

No Way Home: Missouri's "Prior and Persistent" Drug Offenders Are Still Stuck Without a Chance of Parole

By Danny Wicentowski

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The Missouri State Highway Patrol was closing in on Robert Franklin.

It was February 10, 2007, and Franklin was driving blind at 40 miles an hour with no headlights along a rural secondary road in Saline County, about halfway between Kansas City and his home in Columbia. Trailing Franklin's SUV were two troopers from the highway patrol.

The troopers would later testify that the SUV slowed to a near-stop as it rounded a curve by a bridge, only to accelerate and speed off again. While one trooper continued the pursuit, the other pulled over and searched the area. He found a red and white box in the middle of the road. Inside was a plastic bag stuffed with a pound-sized brick of marijuana.

A few minutes later, Franklin himself pulled over and was arrested.

The evidence against the 26-year-old was damning. Not only was his fingerprint found on the box tossed in the road, but the entire incident had only started because Franklin and the woman who had been at the wheel a few miles before, Kelly Johnson, had fallen for a fake drug checkpoint designed to bait traffickers ferrying merchandise from Kansas City.

The tactic involves police setting up signs telling motorists to prepare for a drug checkpoint – with drug-sniffing dogs – a quarter-mile down the road. But there's not really a checkpoint. The misleading warning signs are intentionally placed along remote stretches of Interstate 70, far removed from gas stations or convenience stores. The thinking goes: Unless you're a local, there's no reason to take that exit, and therefore troopers view cars making hurried exits off the highway with suspicion. From there, all it takes is a traffic violation to bring the trap down and initiate a search on the vehicle.

The troopers had pulled over the SUV for rolling a stop sign and sent the driver, Johnson, to a patrol car for interrogation. That's when Franklin eased from the passenger side of the SUV, jumped in the driver's seat and attempted his ill-fated escape.

Franklin was ultimately charged with felony possession of more than five grams of marijuana with intent to distribute. However, the jury also heard details of his arrest that weren't included in any formal criminal complaints. Notably, the troopers testified that Franklin's eight-month-old daughter had been in the SUV during the car chase, and that she was "not properly secured" in the back seat.

Franklin was in a bad spot. He was facing a B-level felony for drug distribution, an offense that can yield a five to fifteen-year sentence.

But Franklin wouldn't get five or even fifteen years. As he soon discovered, he was being judged on more than just one distribution charge. Extending back to 1999, Franklin's rap sheet included two past felony convictions for dealing cocaine and three felony convictions for cocaine possession; although he'd completed a short prison term and probation for those crimes, the county prosecutor deemed him a "prior and persistent drug offender."

The term isn't simply a wordy description of Franklin's criminal record. Missouri's Prior and Persistent Drug Offender, or PPDO, statute allows prosecutors to charge offenders with two or more felony drug convictions with extraordinarily harsh prison sentences. By law, Franklin's B-level felony for distribution was bumped up to an A-level felony – and that meant not only a minimum ten-year sentence, but also no possibility for parole.

After a jury found Franklin guilty in February 2008, the judge sentenced him to 22 years in prison. He remains there to this day. (His accomplice, Kelly Johnson, appears to have gotten off with probation or a suspended imposition of sentence. A search of Missouri court records reveals no indication that she was ever criminally charged.)

"I see people go home all the time," Franklin says during a brief phone call from prison. He says he's grown depressed and isolated while observing murderers and rapists pass through parole hearings. A former cellmate received drug treatment and got out on parole, then got sent back to prison

on new charges, got paroled again, and now is back in prison for yet another stint. Franklin still has fourteen years to go. By the time he can even think about getting out of prison, that eight-month-old baby will be 23 years old.

"I can't even tell my story to nobody," he says. "That I've changed, that I'm not the same person I was when I came in here. I'm not even getting a chance to live a normal life. I've been punished, but the severity of the punishment don't fit the crime."

Franklin isn't alone. According to data from the Missouri Department of Corrections, 69 offenders are serving no-parole sentences for B-level drug distribution charges under the PPDO statute. In total, more than 140 people, most of them black, are currently locked up in Missouri prisons on no-parole sentences that in some cases equal – or even surpass – those for assault, murder or rape.

Defense attorneys and drug reform activists have long critiqued the imbalance between the PPDO statute's treatment of crime and punishment, and their cries have recently translated to legislative action. By 2017, the draconian PPDO statute will be gone, replaced by a far more reasonable policy.

But the repeal isn't retroactive. Franklin and the others will remain in prison until they complete their full sentences, victims of unfortunate timing that could cost them a full decade of their lives.

