TOURO UNIVERSITY
JACOB D. FUCHSBERG LAW CENTER
Where Knowledge and Values Meet

Touro Law Review

Volume 35 | Number 4 Article 7

2020

Urge to Reform Life Without Parole so Nonviolent Addict Offenders Never Serve Lifetime Behind Bars

Johanna Poremba
Touro Law Center

URGE TO REFORM LIFE WITHOUT PAROLE SO NONVIOLENT *ADDICT* OFFENDERS NEVER SERVE LIFETIME BEHIND BARS

Johanna Poremba[*]

I. INTRODUCTION

As the world shifts towards an abolition of capital punishment, the United States remains the only western democratic state to employ the death penalty during times of international peace.[1] Thirty states currently sentence defendants to death, and states which have abolished the policy utilize some form of life without the possibility of parole.[2] This successor form of punishment was virtually nonexistent until the Supreme Court's 1972 decision, *Furman v. Georgia*,[3] which temporarily abolished the death penalty. Since the reinstitution of the death penalty, life without parole sentences have punished far more people than first intended.[4] The long-term implications of this sentence are only recently coming to light.[5] In particular, the effects of this mode of punishment on juveniles and the mentally ill raise large

[*]Juris Doctor Candidate 2019, Touro College Jacob D. Fuchsberg Law Center, Criminal Law Concentration. Aspiring federal prosecutor seeking to shift America's criminal justice system to align with successful rehabilitative models seen in other countries. Thank you, Professor Rena Seplowitz, for igniting the fire within me to publish my ideas; thank you to Steven Fink and the Touro Law Review staff.

[1] Kristi T. Prinzo, *The United States—"Capital" of the World: An Analysis of Why the United States Practices Capital Punishment While the International Trend is Towards Its Abolition*, 24 BROOK. J. INT'L L. 855, 856 (1999).

[2] *State by State,* DEATH PENALTY INFORMATION CENTER (2019), https://deathpenaltyinfo.org/states-and-without-death-penalty.

[3] Furman v. Georgia, 408 U.S. 238, 420 (1972).

[4] JENNIFER TURNER ET AL., A LIVING DEATH—LIFE WITHOUT PAROLE FOR NONVIOLENT OFFENSES 11 (Vanita Gupta et al. eds., American Civil Liberties Union, 2013). Statistics will be discussed later in this section.

[5] Craig Haney, *The Psychological Impact of Incarceration*: *Implication for Post-Prison Adjustment* (2001), https://aspe.hhs.gov/system/files/pdf/75001/Haney.pdf.

concerns.[6] However, the effects on individuals addicted to drugs and alcohol are absent from the discussion.

The Eighth Amendment shelters defendants from cruel and unusual punishments.[7] Past debates surrounding which forms of punishment constitute "cruel and unusual" have focused around the death penalty.[8] This Note will argue that life without parole for addict prisoners is equally "cruel and unusual" and that rehabilitative alternatives should be administered.

This Note will be divided into five sections. Section II will discuss the American history that led nearly all states to embrace life without parole and other pro-incarceration techniques as an alternative to the death penalty. This section will reflect on the Supreme Court cases that have guided state action in this area as well. Section III will provide arguments against life without parole for addicts. This section will be divided into three subsections. Subsection A will demonstrate how the Eighth Amendment to the Constitution should be interpreted to include a life without the possibility of parole ("LWOP") sentence for an addict as a "cruel and unusual" form of punishment. Subsection B will address how an addicted brain is less culpable of criminal conduct than a healthy brain. Subsection C will disprove the common arguments supporting incarcerating addicts for life. Section IV will propose changes that should occur within our judicial system to ensure that sick, addicted, and diseased persons will receive the treatment they require instead of an extended death sentence. This section will also call on prosecutors—whose power to shape the system is arguably as great as lawmakers themselves—to act to eliminate these sentences. Finally, Section V will recommend the implementation of three steps to ensure that change will occur..

II. HISTORY

State statutes LWOP practices date back as early as 1841.[9] The most significant increase in life sentences of this nature began in the

---

[6] *Id.* at IIIA.

[7] U.S. CONST. amend. VIII.

[8] Judith Lichtenberg, *Against Life Without Parole*, 11 WASH. U. JUR. REV. 39, 40 (2018).

[9] *Year That States Adopted Life Without Parole (LWOP) Sentencing,* DEATH PENALTY INFORMATION CENTER (2019), https://deathpenaltyinfo.org/year-states-adopted-life-without-parole-lwop-sentencing.

mid-1970s and grew through the 1990s after lawmakers responded to an increase in drug abuse and related crime with the War on Drugs.[10] President Nixon and his administration sparked the beginning of a multi-decade long effort to combat drug abuse as "public enemy number one."[11] The Controlled Substances Act of 1970 created a single all-inclusive statutory scheme criminalizing the possession, distribution, and manufacture of all drugs for recreational use.[12] Nixon's policy reforms did more than criminalize drugs; the national undertaking allocated $105 million of the appropriated $155 million to treatment and rehabilitation efforts.[13] Unfortunately, by the 1980s, during Ronald Reagan's presidency, Congress slashed the funding for these treatment programs to less than one-fourth of those original reserves.[14] In 1984, Congress introduced new mandatory minimum sentences for drug offenses, and just four years later, expanded these laws to include attempts and conspiracies.[15] These decisions would have profound long-term effects on the federal prison population by putting those involved at even the lowest level (lookout, couriers, street dealers) at risk of lifelong federal imprisonment.[16] Although government efforts to label drugs as public enemy number one fell to the background of the political sphere through the 1990s and 2000s, the anti-drug movement already tainted the beliefs of many Americans.

Currently, nearly all states, including New York, Florida, California, and Texas,implement some form of this lifelong punishment.[17] Each of these jurisdictions sentences individuals to life with parole, life without parole, and "virtual life" sentences.[18] However, sentences including LWOP have been administered

---

[10] JENNIFER TURNER ET AL., A LIVING DEATH—LIFE WITHOUT PAROLE FOR NONVIOLENT OFFENSES 33 (Vanita Gupta et al. eds., American Civil Liberties Union, 2013).

[11] JENNIFER TURNER ET AL., A LIVING DEATH—LIFE WITHOUT PAROLE FOR NONVIOLENT OFFENSES 1329 (Vanita Gupta et al. eds., American Civil Liberties Union, 2013).

