

TO: Representative Jerrold Nadler, Chairman of the U.S. House Committee on the Judiciary
Senator Lindsey Graham, Chairman of the U.S. Senate Judiciary Committee
FROM: Henry Clay Center for Statesmanship Committee on Criminal Justice Reform
SUBJECT: Responsible Rehabilitative Drug Sentencing Act
DATE: May 18, 2019

The Committee on Criminal Justice Reform has worked to address several problems that have stemmed from harsh mandatory minimums for nonviolent drug offenses, including overpopulated prisons, a growing drug abuse problem across society, and the difficulty of former inmates to reintegrate into society. In place of mandatory minimums, the committee has created a more cost-effective set of sentencing guidelines for nonviolent drug offenders to allow judges more discretion to evaluate cases on an individual basis. In assessing cases individually, judges will work with relevant mental health experts, attorneys, and community stakeholders to determine the best rehabilitative option for each offender to reduce recidivism and drug use in the long run. Further, to reduce the current prison population, eligible nonviolent drug related offenders will have their cases retroactively reviewed for potential release. Upon release, each eligible individual will be subject to community supervision, court-based supervision, and support initiatives to aid reintegration into society and increase accountability. Expected savings will be used to further support these rehabilitation services.

Background:

Over the past decade, we have seen several major bipartisan criminal justice reform efforts. Legislators from both parties, such as Representative Doug Collins (R-GA-9) and Senator Richard J. Durbin (D-IL), have sponsored bills to reduce mandatory minimums and create programs to aid the reentry process, proving their commitment to reduce recidivism.¹ Recent policies include the Second Chance Act of 2008, which directed funding towards programs used to improve the reentry process.² Further, the Fair Sentencing Act of 2010 eliminated mandatory minimums for simple possession.³ Finally, the First Step Act of 2018 relaxed mandatory minimum sentences and directed more funds towards adding and expanding programs created by the Second Chance Act.⁴

Criminal justice reform has also been a priority in states. Maryland, Connecticut, Oklahoma, Montana, and many other states have passed legislation reducing or repealing mandatory minimum drug penalties within the last five years.⁵ In January, over 8,000 marijuana convictions in San Francisco were retroactively dismissed with the help of a new computer algorithm used to automatically scan court records.⁶ These efforts have been instrumental in reducing recidivism rates and lowering state prison populations.

¹ “Fair Sentencing Act,” Congress.gov, August 3, 2010; “First Step Act,” Congress.gov, May 23, 2018.

² National Reentry Resource Center, “Second Chance Act Grant Program,” CSG Justice Center.

³ “Fair Sentencing Act of 2010,” Congress.gov, August 3, 2010.

⁴ Congressional Research Service, “The First Step Act of 2018: An Overview,” Congress.gov, March 4, 2019.

⁵ “Recent State-Level Reforms to Mandatory Minimum Laws,” FAMM.org, May 10, 2017.

⁶ Amanda Jackson, “Over 8,000 marijuana convictions in San Francisco dismissed with help from a computer algorithm,” CNN.org, February 25, 2019.

Problem Definition:

Since the late 1970's, the United States has responded to the dramatic increase in drug related crimes. Lawmakers around the country have enacted harsh sentencing laws known as mandatory minimums. These were initially designed to punish offenders accused of using, selling, and distributing illegal substances. Mandatory minimum laws are inflexible, lengthy prison sentences that are not tailored to the individual that committed the crime. According to the American Civil Liberties Union, "Under federal law, most mandatory minimum sentences apply to drug crimes and are based on the weight of the drug(s) involved; these sentences start at five years for certain drug possession offenses and increase to life without parole."⁷ Clearly, mandatory minimums have not succeeded. Prisons have become overcrowded, with nearly 45% of inmates in federal prisons there for drug offenses.⁸ The rate of recidivism after five years is higher for drug offenses than for violent crimes, stating that prison has failed as a rehabilitation mechanism.⁹ A recent analysis of state corrections and public health data found there was no correlation between imprisonment rates and rates of drug use, overdose death, or arrests for drug law violations. It has been noted that public health responses to drug use are more effective than incarceration.¹⁰

Not only do mandatory minimums affect overcrowding of prisons, they also cost the United States every time a drug offender is incarcerated. According to the Leadership Conference for Civil and Human Rights, "Mandatory minimums undermine our nation's commitment to justice and fairness by preventing judges from taking into account the individual's background and the circumstances of his/her offenses in the sentencing determination. These laws have led to overcrowding and exorbitant costs to taxpayers."¹⁰ The average fee for one federal inmate is \$34,704.12 a year, costing United States taxpayers \$94.82 per day.¹¹ Both conservatives and liberals know that it is feasible to cut crime rates and costly incarceration rates. Reducing recidivism should be a unified focus of both ideologies to make efforts to reform the criminal justice system.¹² Specifically, conservatives are clear to understand that reforming offenders is a requirement for public safety.¹² "Breaking the cycle of crime and turning lawbreakers into law-abiding citizens is a conservative priority because it advances public safety, the rule of law, and minimizes the number of future victims".¹²

