



3-13-2020
H 469

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Testimony of Kathy Griesmyer
OPPOSE HB 469: Enhancements to Drug Trafficking Statute
Before Senate Judiciary and Rules Committee
March 13, 2020

The ACLU of Idaho shares with you our opposition to HB 469 as it creates new mandatory minimum sentences for fentanyl related charges, which will continue to perpetuate the failed War on Drugs in Idaho.

Idaho is in the midst of a mass incarceration crisis. Our prisons and jails across the state are severely overcrowded and the Idaho Department of Corrections (IDOC) has turned to housing it's overflow population, almost 1,000 prisoners, in a private prison in Texas, and in the near future, Colorado. And according to data collected in our recent Blueprint for Smart Justice Report, we know that a significant driver of our high incarceration numbers continues to be drug convictions, with over 30% of all convictions related to drug possession, trafficking, and/or delivery of a controlled substance.¹ By expanding Idaho's mandatory minimum law via the proposals outlined in HB 469, defendants will continue to face arbitrarily imposed lengthy sentences, judicial discretion will remain impeded, and Idaho's prison population will continue to grow at rates that are unsustainable and irresponsible.

There is no evidence that there is a public safety benefit to mandating such severe sentences across the board for certain crimes, regardless of circumstances. Indeed, the evidence shows that more severe sentences do not deter more effectively than less severe ones.² In fact, even the National Institute of Justice, a department within the U.S. Department of Justice, agrees that the *certainty* of being caught is a vastly more powerful deterrent than the punishment and that sending an individual convicted of a crime to prison isn't a very effective way to deter crime.³ If there is a reason in a particular case to believe that a more severe sentence is warranted, the decision should be left to the judge, who has fewer incentives to ratchet up sentencing.

Contrary to the messages sent to the public, mandatory minimum sentencing laws are neither mandatory nor do they impose minimum sentences. Under a truly mandatory sentencing law, everyone arrested for the same offense would end up receiving the same sentence if convicted. But that's not how mandatory sentencing laws work. In prosecutors' hands, the minimum transforms from a 'certain and severe sanction' to a tool for prosecutors to incentivize behavior and make judgment calls. Prosecutors use their charging power to cut deals, secure testimony against other defendants, and force guilty pleas where the evidence is shaky. And despite prosecutor and law enforcement messaging that

¹ Blueprint for Smart Justice. ACLU of Idaho. <https://www.acluidaho.org/en/publications/blueprint-smart-justice-idaho-report>. 21 February 2020.

² Durlauf & Nagin, Imprisonment and Crime: Can Both Be Reduced?, 10 CRIMINOLOGY & PUB. POL'Y. 13, 37-38 (2011) at 37-38 (finding relatively little reliable evidence that severity of punishment results in a substantial deterrent effect). From footnotes 527 and 528 in this document:

http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Mandatory_Minimum_Penalties/20111031_RtC_PDF/Chapter_05.pdf

³ National Institute of Justice. Five Things About Deterrence. <https://www.ncjrs.gov/pdffiles1/nij/247350.pdf>. 24 February 2019.



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these draconian laws serve as a successful deterrence for committing these crimes, we know that is untrue.

Ultimately, mandatory minimums threaten due process principles because prosecutors, unlike judges, aren't required to be transparent about their decisions. Mandatory minimums create a powerful incentive for the perversion of justice and needlessly increases costs without improving public safety. At a time when our prison and jail system is at a breaking point, the Idaho Legislature should be prioritizing sentencing reform options that can reduce our reliance on incarceration. For these reasons we urge your "no" vote to keep HB 469 in committee. Thank you.