In fact, at present, only one offender sentenced under the PPDO statute has ever faced a parole board and walked free: a cause celebre named Jeffrey Mizanskey.

Passed in 1989, the PPDO statute entered Missouri's judicial system amid a nationwide wave of harsh sentencing laws. Starting in the mid-1970s and extending through the 1990s, U.S. politicians in every state proved they were "tough on crime" by punishing recidivist drug offenders – especially crack users and dealers – with laws that eliminated parole and instituted three-strike minimum sentencing laws. The voters loved it.

Missouri's PPDO statute was a product of its time, a perfect storm of fear and politics. But as years passed and prisons steadily filled, these laws have been revealed as abject failures.

"The public has this illusion that these long sentences are wonderful," says Jamie Fellner, a former director of Human Rights Watch who has researched and written extensively on America's love affair with mass incarceration. "But everybody knows that for every drug dealer you lock up, someone takes his or her place. Demand hasn't changed that much. How much money does it cost to keep someone in prison for ten or twenty years? What does the public get for that?"

(For the record, Missouri pays more than \$22,000 per year for each of the 32,000 offenders it currently houses. In fiscal year 2016, the state budgeted \$290 million to fund correctional facilities.)

By the end of the twentieth century, the nation's opinion on drugs began shifting. Dozens of states eventually amended their sentencing guidelines for first-time offenders and softened laws responsible for warehousing thousands of black people for possessing and selling small amounts of crack cocaine.

Nowadays, states use three-strike laws to target repeat felons and other violent criminals. Missouri is unique in maintaining a dedicated law for repeat drug felons. For a long time, outside a small circle of judges, prosecutors and defense attorneys, few were aware that such a law even existed.

To a degree, that changed in 2013 when [*Riverfront Times* publicized the startling case of Jeff Mizanskey](#). A relatively small-time pot dealer from Sedalia, Mizanskey's third-strike arrest in 1993 dropped the full weight of the PPDO statute on his head: For the crime of being involved in a drug sale of several pounds of marijuana, Mizanskey was sentenced to life in prison without possibility of parole.

But Mizanskey had never been convicted of any violent crimes, and each of his three felony strikes were connected to marijuana as opposed to less politically palatable drugs like crack or heroin. (And, it's fair to say, the facts of his arrest were murky enough to help his cause. Mizanskey was accused of assisting with a drug deal between two other men, allegations he flatly denied at trial; it's only recently that he admitted to journalist Vince

Beiser that he was in fact helping out, in hopes of picking up "an ounce or two" of the stash for himself.)

Eventually, Mizanskey's case drew outrage from cannabis legalization activists and lawmakers from both sides of the aisle. In April 2015, state Representative Shamed Dogan (R-University City) delivered a [change.org](#) petition seeking Mizanskey's release to the office of Missouri Governor Jay Nixon. The petition had garnered nearly 400,000 signatures. Many questioned what benefit the state derived from keeping a non-violent drug offender locked up for the rest of his life.

So powerful was the outcry that in August 2015 Nixon took the unprecedented step of commuting Mizanskey's sentence, permitting the 62-year-old grandfather to appear before a parole board. [When Mizanskey stepped out of prison on September 1](#), he became a new kind of Missouri folk hero, a victim of the drug war made whole.

See also: [How an Unlikely Coalition Freed Jeff Mizanskey](#)

But there is an untold epilogue to the campaign for Mizanskey's freedom, and it's buried inside Senate Bill 491, a massive piece of legislation passed in 2014. There, amid numerous tweaks to the state's criminal code, you'll find the PPDO statute scheduled for deletion and replacement.

The bill's changes are slated to kick in on January 1, 2017. After that date, the PPDO statute will still allow judges to enhance the sentence of repeat

drug felons – for example, upping a B-level felony to an A-level. But, crucially, offenders will still have a chance at parole. And that means a person serving ten years for drug trafficking would be eligible for release after serving just 25 percent of the sentence.

"I made it a point of advocating that we repeal that damn prior and persistent drug law, which is just too harsh," says Dan Viets. A Columbia-based attorney, Viets worked for three years alongside other lawyers, prosecutors, judges and legislators appointed by the Missouri Bar Association. Their mission was to clean up the state's archaic and oftentimes redundant criminal code, and their collective recommendations were incorporated into Senate Bill 491.

Of the PPDO statute, Viets says, "I think even the prosecutors recognized that it was too much. Too much punishment, too much prison. I think Jeff Mizanskey's case helped to show people why that statute needed to be repealed as well."

