



TESTIMONY

February 26, 2018

SENATE BILL 748 AND MANDATORY MINIMUM SENTENCING

By Patrick Tuohey

Testimony Before the Missouri Senate Judiciary and Civil and Criminal
Jurisprudence Committee

TO THE HONORABLE MEMBERS OF THIS COMMITTEE

My name is Patrick Tuohey and I am the Director of Municipal Policy for the Show-Me Institute, a nonprofit, nonpartisan, Missouri-based think tank that supports free-market solutions for state and local policy. The ideas presented here are my own. The purpose of this testimony is to briefly discuss research regarding the public benefits of eliminating unnecessarily long prison sentences for offenders.

Between 1972 and 2000, Missouri led the Midwest in incarceration growth.¹ Missouri is also eighth in the nation in its incarceration rate, imprisoning 530 people per 100,000 population in 2015.²

The Governor's Missouri State Justice Reinvestment Task Force³ reported that if current incarceration trends continue, Missouri will have to

build two new prisons in the next few years. The price tag to build and operate two new facilities will be \$485 million over the next five years. To put that amount in perspective, the entire budget for the Department of Corrections was \$725 million for 2018. Incidentally, that figure was \$580 million in 2006.

Research indicates that the speed and certainty of punishment are more effective deterrents to crime than the severity of punishments. Mandatory minimum sentences simply do not deliver a worthy public safety return on public dollar investment.⁴ One study concluded:

The certainty of apprehension, not the severity of the ensuing legal consequence, is the more effective deterrent. This conclusion has important policy implications among which are that lengthy prison sentences and mandatory minimum sentencing cannot be justified on deterrence.

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With our prisons already over capacity, it seems as if the time to start thinking of reform has come. According to the Missouri Department of Corrections' 2016 Profile of Institutional and Supervised Offender Population⁵ (page 33), of the 30,754 members of the prison population, 41 percent are there for either nonviolent crime (7,377 inmates) or for drug-related crimes (5,403 inmates). These two offender groups, incidentally, are the fastest-growing populations since 2011. Missourians could save hundreds of millions of dollars if courts had the flexibility to sentence these nonviolent offenders to treatment programs or probationary periods prior to locking them up—while still retaining the ability to treat violent or habitual offenders harshly.

Under current law, sentencing courts are required to issue minimum prison terms based on several criteria including severity of the crime, previous convictions, and whether the infraction involved violence and/or firearms. The legislation being considered today gives courts greater discretion. In cases not involving serious physical force or abuse of a child, courts may:

depart from the applicable minimum term of imprisonment if the court finds substantial and compelling reasons on the record that, giving due regard to the nature of the offense, the history and character of the defendant, and his or her chances of successful rehabilitation, imposition of the minimum term of imprisonment would result in substantial injustice to the defendant or the minimum term of imprisonment is not necessary for the protection of the public.

The opportunities presented by the Justice Safety Valve Act—cost savings for taxpayers, real rehabilitation for offenders, and reduction of recidivism—are well worth the legislature's consideration. More importantly, there would

be a huge benefit in terms of human capital if nonviolent and drug offenders were sentenced to treatment or probation instead of being warehoused in state institutions with few opportunities for self-improvement and the likelihood of reduced lifetime earnings.

*Patrick Tuohy is the director of municipal policy
at the Show-Me Institute.*

NOTES

1. Lin, Zipei. Criminal Justice Panel Looks for Solutions to Missouri's Over-criminalization. *Columbia Tribune*, September 27, 2017. Available at: https://www.columbiamissourian.com/news/local/criminal-justice-panel-looks-for-solutions-to-missouri-s-over/article_20ed094a-a31c-11e7-92b5-0befa4f38768.html.
2. Sentencing Project. The Facts: State-by-state Data. Available at: <https://www.sentencingproject.org/the-facts/#rankings?dataset-option=SIR>
3. Council of State Governments Justice Center. Justice Reinvestment in Missouri. December 13, 2017. Available at: https://csgjusticecenter.org/wp-content/uploads/2017/12/12.13.17_JR-in-MO_Final-Presentation.pdf.
4. Nagin, Daniel S. Deterrence in the Twenty-First Century. *Crime and Justice* 42 (2013): 199–263.
5. Missouri Department of Corrections. Profile of the Institutional and Supervised Offender Population. June 30, 2016. Available at: <https://doc.mo.gov/Documents/publications/Offender%20Profile%20FY16.pdf>.



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