



MEMORANDUM

TO: The Pennsylvania Senate

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: September 19, 2023

RE: OPPOSITION TO SB 235 P.N. 977 “Tyler’s Law” (MASTRIANO)

Bill summary: [SB 235](#) (PN 977), also known as “Tyler’s Law,” would impose a mandatory minimum sentence of 10 years and a fine of \$15,000 (or more) for:

- Any person convicted of [18 Pa.C.S. § 2506](#) (Drug delivery resulting in death) if the person had two or more prior convictions related to drug delivery under Section 13 (a)(14) and Section 13 (30) of the [Controlled Substance, Drug, Device, and Cosmetic Act](#), or
- Any person who “received anything of value, directly or indirectly, as consideration for dispensing, delivering, giving, prescribing, selling or distributing any controlled substance or counterfeit controlled substance.”

On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose Senate Bill 235.

SB 235 would almost certainly incarcerate people with substance use disorders.

Instead of reducing the instances of drug-related deaths, SB 235 has the real potential of punishing people for their substance use disorder. Minimum sentences under SB 235 would apply regardless if the person convicted was suffering from substance use disorder while using drugs with the person who died. *There are no exceptions in the bill for these circumstances.* This may not be the goal of the bill, but it is a real potential consequence. While we appreciate the urgency to address opioid related deaths, we cannot incarcerate our way out of the opioid epidemic, especially if that means incarcerating individuals who really should be receiving medical treatment.

Mandatory minimum sentences have no deterrent effect on the offenses they penalize.

We know that harsher penalties have no deterrent effect. A [study by Pew](#) found that higher rates of drug imprisonment did not translate into lower rates of drug use, arrests, or overdose deaths. “If imprisonment were an effective deterrent to drug use and crime—all other things being equal—then the extent to which a state sends drug offenders to prison should be correlated with certain drug-related problems in that state.”¹ When looking at drug imprisonment and drug use rankings among states, states with high rates of imprisonment still had roughly the same drug use rates. **Considering the absence of any relationship between rates of imprisonment and reduction in drug use, expanding drug imprisonment with mandatory minimum sentences is not an effective drug control or prevention strategy.** Effective responses to drug misuse requires investment in treatment strategies to reduce dependency and prevention efforts to identify individuals who may be at higher risks for substance use disorders. We need better strategies for addressing drug overdose and misuse—not the same bad policies that have continuously failed.

Mandatory minimum sentences fuel mass incarceration.

Mandatory minimums do not work and have directly contributed to the rise of mass incarceration in the United States since their first enactment beginning in the 1970s. **Imposing any mandatory minimum will**

¹ The Pew Charitable Trusts, [More Imprisonment Does Not Reduce State Drug Problems](#) (March 2018).

undoubtedly increase the prison population, undoing many of the efforts to reduce the population in Pennsylvania's state correctional institutions.

Mandatory minimum sentences disproportionately harm people of color.

Mandatory minimums have disproportionately impacted people of color and continue to exacerbate racial disparities. A study of racial disparity in federal criminal sentences found that prosecutors brought mandatory minimum charges 65 percent more often against Black individuals, all else being equal. **These mandatory minimum charges resulted in Black individuals spending more time in prison than their white counterparts for the exact same crimes.**²

Mandatory minimum sentences are blunt instruments that don't let judges judge.

Mandatory minimum sentences are blunt instruments that do not allow for judicial discretion or consideration of the particular circumstances of each case and what appropriate sentences should be. Judges would no longer be able to consider individual factors when applying a sentence, such as a defendant's role in the crime, criminal history, the likelihood of reoffending, and individual treatment needs. **Trial courts in Pennsylvania already have sentencing guidelines to follow in determining sentences. These guidelines give judges a reasonable sentencing range while not binding them to a one-size-fits-all approach.** This is particularly important when noting the scenario where friends are using drugs together and one dies. Currently, a judge would be able to take into account the particular circumstances of the case and impose an appropriate sentence. If SB 235 were enacted, judges would have no choice but to impose the sentence, even if they believed it was disproportionate to the facts of the case.

Mandatory minimum sentences give prosecutors an unfair advantage.

Mandatory minimums disrupt the balance of power in the adversarial system, giving prosecutors an advantage to force defendants into plea deals or convince them to cooperate against others. This also has the real effect of causing defendants to give false information in hopes of receiving leniency from prosecutors. This also penalizes those suffering from addiction or other drug couriers who have no information to exchange for reducing their sentence.

Mandatory minimum sentences do not make communities safer.

Mandatory minimum sentences do not promote community safety. **Studies consistently show that mandatory minimums do not deter people from committing crimes nor do they prevent or reduce recidivism.** In fact, a PA Commission on Sentencing [report](#)³ found that most Pennsylvanians cannot name an offense that carries a mandatory minimum or the sentence that goes with it, making it difficult to imagine how mandatories deter crime if no one knows the punishment. Research also demonstrates that any amount of prison time actually increases the risk of future crime because incarceration destabilizes people's lives.⁴ The difficulties of securing employment and housing with a criminal conviction, not to mention the lack of financial means, makes it nearly impossible to succeed after being released from prison.

Mandatory minimum sentences fail to keep Pennsylvanians safe, while driving up prison populations and costs for taxpayers. Despite their best intentions, legislators should resist resorting to demonstrably failed policies of the past.

For these reasons, we urge you to oppose Senate Bill 235.

² Starr, Sonja and MM Rehani. "[Racial Disparity in Federal Criminal Sentences](#)." J. Pol. Econ. 122, no. 6 (2014): 1320-54.

³ PA Commission on Sentencing, [The Use and Impact of Mandatory Minimum Sentences](#) (2009).

⁴ Cullen, Francis & Jonson, Cheryl & Nagin, Daniel. (2011). [Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science](#). The Prison Journal. 91. 48S-65S. 10.1177/0032885511415224.