§ 44-53-445(B)(1)&(2)), insurance fraud (§38-55-540(3)), embezzlement of public funds (§ 16-13-210(1)), second-degree burglary (§ 16-11-312(B)), and obtaining a signature or property by false pretenses (§16-13-240(1)). “Serious offenses” also include any other offense punishable by 30 years or more. A number of drug offenses meet this description, such as manufacture or delivery of, e.g., more than 400 grams of cocaine (SC ST § 44-53-370(e)(2)(e)) or more than 400 grams of methamphetamine (SC ST § 44-53-375(C)(5)).

SOUTH DAKOTA:

Statutory provisions authorizing NVLWOP for repeat offenders:

- S.D.C.L. § 22-7-8 If defendant has three prior felonies and one or more of them is a “crime of violence,” potential sentence for any felony is increased to life.
- S.D.C.L. § 22-7-8.1 If defendant has three prior felonies but none are nonviolent, potential sentence for a Class 2 felony is increased to life. Nonviolent Class 2 felonies include distribution of any amount of any Schedule I or II controlled substance to a minor (SDCL § 22-42-2), distribution of 1 pound or more of marijuana to a minor (SDCL § 22-42-7), first-degree burglary (burglary at night OR while armed)(SDCL § 22-32-1).
- S.D.C.L. § 24-15-4 All life sentences are without parole

VIRGINIA:

Statutory provisions authorizing NVLWOP for repeat offenders:

- VA Code Ann. § 18.2-248 Second and subsequent convictions for the manufacture, sale, possession with intent, etc. of any controlled substance are punishable by life.
- VA Code Ann. § 53.1-151 If defendant convicted of three controlled substance offenses, and at liberty between each offense, ineligible for parole.

WISCONSIN:

Statutory provisions authorizing NVLWOP for repeat offenders:

- W.S.A. § 939.62 A person facing a third or subsequent conviction for a “serious felony” is a “persistent repeater” and must receive LWOP (mandatory). Nonviolent “serious felonies” include manufacture or delivery of controlled substances in amount over statutory thresholds (W.S.A. § 961.41), possessing materials to manufacture methamphetamine (W.S.A. § 961.65), burglary of a dwelling (W.S.A. § 943.10), arson with intent to defraud insurer (W.S.A. § 943.02).

WYOMING:

Statutory provisions authorizing NVLWOP for repeat offenders:

- W.S. 1977 § 6-10-201 Person convicted of "violent felony" who has three prior felony convictions must receive life(mandatory). Definition of "violent felony" (§ 6-1-104(a)(xii)) includes aggravated burglary (armed), and 2nd-degree arson (burning with intent to collect insurance proceeds).
- W.S. 1977 § 6-10-301 Adult sentenced to life is not eligible for parole unless sentence commuted to term of years by the governor.