[12] Alex Kreit*, Drug Truce,* 77 OHIO ST. L. J. 1323, 1330 (2016).

[13] Kreit*, supra* note 12, at 1329.

[14] *Id.* at 1332.

[15] *Id.*

[16] *Id*.

[17] ASHLEY NELLIS, STILL LIFE: AMERICA'S INCREASING USE OF LIFE AND LONG-TERM SENTENCES 10 (The Sentencing Project, 2017).

[18] *Id*. Virtual life (or de facto life sentences) are sentences not statutorily defined as a "life sentence," yet the term of imprisonment is so long that the prisoner is unlikely to survive if carried out in full. Researchers estimate a sentence of 50 or more years falls under this third, virtual life category. It is difficult to define virtual life sentences because a prisoner's age at the time of imprisonment is a key factor in the calculation.

disproportionately across the country.[19] As of 2016, 53,290 inmates were serving LWOP sentences, which equates to one out of every twenty-eight inmates.[20] However, just over half of this group consists of inmates from a handful of states, including Florida, Pennsylvania, California, and Louisiana, as well as the federal system.[21] Of the prisoners serving LWOP for nonviolent offenses nationwide, 79%, approximately 2,577 inmates, are incarcerated for drug offenses.[22] That number for federal inmates is 1,989, or 96% of prisoners with LWOP sentences.[23]

The term "nonviolent" is somewhat misleading due to its varying interpretation among the states.[24] While the expression "violent" is often interpreted by the public as synonymous with murder or rape, some jurisdictions include the following in this category: manufacture or sale of a controlled substance, extortion, burglary, and possession of a firearm by a convicted felon.[25] Thus, many drug-addicted prisoners may, in fact, be labeled as violent for crimes committed in furtherance of their habits.

Shifting this country's "tough on crime" mindset to one of understanding and rehabilitation would ameliorate the drug problem and produce benefits for addicts and society. It is not "tough" to imprison diseased people who need help, especially those who have aged past their years of a proclivity for lawbreaking. Quite to the contrary, it wastes vital taxpayer resources that could be utilized for crime prevention and rehabilitative measures. For our nation to progress, we must first look back in time at how our justice system has dealt with issues regarding lifelong punishments.

Rather than apply an evenhanded system of review for noncapital offenses, the Supreme Court has deferred to Congress's and state legislatures' decisions regarding LWOP sentencing.[26] The first major example of this laissez-faire approach can be seen in *Rummel v.*

---

[19] Nellis, *supra* note 17 at 10.

[20] *Id.*

[21] *Id.*

[22] Dana Goldstein, *Too Old to Commit Crime?*, THE MARSHALL PROJECT, https://www.themarshallproject.org/2015/03/20/too-old-to-commit-crime#.jVkAeF0cA (Mar. 20, 2015).

[23] *Id.*

[24] JENNIFER TURNER ET AL., A LIVING DEATH—LIFE WITHOUT PAROLE FOR NONVIOLENT OFFENSES 18 (Vanita Gupta et al. eds., American Civil Liberties Union, 2013).

[25] *Id.*

[26] Turner, *supra* note 24 at 207.

Estelle.[27] In this 1980 case, the Supreme Court upheld the mandatory life sentence of a nonviolent Texan man.[28] The three felonies leading to his statutorily required sentence included: fraudulent use of a credit card to obtain $80, forging a check for $28.36, and obtaining $120.75 by false pretenses.[29] Under his sentence, Rummel would be eligible for parole after 10 to 12 years.[30]

The defense argued that Rummel's life sentence was grossly disproportionate to his nonviolent offenses, thus violating the Eighth Amendment's ban on cruel and unusual punishments.[31] In a 5-4 decision, the Court held that the Texas recidivist law did not violate the Eighth Amendment because states have a significant interest in sentencing repeat criminals incapable of conforming to societal norms more harshly.[32] The Court bluntly noted that outside the context of capital punishment, challenges to the proportionality of sentences are rarely successful.[33] Albeit, just three years later, a new case discounted this statement when the Court confronted the issue of lifetime imprisonment without any possibility of parole.[34]

In 1983, the Supreme Court made a decision that revealed the panel's distaste for life sentences without the possibility of parole for nonviolent crimes.[35] Thirty-six-year-old Jerry Helm was convicted in a South Dakota state court for writing a "no account" check for one hundred dollars.[36] The usual punishment for such a crime under state law was five years imprisonment and a $5,000 fine.[37] However, because the defendant had six prior nonviolent felony convictions, South Dakota's recidivist statute required an LWOP sentence.[38] Helm's prior crimes included: three, third-degree burglaries, obtaining money under false pretenses, grand larceny, and driving while intoxicated.[39] The Court acknowledged that Helm never committed a

---

[27] Rummel v. Estelle, 445 U.S. 263, 284 (1980). The Supreme Court's language shows much deference to the state – "Texas is entitled to make its own judgment."

[28] *Id.*

[29] Rummel v. Estelle, 445 U.S. 263, 263-66 (1980).

[30] *Id.* at 265.

[31] *Id.*

[32] *Id.*

[33] Rummel v. Estelle, 445 U.S. at 271.

[34] Solem v. Helm, 463 U.S. 277 (1983).

[35] *Id.*

[36] *Id.* at 278.

[37] *Id.*

[38] *Id.*

[39] *Id.*

single crime against another human being.[40] Notably, the Court also recognized Helm's addiction to alcohol as a contributing factor in each case.[41] This key factor of addiction was not present in *Rummel*.

The Court came to its decision by noting that nonviolent crimes are less serious than violent crimes against persons and that sentences may be unconstitutional on excessive length *alone*.[42] The majority applied a three-prong proportionality analysis of the Eighth Amendment to reach its decision, considering:

> (1) The gravity of the offense and the harshness of the penalty. (2) The sentences imposed on other criminals in the same jurisdiction. (Whether more serious crimes are subject to the same penalty or to less serious penalties. (3) The sentences imposed for commission of the same crime in other jurisdictions.[43]

The decision stated that the death penalty is different from other punishments, not in degree but in kind.[44] What the Court meant is that those sentenced to LWOP suffer the same degree of damage as death row inmates, even though the "kind" of punishment differs.[45] The Supreme Court held that Helm's sentence violated the Eighth Amendment as disproportionate to his crime.[46] Incarcerating a man *of his nature* for life without the possibility of parole is unlikely to advance the goals of our criminal justice system in any substantial way.[47] Neither the addicted defendant nor the State will have the incentive to rehabilitate this individual as he so desperately needed.

