

**Testimony of the John Howard Association to the Senate Criminal Law Committee of the 101st Illinois General Assembly, Sentencing Reform Subject Matter Hearing, September 15, 2020.**

**I. Correctional experience and expertise:** John Howard Association (JHA): JHA is the only independent citizen correctional oversight organization that goes into Illinois' prisons to directly observe conditions and speak with staff, administrators and prisoners. I, Phillip Whittington, a criminologist and subject matter expert on corrections employed by JHA come before you today to discuss mandatory minimum sentencing policies.

**II. What is a mandatory minimum sentencing policy?** Any statute that eliminates or severely restricts the discretionary authority of prosecutors, judges, and the Illinois Department of Corrections (IDOC) to impose an individualized sentence based on the circumstances surrounding an individual criminal offense within the scope of the law is a mandatory minimum sentencing policy. This includes Truth In Sentencing (730 ILCS 5/3-6-3), automatic sentencing enhancements proscribed by 730 ILCS 5/5-8-1, and numerous other automatic sentencing enhancements embedded throughout the Criminal Code.

**III. JHA recommendation:** Illinois should repeal mandatory minimums, thereby untying the hands of criminal justice practitioners so that they can impose individualized sentences within the scope of the law that are tailored to fit individual offenses. The facts surrounding criminal offenses vary. Mandatory minimums are a one-size-fits-all approach that does not allow practitioners to adjust prison sentences in a way that accounts for this variance, sometimes leading to counterproductive, expensive, and unjust results.

**IV. There is no conclusive evidence suggesting that mandatory minimum sentencing policies enhance public safety, but it is undeniable that such policies are very costly and unsustainable for the State of Illinois, and hinder IDOC's ability to maintain safe, humane, and rehabilitative carceral settings.**

The State's failure to adequately resource IDOC for decades, and its unwillingness to maintain and modernize IDOC's infrastructure, has resulted in a perilous deficit. IDOC is not, and has not been, adequately funded or structured in a way that allows the Department to fulfill its goal of increasing public safety by rehabilitating prisoners through successful reentry programs. Currently the Department can merely incapacitate

the majority of the people in its custody, but cannot provide the level of care, education, training, and treatment necessary to further its stated mission or best fulfill the interests of Illinois' citizenry.

Additionally, decades of deferred maintenance have resulted in substandard prison conditions. IDOC utilizes numerous decaying structures to hold prisoners. During monitoring visits to prisons, JHA routinely observes leaking roofs, and the effects of failed plumbing and poorly maintained ventilation systems at IDOC facilities across the state. Sadly, the recent news of the Legionnaire's outbreak at Pontiac is not all that surprising based on the prison conditions we routinely witness and report on. Plumbing and ventilation issues are longstanding at this facility. Despite the best efforts of Administrators to have these issues remedied over the years, required maintenance has not occurred, was not done properly, or was delayed so long that numerous other problems resulted.

The Federal government provided a windfall of criminal justice funding to the states in the 1990's on the condition that they adopt mandatory minimum sentencing policies. In response, Illinois implemented Truth In Sentencing, mandating that criminal offenders serve a minimum of 100%, 85%, or 75% of their court imposed sentence for select offenses in June of 1998. The record is not clear as to whether or not the projected long-term cost of this policy was presented to the Illinois legislature in 1998, or if it was subjected to debate. Now, twenty years following the enactment of Truth In Sentencing, the federal government is not providing our state any funding to build or maintain the massive prison infrastructure required to accommodate mandatory minimums, and Illinois' untenable financial situation makes it so our state cannot fill this void.

**Mandatory minimum sentencing policies exasperate the challenges faced by IDOC in several ways:**

1. The static population of IDOC will remain at problematic levels because of the large number of prisoners serving long sentences without the possibility of earning time off their sentences. Thus, it is nearly impossible for IDOC to maintain constitutionally adequate, humane prison conditions because the limited resources allotted to the department are stretched woefully thin.
2. Another consequence of mandatory minimums is that the average age of IDOC's prison population is steadily increasing. As IDOC's collective prison population ages, the cost of providing medical care to prisoners rises as well. Additionally, the Agency suffers a substantial operational cost by having to transport a large number of elderly prisoners to hospitals throughout the state. When a significant proportion of correctional officers are diverted to transport duty, the number of officers available to work in prisons is reduced. This often creates safety and security concerns resulting in prisoners being denied time out of cell time for essential programming and denial of privileges.
3. Although there is an ample body of evidence suggesting that most people age out of criminal offending, many young people who commit serious offenses will never have

a chance at meaningful rehabilitation because of mandatory minimums. Rather, they will be released after serving decades in prison, ill equipped to live self-sufficient, law abiding lives upon return to the community.

