

MARYLAND ALLIANCE FOR JUSTICE REFORM

Working to end unnecessary incarceration and build strong, safe communities



Reversing High-Cost, Low-Return Trends in Maryland's Prisons

A Look at Sentencing Reforms in the Justice Reinvestment Act (JRA): HB 1312/SB 1005

Over the past decade, the average sentence length for newly sentenced prisoners in Maryland has increased by 23%, demanding an increased share of the state's resources without, in turn, delivering any public benefits. The Maryland Justice Reinvestment Act (JRA) will change Maryland's current high-cost, low-return approach to its prison system and, instead, align our priorities with strong public opinion and the science about "what works" to reform criminal behavior. Supported by both Gov. Larry Hogan and General Assembly leadership, the Act enables Maryland to join a nationwide movement favoring lower prison costs and better public safety.

Why are Sentencing Reforms Good for Maryland?

Public opinion supports change. Public opinion surveys in recent years show increasing bipartisan majorities in favor of eliminating mandatory minimum sentences for nonviolent offenders and giving judges more discretion. In 2015, for example, surveys found that 70% of Marylanders and 77% of Americans now prefer to eliminate mandatory minimums for nonviolent offenders so judges can make sentencing decisions on a case-by-case basis.

The U.S. Congress and 30 states are reducing mandatory minimum sentences. Following this strong movement in public opinion, Republican and Democrat sponsors in Congress have reached rare bipartisan agreements to seek reductions in mandatory federal sentencing laws, particularly for drug offenders. Examples include the Sentencing Reform and Corrections Act of 2015, sponsored by Senators Chuck Grassley (R-IA) and Dick Durbin (D-IL), and the SAFE Justice Act of 2015, sponsored by Representatives Jim Sensenbrenner (R-WI) and Bobby Scott (D-VA).

The Justice Reinvestment program, initiated in the President George W. Bush administration to save taxpayer funds and increase public safety, continues as a nationwide movement in which Maryland and 26 other states have chosen to participate. The effort has received strong support from conservative Republican leaders. The conservative American Legislative Exchange Council, a bipartisan group comprised of state legislators, has formed a task force to help "refocus criminal justice resources on dangerous offenders." Nonpartisan research groups also support the program. For example, see: <https://csgjusticecenter.org/jr/> and <http://www.vera.org/project/justice-reinvestment-initiative> In addition, progressive organizations such as the Urban Institute, The Sentencing Project, and the Justice Policy Institute have expressed support, as well as both conservative and liberal U.S. Supreme Court justices.

Mandatory minimum sentencing fills our prisons. Mandatory minimum sentences, many focused on drug crimes, first were enacted at the federal level in 1986 with hopes of putting away drug kingpins. However, most of those actually jailed under these rules are street-level offenders, some of whom are themselves addicted to drugs and in need of treatment.* Longer sentences resulting from these mandates boost prison populations, especially at the state level, without benefitting public safety. To cut those populations and prison costs at a time of tight budgets, states have begun to revise statutes requiring mandatory minimums.

Longer sentences do not deter crime. The sentencing subgroup of Maryland's Justice Reinvestment Coordinating Council (JRCC) looked closely at problem-solving courts, alternatives to incarceration, property value thresholds, classifications of assault, and sentencing for drug-related crimes. Analysis of state data shows that Maryland average sentence lengths increased 23 percent in the last decade, even though research demonstrates that increased sentence lengths do not increase the deterrent to crime. The subgroup also noted that nonviolent offenses now account for 58 percent of Maryland prison admissions.**

What can Maryland do now? A Look at the Justice Reinvestment Act (JRA)

The JRA offers this fourfold approach to reducing excessive sentences that do not enhance public safety.

1. Retroactive application of the mandatory minimum safety valve. During the 2015 legislative session, the General Assembly passed a “safety valve” for mandatory minimum sentences for drug offenses. The safety valve allows courts to sentence beneath the mandatory minimum if “giving due regard to the nature of the crime, the history and character of the defendant, and the defendant’s chances of successful rehabilitation: (1) the imposition of the mandatory minimum sentence would result in substantial injustice to the defendant; and (2) the mandatory minimum sentence is not necessary for the protection of the public.” The safety valve applies to all offenders sentenced on or after the enactment of the new law but does not apply to those sentenced to mandatory minimums prior to the new law.

Both to reduce prison populations and to be fair to those sentenced under prior law, JRA provisions would allow all offenders sentenced to mandatory minimums for drug offenses to be eligible for the safety valve. Those sentenced prior to the 2015 law would be allowed to apply for resentencing under the safety valve. Proper motions or applications will need to be filed within one year of the bill’s effective date in order to be considered, unless an offender must show good cause as to why it cannot be filed within the year. Consistent with Maryland sentencing law, JRA would recognize the burden is on the state to argue for the mandatory minimum rather than on the defendant to argue for the safety valve.

2. Eliminating mandatory minimums for drug offenses. Mandatory minimums now put sentencing discretion in the hands of the prosecution, and the threat that they will be imposed can compel plea deals simply to avoid the possibility of a long mandatory minimum being imposed. Even defendants who may be innocent or who have defenses to many charges may choose plea bargains rather than take this risk. Racial disparities are apparent in the way the mandatory minimum has been imposed in Maryland. Of the offenders sentenced to a mandatory minimum for a drug crime in FY2013 and FY2014, 81 percent were black.

JRA would eliminate many mandatory minimum sentences, particularly for drug offenders, to make plea bargaining more fair and to put sentencing discretion back into judges’ hands. This would enable judges to impose more appropriate sentences on a case-by-case basis.

3. Include suspended sentences in calculating compliance with sentencing guidelines. Of all Maryland prison inmates sentenced in FY14, statistics show that beyond their sentences for active prison time, 56 percent also received a suspended sentence. The suspended sentence, combined with the actual sentence, may exceed sentencing guidelines. This means that if a returning citizen violates a provision of parole and the suspended sentence is imposed, most of these people will be serving a sentence that is even longer than the mandatory sentence. The JRA requires that suspended portions of a sentence be included in the determination of whether a sentence is compliant with sentencing guidelines.

4. Support appropriate alternatives to incarceration. Although statutes permit alternative sentences, such as residential drug treatment for addicts, a study by the Justice Reinvestment Coordinating Council revealed that treatment programs have been so underfunded that judges sometimes decline to order such treatment, knowing it will not be available. When they do order treatment, the wait for a bed now averages 167 days. Thus, more costly prison beds are used when less costly, more effective, and more appropriate drug treatment could be provided.

Seeking to reverse these trends, JRA would provide that:

- a) JRA savings must be used to fully fund the needs for drug treatment and to provide for other sentencing alternatives like day-reporting centers, mental health treatment, and specialty courts.
- b) JRA also would increase funding to the Division of Correction to expand effective treatment and programming within institutions, so that people who do serve time instead of being diverted to treatment still receive help to recover from addictions.

Note: To access all the links in this document, go to: <http://www.ma4jr.org/jra-trends/>

*See: http://www.drugwarfacts.org/cms/Mandatory_Minimum_Sentencing#sthash.aLlfB8M7.dpbs

**See: <http://www.ma4jr.org/stakeholders-nov-6/>