

# **Maryland's Mandatory Minimum Drug Sentencing Laws**

*Their Impact on  
Incarceration, State  
Resources and  
Communities of Color*

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## I. INTRODUCTION— MARYLAND REDUCES DRUG INCARCERATION, BUT CHALLENGES REMAIN

The latest figures available from the U.S. Justice Department show that America's incarcerated population continues to grow. In 2005, the number of people under the jurisdiction of state prison systems rose by 21,534 (1.6 percent), and the federal prison system grew by 7,290 (4 percent). Altogether, the U.S. prison population rose 1.9 percent during 2005, and at the end of that year there were nearly 2.2 million inmates held in state and federal prisons or county and municipal jails—the equivalent of one in every 136 U.S. residents.<sup>1</sup> Fourteen states had prison population increases of at least 5 percent in 2005. Although incarceration rates are growing at a much lower rate than they did in the 1980s or 1990s, the United States continues to have the highest incarceration rate and the largest prison population in the world.<sup>2</sup>

Since 2003, Maryland has had the distinction of being one of 11 states that have seen reductions in prison populations and falling incarceration rates. The latest comparable data show that Maryland is incarcerating 1,400 fewer people than it did in 2002—a decline of 6 percent. As the national incarceration rate rose, Maryland's incarceration rate also fell by 6 percent.<sup>3</sup> The latest data available from the Department of Public Safety and Correctional Services shows that, as of January, 2007, the prison population of Maryland had declined to 22,298 people—the lowest level seen since 2000.<sup>4</sup>

While there are many possible explanations for the fall in the prison population, the reduced use of incarceration in Maryland comes during a time when the Alcohol and Drug Abuse Administration (ADAA), the Department of Public Safety and Correctional Services (DPSCS), and local agencies and governments have been working to increase drug treatment and associated services to people in the criminal justice system and improve access to drug treatment for the public at large. Reflecting a policy change started under former Governor Robert Ehrlich and advanced by then Mayor Martin O'Malley in Baltimore, policy makers have been working towards the goal of "treatment, not incarceration" for nonviolent drug offenders.

The Justice Policy Institute, a Washington, D.C.-based think tank dedicated to ending society's reliance on incarceration and promoting effective and just solutions to social problems, has issued five policy briefs in Maryland over the last five years that have chronicled the state's reform efforts. Each study has provided a

different glimpse at the challenges the state faces in moving nonviolent, low-level drug-involved people from prison and jail to treatment. JPI has shown that Maryland has made some progress towards realizing the goal of "treatment, not incarceration" for drug-involved people, but the state still faces significant challenges in this effort. Major findings from JPI research include:

- **Maryland has made modest progress in reducing drug imprisonment and increasing access to treatment.** JPI found that the number of drug treatment admissions referred by the criminal justice system grew by 28 percent between 2000 and 2004, while the number of people sentenced to prison for drug offenses fell by 7 percent. Most regions in Maryland witnessed an increase in criminal justice referrals to drug treatment and a decrease in prison admissions for drug offenses over the period.<sup>5</sup>
- **Maryland still spends the lion's share of its correctional resources on the incarceration of drug-involved individuals.** In 2006, JPI showed that for every dollar spent on drug imprisonment, the state of Maryland invests an estimated 26 cents in the treatment of drug abusers referred by the criminal justice system. Maryland is estimated to be spending \$123,000,000 annually to incarcerate drug prisoners, compared with \$31 million to treat people in through the criminal justice system.<sup>6</sup>
- **Maryland's increased use of incarceration is not necessarily making communities safer.** In 2005, in examining neighborhoods with high and persistent levels of violence and incarceration, JPI showed that local crime rose even as the number of youth declined—exactly the opposite of traditional demographic expectations. According to one University of Maryland researcher, "the removal of young men to prison did not increase safety in these neighborhoods, and may ultimately have had the opposite effect." In 2006 study, JPI showed that reliance on treatment was associated with crime drops—eight of the 12 jurisdictions that made greater use of treatment have seen crime fall by 10 percent or more since 2000 compared to just two of the 12 jurisdictions that relied more on imprisonment.
- **The impact of Maryland's reliance on imprisonment for drug-involved individuals is concentrated among communities of color, particularly African Americans.** While public health and survey research suggests that whites and nonwhites use and sell drugs at similar rates, in 2003 JPI showed that African Americans represented 28 percent of the state's population, 68 percent of all drug arrests, and 90 percent of all those imprisoned in the state for a drug offense.<sup>7</sup> In 2005, JPI showed that in Baltimore city an astonishing 52 percent of African

American males age 20-30 were in either prison or jail, on probation or on parole.<sup>8</sup>

This policy brief, which was commissioned by Delegate Curtis Stovall (Curt) Anderson, chair of the House of Delegate's criminal justice subcommittee, is the sixth published by the Justice Policy Institute on Maryland drug and sentencing policies. In this brief, JPI seeks to identify the impact of Maryland's mandatory minimum sentence on the state's realization of the goal of "treatment, not incarceration." By drawing upon available data and analysis conducted by JPI researchers on Maryland, this brief will show policy makers and the public how mandatory minimum sentencing presents a barrier to achieving the goal of "treatment, not incarceration" for drug-involved people. Maryland's mandatory minimum drug laws play a significant role in Maryland's use of imprisonment, have a racially disparate impact, cost the state millions in corrections costs, and are not the most effective public safety investment for the state.

## Methodology

This policy brief was commissioned by Delegate Curtis Stovall (Curt) Anderson, chair of the House of Delegates' criminal justice subcommittee, for the committee's consideration. It summarizes and analyzes the data and findings from a variety of criminal justice agencies and research entities whose work is national in scope, including the U.S. Justice Department's Bureau of Justice Statistics, the U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration and previous studies published by the Justice Policy Institute. In particular, this study draws upon the work of Judith Greene and Timothy Roche (Cutting Correctly in Maryland—2006), and Kevin Pranis (Progress and Challenges—2006),

*"While these laws have imprisoned some drug kingpins and big-time drug dealers, mandatory minimums are regularly invoked against low-level substance abusers trying to support their drug habits. These people buy street-level retail quantities, sell some, use some and do it all over again. As a result, people in need of treatment end up getting long prison sentences. And because they are in a prison cell costing taxpayers \$24,000 a year or more, they also drain resources that could be diverted to more serious criminal behavior."*

—Judge Arthur L. Burnett Sr., writing in the Baltimore Sun, March 16, 2005

published by the Justice Policy Institute. Research on the relationship between mandatory minimums and incarceration rates, commissioned by the U.S. Justice Department and conducted by the Vera Institute of Justice, was reviewed. The authors have also reviewed and summarized analyses from a number of sources in Maryland, including data from the Maryland Department of Public Safety and Correctional Services, Maryland's Alcohol and Drug Abuse Administration, and Maryland's State Commission on Sentencing Policy. This report contains original analysis by Justice Policy Institute analysts on Maryland intakes for mandatory minimum drug sentences, provided by the Department of Public Safety and Correctional Services.

## II. BACKGROUND—WHAT ARE MANDATORY MINIMUMS?

Mandatory minimums are sentencing laws enacted by state legislators that require judges to give fixed prison terms to those convicted of specific crimes. These laws prevent judges from considering other relevant factors, such as the defendant's role in the offense or likelihood of committing a future offense.

