

August 16, 2021

The Honorable Lorena Gonzalez
Chair, California Assembly Committee on Appropriations
Capitol Office, Room 2114
Sacramento, CA 94249-0080

The Honorable Frank Bigelow
Vice Chair, California Assembly Committee on Appropriations
Capitol Office, Room 4158
Sacramento, CA 94249-0005

Dear Chair Gonzalez, Vice Chair Bigelow, and members of the Assembly Appropriations Committee:

We, the undersigned organizations, write today to urge the Assembly Appropriations Committee to pass SB 73. This bill would repeal mandatory minimums for certain drug offenses while granting judges added discretion through a “safety-valve” provision for others. This bill follows over three decades of evidence that shows mandatory minimums are ineffective, inefficient, and result in unjust disparities in our justice system. We ask that you support and pass this important piece of legislation.

One-size-fits-all sentencing laws strip courts of much-needed discretion at sentencing. Mandatory minimums prohibit the courts from considering all relevant factors and circumstances about the crime and its impact on the community, or the individual’s role, motive, profit from the offense, age, likelihood of rehabilitation, or need for mental health or drug treatment. All of these factors are crucial to crafting an appropriate sentence, but mandatory minimums ban judges from considering any of them.

Because mandatory minimums inhibit a judge’s ability to craft an appropriate sentence, tailored to the individual and their offense, these policies have been an abject failure. The Department of Justice’s National Institute of Justice has disproven the deterrence theory framework that many use to support the existence of mandatory minimums, finding that it is the certainty of being caught, not the severity of punishment, that deters crime.¹ Furthermore, a recent 50-state study by the Pew Charitable Trust found no statistically significant relationship between drug sentencing and three major indicators of drug problems: drug arrests, drug use, and drug overdoses.² And simply putting more people in prison does not reduce crime. Another Pew

¹ “Five Things About Deterrence” Washington, D.C.: National Institute of Justice, 2016.

<https://www.ncjrs.gov/pdffiles1/nij/247350.pdf>

² “More Imprisonment Does Not Reduce State Drug Problems,” Pew Charitable Trust, March 2018.

https://www.pewtrusts.org/-/media/assets/2018/03/pspp_more_imprisonment_does_not_reduce_state_drug_problems.pdf

Charitable Trust study found that 35 states reduced their prison populations and crime rates simultaneously.³

These failed policies come at a high cost to taxpayers. As of January 2019, the cost to incarcerate someone in a California prison was \$81,000 per year.⁴ Based on this figure, one three-year mandatory minimum prison sentence will cost the state \$243,000 if incarcerated in a state prison. The costs remain extraordinarily high for those incarcerated in county jails as well. For example, the average cost of incarceration for the Los Angeles County jail was \$60,652 per year – meaning one three-year mandatory minimum prison sentence will cost \$181,958.⁵ A 1997 report from the RAND Corporation found that mandatory minimum sentences were not worth the exorbitant cost. The report found that one million dollars spent on mandatory minimum sentences for cocaine offenses was less effective than one million dollars spent on pre-mandatory minimum arrests, prosecution and sentencing, and was far less effective than one million dollars spent on drug treatment.⁶

Meanwhile probation and diversion programs, which rely on the availability of probation sentences, are far less expensive. According to a 2015 report from the Public Policy Institute of California, one year of incarceration is 13.5 times more expensive than one year of probation.⁷ Furthermore, in her testimony to the California Committee on Revision of Penal Code, Alameda County District Attorney Nancy O'Malley said that in “a cost-benefit analysis, there’s no question that diversion wins out over incarceration.”⁸

Finally, mandatory minimum sentences nationwide and in California have contributed greatly to the criminal justice system’s stark racial disparities. According to the California Attorney General’s Office,⁹ in 2016, Black people made up 16.5% of felony drug arrests (despite representing only 6.6% of the state population), and Hispanic people made up 41.3% of felony drug arrests (despite representing only 24.4% of the state population between the ages 19 and 54).¹⁰ People convicted of a felony drug arrest are likely to face a mandatory prison term, driving disparities among the incarcerated population. According to the most recently available