But Viets concedes that the repeal had to be finessed to gain a spot in a bill already brimming with politically fraught reforms. Some things were left on the cutting-room floor. One such item was adding a retroactivity clause to the new PPDO statute.

"As far as making the repeal retroactive, I'm afraid that would have certainly drawn some heat," Viets says now. "If I recall correctly, there was

some discussion of that possibility, but it was not an idea that prosecutors were going to sign onto."

As it stands, then, the fate of Missouri drug offenders serving no-parole sentences remains essentially unchanged. When asked about the parole status of inmates like Robert Franklin after January 1, 2017, a Department of Corrections spokesperson responds only with a reference to Missouri law stating that repealing or amending penal law does not affect anyone already affected by that law.

"I probably do more drug cases than other lawyers in Missouri," Viets muses. "I have a lot of clients who get into that position, they've had a couple prior drug-related felonies, and it doesn't take much. It's so easy to get a drug felony, and then people find themselves in serious trouble."

About nine months before the Highway Patrol nabbed Robert Franklin, they used the same trick to arrest Dimetrious Woods.

At a hearing before Woods' trial, trooper Bret Brooks testified on that May 19, 2006, he was driving along an overpass near signs for a fake drug checkpoint when he spotted a gold Buick Lucerne heading in the opposite direction. The Buick's driver appeared nervous, staring him down as the two vehicles passed. Brooks figured this could be another drug smuggler attempting a quick retreat back to Kansas City, away from the checkpoint.

Brooks pursued the Buick to the next exit and then to a gas station. On the way, the trooper claimed to see the sedan changing lanes without signaling. The trooper flipped on his siren and pulled into the parking lot, just in time to see two men quickly exit the car. Brooks shouted at them to stop.

The driver, Raymond Brown, a black man in his mid-thirties, fumbled with shaking hands as he presented his wallet and driver's license. After asking permission to search Brown's pockets, Brooks pulled out two wads of \$100 bills, more than \$4,000 total.

By the time Brooks turned to Woods, the younger man who'd been sitting in the passenger seat, he had ample reason to be suspicious. In his testimony, Brooks noted that Woods was breathing raggedly and fidgeting with a lollipop. Searching Woods' pockets revealed another bundle of cash, about \$2,000.

That was all the evidence Brooks needed. He radioed for a drug-sniffing dog. When troopers popped the Buick's trunk, they discovered nearly twenty pounds of cocaine.

Charged with drug trafficking, Brown and Woods waived their right to a jury trial, opting to let a judge sort out the merits. But when the day of the trial arrived, Brown decided to plead guilty and took a 30-year sentence.

Woods and his attorney went forward with the trial, arguing that he had nothing to do with the cocaine in the trunk and that Brooks had initiated an illegal search on the Buick.

But Woods, then the 28-year-old manager of his family's window-tinting business, didn't do his defense any favors. An audio recorder in Brooks' patrol car had picked up his conversation with Brown – and their angst over falling for the fake drug checkpoint. At trial, a bailiff also testified that Woods had incriminated himself while walking to the bathroom, telling her, "Don't ever do anything stupid or get into trouble. I'm facing life for some drugs. My family is here and it's very embarrassing. If my partner pleads guilty he can ruin everything for me." Woods denied making the comments. He maintained his innocence.

Judge Larry Harman didn't buy it.

"This is a person who sells drugs, goes on the street and sells those drugs that cause other crimes, burglaries, thefts, forgeries, robberies, homicides. This is a serious thing. Nine thousand grams of cocaine may be the most amount of cocaine that I've seen in a particular case, and I've had a lot of cocaine cases."

Harman noted that Woods had racked up two felony convictions as a teenager, for assault in 1996 and drug trafficking in 1998. Now Woods' status as a prior drug offender meant that he would be handed a prison sentence for a class-A felony and would not be eligible for parole.

"The court is mindful," Harman continued, "that this defendant most likely will serve a longer period of time even if he receives a shorter sentence than his co-defendant."

Harman sentenced Woods to 25 years in prison. And then, since his arrest revoked his probation for a previous conviction, the judge tacked another four years onto the sentence.

Woods, a father of six, was told he would spend the next 29 years in prison. By comparison, his alleged accomplice, Brown, was paroled after serving just seven and a half years.

Woods fought the conviction in appeal after appeal, losing each one. Years passed. A string of lawyers, including top defense attorney Scott Rosenblum, tried and failed to get him a new trial. Woods watched his children grow up from the visiting room of the Jefferson City Correctional Facility.