Twenty years later, the Supreme Court spoke again on the issue of lifelong imprisonment, this time dealing with California's hotly contested "3 Strikes" rule.[48] Plainly stated, the state enacted this extreme legislation in 1994 to ensure longer prison sentences and greater punishment for prior felons.[49] The law applies to any defendant

---

[40] Solem v. Helm, 463 U.S. 277 n.22 (1983).
[41] Solem v. Helm, 463 U.S. 277 n.22 (1983).
[42] *Id.* at 278.
[43] *Id.*
[44] *Id.* at 294.
[45] *Id.*
[46] *Id.* at 303.
[47] Solem v. Helm, 463 U.S. 277 n.22 (1983).
[48] Ewing v. California, 538 U.S. 11 (2003).
[49] Michael Vitiello, *Three Strikes: Can We Return to Rationality?*, 87 J. CRIM. L. & CRIMINOLOGY 395, 403-15 (1997).

convicted of three serious felonies.[50] Under the statute, the felonies are not required to be committed consecutively or within a certain time period, and the time between offenses does not affect the imposition of the sentence.[51] On the third felony, or "strike," the law withdraws the court's discretion to commit the defendant to a diversion program or rehabilitation center.[52] Conversely, the individual is often placed behind bars permanently, without any possibility of parole.[53] The statute provides that the defendant's minimum sentence will be the greater of three times the term of imprisonment for each current felony, twenty-five years, or a term determined by application of the California penal code plus other enhancement provisions.[54] The reality behind this language is that the best outcome a three-strikes defendant can hope for is twenty years in prison.[55] The law's promises to reduce crime and diminish the financial burden on society have been called into question by critics.[56]

The Supreme Court acknowledged this debate nine years after the harsh law took effect in the case of *Ewing v. California.*[57] Yet, the holding of the case was not a win for opponents of the legislation. Ewing was convicted of a felony grand theft for stealing three golf clubs, each worth $399.[58] Pursuant to California law, the court sentenced Ewing to a mandated life sentence.[59] The state had previously convicted Ewing of four serious or violent felonies, including three separate burglaries, only one of which was an armed offense.[60] The Court held that California's Three Strikes Law does not constitute cruel and unusual punishment within the meaning of the Eighth Amendment of the Constitution.[61] Therefore, Ewing's sentence

---

[50] *Id.* at 403. In 2012, Proposition 36 would alter what "kinds" of felonies could be considered. This will be discussed at length in section IV(b).

[51] *Id. at* 404.

[52] *Id.*

[53] *Id.* at 401.

[54] *Id.* at 407.

[55] Vitiello, *supra* note 49 at 407.

[56] *Id.* at 422-37. Vitiello shows how the analysis used to estimate savings to society is flawed; Ewing 538 U.S. at 27.

[57] *Supra* note 48.

[58] *Id.* at 13.

[59] *Id.* at 18-20.

[60] *Id.*

[61] *Id.* at 29.

of twenty-five years to life in prison was not grossly disproportionate to his combined felonies of grand theft and three separate burglaries.[62]

The dissent compared Ewing's case to *Rummel* and *Solem* to consider how the Court reached differing outcomes in each circumstance.[63] Ewing's claim fell somewhere between the *Rummel* and *Solem* logic.[64] Ewing's claim was stronger than the claim presented in *Rummel*, where the court upheld a recidivist's 25 years to life sentence as constitutional.[65] Yet, it was weaker than the claim in *Solem*, where the Court struck down a recidivist sentence as unconstitutional.[66] The reasons relate to the the differing outcomes of each conviction. By looking at the three pertinent comparative factors in each case, it becomes clear why the seemingly similar cases were handled differently. The first factor, prior record or offender characteristics, remained somewhat equal among all three cases. Ewing's prior record was not much different from Helm's or Rummel's; four prior felonies as compared to Helm's six and Rummel's three. The second factor, offense conduct, was also fairly similar because both offenses included a low monetary loss. However, the last factor, length of likely prison term, varied. While the defendant in *Rummel* had the possibility of parole ten to twelve years after his sentence began, Helm did not have this benefit and faced a lifetime behind bars. Ewing's prison term was more than twice as long as the term at issue in *Rummel*. The Court admitted that Ewing, seriously ill when sentenced at 38, would likely die in prison. Ewing was classified as a property offender in the case and not a drug user, even though Ewing's former charges included possessing drug paraphernalia.[67]

In each case, the defendant's mental health status was nearly absent from the discussion. There was no discussion of LWOP sentencing practices' effects on adult drug addicts. However, success in the movement to eliminate LWOP has been found for juveniles.[68] In *Graham v. Florida*, the Court openly noted that a life sentence alters the offender's life irrevocably by depriving the defendant of the most

---

[62] *Id.*

[63] Ewing v. California, 538 U.S. at 34.

[64] Ewing, 538 U.S. at 36.

[65] *Id.*

[66] *Id.*

[67] *Id.* at 18.

[68] Graham v. Florida, 560 U.S. 48, 68 (2010).

basic liberties without hope of restoration.[69] In this case, the Florida court sentenced seventeen-year-old Graham to life behind bars.[70] A year prior to his sentence, Graham was charged with two serious felonies: armed burglary with assault or battery and attempted armed robbery.[71] After taking a plea deal and serving twelve months in county jail, Graham was released on parole, only to be again arrested for armed home robbery six months later.[72] The trial court held a sentencing hearing at which it found that Graham was guilty of the charges and no longer capable of rehabilitation.[73] Thus, Graham was given the maximum sentence authorized: life imprisonment without the possibility of release.[74]

Ultimately, the Supreme Court reversed this decision on the ground that the trial court violated the Eighth Amendment ban on cruel and unusual punishments. Although the justices briefly mentioned Graham's upbringing by two crack-addicted parents, his alcohol consumption, and tobacco use by age nine and marijuana use by age thirteen, the Court did not rely on these factors as much as Graham's youth at the time of sentencing.[75] Ultimately, the Court scrutinized the categorical practice of lifelong sentences for juveniles. Writing for the majority, Justice Kennedy stated that LWOP, "gives no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope."[76] The Justice highlighted that the United States is the only nation that imposes LWOP sentences on juvenile nonhomicide offenders.[77]

If the Court was willing to compare punishment strategies to the rest of the world in reviewing our treatment of juveniles in the justice system, it would help us understand the morality of LWOP sentences on addicted persons. Similarly, our country needs to consider the implications that these living death sentences have on

---

[69] *Id.* at 70.

