

A lawsuit with large potential ramifications challenges Tennessee's handling of life sentences with chance of parole

Sentence Without a Period

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Jacob Davis in November 2013

Though it has drawn little attention, a lawsuit filed earlier this month in Davidson County Chancery Court has the potential to affect thousands of inmates in Tennessee prisons, change the state's handling of life sentences, and cut state prison costs by several million dollars while addressing overcrowding.

At issue is a single question: Is a sentence of life with the possibility of parole only after 51 years essentially the same thing as life without parole?

It is in Tennessee, alleges a suit on behalf of an inmate currently serving life with parole at Nashville's Turney Center Industrial Complex. The case, *Davis v. TN Department of Corrections and Tennessee Attorney General*, has its roots in a clash of state codes dating back some 20 years.

"This case would have enormous implications if it were successful," says David Raybin, the veteran criminal defense attorney at Hollins, Raybin & Weissman who's a legal consultant in the case. "It could be likened to a class-action lawsuit because so many people would be affected if it changed."

More than 1,900 prisoners in Tennessee are serving life sentences that make them eligible for parole after 51 years, according to the Tennessee Department of Corrections. In 1995, the state moved to change its sentencing laws, specifying that Tennessee prisoners must serve at least 85 percent of their sentence before getting a chance at parole.

The problem, Raybin says, is that under this regulation, there's no practical difference between life with parole and life without, when the minimum far exceeds most estimated lifespans for prisoners. The suit also calls into question two conflicting Tennessee codes.

"Basically, what this case is looking at is whether there are any real differences between life without parole and life with parole at 51 years," Raybin says. "One code says life with parole comes at 25 years in life-with-parole cases, while the other says an inmate must serve the 85 percent, which means at least 51 years."

Jacob Davis, who is bringing the case against the state, was convicted of murdering Robert "Nick" Creson, 18, at his Fayetteville high school after he heard rumors that his girlfriend was sleeping with him. At the time of his conviction in 1999, he was 19.

Although lawyers working on the case recognize the severity of his crime, Davis has been a "model inmate," according to court documents filed by David H. Harrington, the New York-based lawyer representing him in the suit. Davis enrolled in anger management classes and substance rehab as soon as he was incarcerated, and has completed several academic programs offered through the prison.

Attempts by the *Scene* to reach Davis were unsuccessful as of press time. But the lawsuit asserts he has no violent write-ups. His lawyers say he just wants a chance at parole. Before that happens, though, he fears he will die in prison.

Statistics show that's probably true. A federal government estimate says prisoners sentenced to life will likely not live longer than 40 years in prison, according to a June 2014 U.S. Sentencing Commission report.

There was a time, Raybin says, when life-with-parole sentences typically saw a chance at parole after around 25 or 30 years. That started to change in 1989, when the state-appointed Tennessee Sentencing Commission began a massive revision of sentencing laws under Gov. Ned McWherter.

"I served on that commission — this was when Tennessee's system got so bad it was taken over by federal court," recalls Raybin, who helped draft the legislation that resulted, the Tennessee Sentencing Reform Act of 1989. "The short version is that these sentencing laws came somewhat out of that chaos."

The commission revised and classified laws as they applied to seriousness of offense, and mandated longer sentences for people with extensive prior criminal history. But after that commission settled, trouble started in 1995 when McWherter's successor, Gov. Don Sundquist, pushed for a new addition to law-and-order legislation — the one mandating that inmates serve at least 85 percent of their sentence.

The state didn't adjust its sentencing guidelines to line up with the new law, Raybin says. As a result, he says, Tennessee's prison population has risen 250 percent since the 1990s.

"That is a direct result of this law, and the overcrowding we're seeing now is a result of this law Tennessee passed in 1995," Raybin says. The statistic he cites came from a task force formed by Gov. Bill Haslam that seeks to extend prison sentences in the state. Raybin and several others have sent letters to the governor asking to revise the task force.

"None of this is to say that prisoners should just be let out," Raybin says. "But they should have real opportunities for parole. Life with parole at 51 years is the equivalent of a life sentence. Jacob will be 70 before he's even eligible. Now, if they had given him life without parole, fine. That's the sentence."

Davis' eligibility for parole isn't the only detail under challenge. The suit also asserts that the original fiscal note for the 1995 legislation did not provide a true account of costs.

The Tennessee General Assembly in 1995 considered a fiscal note that projected an increase in state expenditures of \$57,899,352 for incarceration "over 10 years along with a \$2,100,040 recurring cost of judicial process and a \$279,500 one-time cost."

According to the lawsuit, the cost of TDOC's mandatory 51-year minimum — for all those sentenced to stay more than a half-century before getting a chance at parole — would actually be \$1.3 billion.

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