In the 1980s, use of mandatory minimum sentences began to escalate on federal and state levels. Stoked in part by the drug-related death of University of Maryland basketball star Len Bias, the U.S. Congress passed legislation that year 1986 requiring mandatory prison sentences for a wide range of drug offenses. States, including Maryland, quickly followed suit. Throughout the country, these laws were toughened in the 1980s and 1990s to apply to drug offenses, certain gun crimes, and other offenses, depending on the jurisdiction.<sup>9</sup>

Families Against Mandatory Minimums, a Washington, D.C.-based organization working to promote fair and proportionate sentencing laws, has summarized the major policy challenges presented by the proliferation of the federal mandatory minimums, that are shadowed in the states:

- **Judges no longer consider the facts of each case to determine a fair sentence.** The charge determines if the sentence is mandatory. If it is, only the weight and type of drug, or the presence of a firearm during a felony offense, determines its length. The judge cannot lower a mandatory sentence because of the circumstances of the case or a person's role, motivation, or likelihood of repeating the crime.
- **Mandatory minimums make those at the top and those at the bottom of the drug trade equally culpable.** Low-level defendants—drug couriers, addicts or those on the periphery of the drug trade—often have no information to give to prosecutors for a sen-

tence reduction. Those who are higher up in the drug trade and most culpable, however, have more information to share and are therefore more likely than lower-level defendants to receive a reduced sentence for cooperation.

- **Mandatory minimums obstruct communities’ public health and drug treatment goals.** As noted by Judge Arthur Burrnett Sr., in states where there is a known gap between people who need drug treatment and those who receive it, there are concerns that the mandatory minimums are invoked against low-level substance abusers who sell drugs to support their drug habits: Addicted sellers buy street-level retail drug quantities, sell some, use drugs, and repeat the cycle of addiction and crime. As a result, people in need of treatment can end up getting long prison sentences, because these laws are designed to ratchet up sentence lengths for the selling of relatively small amounts of drugs.<sup>10</sup> Mandatory minimums criminalize a common and critical component of recovery—relapse. Mandatory sentences are invoked against repeat offenders. By definition, however, almost all recovering users are repeat offenders because relapse is part of recovery. Under Maryland’s mandatory sentencing laws, a person’s subsequent relapse could land him or her in prison for a long prison sentence.<sup>11</sup>

## States that are changing their mandatory minimum sentencing laws

According to a policy report produced by Judith Greene from Justice Strategies for Families Against Mandatory Minimums, 18 states have rolled back mandatory minimum sentences or restructured other harsh penalties.<sup>12</sup> Most reforms have targeted low-level, nonviolent offenders, especially those convicted of a drug offense. Similar surveys of sentencing trends, such as those by the Vera Institute of Justice<sup>13</sup> and the Sentencing Project<sup>14</sup> have also noted the national trend towards reconsideration of mandatory minimum sentencing laws in states.

In California, where the politics around crime and sentencing are more polarized than in other jurisdictions, a ballot initiative to reform that state’s mandatory Three Strikes Law was narrowly defeated at the polls. Since then, the district attorney of Los Angeles initiated his own legislative proposal and ballot measure to reform the Three Strikes Law.<sup>15</sup> “The public has expressed legitimate concerns about [the law’s] use against those who commit new, nonviolent, not serious offenses,” says Steve Cooley, L.A. County district attorney and coauthor of one of the initiatives, the Three Strikes Reform Act of 2006.<sup>16</sup>

### States that have recently changed mandatory minimum sentencing laws

**DELAWARE** decreased mandatory minimum sentences for trafficking in illegal drugs. The bill also increased sentences for six violent offenses.

**CONNECTICUT** legislators gave judges some leeway to relax mandatory minimum sentencing laws for sale or possession of drugs, even within a “drug-free school zone.”

**LOUISIANA** legislators repealed mandatory minimum sentences for simple drug possession and many other nonviolent offenses and cut minimum sentences for drug trafficking in half. The possibility of parole, probation or suspension of sentence was restored for a wide range of nonviolent crimes—from prostitution to burglary of a pharmacy. The bill allowed for already-sentenced prisoners to apply for an early release recommendation from a “risk review panel.” If recommended,

their case is sent to the parole board for consideration.

**MICHIGAN** legislators repealed almost all of the state’s mandatory minimum drug statutes long cited as among the toughest in the nation—replacing them with drug sentencing guidelines that give discretion back to Michigan judges. This sweeping reform of Michigan’s tough mandatory minimum drug laws was accomplished with broad bipartisan support.

**MISSISSIPPI** amended the sweeping truth-in-sentencing law they had enacted in 1994. Nonviolent first offenders regained eligibility for parole after serving one-quarter of their prison sentence. By the end of 2001, more than 2,000 of the state’s prisoners became parole-eligible.

**NORTH DAKOTA** repealed a one-year mandatory minimum sentence for first-time drug offenders, and the legislature called for a study of other mandatory minimum laws.

**NEW MEXICO** legislators repealed a mandatory sentence enhancement that had been required if a prosecutor charged a defendant with a previous drug conviction as a habitual offender. The drug enhancement is now discretionary, allowing judges to determine whether or not it would be appropriate in a particular case.

**MAINE** lowered the available mandatory minimum sentence for anyone convicted of trafficking drugs to a minor. Previously, only those with no prior criminal histories might be sentenced to these lower minimums.

Source: Greene, Judith. “Cutting Correctly in Maryland, and Positive Trends in State-Level Sentencing” (2002; 2003) Justice Policy Institute and Families Against Mandatory Minimums; Stemen, Don and Wool, John, “Changing Fortunes or Changing Attitudes?” (2004) Vera Institute of Justice.

*“By contrast to the guidelines, I can accept neither the necessity nor the wisdom of federal mandatory minimum sentences. In too many cases, mandatory minimum sentences are unwise and unjust.”*

—Supreme Court Justice Anthony M. Kennedy (2003)<sup>18</sup>

Commentators and news media have reported that within the U.S. Congress there are opportunities for reconsideration of mandatory minimum drug sentences, including, building the support of Republicans for changes in the sentencing policy for crack cocaine convictions.<sup>17</sup>

### The legal community calls for reform to mandatory minimums

Within legal circles, mandatory sentencing laws have come under increasing scrutiny for being ineffective and for having a disparate impact on relatively low-level, less serious offenders.

In 2003, a commission convened by the American Bar Association to address the inadequacies—and the injustices—in the prison and correctional systems heard testimony from more than 75 judges, prosecutors, defense lawyers, corrections officials, state and federal sentencing commissioners, former inmates, victim advocacy groups and law enforcement officials. The final report of the commission called on Congress to repeal mandatory minimum sentences, particularly with respect to drug crimes, and to return sentencing discretion to judges.<sup>19</sup> In a speech before the ABA in 2003, Reagan-appointed Supreme Court Justice Anthony M. Kennedy called mandatory minimum sentences “unwise and unjust.”<sup>20</sup>

*“I am unalterably opposed to the system of mandatory minimums. I think we need to give this authority back to the judges.”*

—Barry McCaffrey, former U.S. drug czar in the Clinton administration<sup>21</sup>

### Public opinion and “treatment, not incarceration”

Public opinion polls in Maryland and across the country point to overwhelming support for a more treatment-oriented approach to public safety, sentencing and public health policy.

