



**Testimony Delivered by Ashley Nellis, Ph.D., Senior Research Analyst, The Sentencing Project
For the Virginia House of Delegates Joint Meeting of Courts of Justice and Public Safety Committees
July 29, 2020**

Thank you very much for inviting me to speak today. My name is Ashley Nellis and I am a long-time sentencing researcher with TSP, a national organization committed to evidence-based research and advocacy on criminal justice reform. Our organization has been a vocal opponent of mandatory minimum sentences from their first major endorsement at the federal level in 1986. My comments today pertain to mandatory minimum sentencing here in Virginia.

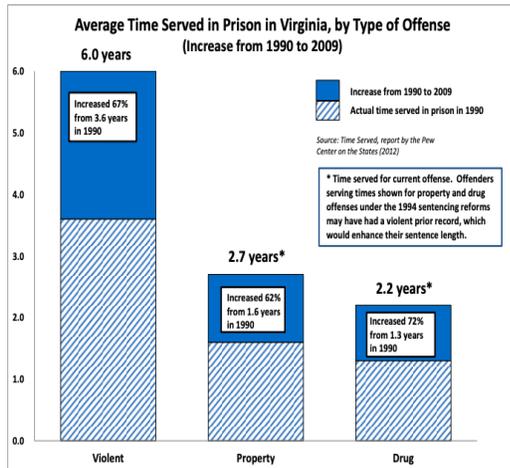
Mandatory minimums do not work as intended.

Mandatory minimum sentences have been shown to lack their intended impact as a public safety tool and instead have contributed to what we now view as a system of mass incarceration. The initial goal of these laws may have been to ensure uniformity across sentences, but this has not been the outcome. We do not have a fairer system today. By constraining the ability of judges to use their discretion and arrive at the appropriate sanction through weighing the facts on a case-by-case basis, prosecutors now have that power, along with an incentive to pressure defendants to accept a plea or face a mandatory minimum. A fair and reliable justice system is impeded by the racial and ethnic biases that tend to drive these decisions.

The justification behind mandatory minimums is that if people know they will face a long sentence for their crime, they will make a rational choice not to commit it. The reality is more complicated than this. First, this line of thinking assumes that people are aware of the sentencing structure in advance; that they know, for instance, that selling an ounce of marijuana to a 16-year-old results in a minimum of five years in prison. The reality is that most people don't believe they will be caught in the first place, and if they are, they will not be aware of the punishment associated with their crime. The research on the effectiveness of punishment repeatedly shows that it is the *certainty* of being caught rather than the *severity* of the punishment, that makes the difference.

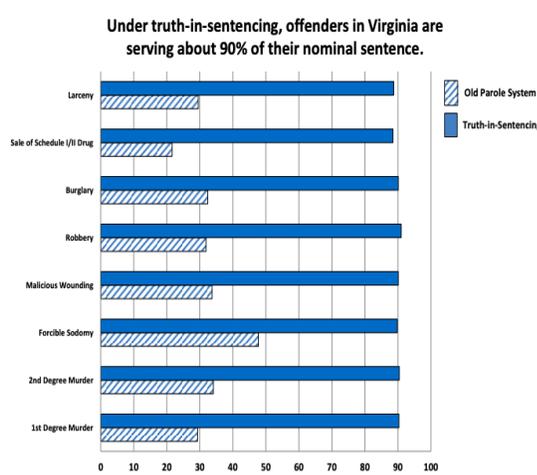
The establishment of mandatory minimum and truth-in-sentencing in Virginia and elsewhere, was intended to address punishments for serious and violent crimes, but there has been the trend of incarcerating people for successively lower level crimes. Take a look at the state's own data—the largest percentage increase in time-served between 1990 and 2009 has been for drug crimes, not violent or property crimes.

Figure 1.



This incapacitation-only approach is not a deterrent. In fact, the dramatic expansion of the prison system has now placed us well past the point of diminishing returns for public safety, affecting sentences from murder to larceny.

Figure 2.



Equally important, we incarcerate well past the point of ages at which individuals are likely to continue committing crimes, as we know that criminal conduct tends to decline with age, and quite precipitously once a person is in their 30s or early 40s.

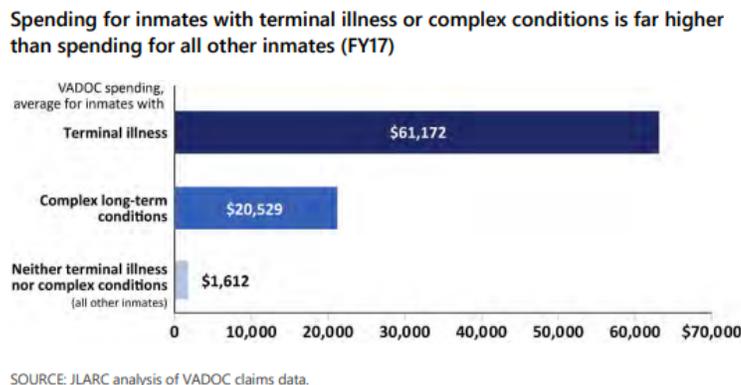
Today, as many states begin to rethink and scale back their mandatory minimum sentences and depopulate their prisons, Virginia has taken neither of these important steps. This state maintains more than 200 mandatory minimums. Over 40 of these come about as a result of a nonviolent drug conviction. As recently as a year ago, 15 *new* mandatory minimums were introduced that would result in life without parole; fortunately, most of these did not pass.

The dramatic expansion of the prison system over the past four decades has had a variety of disturbing effects, particularly on disadvantaged communities of color that have suffered the heaviest burden of these policies. People of color, particularly African Americans, are over-represented at each stage of the Virginia criminal justice system. Though they are less than 20% of the general population, Blacks are arrested at nearly 3 times the rate of whites. African Americans are incarcerated at 6 times the rate of whites.

Finally is the issue of cost. The expansion of incarceration has also produced a severe imbalance in our approach to public safety, whereby record fiscal expenditures have been targeted at the back end of the criminal justice system, coming at the expense of investments in crime prevention, drug treatment programs, and support for more effective initiatives to aid law enforcement and the courts in promoting a broader public safety strategy.

By its own account in a recent government report, Virginia has an increasingly costly inmate population that is cause for concern. Costs are accelerating as a result of its aging prisoner segment as well as its extremely restrictive compassionate release policy for incarcerated people with terminal illnesses.

Figure 3.



Sentencing structures that force judges to impose terms of years based on statutorily mandated minimums have not been demonstrated to be an effective crime control strategy; instead, they have exacerbated racial disparities, contributed to a bloated prison population, and placed an unjustifiable financial burden on the state—and ultimately its citizens—to house individuals, in most case, long past what’s necessary for public safety.