## **V. A snapshot of the impact of mandatory minimums by the numbers:<sup>1</sup>**

- Of IDOC's population of 32,048 prisoners as of June 30 of this year, 15,071 (47.3%) are subject to Truth In Sentencing (TIS). 4,109 (12.8%) of these prisoners will serve 100% of their court-imposed sentence, ranging from 20 to 110 years, the majority sentenced to serve 38 years or more. 9,036 (28.2%) will serve a minimum of 85% of their court-imposed sentence, ranging from 3 to 80 years, the majority sentenced to serve 12 or more years.
- Of the 15,071 prisoners within IDOC subject to TIS, 5,314 (35.6%) were under the age of 24 when they committed the offense resulting in their imprisonment. 896 of these prisoners were 17 or younger at time of offense, one was as young as 11 years old when taken into custody. Additionally, 46.5% of this cohort of 5,314 young offenders will not leave prison until they are 40 years of age or older, and 10.8% will die in prison.
- Overall, younger offenders are disproportionately subjected to TIS in comparison to older offenders. As an offender's age at time of offense increases, the likelihood of them having been subjected to TIS decreases. For example, 54.5% of prisoners who were 18 to 23 years old at time of offense are subject to TIS. In contrast, 37.3% of prisoners who were 46 to 50 years old at time at offense are subject to TIS.
- Of the 15,071 prisoners in IDOC subject to TIS, 59.6% of these prisoners will be between the ages of 40 and 100 years old when their scheduled release date arrives. 14% will never leave prison.
- The majority of prisoners (87.2%) subject to TIS are statutorily ineligible to earn any time off of their sentence, regardless of success in rehabilitative programming or years of exhibiting good behavior.

## **VI. The lack of a correlation between prisons, mandatory minimums, and enhanced public safety:**

A prison sentence is intended to fulfil one or more of the following goals: rehabilitation, incapacitation, deterrence, and punishment & retribution. The concept of mandatory minimum sentences was designed to fulfil three of the four, incapacitation, deterrence, and punishment & retribution. The efficacy of mandatory minimums where these goals are concerned is debatable.

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<sup>1</sup> Figures based on IDOC's prison population data set as of 6-30-2020, available to the general public on IDOC's website.

1. **Rehabilitation:** there is no relationship between mandatory minimums and rehabilitation. Locking people up for decades does not further rehabilitation, and rehabilitation of prisoners is not one of the policy goals sought by proponents of mandatory minimums. In fact, the misconception that it is not possible to rehabilitate people who commit serious offenses in large part drove the push for mandatory minimums in the first place.
2. **Incapacitation:** mandatory minimums undoubtedly incapacitate people who have committed serious offenses for a long period of time. A volume of academic literature on criminal offending indicates that most people age out of crime if given the opportunity to do so. Mandatory minimums make it so these people will be imprisoned much longer than is required to preserve public safety.
3. **Deterrence:** when mandatory minimums were pushed in the 1990's, there was a misconception that extremely harsh sentencing practices would deter people from committing crimes. This misconception arose from a flawed understanding of deterrence theory. In order for a punishment to be an effective deterrent, three conditions must be met: certainty, swiftness, and publicity. Our criminal justice system routinely falls at all three. Whether an offender will be caught, prosecuted, and convicted after committing a crime is anything but certain. Criminal sanctions are often meted out years after an offense is committed. Finally, it is extremely rare for the public to be informed of a court-imposed sanction. Therefore, it is difficult to argue that the harsh prison sentences resulting from mandatory minimums is an effective deterrent. Also, there is ample evidence suggesting the lack of a correlation between mandatory minimums and a reduction in victimization.
4. **Punishment & Retribution:** the harsh prison sentences that result from mandatory minimums are without a doubt punitive. However, as most people adapt to their surroundings one way or another in due time, the punishment component of a prison sentence tends to fade over time. Eventually, for many prisoners sentenced for long periods of time, prison life, as bad as it is, is often normalized as they accept that this is the reality they will live in for many years to come.

As for retribution, serious crimes are tragic events that adversely affect victims. How a person responds to being victimized is a very personal, individualized experience. Therefore, what is required to make a victim whole will depend on what that individual needs. Mandatory minimums curtail a court's ability to tailor a sentence to meet the needs of victims on an individual level.

Whether mandatory minimums enhance public safety is very much subject to debate. What is not subject to debate is the adverse impact mandatory minimums have upon IDOC and the State of Illinois. More people serving extremely long sentences equates to a very costly and ineffective department of corrections. A large prison network that is very expensive to maintain is required to accommodate mandatory minimums. Prisons that function as warehouses rather than rehabilitative settings cost the state dearly in elevated rates of recidivism and a large number of people being released from prison

each year who are not adequately prepared to return to the community as law abiding citizens.

Respectfully submitted,

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