



RE: SB 649 (Leno)
Position: SUPPORT

March 12, 2013

The Honorable Loni Hancock
Chair, Public Safety Committee
State Capitol, Room 2082
Sacramento, CA 95814
Phone: (916) 651-4009
Email: Senator.Hancock@senate.ca.gov

Re: The Sentencing Project Endorses California Senate Bill 649

Dear Chairwoman Hancock:

The Sentencing Project, a national criminal justice research and advocacy organization supports Senate Bill 649. The bill expands sentencing options for certain drug offenses. The proposed legislation would afford prosecutors the option of charging low level drug possession as a misdemeanor and authorize judges to deem a non-violent drug possession offense to be either a misdemeanor or felony after consideration of the offense and the defendant's record

According to the Bureau of Justice Statistics, California incarcerated over 149,000 prisoners in 2011 while more than 380,000 persons were on probation or parole.¹ Lengthy prison sentences for low level drug offenses can shatter families, weaken communities and cost taxpayers millions. At a cost of over \$47,000 per inmate per year-- compared to an average of just over \$31,000 for 40 other states, according to a 2012 study from the Vera Institute of Justice -- this overinvestment in incarceration brings limited benefits to the taxpaying public.

Senate Bill 649 is fiscally sound legislation. According to a 2011 analysis by the Legislative Analyst's Office, charging personal drug possession as a misdemeanor could save California counties \$159 million annually statewide and well over half a billion dollars over five years. Counties could reallocate the savings to drug treatment, education, job training, housing and other proven recidivism-reduction programs.

Specifically, Senate Bill 649 would:

- Allow prosecutors to charge personal drug possession as a misdemeanor.
- Authorize judicial discretion to deem a non-violent drug possession offense to be either a misdemeanor or felony after consideration of the offense and the defendant's record.

The proposed legislation builds on current state policy. Authorizing a misdemeanor conviction for personal drug possession is already an option for eligible methamphetamine offenses. Additionally, 13 states, the District of Columbia and the federal government treat drug possession as a misdemeanor offense.

¹ Guerino, P. Harrison, P.M., & Sabol, P.M. (2011). Prisoners in 2010. Washington, DC: Bureau of Justice Statistics. Available online here: <http://bjs.ojp.usdoj.gov/content/pub/pdf/p10.pdf>

California adopted lengthy prison sentences for certain drug offenses in an attempt to deter drug use. The intent was to make a statement in an attempt to dissuade unlawful behavior. Long prison terms for low level drug offenses prevent courts from using more effective punishments. Studies show that most of these individuals are not the “kingpins” of the drug trade, but rather actors in the lower or middle levels of street-corner drug markets. Further, large-scale incarceration of these people has had little effect on drug markets, since arrestees are easily replaced on the streets. When the individual is a drug abuser or addict, for example, diversion to substance abuse treatment, or less time in prison, can be more effective and less costly than lengthy incarceration.

These laws have weakened the authority and discretion of judges, while failing to advance public safety. Studies show that lengthy prison sentences that increase time served in prison do not deter crime, since deterrence is more a function of the certainty of punishment rather than the severity of punishment.

Research has demonstrated that lengthy prison terms do not reduce recidivism. A 1999 study tested this assumption in a meta-analysis reviewing 50 studies dating back to 1958 involving a total of 336,052 offenders with various offenses and criminal histories. Controlling for risk factors such as criminal history and substance abuse, the authors assessed the relationship between length of time in prison and recidivism, and found that longer prison sentences were associated with a three percent increase in recidivism. Persons who spent an average of 30 months in prison had a recidivism rate of 29%, compared to a 26% rate among prisoners serving an average sentence of 12.9 months.

By passing Senate Bill 649, California would join an increasing number of states that have recognized that lengthy prison sentences for nonviolent drug offenses increase public costs without strengthening public safety. Last year, Kansas lawmakers expanded judicial authority for certain drug offenses by allowing judges to impose alternative sentencing options or drug treatment. During 2011, Delaware lawmakers reformed drug sentencing practices by increasing the drug quantity amounts that prompt mandatory minimum drug sentences and restructuring the drug code to bring the scheme in line with statutory penalties. Rhode Island legislators repealed certain mandatory sentencing laws for drug offenses in 2009. Also in 2009, New York signed into law comprehensive drug policy reforms that greatly expand treatment options while repealing most mandatory minimum sentences for drug offenses. Michigan passed sweeping reforms of its mandatory minimum drug penalties in 1998 and 2003 and Massachusetts made some drug offenders parole eligible after serving one-half of their mandatory minimum sentences just last year.

The Sentencing Project believes that a more appropriate sentencing structure can be instituted to hold low level drug users accountable for their offenses. *We urge the Senate Public Safety Committee to vote in favor of Senate Bill 649.*

Sincerely,



Marc Mauer
Executive Director

cc: Senate Public Safety Committee
Senator Mark Leno