

# Legislating Long Sentences

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# The Historical Development of Long Sentences

For most of 20<sup>th</sup> century, nation used “traditional” indeterminate sentencing, justified by rehabilitative ideal

- General consensus that rehabilitation justified indeterminate sentences, policies, and practices
  - Also critiqued from its beginning
- Laws set parole eligibility
- Courts handed down indeterminate sentences
- Corrections had essentially unreviewable discretion over releases

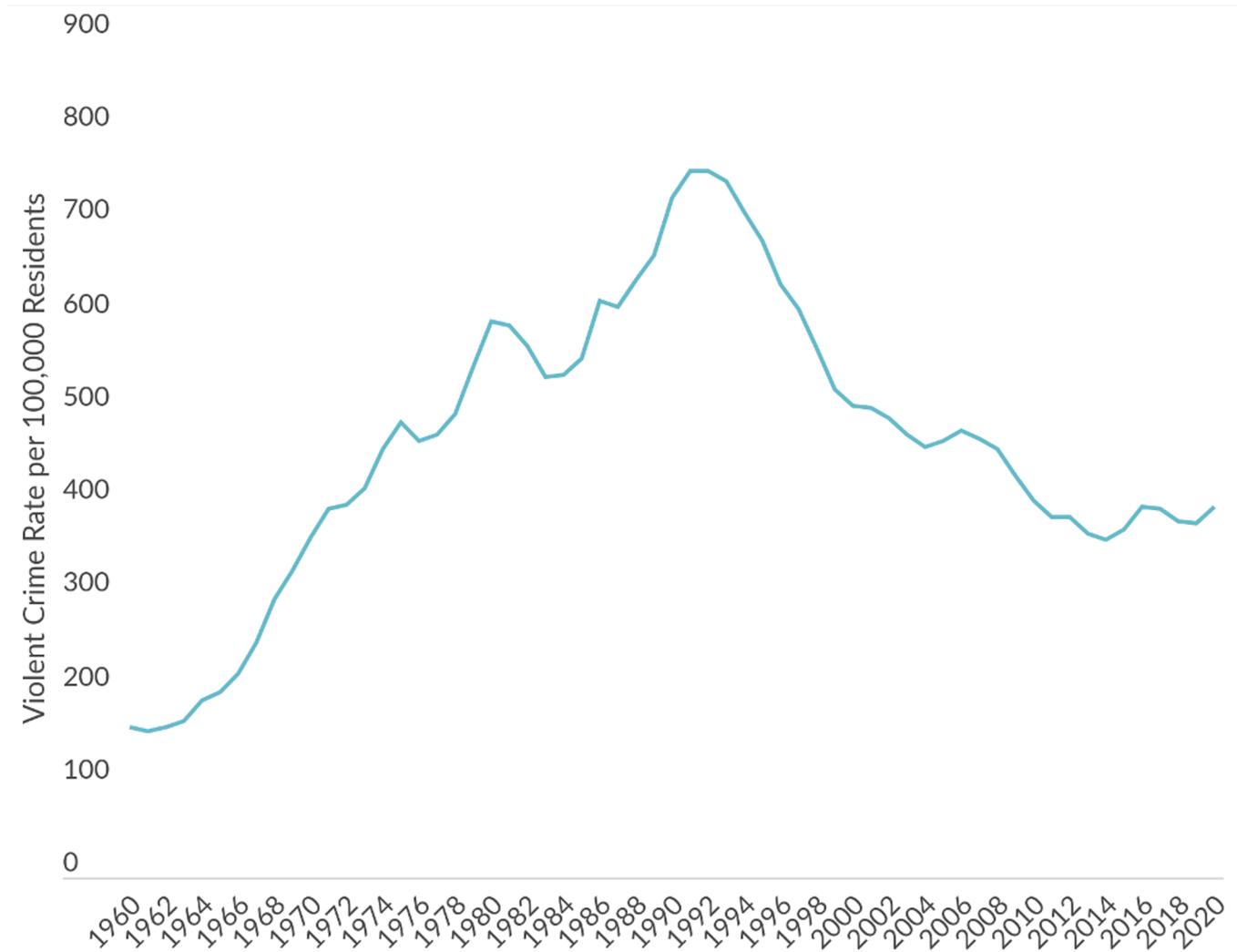
Sources: Travis, 2014; Reitz, 2012; Allen, 1981; Roman, 1995; Rothman, 1980

# Practical/political features of “traditional” indeterminate sentencing

- Legislatures could pass legislation in reaction to serious, violent, or high-profile crimes
- Prosecutors could use minimum sentences to encourage plea deals
- Judges could sentence people to long indeterminate sentences in response to serious and violent crime
- Correctional leaders could control intensity and costs of punishment by determining time served