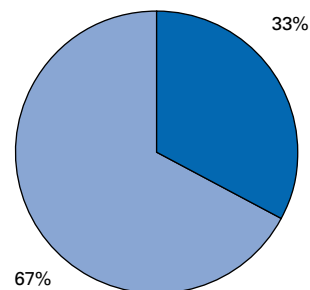
A national survey conducted in 2002 by Peter D. Hart Research Associates found that the public prefers treatment for nonviolent drug offenders over prison 2 to 1, and a substantial majority favors eliminating mandatory minimum sentencing laws and returning discretion to judges.<sup>22</sup>

Fifty-six percent favored elimination of “three-strikes” and other mandatory minimum sentencing laws in favor of giving back to judges the discretion to decide the right sentence in each individual case. Given the choice of six budget areas that might be cut to balance their state’s budget, those polled placed prisons at the top of their list.

Support for returning discretion to judges and for use of well-structured correctional options as an alternative to prison has also surfaced in public opinion research in Maryland. Public opinion research undertaken in 1998 at the University of Maryland’s survey research center found that while a majority of citizens favored limiting judicial discretion in sentencing violent offenders, nearly 60 percent endorsed giving judges discretion in sentencing nonviolent offenders.<sup>23</sup>

Treatment rather than prison for nonviolent drug users in Maryland continues to have significant support. A 2006 poll commissioned by the Open Society Institute-Baltimore found that likely voters favor mandatory treatment for drug users over prison by more than 4 to 1: 67 percent view drug treatment as being more effective than incarceration.<sup>24</sup>

#### 67% of Maryland voters say that drug treatment is more effective than incarceration



Source: Opinionworks, **Maryland Voters on Access to Drug Treatment** (March 31–April 5, 2006); Anderson, Lynn. “Survey Backs Drug Treatment,” *Baltimore Sun*, June 4, 2006.

## III. WHAT ARE MARYLAND’S MANDATORY MINIMUM DRUG SENTENCING LAWS?<sup>25</sup>

The Maryland code contains mandatory minimum sentences for certain handgun and drug distribution offenses. The state’s mandatory sentencing requirements largely target repeat offenders, and judges can impose a lesser sentence provided the prosecutor agrees.

Under Maryland’s controlled dangerous substances laws, possession of drugs is a misdemeanor offense.

But unlike many states where a misdemeanor cannot be sentenced to more than a year in jail, in Maryland an offender convicted of possession can be sentenced to a prison sentence of up to four years (up to one year for possession of marijuana).

*The nine-to-one weight difference between powdered cocaine and crack cocaine has given rise to complaints that the law discriminates against African Americans.*

panel is unanimous. Chances of obtaining relief from a sentence-review panel are very slim. In FY2001, just five sentences were decreased, while 97 remained unchanged. One prisoner's sentence was increased after review.

Distribution, possession with intent to distribute, or manufacture of drugs is a felony, with penalties of up to five years in prison. A repeat offender in this category faces a mandatory sentence of at least two years. For some specific drugs (heroin, cocaine, LSD and PCP) the maximum prison cap is raised to 20 years. A second such offense carries a mandatory sentence of 10 years; a third offense carries a sentence of 25 years, and a fourth or subsequent offense, 40 years. Maryland's drug laws also provide a five-year mandatory minimum sentence for offenders who distribute drugs in amounts that qualify them as a "volume dealer."

An offender who possesses a firearm while engaging in drug trafficking is subject to a mandatory five-year sentence enhancement on a first offense, and a ten-year enhancement for a subsequent offense. A "drug kingpin" charged with organizing, supervising, financing or managing a conspiracy to manufacture, distribute or import dangerous drugs faces a stiff 20-year mandatory minimum sentence, even for a first conviction.

The Maryland Court of Appeals has ruled that plea bargains that stipulate a sentence that falls below a mandatory minimum for repeat offenses are acceptable. In a split decision the majority held that prosecutors should be free to decide whether or not to seek the mandatory minimum for a repeat offender.

The nine-to-one weight difference between powdered cocaine and crack cocaine has given rise to complaints that the law discriminates against African Americans.

### **Prisoners could get a reconsideration of their sentence, but only a few do**

Under Maryland Rule 4-345, prisoners may seek judicial reconsideration of their sentence. They must apply for reconsideration within 90 days of sentencing, but there is no time limit for the exercise of judicial discretion once the application is filed. Since 1999, Maryland's criminal procedure code has also permitted people sent to prison for more than two years to apply for reconsideration of their sentence by a three-judge panel from the same circuit in which they were sentenced. If a prisoner is serving a mandatory sentence, the sentence cannot be decreased unless the vote of the

## **IV. HOW MANY PEOPLE ARE AFFECTED BY MARYLAND'S MANDATORY MINIMUM DRUG SENTENCING LAWS?**

There are few data sources that can precisely show how many people are serving prison terms for mandatory drug sentences. So, while it is known that there were 4,900 people in 2005 in prison in Maryland whose most serious offense was a drug offense, it is not known how many drug prisoners are there serving a mandatory minimum sentence, or how many who faced a mandatory minimum pled to a lesser charge to avoid a long prison sentence.

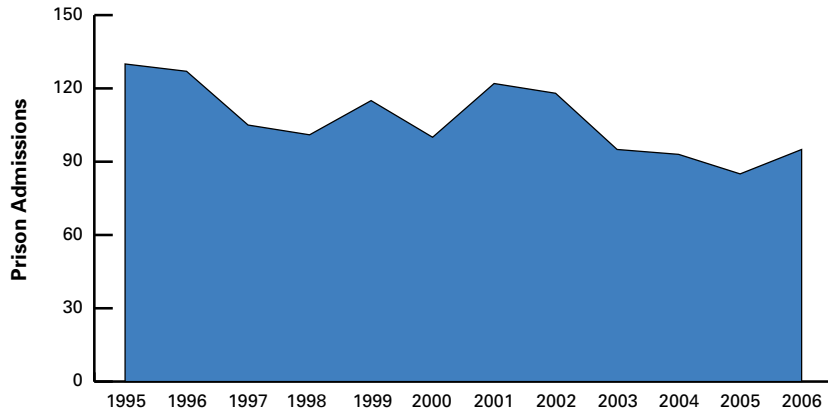
The sentencing worksheets compiled by the Maryland State Commission on Criminal Sentencing Policy do not necessarily capture enough information to know the true number of people being impacted by the mandatory minimum drug sentencing laws.<sup>26</sup> The Department of Public Safety and Correctional Services data system does identify people with mandatory no-parole sentences, but cannot easily disaggregate drug cases from other kinds of mandatory sentences, and the identifiers are sometimes missed at intake or not removed if appellate action eliminates the mandatory provisions of the sentence at a later date.<sup>27</sup>

### **Annual intake of mandatory minimum drug sentences**

The Department of Public Safety and Correctional Services has data on intakes for mandatory drug sentences, which were manually verified by their staff. Between 1995 and 2006, the number of intakes for drug-dealing sentences with parole restrictions averaged about 107 over the eleven year period.<sup>28</sup> Over the last 11 years, 1,206 people were admitted to prison with a parole restriction due to a mandatory minimum drug sentence.

*The threat of a mandatory prison term means that some people arrested for relatively low-level drug offenses feel compelled to plead down and serve a prison sentence, even though the root cause of the offense may be low-level drug sales to sustain a habit, and treatment may be a more appropriate course.*

### Maryland prison admissions for Drug Distribution, 8-506 Mandatorics



Source: Department of Public Safety and Correctional Services (2007).