So it's understandable that Woods took particular notice of Jeff Mizanskey and the drama that unfolded prior his freedom. Woods wondered: If Missourians could agree that one man didn't deserve to rot in prison for drug crimes, why would they allow others to suffer the same fate?

Woods' family was skeptical.

"I really didn't see where it would really help us," says Aundrea Riffle, Woods' mother, on a recent evening. The chunky bracelets on her wrists clang like wind chimes as she shuffles through a stack of legal documents spread across a living room sofa in her North County home.

The room is cozy verging on crowded. Woods' eldest son, eighteen-year-old Dimetrious Jr., sits perched on the edge of a lounge chair, while Woods' half-siblings, Clinton and Keely, share a second couch on the other side of the living room. Soft yellow lamp light glints off a wall-to-wall display case holding row after row of bald eagle figurines.

At first, Riffle says she didn't see a connection between Mizanskey and her son. Mizanskey was doing a life sentence for handling a few pounds of marijuana in Sedalia, not running twenty pounds of cocaine out of Kansas City. Also, she suspected that pot legalization advocates were simply using Mizanskey as a PR boost.

"Sorry, the cannabis people?" she remembers thinking. "They aren't going to do a damn thing about people like Dimetrious. Mizanskey was an opportunity for them to get out and be in the public eye. It was a bandwagon and it was an available bandwagon."

But over several phone calls, Woods pressed the point with his mother. He conceded that Mizanskey's case didn't directly help his own, but there was no denying it had sparked scrutiny of the state's minimum sentencing laws.

And even if politicians wouldn't act against the PPDO statute, he wondered if Missouri voters would.

What they needed, Woods concluded, was an initiative petition to place a referendum on the 2016 ballot.

"I had no idea about how to do it," Riffle says now. Indeed, simply getting a petition approved by the Missouri Secretary of State is a daunting task; applications are routinely rejected over arcane formatting errors and misused legalese. Riffle says she and her son worked like a research team. Slowly, they built a petition that could withstand the rigorous review process.

It took Riffle and Woods a full year to get the petition approved, and it is a remarkably comprehensive document in its own right. Had Woods been sentenced under his "Smarter, Non-Violent, Prior and Persistent Drug Offenders Act," he would be eligible for parole after serving 50 percent of his sentence. The act would have also instituted fines to fund job training and substance abuse treatment programs for felons.

But to land on the ballot, initiative petitions have to collect signatures equaling five percent of the total votes cast in the last gubernatorial election – and in 2016, that equals roughly 100,000 signatures. Riffle says a consulting agency offered to collect the signatures for a cold \$750,000. It was like a door slamming in her face.

Adding further insult, Riffle says a staffer at the Secretary of State's office waited until after the petition's approval to drop the news about Senate Bill 491 and the scheduled repeal of the PPDO statute. In the end, Woods' painstakingly crafted petition wasn't just a failure, it was unnecessary.

Of course, the legislative repeal of the PPDO statute didn't include any of the retroactive fixes in Woods' petition.

"We're still in the same predicament," says Riffle's daughter Keely, who works as a probation officer in St. Louis. Murderers regularly come through her office while they're out on parole, even as drug offenders stay behind bars. She can't help but feel frustrated by the imbalance.

"My brother, he didn't victimize anybody," she says, sounding tired, like she's made this argument a thousand times. "We're not asking anyone to look at the case and say whether you think that he's guilty or not guilty. The question is, is our criminal justice system set to where the punishment is supposed to follow the crime that you've committed? How can we truly preach rehabilitation for our offenders if we're not giving them fair sentences for the crimes they commit?"

Her brother Clinton looks up from his phone.

"Our system has nothing to do with rehabilitation. It's just punishment," he says.

"No," Keely fires back, "it has to do with rehabilitation."

Clinton laughs.

"Your aspect of it, yes," he says. "Please, keep believing that."

As far as the immediate future is concerned, offenders like Robert Franklin and Dimetrious Woods are left grasping at long-shot solutions.

Dan Viets, the attorney who tried and failed to insert a retroactivity clause in the revised PPDO statute, suggests that lawmakers could close the gap with new legislation. But that would require a politician to publicly advocate giving freedom to heroin and crack dealers. Even lawmakers who stood with Mizanskey are unwilling to leap on that rail.

Shamed Dogan, the Republican state representative who went to bat for Mizanskey, says observers shouldn't be so quick to assume that legislators could meddle in the sentences of Missouri inmates even if they wanted to. Three months before Nixon commuted Mizanskey's sentence, Dogan had proposed a law that sought the release any offender "who is serving a life sentence without parole for marijuana offenses." The bill was expressly designed to free Jeff Mizanskey.