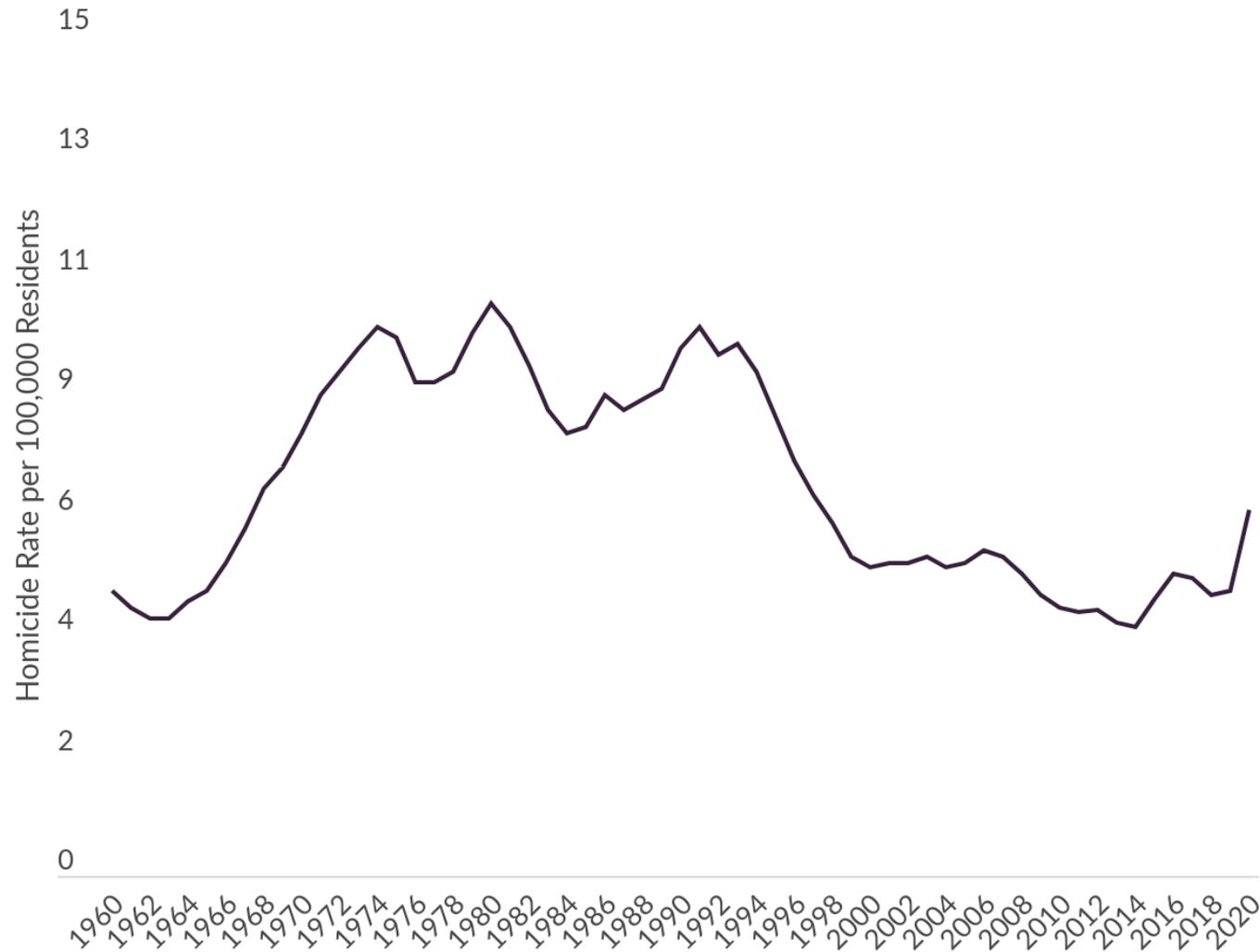
Sources: Travis, 2014; Roman, 1995; Rothman, 1980

# Violent Crime Rate: 1960-2020



Research shows that public “punitive mood” follows violent crime rates, particularly homicide rate (Pickett, 2020)

# Homicide Rate: 1960-2020



# Decline of Rehabilitative Ideal-Traditional Indeterminate Sentencing

In late 1960s-1970s, rehabilitative-ideal's indeterminate sentencing attacked from all ideological perspectives and broke down

- Produced unwarranted disparities by courtroom, region, and race
- Lacked transparency, fair process, principles, and accountability
- Failed to incapacitate and punish serious and violent crime
- Argued “nothing works” to rehabilitate incarcerated people