### The impact on plea bargaining and incarceration rates

While long mandatory prison sentences are handed out to some individuals every year, in Maryland the impact of mandatory minimums goes beyond the drug kingpins these sentences were designed to imprison.

With the threat of a long prison sentence, low-level defendants—addicted sellers, or those on the periphery of the drug trade—may have a hard time bargaining with prosecutors for a sentence reduction commensurate with the actual nature of their offense. The threat of a mandatory minimum prison term means that some people arrested for relatively low-level drug offenses feel compelled to plead down and serve a prison sentence, even though the root cause of the offense may be low-level drug sales to sustain a habit, and treatment may be a more appropriate course of action. The Office of the Public Defender in Maryland has said that the primary impact of the state’s mandatory minimum drug laws is to help prosecutors obtain longer sentences through plea bargains.<sup>29</sup>

*“Unfortunately, low-level offenders, like couriers or the girlfriends and wives of dealers, often had no one to “rat out,” or they waited too long to come forward out of ignorance, loyalty or fear. In these cases, judges have been forced to impose mandatory minimum terms on these defendants, while higher-ups in the same drug network cooperated in exchange for lesser sentences.”<sup>30</sup>*

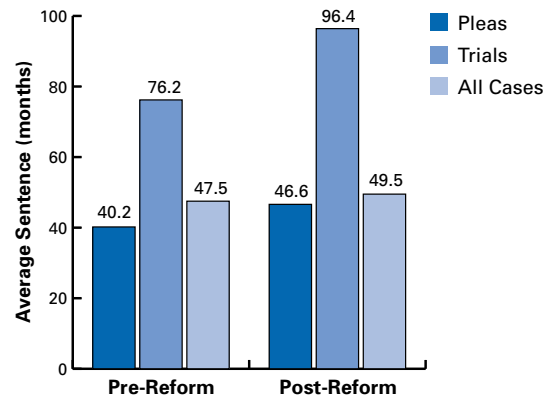
—David Zlotnick, former federal prosecutor (2004)

The Sentencing Commission and the Department of Public Safety and Correctional Services do not keep the kind of data needed to know definitively how many of Maryland’s 4,900 drug prisoners are serving a sentence longer than they might have due to the threat of a mandatory prison term, or who a judge may have decided to sentence to treatment in lieu of incarceration if they had that discretion. There is, however, national research that suggests that mandatory minimums lengthen the prison terms of low-level drug-involved people, because they accept a plea agreement rather than risk a mandatory sentence.

### National findings on pleas and sentencing disparities

In an article published in the *Journal of Law and Economics*, Chantale Lacasse and A. Abigail Payne, using data from the Southern District of New York (SDNY) and the Eastern District of New York (EDNY), investigated whether sentencing guidelines and mandatory minimums eliminate variations in sentences attributable to the judge and whether they alter the plea-bargaining behavior of defendants. While the aim of sentencing reform was to reduce disparities in sentencing, the authors found that the variation in sentences attributable to judges *increased* after the imposition of the guidelines and minimums. Furthermore, contrary to expectation, the rate of plea bargaining increased; the authors found that plea bargains for drug offenses increased 17.5 percent (from 80 percent to 94 percent) after mandatory minimums laws were put into effect in one district in New York.<sup>31</sup>

### Eastern District of New York, drug offense sentences pre- and post-mandatory minimums



Source: Lacasse, C. and Payne, A.A. (1999). “Federal Sentencing Guidelines and Mandatory Minimum Sentences: Do Defendants Bargain in the Shadow of the Judge?” *Journal of Law and Economics*, 41.



## Are mandatory minimums driving up incarceration rates?

A recent study commissioned by the National Institute of Justice and conducted by the Vera Institute of Justice identified and examined the ways in which various sentencing and corrections policies affected state prison populations. Vera found that states with more drug arrests and a larger commitment to law enforcement have higher incarceration rates than other states, and that a reduced emphasis on enforcing drug offenses should reduce incarceration rates.<sup>33</sup> The impact of reducing judicial discretion in sentencing through a variety of state-level sentencing policies was mixed: states with higher statutory maximum sentences for cocaine possession, for example, had lower incarceration rates than other states. The authors, however, found that “states with higher statutory minimum sentences for cocaine possession had higher incarceration rates than other states.” The authors also found that “states with more mandatory sentencing laws had higher incarceration rates than other states.”<sup>34</sup> The authors further noted that taking away judges’ discretion in the disposition and sentencing phases has led to higher incarceration rates across states.

## V. WHO IS IMPACTED BY MARYLAND’S MANDATORY MINIMUMS? COMMUNITIES OF COLOR MOST AFFECTED

One of the original goals of mandatory minimums and other sentencing guideline reforms in the 1980s was to lower the disparity in sentences, including racial disparities, meted out by judges to defendants for the same crime.<sup>35</sup> As noted in the introduction to this brief, JPI has documented in two previous studies that the impact of Maryland’s reliance on drug imprisonment for drug-involved individuals is concentrated on communities of color, particularly the African American community. In a report commissioned by Maryland’s Legislative Black Caucus, JPI showed that, in 2003, African Americans represented 28 percent of the state population,<sup>36</sup> 68 percent of all drug arrests, and 90 percent of all those imprisoned in the state for a drug offense.<sup>37</sup> In 2005, JPI showed that in Baltimore city an astonishing 52 percent of African American males age 20-30 were in either prison or jail, on probation or parole.

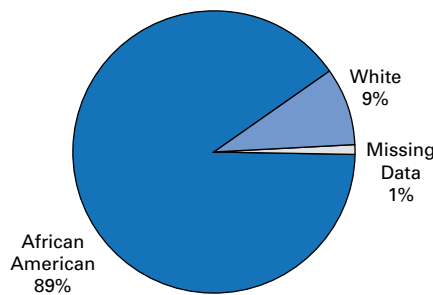
Starting in 2002, the Department of Public Safety and Correctional Services began keeping information on the race of people admitted to prison for a drug distribution mandatory sentence. The data for the last five years reveals that, of the nearly 500 people sent to prison for a mandatory minimum drug sentence, nearly nine out of 10 (89 percent) were African American.

*“Our findings show that states with more mandatory sentencing laws have higher incarceration rates than other states. States have imposed more prohibitions against the granting of probation and have proscribed more mandatory minimum sentences for offenses. In many cases, judges are now constrained in their abilities to set either the disposition or duration of many sentences. Our findings suggest that such constraints have led to higher incarceration rates across the states.”*

—U.S. Justice Department commissioned study from the Vera Institute of Justice<sup>32</sup> (2005)

### Race of people admitted to prison with a mandatory minimum drug sentence

Nearly 9 in 10 of individuals admitted to prison under Maryland’s mandatory minimum laws in the past 5 years were African American



Source: Department of Public Safety and Correctional Services (2007).

The disparity between the race of people admitted to prison under mandatory minimum sentences and representation in the general population is not due higher rates of substance abuse among African Americans. According to the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA), in 2002, 8.5 percent of whites, and 9.7 percent of African Americans reported using illicit drugs in the preceding month, and whites and African Americans reported to be dependent on a substance at virtually identical rates: 9.5 percent of African Americans and 9.3 percent of whites.<sup>38</sup> Difference in involvement in drug sales is also not a likely explanation for the disparity in the use of incarceration. Self-reported surveys of youth behavior have shown that a similar proportion of white, African American and Hispanic youth report that they have sold drugs by age 17.<sup>39</sup>

*Over the last five years, of the nearly 500 people sent to prison in Maryland for a mandatory minimum drug sentence, nearly nine out of 10 (89 percent) were African American.*

## VI. WHAT DO MANDATORY MINIMUMS COST THE STATE?—FISCAL IMPACT ESTIMATES AND COST EFFECTIVENESS

Maryland's fiscal situation has improved in the last few years but is expected to worsen.