[70] *Id*. at 52-53.

[71] Graham v. Florida, 560 U.S. 48, 54 (2010). It is important to note here that Florida law gave the District Attorney's office the discretion whether to charge sixteen and seventeen-year-olds as adults or minors for most felonies. Graham's prosecutor chose to charge Graham as an adult.

[72] *Id.*

[73] Graham v. Florida, 560 U.S. at 58.

[74] *Id.*

[75] *Graham*, 560 U.S. at 53.

[76] *Id.* at 79.

[77] *Id.* at 81.

addicts and their families. If the Supreme Court scrutinizes the categorical practice of lifelong sentences for addicts in the same way it has scrutinized this sentence for youthful offenders, it could eliminate this elongated death sentence for addicts in need of rehabilitation.

III. ARGUMENTS AGAINST LWOP

Many who argue against the death penalty cite LWOP as the answer to our nation's recidivism concerns.[78] While some accept this blanket solution, the realities behind this punishment are far from positive.[79] : Both the Constitution and scientific evidence support the idea that a punishment of life behind bars for those with substance abuse issues is immoral and unjust.

A. LIFE SENTENCES FOR ADDICT PRISONERS VIOLATES CRUEL AND UNUSUAL PUNISHMENT UNDER THE EIGHTH AMENDMENT

In determining whether any form of punishment is constitutional, we look to the language and interpretations of the Eighth Amendment. Before *Graham v. Florida*, the Supreme Court adamantly followed the notion that "death is different" from any other type of sentence,[80] finding the acceptable outer constitutional limits of capital punishment stemmed from the evolving standards of decency test.[81] Conversely, determining acceptable punishment in non-capital cases was determined by a vague and narrow proportionality principle.[82] Here, courts were to consider all circumstances of the case

[78] 19 UPAJLSC 185, 186, Into the Abyss: The Unintended Consequences of Death Penalty Abolition.

[79] 19 UPAJLSC 185, 186, LWOP inmates "are not afforded the same heightened due process protections afforded to those on death row by the Supreme Court's jurisprudence of death…. They have less access to the courts and less ability to challenge the accuracy or legality of their convictions and are therefore in a worse position than those who have been sentenced to death."

[80] William W. Berry III, *More Different Than Life, Less Different Than Death,* 71 OH. S. L. J. 1109, 1111 (2010).

[81] Furman v. Georgia, 408 U.S. 238, 242 (1972). The evolving standards of decency test must "mark the progress of a maturing society."

[82] Graham v. Florida, 560 U.S. 48, 86 (2010); *Harmelin v. Michigan*, 501 U.S. 957, 996-97 (1991) (Kennedy, J., concurring).

in deciding whether the sentence was unconstitutionally excessive.[83] Due to a lack of a clear or consistent interpretation of this standard (besides clearly grossly disproportionate sentences), courts obtained little guidance in determining whether a life sentence without parole fit a particular crime.[84] However, in *Graham*, the Court strayed from the "death is different" ideology and applied the same level of scrutiny to LWOP as in capital cases.[85] In doing so, the Court blurred the line between capital and non-capital cases for the first time, suggesting that a new category had evolved somewhere in the middle.[86] LWOP sentences now require the higher level scrutiny standard, which is measured by the evolving standards of decency test.[87]

Before the *Graham* decision, the Court implied this standard in *Solem v. Helm* to find that a life sentence for a nonviolent crime violated the Eighth Amendment.[88] However, this case acted as an exception rather than the standard.[89] Looking even further back in time, we can catch a glimpse of how the Court viewed the Eighth Amendment as applied to drug addicts.

In 1962, the Supreme Court held that it is cruel and unusual to impose even one day of imprisonment for the status of drug addiction.[90] In *Robinson v. California*, a California statute made it a crime for a person to be addicted to the use of narcotics.[91] The state convicted Robinson based solely on the fact that scarring on his arms evidenced a past of needle-injecting drug use.[92] On appeal, the Supreme Court reasoned that to imprison a person merely for his status, even though he never touched a narcotic drug nor found guilty of any irregular behavior in the state, is unconstitutional.[93] In essence, treating drug addicts like criminals is cruel and unusual punishment

---

[83] Graham v. Florida, 560 U.S. at 58.

[84] Lockyer v. Andrade, 538 U.S. 63, 72-73 (2003); Harmelin, 501 U.S. at 996-97.

[85] Graham v. Florida, 560 U.S at 61-62.

[86] *Supra* note 80.

[87] *Id.* at 1123.

[88] Solem v. Helm, 463 U.S. 277 (1983).

[89] *Supra* note 80 at 1119. As previously mentioned, *Solem* established a three factor proportionality analysis: The gravity of the offense versus the harshness of the penalty, whether more serious crimes are subject to the same penalty or to less serious penalties, and how other jurisdictions penalize the crime.

[90] Robinson v. California, 370 U.S. 660, 667 (1962).

[91] *Robinson*, 370 U.S. at 660.

[92] *Id.* at 687 and n.4 (White, J., dissenting).

[93] *Supra* note 90.

under the Eighth Amendment.[94] This is because narcotics addiction can be contracted innocently or involuntarily.[95]

However, by 1990, the Court, in *Harmelin v. Michigan,* ruled that a life sentence for a single possession of cocaine was not cruel and unusual punishment.[96] The defendant in *Harmelin* was convicted of possessing 672 grams of cocaine and sentenced to a mandatory term of life in prison without possibility of parole.[97] Defense counsel argued that the defendant's sentence violated the Eighth Amendment because of its significant disproportionality to the crime.[98] Further, the defendant's lack of any prior felonies was irrelevant under Michigan law, which mandated his life sentence.[99]

The Court rejected the defendant's constitutional claim and went on to answer the question of whether the Eighth Amendment contains a sentence proportionality guarantee.[100] Writing for the majority, Justice Scalia stated that the framers intended the Eighth Amendment as a check on the ability of the legislature to authorize particular modes of punishment, rather than as a guarantee against disproportionate sentences.[101] Thus, the Eighth Amendment does not contain a proportionality guarantee that the Court found during the *Solem* case just seven years ago.[102] The Court reasoned that in *Solem*, the majority misinterpreted the framers' intent.[103] While a disproportionate punishment can always be deemed cruel, it will not always be unusual.[104] In ruling that cruel and unusual does not include a proportionality principle, the Court rejected the three-factor analysis

---

[94] *Id.* at 668-76 (Douglas, J., concurring). The Justice noted that England treats addicts as sick people and not criminals as the United States does. He commented that although this fact alone does not make California's penal law unconstitutional, we must acknowledge the group of drug addicts who have "lost their power of self-control." He stated that "cruel and unusual punishment results not from confinement, but from convicting the addict of a crime."

