

POLICY BRIEF

Restoring Judicial Discretion by Repealing Rhode Island's Mandatory Minimum Drug Sentences

H7075 and S2172

HISTORY AND BACKGROUND

- **A serious plan for a severe problem**

In 1988, when Rhode Island adopted mandatory minimums, the leading thought on drug crime was that if judges “threw the book at anyone implicated in this insidious business, its diminution would become more likely.”¹ In this context, long sentences for drug crimes had innate appeal.

- **Serious costs**

Since 1988, our prison population has more than doubled (from 1,527 to 3,537 people); we have opened three new prisons and expanded existing facilities three times. In addition to these capital investments, prison expenditures have more than doubled. In 1988, Rhode Island spent \$52 million on incarceration; in 2003 we spent over \$130 million on incarceration.²

- **Mandatory Minimums: More expensive and less effective than we thought**

In 1997, the RAND Corporation released findings that “*Mandatory minimum sentences are not justifiable on the basis of cost-effectiveness at reducing...drug-related crime.*”³ According to the study, discretionary sentencing, conventional enforcement and drug treatment are all more effective, per dollar spent, at reducing both drug consumption and drug-related crime.

- **Consensus: Mandatory Minimums of little value in reducing drug crime**

A large body of research shows that mandatory minimums are not simply cost-ineffective, but futile at any price.⁴ On the recommendations of the Justice Kennedy Commission, the American Bar Association has urged a blanket repeal of mandatory minimum at all levels of government.⁵

- **Mandatory Minimums fail to target highest-level dealers**

The RAND study also states that high level dealers cannot be identified solely by the quantity of drugs they possess, as many insulate themselves from direct interaction with the supply. Thus, factors other than quantity (the primary factor of consideration in Rhode Island) must be taken into account to determine a dealer's position in the distribution hierarchy.

CURRENT POLICY

- The Rhode Island Uniform Controlled Substances Act has a two-tiered system of mandatory minimums.⁶
- The first tier imposes a **mandatory minimum sentence of 10 years** and a maximum of fifty years for individuals convicted of possession, sale or manufacture of:
 - 1-5 kg of marijuana
 - 1oz.-1kg of cocaine or heroin

- The second tier imposes a **mandatory minimum sentence of 20 years** and a maximum of life imprisonment for individuals convicted of possession, sale or manufacture of:
 - More than 5kg of marijuana
 - More than 1 kg of cocaine or heroin

MANDATORY MINIMUMS TAKE DISCRETION AWAY FROM JUDGES

- By blindly attaching penalties to crimes, mandatory minimums make judicial consideration the exception rather than the rule, substituting inquiry into an offender's place in the drug trade with a simple tally of how much he possessed at the time of his arrest.
- Rhode Island is the only state in New England that does not have different laws for possession and sale of larger amounts of controlled substances; our laws must allow this vital difference to be considered.

MANDATORY MINIMUMS ARE NOT COST-EFFECTIVE

- Rhode Island spends an average of \$35,000 per year per offender.⁷ Mandatory drug treatment costs between \$3,000 and \$10,000 and intensive supervision less than \$5,000 a year. More discretion in sentencing will make the state's drug reduction dollars go further.
- For many offenders, drug treatment and/or supervision is not just cheaper, but more effective for rehabilitation and thus, more likely to prevent recidivism—and the incarceration costs it incurs.

RHODE ISLAND HAS THE MOST SEVERE MANDATORY MINIMUMS IN NEW ENGLAND

- Rhode Island is the only state in New England where the shortest mandatory minimum is 10 years. This is twice the highest mandatory minimum of any other state in New England. In other words, Rhode Island's lowest mandatory minimum for marijuana is twice the highest mandatory minimum for cocaine in Connecticut and Massachusetts.
- Rhode Island is the only state in New England where offenders can receive a life sentence for possessing or selling marijuana.

MANDATORY MINIMUMS ARE HELPING TO FUEL RACIAL DISPARITIES IN RHODE ISLAND'S SENTENCED POPULATION

- Whites, Blacks and Hispanics use drugs at similar rates, and 80% of users buy from dealers they initially know outside the dealer-user relationship—someone from their community.⁸
- While drug use and dealing are spread proportionately among the races, the relative incarceration rates for drug crimes are wildly skewed.⁹
 - Black Rhode Islanders are incarcerated for drug crimes at 30 times the rate of whites.
 - Hispanics are incarcerated for drug crimes at 11.5 times the rate of whites.
- Mandatory minimums are by no means solely responsible for these discrepancies; however, by holding people in prison for longer than necessary, they amplify the discrepancies that originate with differential arrest rates, conviction rates and sentencing patterns.

MANDATORY MINIMUMS ARE HURTING RHODE ISLAND'S LOW-INCOME COMMUNITIES

- As mandatory minimums drive up the incarceration rate in low-income communities, they also amplify the collateral consequences of widespread incarceration. **Longer sentences mean more and greater “ripple effects” for the communities from which prisoners come.**

- Extracting more men and women from places like the Southside of Providence for longer periods of time decimates families.
- Reduced family income may hurt a child's academic achievement and emotional development. An Urban Institute study found that 31% of children living under stressful family conditions had low levels of educational attainment, compared to 17% of other children. Those same children also faced higher levels of both emotional and behavioral problems.¹⁰
- Family dissolution can add to the burden of DCYF.

