

January 16, 2022

Honorable Edwards and members of the Senate Judiciary Committee,

In a just criminal legal system, punishment should fit the crime. Mandatory minimum sentences are antithetical to this principle, applying a one-size-fits-all punishment to over 200 offenses in Virginia's criminal code without any consideration for the circumstances that led to them. They result in excessive sentences that do not increase public safety, exacerbate racial disparities in sentencing, and force defendants to bargain away their constitutional right to a fair trial.

Our coalition urges you to vote 'yes' on SB 104 to repeal all mandatory minimum sentences and evaluate the resentencing of the nearly 10,000 Virginians who are currently serving time for a mandatory minimum offense. Over 30 states have reformed or repealed their mandatory minimum sentences in the past two decades while maintaining public safety ([FAMM, 2018](#)). We are not alone in asking for the elimination of mandatory minimums. The [Virginia State Crime Commission](#) endorses their repeal, as do leading professional associations like the [American Bar Association](#) and the [National Association of Criminal Defense Lawyers](#). It is a commonsense reform with bipartisan support that is long overdue. **That is why we also urge you to vote 'no' on SB 79, which would create a mandatory minimum life sentence for Class 1 felonies.**

There are several reasons why mandatory minimums are bad policy:

1. **They do not deter crime or make the public safer.** Research is clear that being caught and punished quickly deters crime, not lengthy sentences. The deterrence rationale for mandatory minimums assumes that people are aware of the penalties for specific offenses, when in fact they do not know ([FAMM, 2020](#)). The National Research Council concludes that "the overwhelming weight of the evidence, however, shows that [mandatory minimums] have few if any deterrent effects" ([83](#)). Virginia's own crime commission recommends eliminating mandatory minimums as there is no evidence that proves them effective in deterring crime ([VSCC, 2020](#)). Mandatory minimums can even work against public safety; researchers have found that long prison sentences increase the chance of re-arrest on average ([Roodman, 2017](#)).
2. **They take discretion away from impartial, highly trained judges and juries and distort sentencing outcomes.** Mandatory minimums prevent judges from weighing all the facts and circumstances of individual cases. Repealing them would re-empower Virginia's judiciary to make sentencing decisions based on the merits of the case.
3. **They create a perverse incentive for prosecutors to leverage defendants out of exercising their constitutional rights.** Prosecutors use the threat of mandatory minimums and the fact that judges' hands are tied to leverage defendants into giving up their right to a fair trial and instead plead guilty to a lesser charge, even if they are innocent. Nationwide, 97 percent of criminal cases end in such plea bargains ([NACDL, 2018](#)).
4. **They exacerbate unjust racial disparities in incarceration.** Black Virginians are incarcerated at 4.3 times the rate of white Virginians ([Sentencing Project, 2021](#)), and mandatory minimums are partly to blame. Researchers have found that prosecutors are significantly more likely to bring a charge carrying a mandatory minimum sentence against a Black defendant. Whatever the root

causes, they disproportionately burden Black Virginians. According to the Virginia State Crime Commission, 41 percent of Black people in Virginia's prisons are serving mandatory sentences, while less than 26 percent of white people are ([VSCC, 2020](#)).

A retroactive repeal of mandatory minimums has many benefits. It will return the rightful authority to determine sentences to judges and juries, lessen the pressure on defendants to give up their constitutional right to trial, and reduce racial disparities in sentencing. According to data gathered by [Recidiviz](#), most mandatory minimums are made up of DWI, drug, and weapon charges. Eliminating these and other mandatory minimums would avoid \$25 million in criminal legal costs over the next five years, which the state can reinvest in crime reduction and victim support programs (Recidiviz, 2022). A full and retroactive repeal would also boost Virginia's economy, generating an estimated \$58 million in wages missed while people are incarcerated over five years (Recidiviz, 2022).

Repealing mandatory minimums does not mean lesser accountability for people who commit crimes, nor does it mean endangering communities. It simply means restoring power to judges and juries to make sentencing decisions that fit the crime. Evidence from other states that have reformed their mandatory minimum sentencing policies gives us confidence that Virginia's public safety record is not at risk. In 2015, many of Pennsylvania's mandatory minimum sentences were struck down as unconstitutional. Since this ruling, crime rates have continued to decline, including during the six years (2012-2018) that the state's prison population declined ([PA DOC](#)). In 2002, Michigan legislators repealed almost all mandatory drug sentences, and the state's crime rate has dropped 27% in the decade following the reform ([ALEC, 2016](#)).

For the reasons stated above, we urge you to **vote "yes" on SB 104** to repeal all mandatory minimums, allow for retroactive resentencing for people currently serving mandatory minimum sentences, **and vote "no" on SB 79**, which would create an unnecessary mandatory minimum life sentence. Virginia and people serving excessive sentences inside its prisons cannot wait another year to pass the widely accepted, evidence-based reform of eliminating all mandatory minimums.

Sincerely,

American Civil Liberties Union of Virginia
Americans for Prosperity Virginia
FAMM
Justice Forward Virginia
Interfaith Action for Human Rights
The Humanization Project
The Sistas in Prison Reform
Virginia Sexual and Domestic Violence Action Alliance