[95] Robinson v. California, 370 U.S. 660, 667 (1962).

[96] Harmelin v. Michigan, 501 U.S. 957, 958 (1991).

[97] *Id.* at 961.

[98] *Id.*

[99] *Id.* at 994.

[100] *Id.* at 965.

[101] *Id.* at 960.

[102] *Id*. at 965.

[103] *Id*. at 966.

[104] *Id*. at 967.

from *Solem.*[105] Although the Court upheld the Michigan statute, it surmised that reasonable minds may differ about its effectiveness.[106]

The dissent adamantly stated that there can be no doubt that prior decisions of the Court had construed cruel and unusual to include a proportionality principle.[107] The dissent also cited *Robinson*, noting that the ripple effect on society caused by drugs (crimes stemming from drug deals, health problems, lost productivity) is not the direct consequence of possession, but of the resulting *addiction*.[108]

The Court did not, however, recognize that drug addictions are perpetuated by the justice system's recycling of addicts rather than properly rehabilitating them.[109] Criminalizing individuals who possess drugs for personal use is the same as criminalizing a status. Similarly, it is cruel and unusual to put diseased people who need rehabilitation behind bars for life. These propositions become clear by taking a closer look at the criminal culpability of an addicted individual.

B. AN ADDICT BRAIN IS LESS CULPABLE

The first concept taught in many criminal law classes is that a crime requires both a voluntary act, or *actus reus*, and a culpable mental state, or *mens rea*.[110] When a defendant is found guilty of a crime, the verdict essentially means that the defendant intended the result to occur. The justice system asks whether the crime was committed by the individual, not whether the crime was committed in furtherance of an addiction. While a defense of voluntary alcohol or

---

[105] Harmelin v. Michigan, 501 U.S. 957, 965 (1991).

[106] *Id*. at 1009.

[107] *Id*. at 1012.

[108] *Id*. at 1022.

[109] Christine Minhee & Steve Calandrillo, *The Cure for America's Opioid Crisis? End the War on Drugs*, 42 HARV. JUR. L. PP. 547, 497 (2019). The authors argue that the disparity between how Americans view cocaine and heroin addiction as opposed to morphine, OxyContin or other prescription drug addiction creates a bifurcated view of addiction. By criminalizing the former and treating the latter, the policy response in effect is to deprioritize rehabilitation for those addicted to the "criminal" drugs.

[110] Stephen J. Morse, *Addiction, Choice and Criminal Law* (2017). *Faculty Scholarship*, https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=2609&context=faculty_scholarship. Actus reus is the legally wrongful act that must be proved that the defendant committed either voluntarily or intentionally. Mens rea refers to the mindset or degree of mental culpability which a defendant must have. These include knowing, negligent, intentional, deliberate. A defendant must have both an actus reus and mens rea, along with any other relevant elements of a crime in order to be found guilty.

drug intoxication is available for criminal defendants, this defense cannot be claimed for a mere drug possession charge.[111]

Yet, the link between drug use and crime is no secret. Drug users have consistently been found to participate in risky behavior overall.[112] The word "addiction" is derived from a Latin term meaning "enslaved by" or "bound to."[113] This makes sense, because addiction fundamentally changes the reward system in the brain, making addicts literally slaves to their addiction.[114] The individual no longer responds to the threat of punishment in the same way as a sober individual.[115] This explains why the threat of a judicial sentence has not and will not stop drug users from taking drugs and selling drugs to fuel their addiction.[116]

The United States Congress determines criminal sentencing recommendations using four rationales for guidance: deterrence, retribution, rehabilitation, and incapacitation.[117] Prior to 1983, the Court compared punishment and defendant culpability to determine if a sentence "fit" the given crime.[118] The United States followed this technique as precedent up until 1991, when the majority in the *Harmelin* Court claimed they got it wrong in *Solem*, stating that the Eighth Amendment is a "check on the ability of the Legislature to authorize particular modes of punishment…rather than a guarantee against disproportionate sentences."[119] In the concurrence, Justice Kennedy argued that legislatures should be free to choose from any of the four major rationales listed above in determining proper punishment for a given crime and that the weight given to each principle varies with time.[120]

---

[111] State v. Garcia, 784 P.2d 297, 300 (Ariz. Ct. App. 1989).

[112] Y. Saadatmand, M. Toma, & J. Choquette (2012). The War on Drugs and Crime Rates. Journal of Business & Economics, 10(5), 285-90.

[113] *How Addiction Hijacks the Brain*, HARVARD HEALTH PUBLISHING (July 2011), https://www.health.harvard.edu/newsletter_article/how-addiction-hijacks-the-brain.

[114] Priya Shetty, *Law and Order: Blame it on the Brain*, BBC FUTURE (July 11, 2012), http://www.bbc.com/future/story/20120710-blame-it-on-the-brain.

[115] *Id.*

[116] *Id*. Nora Volkow, the director of the Institute on Drug Abuse at the National Institutes of Health in Bethesda, Maryland, draws this conclusion.

[117] John F. Stinneford, *Punishment Without Culpability*, 102 J. CRIM. L. & CRIMINOLOGY 653, 717-20 (2012).

[118] *Supra* note 43.

[119] *Supra* note 96 at 960.

[120] *Id.* at 999.

Perhaps these four penological goals vary depending on the current views that America's general population takes. In 2018, a survey of over one thousand people showed that although 53% viewed prescription drug dependency as a medical issue, fewer than 20% of those surveyed would be "willing to associate closely with someone who is addicted to prescription drugs as a friend, colleague or neighbor."[121] The stigma behind addiction still thrives within our borders. As more research on narcotics' effects on the brain comes to light, the understanding of the country should grow and these instilled cultural beliefs will change.