The structural deficit in Maryland is expected to reach \$489 million in FY2007 and increase to over \$1.2 billion in FY2008.<sup>40</sup> The Department of Public Safety and Correctional Services (DPSCS) is budgeted to receive over \$1.2 billion in FY2008, a 3.7 percent increase over its FY2007 appropriations.<sup>41</sup> During a time when Maryland has witnessed three straight years of declining prison populations, 60 percent of the FY2008 DPSCS budget goes directly to the Division of Corrections,<sup>42</sup> an amount which includes almost \$33 million towards construction and refurbishing of a 192-cell housing unit at the Maryland Correctional Training Center in Hagerstown.<sup>43</sup> In this tight fiscal context, any needless or ineffective public safety spending warrants scrutiny.

*"Mandatory minimum sentences are not justifiable on the basis of cost-effectiveness at reducing cocaine consumption, cocaine expenditures, or drug-related crime."*

—the Rand Corporation (1997)

In large part because of the influx of prisoners serving longer terms, per capita spending on prisons during the 1980s and 1990s increased by 100 percent—four times the growth rate of spending on higher education in the state. While prison populations and associated costs continue to grow across the country, in 2005 Maryland's spending on corrections as a percent of total expenditures was 23 percent above the national average.<sup>44</sup>

Other policy briefs issued by JPI in Maryland have sought to portray the larger costs of the state's incarceration and sentencing policies.

- In 2003, JPI showed that during the 1980s and 1990s, Maryland's spending on corrections grew from \$612 million to just under a billion dollars, and that the growth in corrections spending represented 25 percent of the state's budget shortfall, a shortfall resulting in significant cuts to education and other social services. While prisons are not wholly responsible for the state's fiscal woes, the increase in prison spending represents large new annual costs that force the state to choose between classrooms and cellblocks, particularly in tough economic times.<sup>45</sup>

- In 2005, JPI showed that based on the average annual costs to incarcerate an individual from a particular county or region for one year, Maryland was spending roughly \$280 million each year to incarcerate people from the Baltimore region (city and county), \$51 million from Prince George's county, \$21 million from Anne Arundel county, and \$19 million from Montgomery county. In many cases, the public safety resources spent incarcerating people were concentrated in prisons that were far from the incarcerated individuals' neighborhoods. If these same funds were redirected to other kinds of public safety spending—ranging from drug treatment, to community supervision, to local economic development—Maryland's public safety spending could be more effectively allocated across the state which would make it possible to supervise people close to home and would drive community economic development as well.

In 2006, JPI found that the state spent \$124 million dollars to incarcerate drug prisoners, compared with an estimated \$31 million to provide drug treatment to people through the criminal justice system. For every dollar Maryland spent incarcerating people for drug offenses, the state spent 26 cents to treat them through the criminal justice system.<sup>46</sup>

### Fiscal impact of Maryland's mandatory minimums

As there is no definitive way to project how many of Maryland's 4,900 drug prisoners on any given day are serving a longer sentence due to mandatory minimums, the precise costs of these laws cannot be known. However, data on the costs of prison and the probable length of stay do give a reasonable sense of what price Maryland pays for each prison admission.

A U.S. Justice Department survey of the annual cost of prison operations in Maryland showed that the state spent \$26,398 per prisoner in 2001.<sup>47</sup> The cost of imprisonment includes the provision of housing, food and medical care for a year.

Since the typical sentence for a person charged with a drug mandatory is around ten years, their average length of stay prior to release might be anticipated to be approximately seven years, assuming they participate in prison programs and display good behavior while in custody.<sup>48</sup> Assuming the 2001 cost held constant for the next seven years, Maryland could be projected to be spending close to \$200,000 per person admitted to a Maryland prison for a mandatory minimum drug sentence.

<b>Estimated cost per mandatory minimum drug sentence</b>	
Spending per prisoner (2001)	Estimated Sentence Length (Seven Years) @ Annual
\$26,398	\$184,786

Source: *State Prison Expenditures, 2001*. (2004) Washington, D.C: Bureau of Justice Statistics; Department of Public Safety and Correctional Services (2007).

In 2006, 94 people were admitted to Maryland prisons on a mandatory minimum drug conviction. According to these projections, the state would likely spend \$2.5 million each year to incarcerate them. Over seven years, the state would spend \$17 million dollars to incarcerate just one year's worth of admissions of people sentenced under the state's drug mandatory minimums.

It is estimated that the state is spending anywhere between \$2 million and \$3 million a year to incarcerate just this small class of people serving time on mandatory minimum drug sentences. If, as expected, these prisoners serve at least seven years, the state would pay anywhere from \$15 million to \$24 million for the people admitted for mandatory minimum sentences over a seven year period.

<b>Estimated Costs of Maryland's Mandatory Minimums</b>			
Fiscal Year	Number of Drug Admissions (8-506) with parole restrictions	State spending per prisoner (2001)	Costs over estimated term (seven years)
FY1995	131	\$ 3,458,138.00	\$ 24,206,966.00
FY1996	128	\$ 3,378,944.00	\$ 23,652,608.00
FY1997	104	\$ 2,745,392.00	\$ 19,217,744.00
FY1998	99	\$ 2,613,402.00	\$ 18,293,814.00
FY1999	115	\$ 3,035,770.00	\$ 21,250,390.00
FY2000	99	\$ 2,613,402.00	\$ 18,293,814.00
FY2001	123	\$ 3,246,954.00	\$ 22,728,678.00
FY2002	118	\$ 3,114,964.00	\$ 21,804,748.00
FY2003	93	\$ 2,455,014.00	\$ 17,185,098.00
FY2004	92	\$ 2,428,616.00	\$ 17,000,312.00
FY2005	84	\$ 2,217,432.00	\$ 15,522,024.00
FY2006	94	\$ 2,481,412.00	\$ 17,369,884.00
Total Cost	1280	\$33,789,440.00	\$236,526,080.00
Average	107	\$ 2,815,786.67	\$ 19,710,506.67

Source: *State Prison Expenditures, 2001*. (2004) Washington, D.C: Bureau of Justice Statistics; Department of Public Safety and Correctional Services (2007).

Again, these are only the estimated costs for incarcerating people known to be serving a mandatory minimum drug sentence. The true costs are probably much higher, as these numbers cannot account for the people who plead to lengthy sentences because of the threat of the longer mandatory minimum sentence.

### **Context to the cost of a mandatory minimum sentence**

JPI assumes that, even if a judge had discretion over the case, most of the people who are admitted to prison in Maryland under the mandatory minimums would have still served a prison sentence. There is no reasonable way of developing cost-saving estimates based on what we speculate a judge might sentence someone to if they had that option to do so.

