

Senate Bill 154 Doubles Down on Failed Drug Policies

By Sara Whitaker, January 2024

Overview

On the third day of the 2024 legislative session, the West Virginia Senate passed Senate Bill 154,¹ a radical reimagining of the Controlled Substances Act that doubles down on decades of failed drug policies.

West Virginia has been called ground zero of the drug overdose crisis. For the last decade, West Virginia has had the highest fatal overdose rate in the country – more than twice the national average.² While doctors, emergency responders, and people in recovery urge public health solutions to this crisis,³ SB 154 aims to do the opposite and instead increases criminal penalties for those with substance use disorder. This bill overhauls drug offenses and sentences in three main ways.

1. SB 154 Changes Simple Possession from a Misdemeanor to a Felony

Currently, simple possession of a controlled substance is a misdemeanor offense, with a maximum penalty of six months in jail. SB 154 would elevate simple possession of certain drugs (e.g., heroin, opioids, cocaine, methamphetamine) to a felony offense, with a possible prison sentence of one to five years.

For the last several years, 1 out of every 10 people admitted to a West Virginia jail were charged with simple possession.⁴ If SB 154 becomes law, we can expect more people to be incarcerated for this offense and for longer periods of time. That's because people charged with felony offenses are more likely to face higher bonds—and therefore, more likely to be incarcerated prior to trial.⁵

This change would exacerbate the state's jail crisis: As of January 3, 2024, seven out of 10 regional jails were over capacity.⁶ At the end of 2023, a year in which the Division of Corrections and Rehabilitation (DCR) faced its worst staff vacancy rates in 30 years, DCR still had 883 staff vacancies.⁷ In November 2023, DCR agreed to a \$4 million class-action settlement, following months of revelations about deteriorating conditions and deaths behind bars.⁸ West Virginia cannot afford to incarcerate its way out of this public health crisis.

The bill states that this provision is “expressly designed to assist in getting persons unlawfully using controlled substances...in obtaining treatment for any substance abuse issue they may have.” But the bill's treatment goals don't match the reality of treatment availability.

In 2021, there were more than 4,300 jail admissions for simple possession. That same year, all drug courts across the state admitted merely 348 people – out of 576 who were even considered for drug court programs.⁹ At the beginning of 2023, West Virginia had only 1,349 residential treatment beds across the state to offer people with substance use disorder.¹⁰ No matter its intentions, the effect of this bill will be more incarceration – not more treatment.

2. SB 154 Triples the Cost of Incarceration for Felony Drug Offenses

The most common felony drug charge faced by West Virginians is possession with intent to deliver a controlled substance. Today, a person convicted of that offense faces a prison sentence of 1 to 15 years. This means that if sentenced to prison, they would serve one year before they were eligible for the Parole Board to consider their release.

SB 154 would triple the minimum time a person must serve in prison from one to three years. According to the DCR, it costs the state \$38,099 to imprison a person for one year.¹¹ Passing this bill means tripling that minimum cost to **\$114,297 for every person convicted** of West Virginia's most common drug felony.

3. SB 154 Creates Mandatory Minimums for Other Drug Offenses

For years, conservative groups have urged reconsideration of mandatory minimum sentences.¹² These laws take away a judge’s sentencing discretion and instead impose a mandatory minimum prison term. SB 154 imposes mandatory minimum sentences for the felony offenses of transporting drugs into the state and delivering a controlled substance that results in death.

The National Academies of Sciences has found no evidence that mandatory minimum sentences provide a deterrent effect.¹³ In a 50-state analysis, the Pew Charitable Trusts found no relationship between drug imprisonment rates and three main indicators of drug problems: self-reported drug use, drug overdose deaths, and drug arrests.¹⁴ In other words, mandatory minimums will not lead to fewer West Virginians using drugs or dying from drug overdose.

Mandatory minimums will lead to more jail and prison overcrowding. After mandatory minimum sentences were imposed in the federal system in the 1980s, the number of people serving federal prison sentences for drug offenses grew 1,740 percent.¹⁵ Federal judges and prosecutors charged with implementing those mandatory minimums have called them “cruel and ineffective” and one reason “why innocent people plead guilty.”¹⁶

West Virginia Has Made This Mistake Before

In 2020, lawmakers passed House Bill 4852, which increased the penalties for felony distribution of methamphetamine.¹⁷ Supporters of that bill cited the increased presence of meth in the state.¹⁸ But, data shows that methamphetamine-involved overdose deaths did not decrease the year after HB 4852 passed.¹⁹ Tragically, they multiplied. In 2019, 384 West Virginians died of a methamphetamine-involved overdose. In 2021, we lost 788.

More incarceration does not reduce drug use or overdose rates. Nor does it reduce drug use behind bars: Over one two-week period in 2023, a dozen people incarcerated at Southern Regional Jail were hospitalized for suspected overdoses.²⁰

More incarceration does reduce the chance to save lives. Every dollar spent on incarceration is a dollar not spent on proven public health programs that reduce harmful drug use.²¹

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¹ S.B. 154, 86th Leg., 2nd Reg. Sess. (W. Va. 2024).

² National Center for Health Statistics, “Drug Overdose Mortality by State,” Centers for Disease Control and Prevention, March 1, 2022, https://www.cdc.gov/nchs/pressroom/sosmap/drug_poisoning_mortality/drug_poisoning.htm.

³ “Opioid Overdose Crisis: Time for a Radical Rethink,” Editorial, *The Lancet Public Health*, March 2022, [https://doi.org/10.1016/S2468-2667\(22\)00043-3](https://doi.org/10.1016/S2468-2667(22)00043-3).

