

Chairwoman Larsen and members of the committee, my name is Dr. Andrew Myer. I am here to provide neutral testimony on the impacts of SB2128. I am a tenured criminal justice professor and a research fellow with the University of Cincinnati Corrections Institute. I have over 20 years of experience evaluating and conducting research in correctional settings. I have worked with over a dozen state correctional agencies and dozens of community correctional agencies nationwide. I have published over a dozen peer-reviewed academic articles, most of which relate to the correctional system. I have also written over a hundred technical reports to assist correctional agencies in reducing recidivism.

I believe it is critically important to examine the impacts of proposed legislation from a neutral scientific perspective. To that end, I would like to present you with an overview of what we know about the impacts of passing mandatory minimums, just as SB2128 proposes, on crime (community safety) and prison safety.

First, research demonstrates that mandatory minimum laws do not reduce crime in our communities. Empirical research has (1) evaluated changes in crime levels within a state over time (i.e., pre and post-testing) as well as (2) compared states that pass this law to states that do not pass these laws (Roman, 2022; Sundt & Boppre, 2021; The Council on Criminal Justice, 2023; Tonry, 2013; Tonry, 2014; Tonry, 2016; Tonry, 2017; Tonry, 2019). The most rigorous methodological studies consistently show these laws fail to reduce crime.

As a professor of criminal justice, I realize that this finding is often surprising to people. How could locking people up not reduce crime? Mandatory minimum laws try to impact behaviors via deterrence and incapacitation. Three things are necessary for deterrence to work—certainty (a person *will* be caught), celerity (the person will be punished quickly), and severity (the punishment is appropriate for the crime).

It is not easy to establish accountability for crimes via certainty in punishment. This is because not all crimes are solved, and the clearance rates for crimes fluctuate and are influenced by many factors. Let's focus on violent crimes. For context, in 2023, the clearance rate for violent crime in North Dakota was an impressive 57%, a ten-year high up from a low of 49% in 2017 (FBI Crime Data Explorer, 2024). Robbery and aggravated assault clearance rates are routinely around 30-40% clearance rates. Thus, one cannot guarantee certainty in punishment, reducing any deterrable impact of a law. Furthermore, celerity is challenging to manipulate because our courts are designed to protect due process rights. This leaves one element that we can manipulate more readily—severity. This is concerning because we already have historically lengthy sentences, and the cost of increasing sentence lengths is substantial. Unsurprisingly, a meta-analysis of 40 studies of deterrent-based approaches demonstrated no consistent reductions in recidivism (Pratt et al. 2006).

One could argue that removing those convicted under mandatory minimums from society should impact crime. To calculate the impact that incarceration has on crime, one must account for many factors, including the number of crimes that would have been committed had the individual been in society. These are not static variables; their impact changes over time and is a function of age, offense, and substance use/abuse history, to name a few. Empirical research

from criminologists, sociologists, and economists estimates that crime could be reduced by 10% by **doubling** the prison population (see Spelman, 2000).

This takes me to my second empirical observation is that mandatory minimum sentencing practices are costly. Research has shown that defendants facing longer sentences often reject plea deals and select trials. Thus, more trials, longer trials, and more court resources are needed (see Tsuchimoto & Dusek, 2009). In addition, longer stays in prison result in more taxpayer dollars spent on longer prison stays (see Shepherd, 2002)—*which do not lead to reductions in crime*. These problems are further exacerbated by limiting parole. Research on parole shows significant reductions in recidivism compared to those who max out their sentences (Ostermann, 2012, 2013, 2015; Schlager & Robbins 2008; Vito, Higgins, & Tewksbury, 2017). These findings, along with the findings related to a lack of impact on crime, suggest that there is a minimal return on one's investment.

My third point to the committee is that mandatory minimums impact prison safety. Since mandatory minimums were introduced, this has been a consistent finding (see Memory et al. 1999). Increasing the length of time served while restricting opportunities for release directly impacts the functioning of prisons, not only in terms of cost but also in terms of safety. Research on mandatory minimums has demonstrated that those individuals sentenced under mandatory minimum laws have more disciplinary infractions for violent, property, drugs, and disorderly misconduct compared to those not sentenced under mandatory minimum laws. This finding was held from the first month in prison to 4 years later (Bales et al. 2012). In addition, mandatory minimums can lead to overcrowding. This makes an already difficult job even more dangerous for correctional workers. Overcrowding has been empirically demonstrated to make prisons more dangerous; violence in prisons increases for staff and inmates, which impacts their physical and mental health; rehabilitation, healthcare, and education services are diminished because of security concerns (see Baggio et al. 2020; MacDonald, 2018). Many states that experience overcrowding conditions are subject to lawsuits (Guetzkow & Schoon, 2015).

In summary, a review of the empirical research demonstrates that mandatory minimums (1) do not reduce crime, (2) are exceedingly costly to state budgets, and (3) create prisons that are more dangerous for staff and inmates.