<b>Costs in context: select government expenditures in Maryland</b>	
Annual cost of incarceration—one year	\$ 26,398
Annual cost of incarceration—seven years	\$ 184,786
Minimum salary of a Maryland police officer	\$ 31,597
Minimum salary for an assistant state prosecutor	\$ 47,709
Minimum salary, rehab center residential advisor	\$ 24,258
Substance abuse prevention specialist	\$ 27,329
University of Maryland – full time tuition and fees	\$ 7,906
Drug Treatment – Methadone (Outpatient)	\$ 3,100
Drug Treatment – Intensive Outpatient	\$ 2,600
Drug Treatment – Long-Term Residential (One year)	\$ 21,000

Source: *State Prison Expenditures, 2001*. (2004) Washington, D.C: Bureau of Justice Statistics; Department of Public Safety and Correctional Services (2007). Maryland Department of Budget and Management, Division of Salary Administration and Position Classification. (2007). Employee Services: Salary Plan. Retrieved on February 7, 2007, from [http://www.dbm.maryland.gov/dbm\\_publishing/public\\_content/dbm\\_taxonomy/employee\\_services/employee\\_benefits/compensation/salary\\_plan.html](http://www.dbm.maryland.gov/dbm_publishing/public_content/dbm_taxonomy/employee_services/employee_benefits/compensation/salary_plan.html)

However, to put the costs of the current policy in context, JPI has shown what the state could buy with these public safety resources.

For the cost of sending one nonviolent drug offender to prison for one year, Maryland could finance three undergraduate students at the University of Maryland.<sup>49</sup> Maryland could put one more police officer on the street,<sup>50</sup> or one more parole/probation agent.<sup>51</sup> Or the money could be spent on direct services to the community, including money to hire one more substance abuse prevention specialist,<sup>52</sup> a licensed practical nurse (LPN),<sup>53</sup> or a job service specialist.<sup>54</sup> Maryland could also provide supportive housing for two individuals in need for less than the cost of locking up one person in a state prison.<sup>55</sup>

## Cost effectiveness

Since the mid-1990s, researchers have sought to quantify more precisely the cost effectiveness of current sentencing policies. To quantify the true costs of long prison sentences, this new area of research asks more questions about the policy efficacy of the current laws: based on what is known about the relatively high recidivism rates seen among prisoners and the cost of their incarceration, and lower recidivism rates seen among people completing various kinds of drug treatment and public health approaches, what is the “benefit” for every dollar spent on various approaches, and how does that compare to the “costs” of the policy choice.

A landmark study issued by the RAND Corporation, one of the nation’s leading research institutes, estimates that treating cocaine users reduces serious crime 15 times more effectively than prison.<sup>56</sup> Furthermore, for the millions taxpayer dollars spent, mandatory minimums decrease drug consumption less than providing heavy drug users with drug treatment. The authors conclude that “mandatory minimum sentences are not justifiable on the basis of cost-effectiveness at reducing cocaine consumption, cocaine expenditures, or drug-related crime.”

Since that 1997 study, the Washington State Institute for Public Policy (WSIPP) has advanced this methodology further, and noted the “cost/benefit” of treating drug-involved populations, versus incarcerating drug-involved populations. In their 2006 study, researchers reviewed 571 comparison-group evaluation studies in a meta-analysis that looked at whether criminal justice programs had

any proven effects on crime rates.<sup>57</sup> From there, researchers did a long-term cost-benefit analysis of these programs, asking the question: based on the “per dollar spent on a program, do the benefits of the program’s crime reduction exceed its costs?”<sup>58</sup> The results of this question are graphed below. Overall, drug treatment in the community was the most beneficial in terms of costs as well as crime reduction, providing \$10,054 in benefits per participant after deducting costs of treatment, while lowering recidivism rates by an average of 9.3 percent.

Authors localized these findings to estimate the fiscal and crime benefits of three levels of these programs, from current levels to aggressive use of evidence-based programs, and their effects on the need for new prison

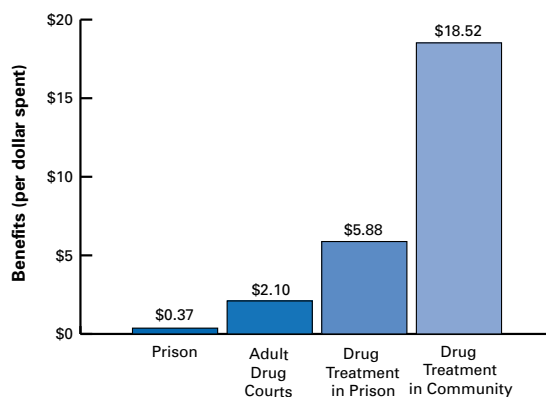
beds in 2020 and 2030. They found that aggressive implementation of these programs would both lower the crime rates in Washington and significantly decrease the need for new prison beds, saving money while promoting public safety. Utilizing these evidence-based programs instead of incarceration would yield a minimum of \$1.1 billion in benefits to taxpayers, with \$2.45 in rewards for every dollar spent.

There is, of course, a crime reduction and public safety benefit to incarcerating people, but for drug prisoners, that benefit is very small. A 2003 analysis by WSIPP found that every dollar invested in prison for a convicted drug user produced \$0.37 in crime reduction benefits,<sup>59</sup> while the state’s drug courts produced \$2.10<sup>60</sup> in crime reduction benefits for each dollar invested—nearly six times the cost benefit of prison.

*Aggressive implementation of evidence-based practices would both lower the crime rates and significantly decrease the need for new prison beds, saving money while promoting public safety.*

—Washington State Institute for Public Policy (2006)

**Community-based drug treatment provided bigger returns than prison**



Sources: Aos, S., Miller, M. and Drake, E. (2006). Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates. Olympia, WA: Washington State Institute for Public Policy. [www.wsipp.wa.gov](http://www.wsipp.wa.gov); Aos, S. (2003). The Criminal Justice System in Washington State: Incarceration rates, taxpayer costs, crime rates and prison economics. Olympia, WA: Washington State Institute of Public Policy.

While WSIPP and the Rand Corporation have pioneered these kinds of cost/benefit analyses, there is also research in Maryland that shows that treatment is a more cost effective strategy than incarceration, and that treatment has other critical benefits. The Alcohol and Drug Abuse Administration (ADAA) found that drug treatment resulted in significant benefits: both ADAA-funded and nonfunded treatment programs reduce substance use, crime and homelessness and increase employment. Arrest rates during both funded and nonfunded treatment were about 75 percent lower than arrest rates during the two years preceding treatment. Moreover, there was a 27 percent reduction in substance abuse and a 20 percent increase in employment among those receiving ADAA-funded treatment.<sup>61</sup>

## VII. WHAT IS THE PUBLIC SAFETY IMPACT OF MANDATORY MINIMUMS AND INCREASED USE OF INCARCERATION?

During the 1980s and 1990s, many state legislators and the federal government embraced mandatory minimums to help reduce crime. The United States and Maryland communities (specifically, Baltimore and the Washington, D.C. suburbs) did experience an increase in violent crime during the 1980s and the early 1990s that helped compel policy makers into action. In considering any criminal justice legislation, it is important to put Maryland's public safety challenge into context.

