FEDERAL LEGISLATIVE Roundup:  
SENTENCING REFORM IN THE 112TH CONGRESS

The 112th Congress was in session from January 2011 to December 2012. Any federal legislation that did not become law before December 31, 2012, died and must be reintroduced in the next Congress (in other words, if it didn’t become a law by December 31, 2012, we have to start over again from scratch in January 2013). During the 112th Congress, we experienced some setbacks, but we also created a foundation for important federal sentencing reforms that we will continue supporting in the 113th Congress, which begins in January 2013. Here is a summary of the federal sentencing legislation from the 112th Congress:

**Crack cocaine** On August 3, 2010, the Fair Sentencing Act (FSA) passed with bipartisan support, reducing the racially discriminatory 100-to-one ratio between crack and powder cocaine mandatory minimum sentences to a fairer, but still imperfect, ratio of 18-to-one. The new law is not retroactive – in other words, its changes to mandatory minimum sentences only apply to federal offenders sentenced after the law went into effect. Rep. Bobby Scott (D-VA) introduced the following bills to build on the FSA’s reforms:

- H.R. 2316, The Fair Sentencing Clarification Act: if passed, would make the FSA’s changes to mandatory minimum sentences retroactive.

FAMM supported both bills, which unfortunately were not passed out of the House Judiciary Committee. Neither bill received a committee hearing or passed this year.

However, there was a positive development for FSA retroactivity in the U.S. Supreme Court in June 2012. The Court ruled that so-called “pipeline” crack defendants – people who committed federal crack offenses before August 3, 2010, but were sentenced after that date – can receive the benefit of the FSA’s changes to mandatory minimum sentences. FAMM submitted a “friend of the court” brief on the case, urging the Court to reach this result.

**Other Drug Sentencing Laws** Unfortunately, in 2012, Congress expanded the list of drugs that trigger federal mandatory minimum sentences. Congress passed legislation that requires 20-year mandatory minimum sentences for distributing certain so-called “synthetic drugs” (chemicals that mimic the effects of other illegal drugs), if death or serious bodily injury results from the distribution or use of those drugs. FAMM fought hard against this expansion of mandatory minimum drug sentences, working closely with Senator Rand Paul (R-KY). Though we did not succeed in stopping these new mandatory sentences, we will continue to work with Senator Paul and others on reforms that will enable federal judges to bypass excessive mandatory sentences when circumstances warrant it.

**Other mandatory minimum proposals** Members of Congress from both parties sought to add new mandatory minimum sentencing provisions for various federal crimes. New mandatory
minimums were proposed for: sexual assault (in the Violence Against Women Act reauthorization bill); identity theft related to federal tax returns; and aggravated computer fraud that threatens our nation’s cybersecurity system. FAMM testified against or otherwise publicly opposed all of these proposals and is pleased that none of them became law during the 112th Congress.

**Second Chance Act Reauthorization** In 2007, Congress passed a law authorizing millions of dollars for state, tribal, and federal reentry programs for prisoners. However, the authorization for that funding expired in 2010. Spending on these programs continues, but in order to get additional funding and reforms, Congress must pass legislation to reauthorize the program. S. 1231, the Second Chance Reauthorization Act, was introduced by Senators Patrick Leahy (D-VT) and Rob Portman (D-OR) to do just that. Though the bill made it out of committee, it did not become a law. FAMM supports reauthorization of Second Chance Act funding and hopes that the effort will succeed in the 113th Congress.

**National Criminal Justice Commission** Retiring Senator Jim Webb (D-VA) introduced S. 306, the National Criminal Justice Commission Act, to establish a national, bipartisan commission of experts to do a top-to-bottom review of our country’s criminal justice system, including taking a critical look at mandatory minimum sentencing laws. Such a commission could be vital to moving away from our current harsh system and toward one that is fairer, less expensive, and more effective. FAMM supported the legislation, which unfortunately did not move out of the Senate Judiciary Committee.

**Gun offenses** There were no reforms to mandatory minimum sentences for federal gun offenses during the 112th Congress. Representatives Bobby Scott (D-VA) and John Conyers (D-MI) introduced H.R. 2398, the Firearm Recidivist Sentencing Act of 2011, which would have amended 18 U.S.C. § 924(c) to clarify when the mandatory minimum sentences for possessing, brandishing, or discharging a firearm during the course of a drug crime or crime of violence may be applied. Known as “stacking,” § 924(c) requires multiple mandatory minimum sentences for multiple gun charges to run back-to-back – even if all the charges arose from one criminal indictment. This problem has resulted in many unjust sentences, and FAMM supports fixing it. Unfortunately, the bill did not pass during this Congress. FAMM will be advocating for reforms to 18 U.S.C. § 924(c) and other federal gun laws in the 113th Congress.

**Federal Good Time Reform** In the 112th Congress, there were numerous bills introduced to increase the amount of “good time credit” that federal prisoners can earn through good behavior and completing rehabilitative programming. None of the bills moved out of committee or passed this year. FAMM supports increased use of good time credit and will continue to do so in the 113th Congress.

**Federal Child Pornography Laws** On November 27, 2012, the U.S. Senate passed, by unanimous consent, a bill that increases the statutory maximum sentences for possession of child pornography from 10 years to 20 years. The bill, H.R. 6063, passed the House in August, and President Obama signed it into law in December 2012. Fortunately, the bill did not create new
mandatory minimum sentences. Unfortunately, though, sentences for child pornography possession are already viewed by many as excessive. In February 2012, the U.S. Sentencing Commission held a hearing and heard many concerns about the length of child pornography sentences, particularly for possession and receipt cases. The Commission is currently doing an extensive study of federal child pornography sentences and will produce its findings and recommendations soon.

**Federal Commutation Process Reform** Over the last two years, ProPublica investigative reporter Dafna Linzer has written a cutting-edge series of articles on serious problems with the administration of the president’s power to pardon federal ex-offenders and give commutations (sentence reductions) to federal prisoners. In May 2012, FAMM held an important briefing at the National Press Club bringing experts together to discuss the problems and possible solutions. FAMM also helped organize letters from Members of Congress, law professors, former federal prisoners who received commutations, and dozens of advocacy groups, calling for reforms to the Office of the Pardon Attorney, which reviews all commutation and pardon requests and gives advice to the president. In December 2012, a Department of Justice investigation showed that the current pardon attorney misrepresented key facts to the White House regarding a commutation request from a federal prisoner. FAMM continues to urge the president and the Department of Justice to ensure that reforms are made so that all federal pardon and commutation applicants get a fair shake.

*For more, visit FAMM’s “Bills in Congress” page on our website, at [http://www.famm.org/federal/USCongress/BillsinCongress.aspx](http://www.famm.org/federal/USCongress/BillsinCongress.aspx)*