Overall, there is a major problem with mandatory minimums for drug offenses within the United States of America's criminal justice system. Supreme Court Justice Anthony Kennedy has stated "This idea of total incarceration just isn't working."⁸

⁷ "Overcrowding and Overuse of Imprisonment in the United States" American Civil Liberties Union Foundation, May 2015, accessed May 2019.

⁸ "Sentencing and Mandatory Minimums," Civil Rights Documents, March 28, 2018, accessed May 17, 2019.

⁹ Jacob Reich, "The Economic Impact of Prison Rehabilitation Programs," Public Policy Initiative, August 17, 2017, accessed May 17, 2019.

¹⁰ Brian Elderbroom and Julia Durnan, "State Drug Law Reforms to Reduce Felony Convictions and Increase Second Chances," Urban Institute, October 2018, accessed May 2019.

¹¹ "Annual Determination of Average Cost of Incarceration," National Archive: The Daily Journal of the United States Government, April 30, 2018, accessed May 17, 2019.

¹² Randy Petersen, "The Conservative Case for Reform," Right on Crime, accessed May 17, 2019.

Policy Goals & Criteria:

Goals

The goals of this policy are to reform the criminal justice system for nonviolent drug offenses by reducing the amount of people currently in prison for these offenses; increasing the amount of funding for rehabilitation services; increasing accountability of offenders in treatment, and reducing recidivism overall.

In order to meet these goals, this proposal calls for:

- An elimination of mandatory minimum sentences for nonviolent drug offenses
- An establishment of sentencing guidelines for federal judges
- A rehabilitation-focused court proceeding for drug offenses in which mental health professionals and other drug and criminal justice experts are present
- An enhanced accountability system in which community stakeholders and correctional officers are involved in monitoring drug offenders
- An application of these policies retroactively to previously incarcerated nonviolent drug offenders

Criteria

Efficacy:

- By reducing mandatory minimums for nonviolent drug offenses and establishing sentencing guidelines for federal judges, the amount of people currently in prison facilities will be reduced, as judges will have more discretion to individually evaluate cases rather than adhering to mandatory minimum sentence standards.
- By implementing a rehabilitation-based system, recidivism within the criminal justice system will be reduced due to fact that rehabilitation is more effective than incarceration.

Efficiency:

- This policy proposal will be more efficient than other proposed solutions such as drug courts because we are utilizing the current criminal justice court system as opposed to investing money to create a whole new system such as a drug court system. However, some elements of drug courts will still be implemented into the current system, such as having mental health professionals, criminal justice experts, and other specialists present to determine the best sentence/treatment for the defendant. Further, new sentencing guidelines will guide these professionals to establish consistent rulings while incorporating individual considerations of the offender to assign the most efficient and fair sentence possible.
- The process of applying this policy retroactively will also increase efficiency due to new technologies that allow for a more expedited process of determining who is eligible for release under these new laws.
- By using the existing system of probationary officers to monitor the drug offenders and hold them accountable after their release, offenders will be less likely to relapse and return to a life of drug crimes, reducing recidivism.

Cost-Effectiveness:

- The cost of the policy will have no net gain or loss because the savings from implementing this policy by reducing the money currently spent on incarceration will be re-allocated towards other aspects of the policy.

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|--------------------------|---|------------------------------------|
| Current Spending | Incarceration of 76,099 Individuals ¹³ | (\$2,762,336,625.75) ¹⁴ |
| Proposed Spending | Rehabilitation of 76,099 Currently Incarcerated | \$2,228,178,720 ¹⁵ |
| | State Grant Funding for Other Rehabilitative Programs and Community-Based Education | \$534,157,905.75 |
| Net Total Cost | | \$0 |

- This chart shows that this policy is more cost effective than the status quo of our current prison system and therefore will not result in a spending deficit.
- Thus, this system will be the most economical option to reduce the prison population and save money in the least amount of time.

Ease of Implementation:

- This policy will be implemented more easily because it utilizes the current criminal justice system and the resources within it. For example, the current system already includes mental health experts and psychologists as well as correctional and probationary officers.
- The process of eliminating mandatory minimums will also occur with ease due to the fact that it only requires one piece of federal legislation. Additionally, to ensure efficiency in applying this policy retroactively, the courts will collaborate with organizations such as “Code for America,” and use their technology and algorithms to determine the eligibility of inmates for release and expedite the process.
- Furthermore, while creating sentencing guidelines will involve some work by the Sentencing Commission, it should not be too difficult by looking at precedent for past cases.