Just twenty years ago, our country and courts believed the execution of the mentally retarded met constitutional standards. In 1989, when first confronted with the issue of whether execution of the mentally retarded is constitutional, the Supreme Court found "insufficient evidence of a national consensus against executing mentally retarded people."[122] During this time, only two states and the Federal Government prohibited execution of the mentally retarded, albeit allowing executions in general.[123]

However, by 2002, the Court's mindset shifted in *Atkins v. Virginia*.[124] The Court found that "much ha[d] changed" in thirteen years in that the practice had become "truly unusual."[125] The reason behind this change of heart became evident when the decision stated that it was "fair to say that a national consensus had developed against it [execution of the mentally retarded]." By this time, sixteen additional states prohibited the execution of the mentally retarded, and no states had reinstated the power. The *Atkins* Court highlighted how the backbone of the decision rested on "not so much the number" of states that had acted, but instead "the consistency of the direction of change."[126] Further, the Court explained that executing mentally retarded individuals would not serve the interests of deterrence or

---

[121] Beth Leipholtz, *Poll: Most Americans View Addiction As Disease, But Stigmatizing Views Persist,* THE FIX, (Apr. 10, 2018), https://www.thefix.com/poll-most-americans-view-addiction-disease-stigmatizing-views-persist.

[122] Penry v. Lynaugh, 492 U.S. 302, 335 (1989).

[123] *Cruel and Unusual Punishments*, CORNELL LAW SCHOOL LEGAL INFORMATION INSTITUTE, https://www.law.cornell.edu/constitution-conan/amendment-8/cruel-and-unusual-punishments.

[124] Atkins v. Virginia, 536 U.S. 304 (2002).

[125] *Id.* at 316.

[126] *Id.* at 315. Hall v. Florida, 572 U.S. 701 (2014). This case would solidify the ideas set forth in *Atkins.*

retribution due to the lack of developmental capacities necessary to establish a threshold level of culpability.[127]

Over time, our nation has come to accept the concept of lessened culpability of the mentally ill. After that, our nation came to accept that adolescences too lack cognitive decision-making skills. It is only a matter of time before this nation shifts to understanding addicted individuals' lessened culpability. Although it may seem radical now, as we collectively understand an addiction's role on the brain and cognitive decision making, it is likely that the justice system will find more leniency and acceptance in pushing for rehabilitative measures as opposed to choosing LWOP for nonviolent addicts.

C. REFUTING ARGUMENTS THAT SUPPORT LWOP FOR ADDICTS

Proponents of the War on Drugs and its aftermath believe incarceration is the answer to America's drug problem. Some common arguments made by these believers include: 1) the cost of rehabilitation is greater than incarceration, and 2) prison inmates are impossible to cure with treatment, making rehabilitation a waste of resources.[128] Similarly, one could argue that allowing rehabilitation for criminals could create a slippery slope that would allow more and more criminals to claim to have a "drug problem" in order to evade the criminal justice system.

Across America, prison costs continue to rise alongside the ever-growing prison population.[129] According to the Federal Register, the national average cost to confine one prison inmate is $34,704.12 per year.[130] For elderly prisoners, that price tag climbs to anywhere

[127] Jeffrey Fagan, *Atkins, Adolescence, and the Maturity Heuristic: Rationales for a Categorical Exemption for Juveniles From Capital Punishment,* 33 N. M. L. REV. 207, 207 (2003).

[128] Alan I. Leshner, *TREATMENT OPTION FOR DRUG OFFENDERS IS CONSISTENT WITH RESEACH FINDINGS*, 72 SEP N.Y. St. B.J. 53, 54 (2000).

[129] U.S. v. Leitch, 2013 WL 753445 (E.D.N.Y. Feb. 28, 2013) "Everywhere you look federal policy makers are complaining about the rising costs of incarceration….Despite a sustained increase in federal prison spending, the continued growth of the prison population has resulted in overcrowding."

[130] *Annual Determination of Average Cost of Incarceration*, FEDERAL REGISTER, (Apr. 30, 2018), https://www.federalregister.gov/documents/2018/04/30/2018-09062/annual-determination-of-average-cost-of-incarceration.

from sixty to seventy-thousand dollars per year.[131] While it would be incorrect to say all drug treatment programs are less expensive and naïve to claim any two rehabilitative services are built the same, there are undoubtedly cheaper available options. Over 3,000 drug courts already exist across the country, their goal being to route addicted criminals to appropriate treatment rather than incarceration.[132] Nationally, the average drug court program cost ranges between $900 to $2,200 per defendant.[133] This is a small price to pay in order to allocate more effectively valuable criminal justice resources.[134]

One may further argue that prisons already offer enough services for addicted prisoners. In fact, The New York Times revealed in 2017 that fewer than 30 prisons across the country offer medications that combat opioid addiction—methadone or buprenorphine.[135] The reality is that the services available are scarce and insufficient to provide necessary change. Ultimately, the cost of one successful drug treatment is far less than cycling an addict in and out of prison for life.

As for treatability, many citizens wrongfully believe that prison inmates are poor candidates for treatment.[136] This mistaken belief stems from the longstanding view that addicts, especially those behind bars, are weak or powerless to better themselves.[137] However, according to the director of the National Institute on Drug Abuse, scientific research shows that when the legal system pressures an individual to pursue treatment as an alternative to incarceration, the likelihood of success in drug treatment actually improves.[138] This body of research, spanning twenty years in length, shows consistently high returns for society when drug treatment is used for addicted

---

[131] JENNIFER TURNER ET AL., A LIVING DEATH—LIFE WITHOUT PAROLE FOR NONVIOLENT OFFENSES 194 (Vanita Gupta et al. eds., American Civil Liberties Union, 2013). Inmates over age 50 tend to require increased healthcare and staff personnel, which in turn demands increased costs for the prison.

[132] *Drug Courts*, U.S. DEPARTMENT OF JUSTICE (2018), https://www.ncjrs.gov/pdffiles1/nij/238527.pdf. *See also* Lisa N. Sacco, *Federal Support for Drug Courts: In Brief*, CONGRESSIONAL RESEARCH SERVICE (Mar. 20, 2018), https://fas.org/sgp/crs/misc/R44467.pdf.

[133] *Benefits of Drug Court*, SANMATEO COURT, (2019), https://www.sanmateocourt.org/court_divisions/criminal/drug_court/benefits.php.

[134] *Id.*

[135] Matt Gonzales, *Prisoners and Addiction*, DRUGREHAB.COM (2019), https://www.drugrehab.com/addiction/prisoners/.

[136] Leshner, Alan I, *TREATMENT OPTION FOR DRUG OFFENDERS IS CONSISTENT WITH RESEACH FINDINGS*, 72 SEP N.Y. St. B.J. 53, 54 (2000).