MANDATORY MINIMUMS HAVE BEEN EFFECTIVELY REDUCED OR REPEALED IN OTHER STATES

- In many states, legislators are reconsidering costly sentencing policies enacted when harsh and long sentence were considered an effective response to drug crime.
- In 2002, **Michigan** completely abolished mandatory minimums for drug offenses, eliminated the stacking of consecutive sentences and restored the power of judges to consider factors other than weight in determining penalties. These changes were passed with broad bipartisan support and saved the state \$41 million in 2003.¹¹
- In 2001, **Louisiana** repealed mandatory minimums for many non-violent and simple drug possession offenses and cut minimums in half for drug trafficking. These changes, along with accompanying administrative reforms and the expansion of treatment programs, have stabilized prison population growth in Louisiana.¹²
- **Maine** passed legislation reducing certain mandatory minimums and granting judges the authority to suspend others.¹³
- In total, 18 states have rolled back mandatory minimums or restructured similar penalties.¹⁴

BENEFITS OF REPEALING MANDATORY MINIMUMS & RESTORING JUDICIAL DISCRETION

- **Rhode Island has one of the most severe drug problems in the United States.**
After the District of Columbia, Rhode Island has the highest percentage of illicit drug abusers and addicts in the United States.¹⁵ This figure is partly explained by the fact that 18-25 year-olds in Rhode Island have a higher incidence of illicit drug abuse or dependence than any other age group in any other state; more than 12 percent are affected.¹⁶ In particular, a greater percentage of 18-25 year-olds in Rhode Island use cocaine than in any other state.¹⁷
- **We are not funding and providing adequate levels of substance abuse treatment.**
Out of all fifty states and the District of Columbia, Rhode Island has the fourth highest percentage of individuals needing but not receiving treatment for illicit drug use.¹⁸
- **Reserving incarceration and the associated costs for only the highest-level dealers is a better use of the money that we earmark for public safety and drug reduction.**
The money saved by doing away with this automated and maladaptive system of spending prison dollars will make money available for services known to be more effective at reducing drug consumption and drug-related crimes—most notably, drug treatment.
- **Rhode Island's drug laws are the most severe and expensive in New England, and they have not been effective.**
H7075 and S2172 will bring Rhode Island in line with the reasonable drug law found in the rest of New England and will cost taxpayers less than our current policy.

Notes

¹ *Providence Journal*, Providence, RI: Mar. 21, 1985. p. A-16.

² RIDOC 2003 Annual Report; Leo Carroll, *Lawful Order*, (New York: Garland, 1998) pp. 329-330.

³ Jonathan P. Caulkins et. al., *Mandatory Minimum Drug Sentences: Throwing Away the Key or the Taxpayers' Money* (Santa Monica, CA: The RAND Corporation Drug Policy Research Center, 1997).

⁴ The amount of state-level research on this issue is constantly growing. Three reports include: Judith A. Greene, *Crime Trends and Incarceration Rates in Oregon* (Brooklyn, NY: Justice Strategies, 2004); Vincent Schiraldi and Jason Ziedenberg, *Costs and Benefits? The Impact of Drug Imprisonment in New Jersey* (Washington, DC: Justice Policy Institute, 2003), Finding 7; Judith A. Greene, Kevin Pranis and Howard R. Wine, *Arizona Prison Crisis: A Call for Smart on Crime Solutions* (Washington DC: Families Against Mandatory Minimums, 2004).

⁵ ABA Justice Kennedy Commission, "Resolution 121A" (revised), *Report of the ABA Justice Kennedy Commission* (Adopted by the American Bar Association at its Annual Meeting in Atlanta, August 9 and 10, 2004). Accessed at: <http://www.abanet.org/media/jkcrecs.html> and at: <http://www.abanet.org/leadership/2004/annual/dailyjournal/121A.doc>.

⁶ Rhode Island, *General Laws*, "Uniform Controlled Substances Act," §21-28-4.01.1 and §21-28-4.01.2. Accessed at: <http://www.rilin.state.ri.us/Statutes/TITLE21/21-28/INDEX.HTM>.

⁷ Rhode Island Department of Corrections, "Costs Per Offender – FY 2004." Accessed at: www.doc.ri.gov/pdf/Cost%20Per%20Offender%20-%202004.pdf.

⁸ United State Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Office of Applied Studies, *Results from the 2003 National Survey on Drug Use and Health: National Findings* (September, 2004), 18, 22. Accessed at: <http://oas.samhsa.gov/nhsda/2k3nsduh/2k3ResultsW.pdf>.

⁹ Family Life Center Analysis of RI DOC Sentenced Population Date File (December 31, 2003).

¹⁰ Kristin Anderson Moore and Sharon Vandivere (Child Trends), "Stressful Family Lives: Child and Parent Well-Being," *New Federalism, National Survey of America's Families* (Washington, DC: The Urban Institute, June, 2000), p. 1, and Moore, Vandivere and Jennifer Ehrle (the Urban Institute), "Turbulence and Child Well Being," *New Federalism*, pp.2-3.

¹¹ Judith A. Green, *Positive Trends in State-Level Sentencing and Corrections Policy* (Washington DC: Families Against Mandatory Minimums, Nov., 2003), pp. 11-2. Accessed at: http://www.famm.org/pdfs/82751_Positive%20Trends.pdf.

¹² *Ibid.*, p. 15.

¹³ *Ibid.*

¹⁴ *Ibid.*, p. 6.

¹⁵ Douglas Wright and Neeraja Satha, *State Estimates of Substance Use from the 2002-2003 National Surveys on Drug Use and Health* (United State Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Office of Applied Studies, September, 2004) pp. 138-41. This figure is, as noted, a combination of two categories: abusers and addicts; in addicts alone, however, Rhode Island also ranks second after DC. Accessed at: <http://oas.samhsa.gov/2k3State/2k3SAE.pdf>.

¹⁶ *Ibid.*, pp. 138-9.

¹⁷ *Ibid.*, pp. 120-1.

¹⁸ *Ibid.*, pp. 144-5.