

Second Look Policy: A Second Chance for West Virginia Corrections

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What is a Second Look Policy?

Under West Virginia law, judges have no power to reconsider long sentences – even when a person poses no threat to the community. A Second Look policy gives judges the power to review a sentence if a person was 25 or younger at the time of the crime, and they have served at least 10 years of their sentence. If a judge finds that the person does not pose a danger to the community and the interests of justice no longer support the original sentence, the judge may grant release, place a person on supervision, or reduce the sentence term. Legal associations like the **American Bar Association** and the **American Law Institute** have adopted standards recommending Second Look policies.¹

\$49+ Million in Savings

Recidiviz, a national criminal justice data agency, projects that a Second Look policy can save West Virginia at least \$49.1 million dollars over the next five years.²

Science and Common Sense Tell Us That People Change

Research in neurobiology and developmental psychology have revealed that brain development continues through the mid-20s. During this period of emerging adulthood, “young people are still learning to self-regulate by controlling their impulses, considering the impact of their actions on others, delaying gratification, and resisting peer pressure.”³ Experts have known for decades that people “age out” of crime. The likelihood of committing a crime peaks during adolescence and early adulthood, then decreases as a person ages.⁴

Today, one out of every four residents in West Virginia prisons are considered “elderly,” which is a population of people *least likely* to be re-arrested after release.⁵ Further, locking people up for long periods does not discourage future crime. Both the National Research Council and the Department of Justice have concluded that longer sentences have no material deterrent effect.⁶

As the head of the Faith and Freedom Coalition wrote in a recent article urging Second Look, “people deserve an opportunity for redemption and are capable of positive change.”⁷

The public agrees. A recent study found that most people (three-fourths of respondents in one poll) support Second Look sentencing.⁸

The Next Crisis Behind Bars? Aging

Long sentences have led to an aging prison population. In 2002, there were 445 people age 50+ in West Virginia prisons.⁹ By 2022, there were 1,209 people age 50+.¹⁰ Researchers estimate an incarcerated person’s “physiological age averages 10 to 15 years older than their chronological age.”¹¹ Five years ago, West Virginia opened its first prison dementia unit.¹² Experts predict the number of incarcerated people with dementia will *triple* in the next 25 years.¹³ A Second Look policy provides a humane, evidence-based process for releasing people who no longer pose a threat to the community.

A Second Look Policy May Reduce Staff Vacancies in State Prisons

Most people would not choose to work in poorly maintained facilities overcrowded with an increasingly aging population. At a time when the Division of Corrections and Rehabilitation (DCR) faces 850 staff vacancies, a Second Look policy could help reduce overcrowding and improve work environments.¹⁴

Further, the possibility of future release creates incentives for incarcerated people to stay free of write-ups and disciplinary infractions, and to take advantage of education, work, and other rehabilitative programs. Plus, introducing positive incentives into prisons has been shown to reduce prison violence and misconduct.¹⁵ Given the high rates of post-traumatic stress disorder amongst correctional employees, policies that reduce workplace stressors are bound to improve DCR staff recruitment and retention.¹⁶

Q&A

Isn't there already a reconsideration motion available to people? Yes, but only within a few months of the sentencing hearing. Rule 35b of the Rules of Criminal Procedure allows a person to file a motion for reconsideration of sentence within 120 days of the sentencing hearing. Rule 35b motions can address new information or changes that occur within weeks of the sentencing decisions (for example, a new home plan or a treatment bed becomes available). A Second Look policy allows the court to consider long-term, more permanent changes that take place over years (for example, the impact of years of rehabilitative programming, earning a college degree while incarcerated, how long-term sobriety changed one's character, etc.).

What would a judge consider at a Second Look hearing? There are several factors that could help a judge determine if the person poses a threat to the community and whether the interests of justice support their release. For instance, a judge can consider: a person's age at the time of the offense, a person's life experiences prior to incarceration, what a person has done since their incarceration, rehabilitative programming, education, record of prison conduct, the statements of survivors or victim's family, and more.

¹ American Bar Association, [Resolution 502](#), Adopted August 2022; The American Law Institute, [Modification of Long Term Prison Sentences](#), March 27, 2019.

² ["Second Look Sentencing in West Virginia"](#) (Recidiviz, December 2023).

³ Nazgol Ghandnoosh, ["A Second Look at Injustice"](#) (Washington, DC: The Sentencing Project, 2021), 22.

⁴ Tina Chiu, ["It's About Time: Aging Prisoners, Increasing Costs, and Geriatric Release"](#) (New York, NY: Vera Institute for Justice, 2010), 5.

⁵ Chiu, ["It's About Time"](#), 4-5; Brie A. Williams, MD et al., ["Aging in Correctional Custody: Setting a Policy Agenda for Older Prisoner Health Care"](#), *American Journal of Public Health* 102, no. 8 (2012): 1477; Evelyn J. Patterson, ["The Dose-Response of Time Served in Prison on Mortality: New York State, 1989-2003"](#) *American Journal of Public Health* 103, no. 3 (March 2013): 1; Office of the Inspector General, U.S. Department of Justice, [The Impact of an Aging Inmate Population on the Federal Bureau of Prisons](#) (Washington, DC: 2016); Emily Widra, ["The Aging Prison Population: Causes, Costs, and Consequences"](#) (Prison Policy Initiative, August 2023).

⁶ *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, DC: National Academies Press, 2014), 140; National Institute of Justice, ["Five Things about Deterrence"](#) (Washington, DC: Department of Justice, 2016).

⁷ Timothy Head and Sam Lewis, ["Help People in Prison Change for the Better"](#), *The Hill*, December 12, 2023.

⁸ Kellie R. Hannan et al., ["Public Support for Second Look Sentencing: Is There a Shawshank Redemption Effect?"](#) *Criminology & Public Policy* (2023).

⁹ ["Annual Report FY 2002"](#) (Charleston, WV: Division of Corrections), 119.

¹⁰ ["FY 2022 Annual Report"](#) (Charleston, WV: Division of Corrections and Rehabilitation, December 2022), 37.

¹¹ Williams et al., ["Aging in Correctional Custody"](#), 1477.

¹² ["FY 2019 Annual Report"](#) (Charleston, WV: Division of Corrections and Rehabilitation, January 2020), 10.

¹³ Farah A. Kaikow, Lars Brown, and Kristin B. Merss, ["Caring for the Rapidly Aging Incarcerated Population: The Role of Policy"](#), 3.

¹⁴ Brad McElhinny, ["Corrections Commissioner Tells Delegates That Employment Situation is Improving"](#), *West Virginia MetroNews*, January 18, 2024.

¹⁵ A. Mitchell Polinsky, ["Deterrence and the Optimality of Rewarding Prisoners for Good Behavior"](#), *International Review of Law and Economics* 44 (2015): 1.

¹⁶ Jared M. Ellison, Calli M. Cain, and Lisa A. Jaegers, ["Just Another's Day Work: The Nexus Between Workplace Experiences and Post-Traumatic Stress Disorders \(PTSD\) in Jail Settings"](#), *Journal of Criminal Justice* 81 (2022); National Institute of Justice, ["Research on the Mounting Problem of Correctional Officer Stress"](#), December 1, 2023.