I thank the committee for their time. I am happy to answer any questions from the committee.

Bales, William D., Miller, Courtenay H. (2012). The impact of determinate sentencing on prisoner misconduct. *Journal of criminal justice*, 2012-09, Vol.40 (5), p.394-403.

Baggio, S., Peigne, N., Heller, P. Getaz, L., Liebrezn, M., & Wolff, H. (2020). (2020). Do overcrowding and turnover cause violence in prison? *Frontiers in Psychiatry*, 10, 1015.

Federal Bureau of Investigation. (2024). Crime Data Explorer. <https://cde.ucr.cjis.gov/>, Accessed in January 2025.

Guetzkow, J. & Schoon, E. (2015). If you build it, they will fill it: The consequences of prison overcrowding litigation. *Law & Society Review*, 49(2), 401-432.

MacDonald, M. (2018). Overcrowding and its impact on prison conditions and health. *International journal of prisoner health*, 14(2), 65-68.

Memory, J.M., Guo, G., Parker, K., Sutton, T. (1999). Comparing Disciplinary Infraction Rates of North Carolina Fair Sentencing and Structured Sentencing Inmates: A Natural Experiment. *The Prison journal* (Philadelphia, Pa.), 1999-03, Vol.79 (1), p.45-71.

Ostermann M. (2012). Recidivism and the propensity to forego parole release. *Justice Quarterly*, 29, 596-618.

Ostermann M. (2013). Active supervision and its impact upon parolee recidivism rates. *Crime & Delinquency*, 59, 487-509.

Ostermann M. (2015). How do former inmates perform in the community? A survival analysis of rearrests, reconvictions, and technical parole violations. *Crime & Delinquency*, 61, 163-187.

Pratt, T. C., Cullen, F. T., Blevins, K. R., Daigle, L. E., & Madensen, T. D. (2006). The Empirical Status of Deterrence Theory: A Meta-Analysis. In F. T. Cullen, J. P. Wright, & K. R. Blevins (Eds.), *Taking stock: The status of criminological theory* (pp. 367–395). Transaction Publishers.

Roman, J.K. (2022). From Causal Mechanisms to Policy Mechanisms: Why Did Crime Decline and What Lessons Can Be Learned from It? *American journal of criminal justice*, 2022-12, Vol.47 (6), p.1116-1139.

Schlager M. D., Robbins K. (2008). Does parole work?—Revisited: Reframing the discussion of the impact of postprison supervision on offender outcome. *The Prison Journal*, 88, 234-251.

Shepherd, J.M. (2002). Police, Prosecutors, Criminals, and Determinate Sentencing: The Truth about Truth-in-Sentencing Laws. *The Journal of Law & Economics*, Vol. 45, No. 2 (October 2002), pp. 509-533.

Spelman (2000). What recent studies do (and don't) tell us about imprisonment and crime. Pp. 419-494 in Tonry (ed.), *Crime and Justice: A Review of Research*.

Sundt, J. & Boppre, B. (2021). Did Oregon's tough mandatory sentencing law "measure 11" improve public safety? New evidence about an old debate from a multiple-design, experimental strategy. *Justice quarterly*, 2021-11, Vol.38 (7), p.1363-1384.

The Council on Criminal Justice. How Long Is Too Long? Task Force on Long Sentences Final Report. *Federal sentencing reporter*, 2023-12, Vol.36 (1-2), p.6-37.

Tonry, M. (2016). Equality and Human Dignity: The Missing Ingredients in American Sentencing. *Crime and justice* (Chicago, Ill.), 2016-01, Vol.45 (1), p.459-496.

Tonry, M. (2019). Fifty Years of American Sentencing Reform: Nine Lessons. *Crime and justice* (Chicago, Ill.), 2019-01, Vol.48 (1), p.1-34.

Tonry, M. (2017). Making American Sentencing Just, Humane, and Effective. *Crime and justice* (Chicago, Ill.), 2017-01, Vol.46 (1), p.441-504.

Tonry, M. (2014). Remodeling American Sentencing: A Ten-Step Blueprint for Moving Past Mass Incarceration. *Criminology & Public Policy*. Nov2014, Vol. 13 Issue 4, p503-533.

Tonry, M. (2013). Sentencing in America, 1975–2025. *Crime and justice* (Chicago, Ill.), 2013-01, Vol.42 (1), p.141-198.

Tsuchimoto, F., & Dusek, L. (2009). Responses to More Severe Punishment in the Courtroom: Evidence from Truth-in-Sentencing Laws. *CERGE-EI Working Paper Series*, (403).

Vito, G.F., Higgins, G.E., & Tewksbury, R. (2017). The effectiveness of parole supervision: Use of propensity score matching to analyze reincarceration rates in Kentucky. *Criminal Justice Policy Review*, 28(7) 627-640.