³ Adam Gelb and Jacob Denney, “National Prison Rate Continues to Decline Amid Sentencing, Re-entry Reforms,” Pew Charitable Trust, January 16, 2018. <http://www.pewtrusts.org/en/research-and-analysis/articles/2018/01/16/national-prison-rate-continuesto-decline-amid-sentencing-re-entry-reforms>

⁴ “California’s Annual Cost to Incarcerate an Inmate in Prison,” Legislative Analyst’s Office, January 2019. https://lao.ca.gov/PolicyAreas/CJ/6_cj_inmatecost

⁵ “Los Angeles County Jail System By the Numbers,” Los Angeles Almanac, n.d.a, <http://www.laalmanac.com/crime/cr25b.php>

⁶ Jonathan Caulkins et al., “Mandatory Minimum Drug Sentences: Throwing Away the Key or Taxpayers Money,” RAND Corporation, 1997. https://www.rand.org/pubs/monograph_reports/MR827.html

⁷ Ryan Grattet and Brandon Marten, “Probation in California,” Public Policy Institute of California, December 2015. <https://www.ppic.org/publication/probation-in-california/>

⁸ “Annual Report and Recommendations: 2020,” Committee on Revision of the Penal Code, February 2021. http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2020.pdf

⁹ California Dept of Justice. Crime in California 2016. <https://oag.ca.gov/crime>

¹⁰ US Census Bureau: <https://www.census.gov/quickfacts/CA>

“Offender Data Points” report from the California Department of Corrections and Rehabilitation, nearly 72 percent of all incarcerated Californians were Black or Hispanic.¹¹

California has positioned itself as a leader in many regards when it comes to criminal justice reform, but its continued reliance on mandatory minimum sentences for drug offenses places it well behind the national curve. States as diverse as New York, Michigan, Louisiana, South Carolina, Massachusetts, Montana, Maryland, and Iowa have repealed mandatory minimum drug laws, and many more have passed reforms granting more discretion to judges or reducing mandatory prison terms.^{12 13} It is time for California to join to growing cohort of states repealing harmful and ineffective mandatory minimums and pass SB 73.

We thank you for your time and consideration of our views.

Sincerely,

FAMM

Drug Policy Alliance

A New Path

ACLU California Action

Any Positive Change Inc.

APLA Health

Bienestar

California Association of Social Rehabilitation Agencies

Californians for Safety and Justice

Center for Living and Learning

Communities United for Restorative Youth Justice

Community Legal Services in East Palo Alto

Criminal Justice Clinic, University of California-Irvine School of Law

DreamCorps Justice

Due Process Institute

Ella Baker Center for Human Rights

End Hep C SF

Fresno Barrios Unidos

Hispanic Federation

Immigrant Legal Resource Center

Initiate Justice

Law Enforcement Action Partnership

Legal Service for Prisoners with Children

Los Angeles Community Health Project

¹¹ “Offender Data Points,” California Department of Corrections and Rehabilitation, October 2020.

https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2021/06/201906_DataPoints.pdf?label=Offender%20Data%20Points%20Report%20June%202019&from=https://www.cdcr.ca.gov/research/offender-outcomes-characteristics/offender-data-points/

¹² “Recent State Level Reforms to Mandatory Minimum Laws,” FAMM, May 10, 2017.

¹³ Louisiana Senate Bill 220, 2017 Regular Session, <https://www.legis.la.gov/legis/ViewDocument.aspx?d=1051860>.

Los Angeles LGBT Center
Los Angeles Regional Reentry Partnership
National Association of Criminal Defense Lawyers
National Harm Reduction Coalition
Re:Store Justice
Root and Rebound
Rubicon Programs
San Francisco Public Defender's Office
Secure Justice
The Sidewalk Project
William C. Velázquez Institute
Women Organized to Respond to Life-threatening Diseases (WORLD)