[137] *Id.*

[138] *Id.*

criminals.[139] Further, these individuals are proven to use fifty to seventy percent fewer drugs than those who go untreated, and fifty to sixty percent less likely to be incarcerated again.[140]

The solution to the slippery slope concern requires drawing a line at nonviolent offenses that are direct consequences of addiction. Drug possession, minor drug sales, or stealing to promote a habit (if clear evidence of addiction exists) would all fit under this category. Criminals with violent offenses on their record within the last five years should not be able to claim they have a drug problem absent some other extenuating circumstances. A defendant would have to be evaluated on a case by case basis by a professional in the field to determine eligibility for rehabilitation.

Ultimately, the four policy rationales are not served by imprisoning nonviolent addicts for life. Retribution for a nonviolent addict does not demand a LWOP sentence.[141] Deterrence becomes marginal, and most importantly, the possibility of rehabilitation becomes unattainable.[142]

IV. ALTERNATIVE SOLUTIONS

> *"If lengthy mandatory minimum sentences for nonviolent drug addicts actually worked, one might be able to rationalize them. But there is no evidence that they do. I have seen how they leave hundreds of thousands of young children parentless and thousands of aging, infirm, and dying parents childless. They destroy families and mightily fuel the cycle of poverty and addiction. . . ."*[143]

---

[139] *Id.*

[140] *Id.*

[141] Berry, *supra* note 80 at 1143.

[142] *Id.*

[143] Judge Mark W. Bennett, *How Mandatory Minimums Forced Me to Send More Than 1,000 Nonviolent Drug Offenders to Federal Prison*, THE NATION (2012 Issue), https://www.thenation.com/article/how-mandatory-minimums-forced-me-send-more-1000-nonviolent-drug-offenders-federal-pri/.

A. NEW SYSTEM OF REVIEW FOR LWOP CASES

The Supreme Court has historically relied on Congress and the states in deciding how to handle LWOP cases. In order to eliminate any possibility of non-violent, addict offenders serving life sentences, either the Supreme Court or Congress must act. The Court must hear a case on this narrow issue in order to proclaim a proper system of review—a process that could take decades. Thus, Congress and our state legislatures should establish a new system of review for LWOP cases to ensure the speediest result.

Compared to the rest of the world, America's progress is lagging in the area of forward-thinking justice. Nearly one-hundred other countries signed onto the Rome Statute wherein Article 110(3) requires all life sentences to be reviewed after twenty-five years.[144] Various European countries have abolished LWOP altogether while some countries do not even include the term "life imprisonment" within statutory language.[145] On an international level, courts consider the release of LWOP prisoners in several European, African, Central Asian and South American countries.[146] Upon release, these countries' standards focus on assisting prisoners to re-enter communities.[147] However, common conditions include regularized supervision, also known as a conditional release.[148] These conditions may include regular supervision attendance, approved residence, home visits by a supervising officer, approved employment, travel restrictions, drug testing, and travel and behavior restrictions.[149] Sixty-eight of the seventy-nine countries that allow for release of life-sentenced prisoners also contend that violation of a conditional release will result in "recall to prison."[150] This means exactly what it sounds like: an individual recently released from LWOP may be returned to prison for

---

[144] JENNIFER TURNER ET AL., A LIVING DEATH—LIFE WITHOUT PAROLE FOR NONVIOLENT OFFENSES 200 (Vanita Gupta et al. eds., American Civil Liberties Union, 2013). *See* Professor Dirk Van Zyl Smith & Dr. Catherine Appleton, *A Life Imprisonment, A Policy Briefing,* PENAL REFORM INTERNATIONAL (2018) https://cdn.penalreform.org/wp-content/uploads/2018/04/PRI_Life-Imprisonment-Briefing.pdf.

[145] *Id.*

[146] Smith, *supra* note 144. It is worth noting that the methods of release vary within each country. Determinants of a prisoner's release vary from: a court, parole board, executive politician, or governor or minister granting clemency.

[147] *Id.*

[148] *Id.*

[149] *Id.*

[150] *Id.*

committing an offense or violating parole conditions.[151] Studies reveal that recidivism and re-arrest rates among released life-sentenced prisoners are low compared to other released prisoners.[152] The key to successful reintegration into community life requires community programs and supervision in the community.[153]

While America may not be actively participating in this international shift, some American states have recognized the need for change due to overcrowding within their state prison walls.[154] Oklahoma's "Parole of Aging Prisoners Act" purports to ease prison overcrowding by creating a flexible geriatric release system.[155] The state bill gives the parole board power to grant parole to a prisoner who is at least 50 years old and has served at least 10 years or one-third of his prison term.[156] Eligible prisoners may request to appear before the parole board on the next available docket.[157] However, because the bill excludes twenty-two crimes, including murder, arson, first-degree burglary, aggravated robbery, and any crime that would result in sex offender registration upon release, individuals serving life will not qualify.[158] In fact, analysis of data from the Oklahoma Department of Corrections reveals that only one-quarter of the prisoners who are age fifty or above become eligible for parole under this law.[159] Oklahoma

---

[151] *Id.*

[152] Brandon L Garrett, *The Moral Problem of Life-Without Parole*, TIME (Oct. 26, 2017), https://time.com/4998858/death-penalty-life-without-parole/. According to a 2013 California Department of Corrections and Rehabilitation report, recidivism rates among LWOP prisoners who have been granted parole by the governor are extremely low, "markedly" less than those of other released prisoners. *See also* Christopher Zoukis, *California Lifers Paroled in Record Numbers*, PRISON LEGAL NEWS (Mar. 31, 2016), https://www.prisonlegalnews.org/news/2016/mar/31/california-lifers-paroled-record-numbers/.

[153] *Life Imprisonment, A Policy Briefing,* PENAL REFORM INTERNATIONAL (Apr. 2018), https://cdn.penalreform.org/wp-content/uploads/2018/04/PRI_Life-Imprisonment-Briefing.pdf.

[154] Nicole D. Porter, *Testimony to the NY Joint Leg. Budget Hearing on Public Protection*, THE SENTENCING PROJECT (2019), https://www.nysenate.gov/sites/default/files/testimony_given_by_the_sentencing_project.pdf. Of course, states have humanitarian concerns such as public safety and wellbeing. However, overcrowding has provided a neutral means of addressing the issue of mass incarceration for the states.

