



**Testimony for the House Judiciary Committee
February 26, 2015**

**HB 121 – Criminal Procedure – Drug-Related Offenses – Repeal of
Mandatory Minimum Sentences**

SUPPORT

The ACLU of Maryland supports HB 121, which would repeal certain mandatory minimum sentences for certain drug-related offenses. Mandatory minimum sentences are problematic for many reasons, including: mandatory minimums needlessly increase costs without improving public safety; threaten due process principles; create a powerful incentive for the perversion of justice; and they disproportionately penalize low-level, nonviolent offenders.

Mandatory Minimum Sentences Increase costs without improving public safety.

It is extremely expensive to introduce mandatory extra years of incarceration, which should only be done if there is a clear benefit to public safety. There is no evidence that there is a public safety benefit to mandating severe sentences across the board for certain crimes, regardless of circumstances. Indeed, the evidence shows that more severe sentences do not deter more effectively than less severe ones.¹ By putting all discretion in the hands of prosecutors, who are professionally rewarded for achieving numerous convictions for lengthy sentences, mandatory minimums ensure that public policy concerns, such as cost and ensuring a good ‘public safety bang for the buck,’ take a back seat.² If there is a reason in a particular case to believe that a more severe sentence is warranted, the decision should be left to the judge, who has fewer incentives to ratchet up sentencing.

Mandatory Minimum Sentences Threaten Due Process Principles

Contrary to the messages sent to voters, mandatory minimum sentencing laws are neither mandatory nor do they impose minimum sentences. Under a truly mandatory sentencing law, everyone arrested for the same offense would end up receiving the same sentence if convicted. But that is not how mandatory sentencing laws work. They simply transfer the discretion a judge would have to impose an individualized sentence (based on relevant factors, such as a defendant’s role in the crime, criminal history and the likelihood of reoffending) and give that discretion to prosecutors. Prosecutors, unlike judges, need not be transparent about their decisions. A prosecutor need never disclose her reasons for bringing or dropping a charge. Judges, on the other hand, typically must disclose their reasons for sentencing in the written, public court record, and aggravating factors can be contested by the defendant.

¹ Durlauf & Nagin, *Imprisonment and Crime: Can Both Be Reduced?*, 10 CRIMINOLOGY & PUBL. POL’Y, 13, 37-38 (2011)

² Se. e.g. Richard T. Boylan & Cheryl X. Long, *Salaries, Plea Rates and the Career Objectives of Federal Prosecutors*, 48 J.L. & ECON. 625 (2005).

AMERICAN CIVIL
LIBERTIES UNION OF
MARYLAND

MAIN OFFICE
& MAILING ADDRESS
3600 CLIPPER MILL ROAD
SUITE 350
BALTIMORE, MD 21211
T/410-889-8555
F/410-366-7838

FIELD OFFICE
6930 CARROLL AVENUE
SUITE 410
TAKOMA PARK, MD 20912
T/301-270-2258

WWW.ACLU-MD.ORG

OFFICERS AND DIRECTORS
COLEMAN BAZELON
PRESIDENT

SUSAN GOERING
EXECUTIVE DIRECTOR

ANDREW FREEMAN
GENERAL COUNSEL

Mandatory Minimums Disproportionately Penalize Low-Level, Non-violent offenders.

Defendants are often afforded relief from mandatory minimums in exchange for information helpful to prosecutors. Low-level defendants charged under mandatory minimums – drug couriers, addicts or those on the periphery of the drug trade, like spouses – often have no information to give to prosecutors for a sentence reduction.

Peter Zeidenberg, a federal prosecutor from 1991 – 2007, had this to say:

It is not surprising that [] proposed changes [set forth by AG Holder that mandatory minimum sentences should be sought only for high-level or violent drug dealers] have drawn fire from certain prosecutors³ and “law and order” politicians. Eliminating the imposition of mandatory minimum sentences for nonviolent drug crimes would, without question, make the prosecution of drug trafficking cases more difficult. The how-to of taking down drug organizations is not particularly complicated: Arrest the low-level dealers and, after threatening them with the prospect of a lengthy prison sentence, obtain their cooperation and agreement to testify against their higher-ups. Long mandatory-minimum sentences are a crude but effective method of extracting this cooperation. So narcotics prosecutors’ resistance to the proposed reforms is to be expected.

But merely because it is often effective to threaten small-time drug dealers with decades in prison if they fail to cooperate does not make the practice just. Saudi Arabia imposes the death penalty for trafficking even small amounts of drugs and, by all reports, the kingdom has very low levels of illegal drug use. But few would suggest that such a draconian approach, even if effective, was just or moral. A balance must be struck between the crude effectiveness of the threat of a long prison sentence and the fairness of sentencing a low-level, nonviolent drug dealer — generally a user himself or herself — to decades behind bars. The cost of that imprisonment — not simply in taxpayer dollars, though that is immense — must also be considered in the context of sentences that violent felons typically receive.⁴

For the foregoing reasons, the ACLU of Maryland supports HB 121.

³ http://www.washingtonpost.com/world/national-security/some-prosecutors-fighting-effort-to-eliminate-mandatory-minimum-prison-sentences/2014/03/13/f5426fc2-a60f-11e3-a5fa-55f0c77bf39c_story.html

⁴ http://www.washingtonpost.com/opinions/reduce-long-sentences-for-drug-dealers-even-if-it-makes-prosecutions-harder/2014/04/10/e645646c-b9dc-11e3-9a05-c739f29ccb08_story.html