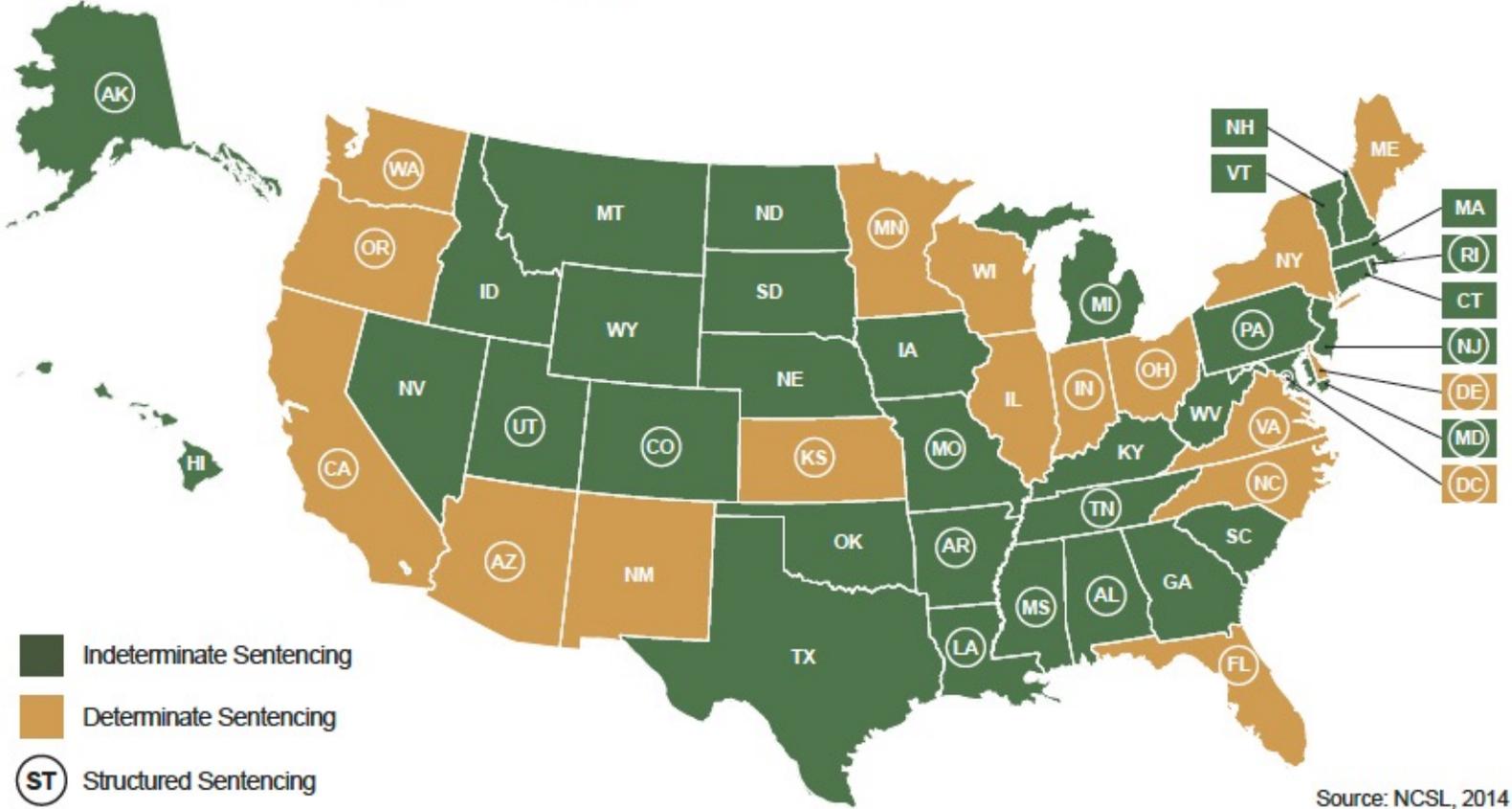
Sources: Travis, 2014; Allen, 1981; Martinson, 1974; Frankel, 1973

# Rise of Legislative Influence Over Long Sentences

Mostly through the 1970s-1990s, legislatures attempted to take *varying* degrees of control over implementation of sentences and time served based:

- Determinate and structured sentencing, commissions, and guidelines
  - Since 1975: 17 states, DC, and federal system abolished parole, 25 states implemented guidelines, and *33 states retained indeterminate sentencing*
- Mandatory minimum sentences
  - Since 1975: All states enacted mandatory minimums
- Mandatory minimum time served requirements
  - Since 1975: Time served requirements significantly increased

Figure 2: States' Primary Sentencing System



Source: NCSL, 2014

# Social Science and Psychology of Legislating Long Sentences

- Social psychology finds that punishment decisions tend to be “intuitively made,” “just deserts based,” and associated with group identity
- Public opinion analysis shows that a “racial animus” toward Black Americans has consistently predicted greater support for severe punishments
- Spikes in violent crime rates, media coverage of crime, and appeals to punitive policies have historically mobilized voters, including Black communities and leaders
- Increase in social distance can strengthen intuitive punitiveness
- Consideration of individualized fairness and procedural justice can moderate intuitive punitiveness

# Key Takeaways

- Our long sentencing law and policy retain high levels of indeterminacy, including in parole systems and the implementation of legislative mandates
- Legislators often positioned as needing “to do something” about serious and violent crime, typically by passing laws that *try* to fix implementation of sentence/time served by offense and at time of conviction
- Legislating long sentences can tap into an intuitive punitiveness, which tends to follow violent crime rates and has been historically interwoven with racial animus

