

# NACDL's Model Second Look Legislation

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# NACDL's Model Second Look Legislation: Key Components

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- Judicial “second look” after 10 years served for everyone
- Review at no more than 5-year intervals thereafter
- Harnesses DOC to commence process
- Petitioner has right to appointed counsel
- Requires a face-to-face hearing
- Sets forth factors that must be considered
- Ensures and cabins victim participation
- Petitioner has right to appellate review
- Animated by principles of humility and humanity



# Why Petitioner Driven?

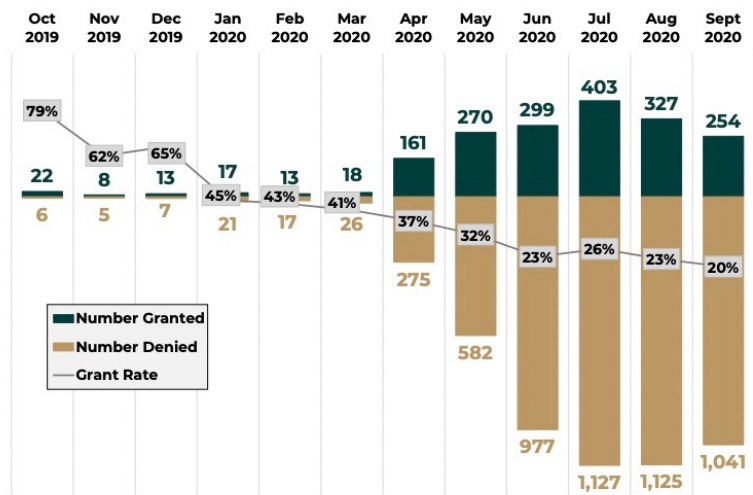
## Derrin Perkins

- Charged in 1991 (age 26) at state and federal level for role in DC-street crack conspiracy
- Nonviolent; unarmed; arrested with 16g of crack
- Offered 5 years pre-trial; sentenced to life in prison post-trial (1992)
- Denied clemency 2017
- Released in 2018 after *three* post-conviction petitions

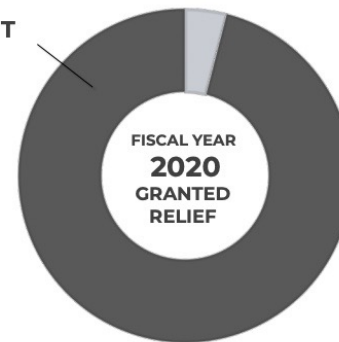


# Why Petitioner Driven?

## Compassionate Release under the First Step Act



FILED BY  
DEFENDANT  
96%



# Why Representation?

## ZoAnn Brown

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- Mother of five pled to participation in federal drug conspiracy in mid-thirties
- Sentenced to 24 years in prison in 2007
- Pro se clemency petition denied in 2015
- Counseled clemency petition granted in 2016
- Sentencing Judge: “my sentence was too long by a country mile”



# Why Representation?

- NACDL includes provision requiring appointment of counsel
- Counsel is more effective
- Hard to advocate for oneself from prison
- Multiple recent analogues at federal level indicate that large-scale representation is viable



**"I've heard mitigating things about you."**

# Why the Sentencing Judge?

## Raeanna Paxton

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- Mother of five charged in federal drug conspiracy
- Non-violent; low-level, unarmed courier
- Offered pre-trial plea of 21-27 years (no departures) or go to trial and face mandatory life
- Δ had no choice but accept plea and judge had no choice but impose 21 years
- Judge would have given her no more than 10 years



# Why the Sentencing Judge?

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- Sentencing is traditional a judicial function.
- Best situated to conduct individualized assessment
- Public, transparent, subject to adversarial testing and appellate review
- Insulated in part from political pressures
- Educative function



**“The past, Your Honor, is a foreign country,  
and we did things differently there.”**

# Why No Categorical Exclusions?

## Samantha Heiges

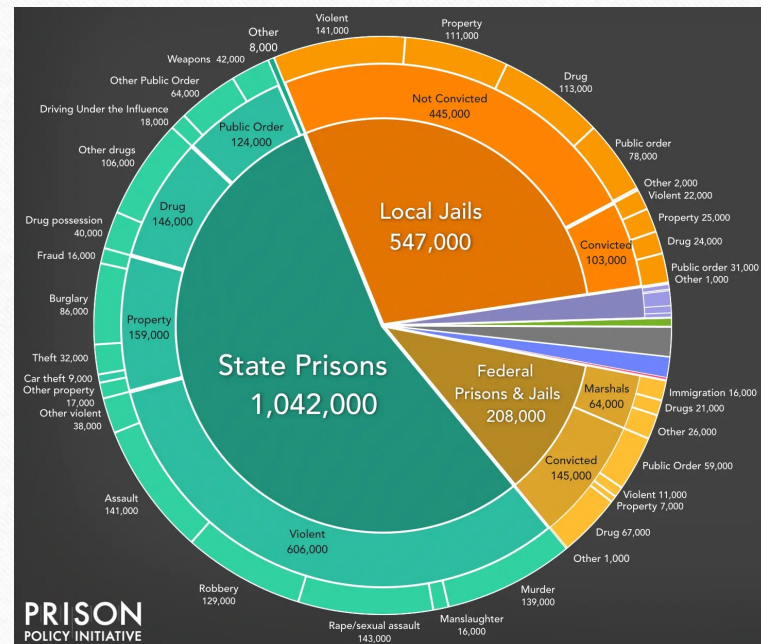
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- Convicted after trial in 2008 of 2<sup>nd</sup> degree murder
- Drowned newborn in bathtub at age 19
- Isolated in abusive relationship at time of offense
- Sentenced to guidelines sentence of 25 years
- Served 13 years of offense
- Exemplary prison record
- Granted clemency from Minnesota Board of Pardons
- Sentencing judge supported clemency petition



# Why No Categorical Exclusions?

- Majority of state prisoners are convicted of violent offenses
- Those with violent convictions serve among the longest sentences
- Nature of offense can be factor in decision to resentence and also level of second look process
- Consistent with humanity principles underlying second look concept



## Some Resources

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- Link to NACDL Model Second Look Legislation:  
<https://www.nacdl.org/getattachment/4b6c1a49-f5e9-4db8-974b-a90110a6c429/nacdl-model-second-look-legislation.pdf>
- Link to Report Accompanying Model Legislation:  
<https://www.nacdl.org/getattachment/c0269ccf-831b-4266-bbaf-76679aa83589/second-look-second-chance-turning-the-tide-through-nacdl-s-model-second-look-legislation.pdf>.
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