Political Feasibility:

- The issue of criminal justice reform is a bipartisan issue that has involved significant compromise between conservative and liberal thinkers. The proposed policy is politically feasible due to the fact that it prioritizes liberal goals of equity and social justice along with conservative goals of improving cost-efficiency and accountability.

¹³ "Federal Bureau of Prisons." BOP Statistics: Inmate Offenses. May 11, 2019. Accessed May 17, 2019.

¹⁴ Bureau of Prisons. "Annual Determination of Average Cost of Incarceration." Federal Register. April 30, 2018. Accessed May 17, 2019.

¹⁵ "Incarceration Costs Significantly More than Supervision." United States Courts. August 17, 2017. Accessed May 17, 2019.

- By eliminating mandatory minimum sentences for nonviolent drug offenders and applying this retroactively, as well as increasing funding for rehabilitation services, the proposal is focusing on issues of equity with previously incarcerated individuals and ensuring that people who are most disadvantaged by the current system are treated justly.
- By establishing sentencing guidelines as well as implementing aspects of the drug court panel system into our current court system for drug offenders, we are ensuring that the best possible sentences can be given to individuals and that there is accountability for their actions set in place through required interactions with correctional officers.
- Finally, by reducing the prison population and transitioning towards a more rehabilitation-focused program of justice, a lot of money will be saved which can then be put into rehabilitation programs, which are more cost-effective than incarceration. Thus, this reform is politically feasible because it appeases both conservative and liberal goals.

Recommendations:

- All nonviolent drug offenses will no longer be subject to the restrictive mandatory minimums that currently exist within the federal judiciary system. Mandatory minimums will be rescinded for nonviolent drug offenses and will no longer apply. Rescinding mandatory minimums for solely drug offenses will prove to be cost-effective by saving \$2,762,336,625.75. This money will be redirected towards rehabilitative services, which will save taxpayers more money in the long run which is politically advantageous by saving money while also funding more social services.
- Retroactively review, recall, and resentence in phases. Phase I will review all first time nonviolent offenders in federal prison for drug offenses. Phase II will review all second time nonviolent offenders. Phase III will review all third or more time nonviolent offenders. The phases are not on a set timeline, rather they will progress based on institutional capacity, as to not overwhelm the system. Breaking down the retroactive release of the incarcerated persons into phases allows for efficient reintegration of said persons into their communities in smaller groups, allowing for more hands-on reintegration. Retroactively reviewing, recalling, and resentencing currently incarcerated nonviolent drug offenders is the greatest contributor towards the cost-effectiveness of the proposed policy and contributes to the efficacy of the proposal.
- New nonviolent drug offenders will go through the federal court system as normal, with the caveat that relevant community stakeholders, mental health experts, attorneys, and the judge determine what rehabilitative option is best on a case-by-case basis which will be referred to as the Sentencing Commission from this point forward. The Sentencing Commission will utilize federal sentencing guidelines created by criminal justice and mental health experts that will provide guidance and recommendations in sentencing for drug offenses. Creation of a Commission with experts in their respective fields will improve outcomes and encourage the creation of guidelines that work to reduce recidivism.
- Should a nonviolent offender get arrested a second time for a drug offense, they will return to court with the same Sentencing Commission, if they so choose, to re-evaluate the first sentence and come to a solution for a new sentence/rehabilitative plan moving forward. Should they be arrested a third time for a nonviolent drug offenses, the same process will occur, with the federal sentencing guidelines and Commission. Consistency with the Commission for the same individual should they be arrested for subsequent

nonviolent drug offenses, will allow for efficiency in case-by-case sentencing with the same stakeholders being present for an individual. By evaluating cases on an individual basis, the Sentencing Commission has more agency in deciding the best plan of action for each offender, resulting in reduced drug use and recidivism long-term.

