

Vera

*Mass Incarceration and the Need
for Sentencing Reform*

MAY 2, 2024

Agenda

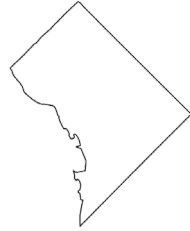
1. Sampling of recent sentencing reforms across the U.S
2. Importance of reforming mandatory minimums
3. Addressing critiques of sentencing reform



Sampling of sentencing reforms across the U.S., 2016-present

Back-end reforms

Second Look creates
judicial resentencing
after a period of
time based on the
interest of justice



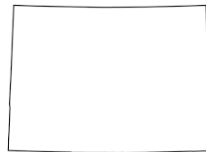
DC, 2016

Incarceration Reduction Amendment Act ([IRAA](#)) was expanded in 2021 to allow individuals convicted for crimes committed up to age 25 to petition for release after 15 years



Maryland, 2021

[SB 494](#) allows individuals convicted for crimes committed when they were minors to petition for resentencing at 20 years



Colorado, 2023

[SB 23-1292](#) allows individuals to petition after 10 years if serving a three-strikes sentence of 24 years or more

Truth in Sentencing

TIS reform changes the percentage of sentences individuals must serve before either automatic release or parole consideration

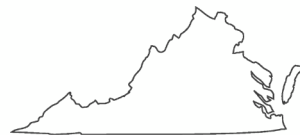


Mississippi, 2021

[SB 2795](#) reduces time to parole consideration for people convicted of violent offenses to 50% of their sentences or 20 years, whichever is less

	Law Before July 1, 2021	Law as of July 1, 2021 (SB 2795)
Crimes classified as nonviolent offenses	25% of sentence(s)	25% or 10 years, whichever is less, of sentence(s)
Armed Robbery, Drive-By Shooting, Carjacking	Not eligible for parole	60% or 25 years, whichever is less, of sentence(s)
Other crimes classified as violent, excluding those specified as not eligible	Not eligible for parole	50% or 20 years, whichever is less, of sentence(s)

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Virginia, 2020

[HB 5148](#) lowers the previous 85% service requirements for most offenses, leaving it for some but not all violent offenses, changes are retroactive



Front-end reforms

Reducing mandatory sentence enhancements



California

[SB 1393](#) (2019) returns discretion to judges to dismiss "nickel priors," or 5-year enhancements based on second serious felony convictions

[SB 136](#) (2019) eliminates 1-year enhancements for any prior jail or prison sentence; made retroactive in 2021

[SB 81](#) (2021) says judges "shall" dismiss an enhancement if the "furtherance of justice" requires it and gives guidance for these instances



Delaware, 2019

[SB 47](#) Eliminates sentencing enhancements based on prior drug convictions



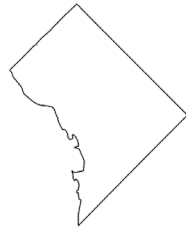
Front-end reforms

Removing
mandatory
minimums which
require a baseline
prison sentence



California, 2021

[SB 73](#) repealed mandatory minimums for various drug offenses



DC, 2022

Revised Criminal Code Act ([RCCA](#)) eliminated all mandatory minimums (rejected by U.S. Congress in 2023)



Tennessee, 2020

[SB 2734](#) removed mandatory minimums for drug offenses in school zones



Why is it important to reform mandatory minimums?

Restore consideration of the person, not only the offense

Judges should perform an individualized assessment of the appropriateness of an incarcerative sentence.

“Guidelines and mandatory minimum sentences have simply normalized sentences that would have been obscene years ago. We have come to view imprisonment as the appropriate punishment for all crimes with the only question being *how much*.”
Former judge Nancy Gertner, 2016

Shift the paradigm of mass incarceration and racial inequity

Mandatory minimums lengthen sentences and perpetuate the overcriminalization of Black people and immigrants.

91% of arrests for crimes that carry mandatory minimums were of people of color in New York City; whites comprised only 7%
Center for Court Innovation, 2022

Increase options for forms of accountability for crime survivors

Crime survivors vary in their perspectives and often do not see incarceration as a means of accountability and repair.

75% of crime survivors prefer accountability through proactive measures rather than prison sentences, such as rehabilitative programming, mental health treatment, and community service.
Alliance on Safety and Justice, 2022

Reduce coercion in plea bargaining

Mandatory minimums give prosecutors’ enormous power in plea bargaining; defendants facing mandatory minimums forgo trials; some plead to wrongful convictions.

98% of convictions in New York State come through guilty pleas
NYSACDL, 2022

“By eliminating mandatory minimum sentences, the RCCA empowers victims to advocate for the justice they seek, rather than to accept justice as prescribed. In so doing, it encourages our courts to treat victims of violent crimes with **fairness, dignity, and respect.**”

- Network for Victim Recovery of DC,
Letter to DC Committee on the Judiciary and Public Safety

Addressing critiques of sentencing reform

Critiques of sentencing reform

MISCONCEPTION

We need mandatory, often lengthy incarcerative sentences to guarantee accountability.

REALITY

Accountability is necessary, though seldom achieved through mandatory prison sentences.

- To achieve accountability, we must ask ourselves what processes and actions (e.g., apology, amends, service) are needed to help repair the harm to the specific survivor of crime or to society.
- Restoration and reinvention are serious undertakings that often require more action and effort from the person sentenced than enduring incarcerative punishment.
- 62% of the general public supports an accountability approach with the goals of repairing harm caused, learning from mistakes, and changing behavior over a punishment approach of harsh sentences.¹

Critiques of sentencing reform

MISCONCEPTION

We need sentences to create public safety.

REALITY

Long sentences don't make us safer.

- The severity of punishment doesn't deter behavior, particularly crimes arising out of conflict or opportunity.¹
- A 2021 meta-analysis of 116 studies found that custodial sentences do not prevent reoffending but also actually increase it. Among the reasons for this is that incarceration has harmful effects on incarcerated individuals and communities.²
- We overuse incapacitation by overestimating who presents a risk. Violent crime arrests sharply declines among for ages above the early twenties.³ Only 1-5% of people engaged in unlawful behavior commit 50-75% of all violent crimes.⁴

¹Daniel Nagin, "Deterrence in the Twenty-First Century" 2013

²Damon M. Petrich et al., "Custodial Sanctions and Reoffending" 2021

³Snyder, Arrest in the United States, BJS 2014

⁴James Austin et al. Reconsidering the "Violent Offender" 2021

Critiques of sentencing reform

MISCONCEPTION

Incarcerative sentences are our only option for dealing with certain behaviors.

REALITY

There are a range of alternatives that have been proven to reduce crime and facilitate healing.

- Community-based sentences have a track record of delivering behavioral change and more community safety, though are significantly underutilized.¹
- Many rehabilitative programming innovations in the last 30 years, including cognitive behavior programming and restorative justice, were pioneered in communities.
- Community-based restorative justice programs found that participants were 41.5% less likely to be rearrested than those who had been prosecuted and sentenced in the criminal legal system.²

¹Michael Tonry, "Community Punishments" 2017

²Kyle Ernest, "Is Restorative Justice Effective in the U.S.?" 2019

If we truly want to end mass incarceration and provide a
safer present and future,
we can and must address sentencing.

Thank you!

To continue the conversation:
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