Since 1993, Maryland has benefited from the same crime drop experienced in the rest of the country. Contrary to the information both candidates for governor issued in 2006, crime in Maryland decreased at a rate comparable to that experienced in other states, and violent crime in Baltimore decreased at a rate comparable to that of other large cities, such as New York City, Washington, D.C., Chicago, and Los Angeles.<sup>63</sup> While the final totals for 2006 still need to be tabulated, Baltimore county and Prince George's county had fewer homicides than the year before, and Baltimore City experienced six more homicides last year.<sup>64</sup> While January 2007 witnessed a troubling rise in homicides in Baltimore City, it is important for Maryland's largest city to learn the lessons from neighboring Washington, D.C. that, one month does not necessarily mean crime is on permanent trend upwards: In a year where Washington, D.C. saw a two-week period where it experienced one homicide a day, the city ended 2006 with its lowest number of homicides in 21 years.<sup>65</sup>

When it comes to crime, what is true for the nation is also true for Maryland. In most categories of crime, the United States experiences similar levels of crime as other countries, except for certain categories of violent crime, particularly lethal violence with guns. New York City, for example, has relatively comparable rates of crime to that of London, England, and Sydney, Australia—except in the category of lethal violence, where the United States is a world leader<sup>66</sup>

Lethal violence—the only true America crime exception—does not impact communities equally, and this is true in Maryland as it is nationwide. Of the 521 homicide victims in Maryland in 2004, 98 were white, and 415 were African American.<sup>67</sup> While this does represent a decline in homicides from 552 in 1990, to 521 in 2004, and African Americans do benefit from this change in homicides, the African American homicide rate is still nine times higher than whites, despite a 30 percent drop since 1990.<sup>68</sup>

	1990	2004	% Change
African American	36.47 per 100,000	25.66 per 100,000	-29.6 percent
White	3.39 per 100,000	2.73 per 100,000	-19.5 percent

Sources: U.S. Census Bureau; Bureau of Justice Statistics. Local Level Homicide Trends and Characteristics. <http://bjsdata.ojp.usdoj.gov/dataonline/Search/Homicide/Local/OneYearOfData.cfm>

In summary, the increase in Maryland's prison population has been almost wholly driven by the increased imprisonment of people in the African American community, and this massive investment in incarceration has not prevented the African American community from enduring homicide rates that are disturbingly higher than that of other communities.

### Does more incarceration promote less crime? National research and Maryland findings

In *Reconsidering Incarceration: New Directions for Reducing Crime*,<sup>69</sup> a 2007 report from the Vera Institute of Justice, Don Stemen examined most of the recent work that analyzes the relationship between crime rates and incarceration rates, controlling for a wide range of factors. The studies show that while incarceration has some impact on reducing crime rates, the scope of the impact is limited, and may be diminishing. One study he reviewed, by William Spellman of the University of

*"High levels of incarceration concentrated in impoverished communities has a destabilizing effect on community life, so that the most basic underpinnings of informal social control are damaged. This, in turn, reproduces the very dynamics that sustain crime."* —Todd Clear, Professor of Criminal Justice at John Jay College of Criminal Justice in New York.<sup>62</sup>

Texas at Austin, showed that as the U.S. experienced a dramatic drop in crime between 1992 and 1997, imprisonment was responsible for just 25 percent of that reduction.<sup>70</sup> That means that 75 percent of the crime drop through the 1990s was attributable to factors other than incarceration. Stemen notes that this new research frames a different kind of question for policy makers about sentencing policy and the continued overreliance on incarceration:

"[T]he pivotal question for policy makers is not "Does incarceration increase public safety?" but rather, "Is incarceration the most effective way to increase public safety?" The emerging answer to

*"[T]he pivotal question for policy makers is not "Does incarceration increase public safety?" but rather, "Is incarceration the most effective way to increase public safety?" The emerging answer to the rephrased query is "no." —The Vera Institute of Justice*

the rephrased query is "no." Analysts are nearly unanimous in their conclusion that continued growth in incarceration will prevent considerably fewer, if any, crimes—and at substantially greater cost to taxpayers. In the future, policing strategies, unemployment, wages, education, and other factors associated with low crime rates may account for more significant reductions. Yet, policy and spending for public safety continue to focus heavily on imprisonment, effectively limiting investment in these promising alternatives.<sup>71</sup>

As noted in the introduction, JPI has shown in previous studies that Maryland's increased use of incarceration is not necessarily making communities any safer. Specific JPI findings in Maryland are as follows:

- In 2005 study that examined the Baltimore neighborhoods with high and persistent levels of violence and incarceration, JPI showed that local crime rose even as the number of youth declined, exactly the opposite of traditional demographic expectations. Fifty-two percent of African American males age 20-30 in Baltimore City were in either prison or jail, on probation or parole. According to one University of Maryland researcher, "the removal of young men to prison did not increase safety in these neighborhoods, and may ultimately have had the opposite effect."
- In a 2006 study, JPI's analysis of crime trends in 2000 suggest that treatment does more than imprisonment to reduce crime. JPI showed that reliance on treatment was associated with crime drops—eight of the 12 jurisdictions that made greater use of treatment have seen crime fall by 10 percent or more since 2000, compared to just two of the 12 jurisdictions that relied more on imprisonment.

*"The evidence was mixed whether spending more time in prison reduces the recidivism rate."*

—U.S. Justice Department, Bureau of Justice Statistics (2002)<sup>72</sup>

## Do longer prison sentences mean less recidivism?

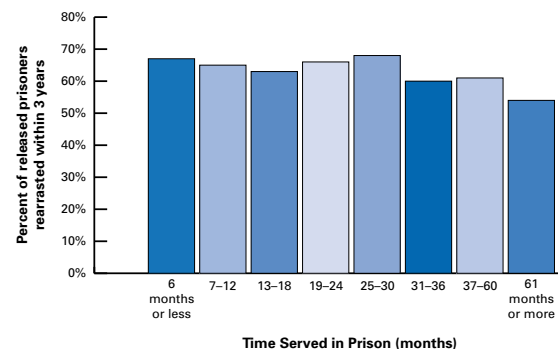
As has been shown elsewhere, the overall recidivism rate for Maryland prisoners hovers around 50 percent.

The Department of Public Safety and Correctional Services does not keep recidivism figures for individual categories of prisoners, nor does it keep recidivism figures for people released from prison by their length of stay.<sup>73</sup> As such, there is no definitive way to quantify in Maryland whether people serving mandatory minimum sentences are less likely to engage in crime upon their release than those who received a reduced sentence, or received treatment in lieu of incarceration.

However, research conducted by the U.S. Justice Department does address the question of whether longer prison sentences reduce crime. According to longitudinal study of recidivism conducted by the Federal Bureau of Justice Statistics<sup>74</sup> which tracked 272,111 prisoners for three years after their release from state prisons in 15 different states, including Maryland, the relationship between longer sentences and lower recidivism was small, at best. BJS found that, "the evidence was mixed whether spending more time in prison reduces the recidivism rate."

The study found that recidivism did not differ significantly among those prisoners released after six months or less (66 percent), those released after 7 to 12 months (64.8 percent), those released after 13 to 18 months (64.2 percent), those released after 19 to 24 months (65.4 percent) and those released after 25 to 30 months (68.3 percent). So, whether an individual served six months or five years, there was little variation between the length of stay in prison and recidivism.

Those who served more than 60 months (5 years) did have a lower recidivism rate: 54.2 percent were rearrested within three years—a recidivism rate that is 16 percent lower than the average recidivism rate for prisoners studied. Put another way, for every 100 people who served the longest possible prison sentence (five years or more), about ten fewer people recidivated compared to those who served much shorter sentences, including six months or less.



Source: Langan, Patrick A. and Levin, David J. (June 2002). *Recidivism of Prisoners Released in 1994*. U.S. Justice Department, Office of Justice Programs, Bureau of Justice Statistics.