[155] *Id. See* 57 Okl.St.Ann. § 332.21 (2018).

[156] *Id.*

[157] *Id.*

[158] *Id.*

[159] ASHLEY NELLIS, STILL LIFE: AMERICA'S INCREASING USE OF LIFE AND LONG-TERM SENTENCES 6 (The Sentencing Project, 2017).

would be better served by amending this legislation to allow prisoners who are free of such violent offenses for five years to be eligible under the statute.

A wiser alternative is to enact an "intermediate" proportionality standard of review for LWOP cases.[160] This proposition would fall somewhere between the evolving standards of decency used in capital cases and the narrow proportionality principle used in non-capital cases.[161] The heightened standard would ensure greater safeguards against error by forcing excessive review on a case by case basis. In order to show an LWOP sentence violates the Eighth Amendment, the defendant must demonstrate that the sentence was excessive in duration as compared to the offenses.[162] Also included in this method of review would be a mandatory LWOP case review every twenty-five years.

Although the majority in *Graham* applied the evolving standards of decency to LWOP sentences, the dissent in *Graham* stressed that such an application departs from the Court's prior precedent. Thus, the best solution is to apply a new, unique standard. LWOP falls between a death sentence and a standard prison term, a fact that has been acknowledged by the Supreme Court Justices.[163] Both death and LWOP share the characteristic of irrevocability, and for that reason, when it comes to nonviolent addicts in need of help, there must be a new process to review such cases. Such a new process of review will ultimately lead to releases of individuals from life imprisonment sentences, at which point, it will be proper to analyze successful models of release from overseas. Until then, there are steps to be taken within our own borders to halt the number of addicted men and women serving life behind bars.

---

[160] Berry, supra note 80 at 1141.

[161] *Graham,* 560 U.S. at 75. The Supreme Court implied in Graham that LWOP is somewhere between death and a non-capital sentence, since freedom thereafter is essentially "irredeemable" and it simultaneously forecloses the possibility of ever reviewing that determination.

[162] Berry, *supra* note 80 at 1142.

[163] *Graham,* 560 U.S. at 69 (noting that "life without parole is "the second most severe penalty permitted by law." It is true that a death sentence is "unique in its severity and irrevocability"; yet life-without-parole sentences share some characteristics with death sentences that are shared by no other sentences.).

B. REFORM 3 STRIKES, PROSECUTOR EDUCATION, & MORE REHABILITATIVE OPTIONS

Nearly half of the states follow some form of two, three, or four strikes approach.[164] Since the enactment of California's Three-Strike Law, the Substance Abuse and Crime Prevention Act of 2000 ("Proposition 36") has been introduced in an effort to undo the wrongs of Three-Strikes.[165] Yet, critics question the impartiality of California courts and prosecutors in administering Proposition 36.[166] The law applies to any "qualifying conviction for nonviolent drug possession," and is intended to place drug addicts into treatment without letting violent users go free.[167] However, the law mandates five eligibility requirements that narrow the scope of the program.[168] First, defendants may not have any violent history on their records.[169] Second, a defendant will be disqualified if he or she is convicted of an unrelated misdemeanor or a felony in the same proceeding.[170] Third, any defendant in use or possession of a firearm while under the influence of drugs is ineligible.[171] Fourth, any defendant who refuses drug treatment as a condition of probation is ineligible.[172] Last, any defendant who is "unamenable" to available forms of treatment will not be eligible for the program.[173] These criteria allows prosecutors to exclude nearly anyone from receiving a diversion program by emphasizing certain facts about a defendant.[174]

Ultimately, prosecutors have the power to effect change. Prosecutorial discretion plays a huge role in what "justice" is and how that justice is administered. Clear evidence of this can be seen in the *Graham* case; the assigned prosecutor could have opted to try Graham

---

[164] Vitiello, *supra* note 49 at 463.

[165] Gregory A. Forest, *Proposition 36 Eligibility: Are Courts and Prosecutors Following or Frustrating The Will of Voters?*, 36 MCGEORGE L. REV. 627, 628 (2005).

[166] *Id.* at 629.

[167] *Id.* at 628.

[168] *Id.* at 631.

[169] *Id.*

[170] *Id.* Unrelated meaning: not related to the present drug charge.

[171] Forest, *supra* note 165 at 632.

[172] *Id.*

[173] *Id.* at 632.

[174] *Id.* at 641. In one small county the District Attorney acknowledged that he could prevent every defendant charged with drug possession from qualifying for Proposition 36 by charging an additional misdemeanor offense.

as a minor and avoid three strikes altogether. Further, in implementing Proposition 36 in California, prosecutor cooperation is essential for the law to work as intended. The uneven application of Proposition 36 requires its revision or some form of punishment for prosecutors who purposefully evade the law. A fining system could be instituted so that prosecutors have greater incentives to act ethically.[175] Continuing Legal Education programs can also be vital tools in instructing prosecutors about the realities behind an LWOP sentence and the proper use of discretion to guide defendants down the path of rehabilitation.

Arguments that have been made in favor of Proposition 36 include the following: (1) drug abuse is medically treatable; (2) incarcerating nonviolent drug offenders is wasteful; and (3) community safety is best served by diverting drug offenders out of incarceration and into treatment.[176] The greatest obstacle holding this country back from reform is the general misunderstanding regarding addiction. Until and unless drug addiction is widely understood as a disease of the brain, which alters problem-solving and rational thinking, our country will continue to criminalize this illness.

V. CONCLUSION

While addicts should not be excused because of their inculpable mental states, nor should we take pity on the outcomes of addicted individuals' cases; our system must acknowledge that America has an addiction epidemic. Further, we must collectively accept that our criminal justice system does nothing but fuel the fire of addiction instead of placing rehabilitation at the forefront. To succeed, we must shift our focus to dampening the demand for drugs instead of stemming the supply. In order to do this, three changes must be implemented at the federal level. First, a new system of review for LWOP cases must be created. Second, Three Strike Rules must be abolished, or at a minimum, reformed across the country. Third, more rehabilitative options must become readily available and prosecutors must be reminded of their moral obligation to seek appropriate justice on a case by case basis. If these changes are implemented, there is

[175] To date, no fining systems exist to ensure prosecutors uphold their moral and ethical responsibilities. Disciplinary action against an individual attorney is the sole course of action.

[176] Forest, *supra* note 165, at 634.

hope for a United States where nonviolent addicts no longer serve life behind prison bars.