



**Written Statement of  
Christopher W. Adams, President**

**on behalf of the  
National Association of Criminal Defense Lawyers**

**Before the  
Senate Corrections and Criminal Law Committee  
Of the State of Indiana**

**Re:  
HB 1202**

**April 6, 2021**

The National Association of Criminal Defense Lawyers (NACDL) appreciates this opportunity to present its views in support of a bill pending before this committee – [House Bill 1202](#). If passed, HB 1202 would extend parole eligibility to qualified individuals convicted of certain nonviolent crimes, building upon the successful sentencing reforms enacted in 2014. By extending opportunities for early release to individuals convicted before July 1, 2014, the effective date of House Enrolled Act 1006, HB 1202 presents Indiana lawmakers with a critical chance to advance the interests of justice, fiscal responsibility, and public safety.

NACDL is the preeminent organization advancing the mission of the criminal defense bar to ensure justice and due process for persons accused of crime or wrongdoing. A professional bar association founded in 1958, NACDL's many thousands of direct members in 28 countries – and 90 state, provincial and local affiliate organizations totaling up to 40,000 attorneys – include private criminal defense lawyers, public defenders, military defense counsel, law professors and judges committed to preserving fairness and promoting a rational and humane criminal justice system.

Every April, NACDL joins Prison Fellowship<sup>1</sup> and other national, state, and grassroots organizations in observing Second Chance Month<sup>2</sup> by highlighting the practical and moral necessity for second chances. Over the years, NACDL has built a long track record of advocating for second chances for individuals serving lengthy and often unnecessary sentences. Our work, including Clemency Project 2014<sup>3</sup> and current Return to Freedom Project,<sup>4</sup> has gained freedom for over 1,100 people, including more than 300 individuals serving life sentences; reduced incarceration by 14,500 years; and saved more than \$400,000,000. Most recently, NACDL joined the Last Prisoner Project<sup>5</sup> in launching the Cannabis Justice Initiative,<sup>6</sup> a program connecting volunteer attorneys with individuals suffering continued punishment for outdated cannabis convictions. With this background, we understand the power of second chances, compelling us to voice strong support for HB 1202 because of the opportunity it presents to meaningfully decrease prison crowding, save taxpayer dollars, and keep families together and communities safe.

We applaud Indiana lawmakers for enacting House Enrolled Act 1006, which reduced the sentencing range for certain nonviolent crimes, including theft and drug-related offenses. This reform represents a significant step towards eliminating excess prison spending and mitigating the collateral consequences of convictions. However, this legislation remains limited to individuals who committed a covered offense after July 1, 2014. This has resulted in 1,451 individuals, who were convicted before the reform's effective date, continuing to serve harsher sentences than they would receive for the same offenses today.

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<sup>1</sup> Prison Fellowship: <https://www.prisonfellowship.org/>.

<sup>2</sup> Second Chance Month: <https://www.prisonfellowship.org/about/justicereform/second-chance-month/>.

<sup>3</sup> In 2014, NACDL launched Clemency Project 2014 in collaboration with the American Bar Association, the American Civil Liberties Union, Families Against Mandatory Minimums, and Federal Public and Community Defenders. Statistics were provided by the Clemency Project 2014 Project Manager.

<sup>4</sup> In 2017, NACDL founded the Return to Freedom Project, a series of programs matching pro bono attorneys with individuals that qualify for clemency or compassionate release. See statistics and learn more here: <https://nacdl.org/Freedom>.

<sup>5</sup> Last Prisoner Project: <http://www.lastprisonerproject.org/>.

<sup>6</sup> Cannabis Justice Initiative: <https://www.nacdl.org/cannabis>.

HB 1202 addresses the unequal justice created by allowing individuals convicted of applicable nonviolent offenses to be considered for early release upon recommendation by their warden. Individuals only become eligible after serving at least 11-15 years or 75% of their current sentence, depending on the nature of the underlying offense and the number of educational credits acquired while incarcerated. This approach is practical, fiscally responsible, and safe, establishing a process only open to those determined to pose no threat to public safety.

With notably high rates of incarceration in Indiana, lawmakers face an increased urgency to reduce the prison population through measures like HB 1202. According to recent data from the Department of Corrections (DOC), 23,745 adults are currently serving sentences in state prisons.<sup>7</sup> Indiana also has the 19<sup>th</sup> highest rate of total incarceration per capita in the country, with 399 individuals in prison for every 100,000 residents.<sup>8</sup> The burden of incarceration disproportionately falls on Black individuals, who are imprisoned at rates of 1,408 per 100,000.<sup>9</sup> Indiana's heavy reliance on prisons has resulted in understaffed and overpopulated facilities, endangering both DOC staff and those incarcerated.

Incarceration, particularly when it does not serve to protect communities, carries significant financial costs to taxpayers and state governments alike. At present, Indiana incarcerates as many as 1,451 individuals for the nonviolent offenses that would be impacted by the passage of HB 1202.<sup>10</sup> With an approximate cost of \$22,000 per year spent on each adult in state prison, Indiana spends at least \$32 million in taxpayer dollars annually to lock up individuals serving outdated sentences. Further, the aforementioned population of low-risk and aging individuals costs substantially more to incarcerate than their younger peers.<sup>11</sup> With COVID-19 placing a strain on financial resources, Indiana cannot afford to continue incarcerating individuals convicted of low-level offenses without a clear benefit to public safety.