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- ⁴ WVCBP analysis of Annual Reports from the WV Division of Corrections and Rehabilitation for Fiscal Years 2019 – 2022.
- ⁵ On January 3, 2024, 82.0 percent of people jailed pretrial were being held on a felony charge. “West Virginia Division of Corrections and Rehabilitation Adult Inmate Count, Run Date 1/3/2024” (Charleston, WV: Division of Corrections and Rehabilitation), <https://wvpolicy.org/wp-content/uploads/2024/01/2024.01.03.pdf>.
- ⁶ “Adult Inmate Count, 1/3/2024.”
- ⁷ Chris Lawrence, “Bill Advances with Bonus, Pay Raise for Corrections Officers,” *MetroNews*, January 26, 2023, <https://wvmetronews.com/2023/01/26/bill-advances-with-bonus-and-payraise-for-corrections-officers/>; *Testimony of William Marshall before Legislative Oversight Committee on Regional Jail and Correctional Facility Authority*, December 12, 2023.
- ⁸ Mike Tony, “Settlement Reached in Class-Action Lawsuit Over Southern Regional Jail Conditions,” *Charleston Gazette-Mail*, November 7, 2023, https://www.wvgazette.com/news/politics/settlement-reached-in-class-action-lawsuit-over-southern-regional-jail-conditions/article_4679e272-57b3-56a2-9655-8f58a4aa468a.html.
- ⁹ “West Virginia Court System 2021 Annual Report” (Charleston, WV: Supreme Court of Appeals of West Virginia Administrative Office), 40, <https://www.courts.wv.gov/sites/default/pubfiles/mnt/2023-06/2021AnnualReport.pdf>.
- ¹⁰ “Treatment Bed Capacity by County (Total 1349 beds), presented by Rachel Thaxton of the Office of Drug Control Policy, January 2023, <https://wvpolicy.org/wp-content/uploads/2023/03/WV-Residential-Treatment-Capacity.png>.
- ¹¹ “FY 2022 Annual Report WV Division of Corrections and Rehabilitation” (Charleston, WV: West Virginia Division of Corrections and Rehabilitation, December 2022), 28, https://dcr.wv.gov/resources/Documents/annual_reports/FY22%20ANNUAL%20REPORT%20WVDCR.pdf.
- ¹² Charles Koch Institute, “Mandatory Minimums in 60 Seconds,” YouTube video, October 12, 2015, <https://www.youtube.com/watch?v=y7dHqBYllx0>; Nolan Center for Justice, “Fair Sentencing/Mandatory Minimums,” American Conservative Union Foundation, <https://conservativejusticereform.org/issue/fair-sentencing-mandatory-minimums/>; Luna, Erik, “Mandatory minimums,” *Reforming Criminal Justice: A Report of the Academy for Justice on Bridging the Gap Between Scholarship and Reform 4* (2017): 117-145, https://law.asu.edu/sites/default/files/pdf/academy_for_justice/7_Criminal_Justice_Reform_Vol_4_Mandatory-Minimums.pdf.
- ¹³ *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, DC: National Academies Press, 2014), 140.
- ¹⁴ Adam Gelb et al., “More Imprisonment Does Not Reduce State Drug Problems” (The Pew Charitable Trusts, March 2018), 1, https://www.pewtrusts.org/-/media/assets/2018/03/pspp_more_imprisonment_does_not_reduce_state_drug_problems.pdf.
- ¹⁵ Gelb, “More Imprisonment Does Not Reduce Drug Problems,” 2.
- ¹⁶ Nancy Gertner and Chiraag Bains, “Mandatory Minimum Sentences are Cruel and Ineffective. Sessions Wants Them Back,” *The Washington Post*, May 15, 2017, <https://www.washingtonpost.com/posteverything/wp/2017/05/15/mandatory-minimum-sentences-are-cruel-and-ineffective-sessions-wants-them-back/>; Jed S. Rakoff, “Why Innocent People Plead Guilty,” *The New York Review*, November 20, 2014, <https://www.nybooks.com/articles/2014/11/20/why-innocent-people-plead-guilty/>.
- ¹⁷ H.B. 4852, 84th Leg., 2nd Reg. Sess. (W. Va. 2020).
- ¹⁸ Charles Boothe, “More Jail Time for Meth Crimes: Bill Doubling Penalties Expected to Pass,” *Bluefield Daily Telegraph*, March 7, 2020, https://www.bdtonline.com/news/more-jail-time-for-meth-crimes-bill-doubling-penalties-expected-to-pass/article_ea2a1630-6017-11ea-94b2-23eb439ad76d.html.
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- ²⁰ Annie Moore, “Several Inmates Taken to Hospital After Appearing to Overdose at Southern Regional Jail,” *WVVA*, January 16, 2023, <https://www.wvva.com/2023/01/16/several-inmates-taken-hospital-after-overdose-southern-regional-jail/>; Annie Moore, “Three Inmates Taken for Medical Treatment After Drugs Discovered at Southern Regional Jail,” *WVVA*, January 24, 2023, <https://www.wvva.com/2023/01/25/three-inmates-taken-medical-treatment-after-drugs-discovered-southern-regional-jail/>; Annie Moore, “More Inmates at SRJ Taken to Hospital After Apparent Overdoses,” *WVVA*, February 2, 2023, <https://www.wvva.com/2023/02/02/more-inmates-srj-taken-hospital-after-apparent-overdoses/>.
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