- Money that will be saved through the proposed policy will be redirected towards the creation of a federal grant that states can apply for to receive funding for rehabilitation centers, harm-reduction training for law enforcement agencies, and community-based accountability training rooted in transformative justice frameworks. Additional money/ will be funnelled towards the reintegration of formerly incarcerated persons to help gain access to housing and jobs as well as for the monitoring of persons to ensure they are supported by rehabilitative services. This will redirect \$2,228,178,720 to support the formerly incarcerated individuals if we decide to release all individuals from Phases I-III at once. The leftover \$534,157,905.75 will be put towards the state grant program. The reallocation of funds in the policy will prove more cost-effective over time as rehabilitative programs have been shown to reduce recidivism and produce better outcomes for individuals with drug addiction, resulting in healthier communities and families. Not only will money be saved through the implementation of the policy, but as time goes on, savings will further increase as the cost of reintegration of formerly incarcerated persons decreases.
- Encourage the Drug Enforcement Administration (DEA) to review the current drug schedules and consider re-classification. Should the DEA choose to reclassify drug schedules, further taxpayer money will be saved if higher schedule drugs are declassified and decriminalized. The political feasibility of this seems to be moving in a positive direction as states across the country continue to legalize marijuana usage.
- Due to ambiguity on the definition of drug trafficking, the decision to allow drug traffickers to participate in federally sponsored rehabilitation programs is left to the discretion of the presiding judge and Sentencing Commission. Further, the decision to apply this policy retroactively is determined by the judge on a case by case basis.

Conclusion:

The needless yet continual cycle of overpopulation within the prison system must be stopped to ensure the progress of the United States justice system. Mandatory minimum sentencing must be eliminated in its entirety to allow forward momentum to occur within criminal justice reform. As articulated in this report, there is no one single policy solution that will alone solve the overpopulation problem occurring in federal prisons across the country. It is for this reason that the Committee on Criminal Justice Reform offers an approach that is comprehensive and multifaceted.

The Committee on Criminal Justice Reform has recommended a number of policy strategies that include removing mandatory minimums for all nonviolent drug offenses. Retroactively review, recall, and resentencing cases in approximately three phases. Allowing new nonviolent drug offenders to have a Sentencing Commission with relevant community stakeholders, mental health experts, attorneys, and the judge to determine what rehabilitative options are given. A federal grant will be created with the money saved from the proposed policy above and will be used to fund rehabilitation centers and harm reduction seminars. The Committee on Criminal Justice Reform also encourages the Drug Enforcement Administration to consider reclassifications of drug schedules.

Retroactively implementing these recommendations will help lower prison populations in federal prisons and reduce recidivism. This will aid in closing the racial disparity that is persistently evident in our justice system through unequal sentences placed on those from low socioeconomic and marginalized communities. As laid out in this report, efficiency, efficacy, political feasibility, cost-effectiveness, and ease of implementation are needed to ensure that the above proposal works. Thousands of American lives depend upon it. We look forward to discussing this further. Please contact us if you have any questions.

Responsible Rehabilitative Drug Sentencing Act

To reduce overcrowding in federal prisons, reduce the rate of recidivism, and work to close the racial disparities that exist within the criminal justice system.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REFORMING MANDATORY MINIMUMS.

This Act may be cited as the “Responsible Rehabilitative Drug Sentencing Act”.

SEC. 21. REPLACING MANDATORY MINIMUM SENTENCING FOR NONVIOLENT DRUGS.

(a) REMOVING MANDATORY MINIMUMS.—Section 21 of Controlled Substances Act of 1971 ([21U.S.C 841](#)) replacing all of subsection (b)—

(1) Retroactively review, recall, and resentence all currently incarcerated nonviolent drug offenders in phases.

(i) Phase I will review all first time nonviolent offenders in federal prison for drug offenses.

(ii) Phase II will review all second time nonviolent offenders.

(iii) Phase III will review all third or more time nonviolent offenders.

(iv) The phases are not on a set timeline, rather they will progress based on institutional capacity, as to not overwhelm the system.

(2) New nonviolent drug offenders--

(i) Will go through the federal court system as normal,

(ii) Sentencing Commission involved in sentencing and treatment decisions,

(a) Stakeholders involved- relevant community stakeholders, mental health experts, attorneys, and the judge

(b) Evaluated on a case-by-case basis

(c) Utilize federal sentencing guidelines created by criminal justice and mental health experts to provide guidance and recommendations in sentencing for drug offenses.

(3) Repeat offenders--

(i) Shall return to court with the same sentencing commission, to re-evaluate the first sentence and come to a solution for a new sentence along with the sentencing guidelines.

(4) Money saved through the proposed policy will be redirected towards the creation of a federal grant that states can apply for to receive funding for:

(i) Rehabilitation centers

(ii) Harm-reduction training for law enforcement agencies

(iii) Community-based accountability training

(iv) Reintegration of formerly incarcerated persons to help gain access to:

(a) Housing

(b) Jobs

(c) Monitoring of persons to ensure they are supported by rehabilitative services

(5) Encourage the Drug Enforcement Administration (DEA) to review the current drug schedules and consider re-classification.

(6) Drug trafficking--

(i) Decision to allow drug traffickers to participate in federally sponsored rehabilitation programs is left to the discretion of the presiding judge and Sentencing Commission.

(ii) Decision to apply this policy retroactively as determined by the judge on a case by case basis.