After filing the bill, Dogan says he was warned that such a tactic was likely unconstitutional.

"If there's going to be any relief retroactively, to my understanding it has to be done either through probation and parole or through the governor," he says.

Neither option offers good odds to drug offenders facing additional years in prison. Aside from Mizanskey, Governor Jay Nixon has pardoned only a handful of scofflaws for minor violations, such as a decorated veteran convicted of burglary for stealing a water jug containing loose change. That's a far cry from pardoning someone busted with a massive quantity of cocaine.

(In response to questions about pardoning drug offenders overlooked by the new PPDO statute, a Nixon spokesman would only say that governor's office "continually reviews clemency applications, and each application is reviewed on its own merit.")

As for the Office of Probation and Parole, the attorney representing Franklin and Woods, Kent Gipson, theorizes that state officials could interpret the language of the new PPDO statute to give parole hearings to offenders already serving no-parole drug sentences. But Gipson isn't betting on the good will of state officials.

"Everybody from their records officers at the individual prisons to the legal counsel, they seem to get their jollies by fucking with these guys and making them do more time if they can find a way to do it," Gipson says. "To

expect them to do something enlightened and progressive like that would be a shock to me."

If the new PPDO standards were suddenly applied to Woods' and Franklin's cases, it's possible that both men would already be free. Like any other person convicted of an A-level felony for drug distribution, Franklin would be eligible for parole after serving 25 percent of his 22-year sentence. That means he could be paroled after four or five years – and he's already served eight.

Woods' situation is complicated by a previous weapons charge – he was busted in 2005 carrying an unregistered pistol – for which he was sentenced to an additional four years. But considering that his accomplice walked free in under eight years, it's reasonable to imagine that ten years would be sufficient for Woods to qualify for parole, meaning he could be looking at freedom in around two years instead of two decades.

In both cases, though, that's all hypothetical. There is little light at the end of the tunnel for either offender, as well as the 140 others in Missouri prisons.

And it's worth noting that even the new PPDO standards won't block prosecutors from levying significant jail time on repeat felons.

For example, Darryl Walton was convicted in 2011 of three drug felonies after St. Louis cops spotted him handing something through the windows of two vehicles in a gas station parking lot.

That "something" was later found to be two small baggies of heroin. After searching Walton's clothing, the cops found more drugs, about two grams of crack.

Had Walton been sentenced under the new PPDO statute, he could be paroled after two to four years. However, Walton's extensive criminal record includes felonies for burglary and two convictions for felony assault. By law, prosecutors could charge Walton using a different persistent felony statute, thus forcing him to serve 80 percent of his sentence before getting parole.

At the end of the day, drug offenders like Dimetrious Woods, Robert Franklin and Darryl Walton aren't naturally sympathetic characters. They don't generate the kind of empathy or outrage that Mizanskey's case did.

But Michael Tonry, a criminologist and law professor at the University of Minnesota, says that these types of cases reflect the breathtaking cost of America's moral hysteria over drugs and its decades-long obsession with punishment. The damage runs so deep that states like Missouri are finding it politically difficult to enact even simple solutions, such as giving drug offenders a parole hearing.

"After a twenty-year period of passing historically unprecedented and probably cruel laws, public officials have a feeling that something is wrong and that it's out of control, but there's an incredible caution about doing anything more than taking small steps," Tonry says.

On a more philosophical level, Tonry believes there is something fundamentally broken about a justice system that treats similar offenders differently based on the kinds drugs they've sold or how many prior felony convictions they've accumulated in a lifetime.

"It's deeply, profoundly unjust and it results from an unwillingness or inability to think about how these laws would actually affect the lives of individual human beings," he says. "Everybody makes mistakes in life. Kids act out, and if they do it in front of a policeman they get arrested. I would tell people, 'There but for the grace of God go you.'"

For drug offenders like Woods, the disparity between crime and punishment isn't a political or academic issue. The PPDO statute forms the bonds of his own personal hell, a dimension unhinged from proportionality and rehabilitation. And unless something drastic changes, Woods and the others will continue to suffer. And for what?

"I'm not an angel," Woods says, his deep voice scratched with static over the prison phone system. "I would never try to pull the wool over anyone's eyes that I have been perfect in life. I'm not proud of my life or my decisions. I

wasn't mature when I made those decisions. I didn't realize that I was giving part of my life up."