The crisis of overincarceration in Indiana and across the country is largely fueled by individuals serving very harsh sentences. However, as researchers continue to find that lengthy sentences have no impact on recidivism rates, this practice is neither necessary to protect communities, nor fiscally responsible.<sup>12</sup> Furthermore, as individuals age, their tendency to reoffend after being released from incarceration decreases significantly. While nearly half of individuals released before age 24 are reconvicted, by ages 35-39 that rate has dropped to 31.3%, and by ages 50-54, it has dropped to only 15.9%.<sup>13</sup>

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<sup>7</sup> Indiana Department of Corrections, "Offender Population Report," (January 2021), <https://www.in.gov/idoc/files/IDOCFebruary-2021-Total-Population-Summary.pdf>.

<sup>8</sup> The Sentencing Project, "State-by-State Data," (January 2019), <https://www.sentencingproject.org/the-facts/#map>.

<sup>9</sup> *Ibid.*

<sup>10</sup> Bernice A. N. Corley, Executive Director at Indiana Public Defender Council, Materials in Support of the passage of House Bill 1202 to Members of the House Committee on Courts and Criminal Code, January 26<sup>th</sup>, 2021.

<sup>11</sup> U.S. Department of Justice, "The Impact of an Aging Inmate Population on the Federal Bureau of Prisons," (February 2016): 12, 15, <https://oig.justice.gov/reports/2015/e1505.pdf>.

<sup>12</sup> The Pew Center on the States, "Time Served: The High Cost, Low Return of Longer Prison Terms," (June 2012), <https://www.pewtrusts.org/en/research-and-analysis/reports/2012/06/06/time-served-the-high-cost-low-return-of-longer-prison-terms>.

<sup>13</sup> United States Sentencing Commission, "The Effects of Aging on Recidivism Among Federal Offenders," (December 2017), <https://www.ussc.gov/research/research-reports/effects-aging-recidivism-among-federal-offenders>.

Mass incarceration additionally brings serious repercussions for the economy, as well as family and community stability. With fewer sources of income, families with at least one parent incarcerated are more likely to require government aid to meet their basic needs, including affording food and health insurance.<sup>14</sup> Children also suffer emotionally and developmentally from the incarceration of a parent, many struggling with expulsions from school, behavioral problems, poor health, and increased risk for future convictions.<sup>15</sup> These trends are particularly troubling in Indiana where 11% of children have at least one incarcerated parent, the 2<sup>nd</sup> highest rate in the country.<sup>16</sup>

Across the country, states are embracing decriminalization and opportunities for second chances to mitigate the disastrous impacts of overincarceration. For example, in 2019, Oklahoma enacted HB 1269, retroactively applying a 2016 ballot measure, similar to Indiana's 2014 reform, that reclassified low-level drug and property offenses as misdemeanors and increased the threshold for a felony theft. After HB 1269 passed, the parole board accelerated commutations for over 400 individuals sentenced under the old law.<sup>17</sup> Additionally, federal lawmakers have also reformed drug policy with the Fair Sentencing Act of 2010, cutting the crack-powder cocaine sentencing disparity from 100:1 to 18:1. In 2018, the First Step Act made this retroactive, applying the law to the remaining 3,000 people convicted of crack offenses before 2010. Research has demonstrated that enacting the First Step Act has not meaningfully impacted recidivism rates.<sup>18</sup>

HB 1202 provides Indiana with the opportunity to protect public safety, while reducing the prison population, reallocating scarce resources towards more urgent needs, and keeping families and communities intact. Through the expansion of parole eligibility for individuals convicted of certain nonviolent offenses, lawmakers can work towards a system built on common sense and fair sentencing practices.

NACDL urges this body to vote yes on HB 1202.

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<sup>14</sup> Naomi F. Sugie, "Punishment and Welfare: Paternal Incarceration and Families' Receipt of Public Assistance," *Soc. Forces* 90:4 (June 2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3827915/#:~:text=The%20majority%20of%20families%20with,as%20opposed%20to%2054%20percent>.

<sup>15</sup> National Institute of Justice, "Hidden Consequences: The Impact of Incarceration on Dependent Children," (March 2017), <https://nij.ojp.gov/topics/articles/hidden-consequences-impact-incarceration-dependent-children>; Paola Scommegna, "Parents' Imprisonment Linked to Children's Health, Behavioral Problems," *Population Reference Bureau* (December 2014), <https://www.prb.org/incarcerated-parents-and-childrens-health/>.

<sup>16</sup> The Annie E. Casey Foundation, "Children of Incarcerated Parents, a Shared Sentence," (April 2016), <https://www.aecf.org/resources/a-shared-sentence/>.

<sup>17</sup> Nicole D. Porter, "Top Trends in State Criminal Justice Reform, 2019," *The Sentencing Project* (January 2020), <https://www.sentencingproject.org/publications/top-trends-in-state-criminal-justice-reform-2019/>.

<sup>18</sup> U.S. Sentencing Commission, "Recidivism Among Offenders Receiving Retroactive Sentence Reductions: The 2007 Crack Cocaine Amendment," (May 2014), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20140527\\_Recidivism\\_2007\\_Crack\\_Cocaine\\_Amendment.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20140527_Recidivism_2007_Crack_Cocaine_Amendment.pdf).