These figures suggest, as noted in the Justice Department survey, that the evidence is mixed on whether spending more time in prison reduces recidivism and should give particular pause in regard to the real-life impact of Maryland's mandatory minimums. In any given year, about 100 people enter prison with a mandatory minimum drug sentence, and they likely serve seven years, or longer. Given that the state will spend around \$200,000 to incarcerate each person serving a mandatory drug sentence, a relevant policy question is whether Marylanders are getting their money's worth on this public safety investment? If the difference in re-offense rates between people serving the longest sentences and shorter sentences is small, and most people serving a mandatory minimum will be released in under a decade, is the price of a mandatory minimum worth the public safety benefit?

While Maryland does not know how much safer it is because of long mandatory minimum prison sentences is not clear, the cost effectiveness of investing in community-based treatment over incarceration is well-documented. The findings of the Rand Corporation and the Washington State Institute for Public Policy suggest that investing more in drug treatment for people before they end up engaging in crime, and investing in treatment for people already in the criminal justice system is more cost effective than long prison sentences in promoting public safety. And, as mandatory minimums likely contribute to plea agreements that lengthen prison sentences for the entire drug-involved population, there is plenty of new research that shows that simply increasing the incarcerated population of the state does little to curb crime and recidivism.

## VIII. RECOMMENDATIONS

Despite significant forward movement, Maryland has a long way to go before the state can be said to have adopted a treatment-centered approach to reducing the harms of drug abuse and drug-related crime. State spending on the imprisonment of people convicted of nonviolent drug offenses still far outstrips investments in treatment alternatives to incarceration. Maryland's mandatory minimums for drug offenses represent a significant policy barrier to shifting ineffective public safety spending in the form of long prison terms towards more effective investments in community-based drug. Maryland policy makers and the public should consider the following recommendations to promote the goal of "treatment, not incarceration."

### Reform drug mandatory minimums

Cost savings could be generated by reforming or repealing a law that mandates 10-year prison terms for second-time drug distribution—a penalty that applies

regardless of the amount involved or the defendant's role in the transaction. If only a few of the people entering prison for a mandatory minimum were receiving some other kind of disposition, the state could free up resources to more effectively promote public safety goals through community-based drug treatment. Also, while we do not know how many people, threatened by a long mandatory, plea to a sentence that a judge may not have opted for, the research shows that mandatory minimums contribute to longer prison terms and higher incarceration rates. Since research suggests that the length of a prison term has a very small effect on recidivism for a class of prisoners who will be released anyway, Maryland's public safety dollar may be more effectively spent meeting drug-involved people's needs through the public health system or through treatment.

### Expand treatment options by increasing available drug treatment funds

State officials could take up where they left off in 2003 by making the expansion of treatment a major budget priority. The FY2007 budget included a nearly \$7 million increase in funding for substance abuse treatment (including \$500,000 earmarked for drug court treatment programs). But addiction treatment advocates of Maryland estimated that an \$11 million increase was needed just to keep pace with rising costs, which have eaten away at the state's treatment capacity over three years of "level funding."

Treatment experts and advocates believe that the state should commit an additional \$30 million to substance abuse treatment in the FY2008 budget in order to meet urgent needs in Baltimore and elsewhere in the state. If the trends observed since 2000 hold, at least a portion of the funds invested in expanding treatment would be recouped over the medium-term through reduced corrections costs. And the benefit of long-term gains in health, public safety and employment would far exceed the cost of providing treatment to a larger share of the addicted population.

According to an analysis of the revenues expected to be raised under the Healthy Maryland Initiative, a measure that would fund an expansion of Maryland's public health system by raising the tobacco tax by a dollar, \$30 million dollars in funds for drug treatment will be available if the tax increase is kept at \$1.<sup>75</sup> Ensuring that these funds are available for drug treatment would go a long way to meeting the massive unmet treatment needs in the state large and in the criminal justice system.

## **Maryland needs to embrace “cost-benefit” analysis of all sentencing policies**

JPI recommends that Maryland’s Department of Legislative Services’ (DLS) embrace the methodology used by the Rand Corporation, the Washington State Institute for Public Policy and a growing number of states that are using a more comprehensive method of calculating the true impact of policy changes in sentencing, correctional programming, and public health investments. This should include calculating the public safety costs and benefits (or lack thereof) of the current policies, and comparing these costs with investments in evidenced-based practices or investments in public health approaches. By including the benefits that would accrue from other policy choices that could lower recidivism rates, help people return to the workforce, and allow them to contribute to the tax base, we can provide policy makers with the information they need to make the most effective investments in public safety policies.

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### **About the authors**

**TIMOTHY ROCHE**, a former Executive Director of the Justice Policy Institute. Along with Judith Greene of Justice Strategies, Roche authored *Cutting Correctly in Maryland*, JPI’s first study on Maryland’s prison system and public safety challenge. Roche also authored technical assistance reports for government, including reports commissioned by the Annie E. Casey Foundation, the Louisiana Office of Youth Development, and the Court Offender Supervision Agency for the District of Columbia.

**NASTASSIA WALSH** serves as JPI’s Research Assistant. She joined JPI shortly after earning her Master’s

degree in Forensic Psychology from Marymount University, where she studied psychological principles in the law and injustices in the criminal justice system. She started her education by earning a Bachelor of Science degree in Psychology and Justice Studies from Arizona State University. She is also an active volunteer at Opportunities, Alternatives and Resources (OAR) of Fairfax County, Virginia, an organization that aids recently released offenders in their re-entry process to help break the cycle of crime.

**JASON ZIEDENBERG**, Executive Director: Ziedenberg is the co-founder the Justice Policy Institute, one of the nation’s leading prison reform think tanks, and has served as the organization’s Director of Policy and Research and as Associate Director. His research and policy work on juvenile and criminal justice policy is frequently used by nonprofits, foundations, think tanks, law enforcement, community organizations, government, and the media. He is the recipient of two awards from the National Council on Crime and Delinquency for exceptional research and communications work in support of prison reform. Ziedenberg has served on the California Governor’s Juvenile Justice Reform Working Group and the Mayor of Washington DC’s transition team on corrections (1999), and public safety (2006). He has represented JPI’s research and analysis before the U.S. Congress, state legislators, city and county councils, and various national and state commissions considering juvenile and criminal justice reform. Ziedenberg has a Master in Science from the Columbia University School of Journalism in New York City, and a Bachelor of Arts from the University of Toronto. Ziedenberg was a co-author of *Race and Incarceration in Maryland* (2003), a policy brief on racial disparities in the use of incarceration in Maryland, commissioned by Maryland’s Legislative Black Caucus, and co-author of several other JPI reports on Maryland sentencing and correctional trends.

**THE JUSTICE POLICY INSTITUTE** is a Washington, D.C.-based think tank dedicated to ending society’s reliance on incarceration and promoting effective and just solutions to social problems. This is the sixth in a series of studies published by the Justice Policy Institute on Maryland drug and sentencing policies. Previous reports by the organization include: “Cutting Correctly in Maryland”; “Race and Incarceration in Maryland”; “Treatment and Incarceration: National and State Findings on the Efficacy and Cost Savings of Drug Treatment versus Imprisonment”; “Tipping Points: Maryland’s Overuse of Incarceration and the Impact on Public Safety,” and “Progress and Challenges: An Analysis of Drug Treatment and Imprisonment in Maryland from 2000 to 2005.” For more information, visit [www.justicepolicy.org](http://www.justicepolicy.org).



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