



Written Testimony of Molly Gill
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Hearing on HB 1739
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Crime Prevention and Public Safety Committee

I would like to thank Chair Phillips and Vice-Chair Hill and the members of the committee for the opportunity to submit written testimony on behalf of Families Against Mandatory Minimums. We support HB 1739, a state-tested and state-approved solution to Missouri's overcrowded prison system and bloated correctional budget.

FAMM is a nonpartisan, nonprofit sentencing reform advocacy group founded in Washington, D.C. in 1991. FAMM's mission is to protect public safety and promote efficiency in the criminal justice system by advocating for individualized, proportional criminal sentencing laws. We are not against punishment or prisons. We simply believe that sentences should fit the crime and the offender, and that judges are in the best position to decide the proper punishment in each and every case.

Should Missouri enact HB 1739, it will join a growing list of states that have improved public safety while saving their residents money through smart, evidence-driven sentencing reform. In the last two decades, dozens of states including Utah, North Dakota, Iowa, South Carolina, Michigan, and Louisiana have significantly reformed their sentencing laws to return discretion to the courts and reduce their state's reliance on lengthy prison sentences as a response to crime. HB 1739 is based on model legislation adopted by the American Legislative Exchange Council (ALEC). States as varied as Georgia, Florida, Oklahoma, Virginia, Maryland, Montana, Maine, and Minnesota have adopted versions of HB 1739 for both violent and nonviolent offenses and repeat offenders.

Missouri's minimum prison terms and statutory minimums are resulting in lengthy prison stays that are not necessarily in the best interest of public safety and effective resource allocation. Under Missouri law, most repeat offenders are required to serve a minimum portion of their sentence based on the number of prior prison commitments they have on their record. Offenders with one prior commitment to the Department of Corrections (DOC) must serve 40 percent of their minimum sentence, offenders with two prior DOC commitments must serve 50 percent of their minimum sentence, and offenders with three or more prior commitments to the DOC must serve 80 percent of their sentence. Missouri also has statutory minimum sentences of three years for Class C offenses, five years for Class B offenses, and 10 years for Class A offenses. If the court decides to impose and execute a prison sentence other than a short-term drug treatment sentence, it must follow these statutory minimums and, if they apply, minimum prison terms.

Missouri's lengthy statutory minimum sentences and minimum prison terms increase prison populations and costs for the state. Despite recent steps in the right direction in regards to sentencing and evidence-based criminal justice policies, Missouri's prison rate remains the eighth largest in the country, with 33,000 people serving prison sentences within the DOC. Not

only do these prison sentences carry a large cost in terms of human and social capital, they represent a huge burden on taxpayers. The Missouri Department of Corrections received over \$300 million in taxpayer money to cover the costs of incarceration in FY2017, a 24 percent increase since 2007. If Missouri continues down this path, the prison population will grow to 35,000 by 2021, requiring the construction of two new prisons that would cost upwards of \$200 million in the first two years alone. With one-third of new DOC admissions entering prison with a minimum prison term, sentencing reform is clearly needed to slow down this unsustainable growth pattern. Moreover, the costs of excessive incarceration siphon off money that could be better invested in other public safety priorities, like smarter policing, more victim services, or more drug treatment to fight the opioid epidemic.

HB 1739 would allow courts to depart from the statutory minimum or minimum prison term when the court finds “substantial and compelling reasons” on the record that the prison term is not necessary to protect the public or would produce a “substantial injustice.” The bill does not repeal a single minimum or statutory minimum prison term, but rather allows courts to avoid the occasionally unreasonable, unnecessary, or counterproductive prison sentences those laws may produce, and instead craft a sentence that fits the crime and each offender’s unique role and needs.

HB 1739 will allow judges to pursue the best possible sentence to match public safety demand while saving the state millions of dollars. Based on CY 2016 numbers from the Department of Corrections, Missouri could avoid \$4 million per year in prison costs by permitting more reasonable sentences for some offenders facing statutory minimums and minimum prison terms. These savings can be reinvested in more proven methods of crime reduction, such as increased overtime for police officers or drug treatment programs.

FAMM understands the hesitation some may have with permitting the possibility of shorter sentences for individuals who have already served a sentence within a DOC facility. However, HB 1739 will not fling open the prison doors. Under HB 1739, a judge’s discretion is limited to prevent more dangerous offenders from receiving unjustified leniency. HB 1739 clearly states that people who used or threatened to use violence, committed a sexual offense against a minor, or used or brandished a firearm are ineligible for a sentence below the statutory or minimum prison term required by law.

In response to those who argue that Missouri needs lengthy and mandatory prison sentences to maintain public safety, the evidence suggests otherwise. The Department of Justice’s National Institute of Justice has found that it is the certainty of being caught, not the severity of the punishment, that deters future crime. Additionally, a recent study from the Pew Charitable Trust found, on average, lower crime rates in states with the greatest decrease in prison populations over the last 10 years.

It is also important, when considering the appropriate sentence for a repeat offender, to consult the available data. The data show that prison is not the safest or most cost-effective solution. A recent study found that progressively longer sentences for repeat offenders are less effective than alternative options, such as intensive probation. In fact, the authors of the report noted that in

some instances tougher prison sentences may prove to be criminogenic, increasing the likelihood that an offender will continue to engage in criminal activity.

Furthermore, data from within the Missouri Department of Corrections should give any pro-public safety legislator pause when considering lengthy prison terms as the preferred response to crime. According to FY 2015 sentencing data, Missouri courts, on average, sentenced defendants to prison in 23.6 percent of all dispositions. Of the 45 circuit courts, the circuit with the lowest percentage of prison sentences – the 41st circuit, with only 13.6 percent of cases resulting in a prison sentence – had the lowest rate of recidivism, with 28 percent of defendants returning after two years. The circuit court with the highest rate of recidivism, 47 percent returning after two years, sentenced defendants to prison in almost one-quarter of all dispositions.

The data also suggests a troublesome connection between lengthy sentences and recidivism. St. Louis's average prison sentence length was 9.2 years, and its recidivism rate, 36.6 percent, was higher than the statewide average of 35.4 percent. While St. Louis presents unique challenges as a large city, a troubling trend emerges when comparing the state's smaller counties, as well. For example, Dade County had an average sentence of only 2.7 years and boasted a recidivism rate of 17.8 percent, just over half the statewide average. Meanwhile, Hickory County, which has a similar population, had an average sentence of 7.7 years while also holding the dubious honor of the state's highest recidivism rate, 54.5 percent. Many factors influence recidivism rates, but longer prison stays do not appear to guarantee less reoffending in Missouri.

Missouri simply cannot afford to continue its current sentencing practices. Continued prison growth is not a sustainable public safety strategy. Evidence has repeatedly shown at both national and state levels that long prison sentences are not a cost-effective way to address crime. While FAMM certainly agrees that prison is an appropriate choice in many cases, we believe that the courts must be given more discretion to weigh every pertinent factor in determining the appropriate sentence for each individual offender. HB 1739 will return some limited discretion to courts in some cases, ensuring cost-effective and proportional accountability for each offender. For these reasons, we urge you to support HB 1739.

Thank you again for considering this bill and my written statement. FAMM is happy to provide further assistance as well as copies of the resources cited in this testimony at the request of the committee.



Missouri's Safety Valve: Better Justice and Public Safety for Taxpayers

Missouri Budget Snapshot: The Missouri Department of Corrections' (DOC) budget is currently

- **Too big:** In fiscal year 2017, the state of Missouri appropriated over \$300 million to the DOC to cover the costs of their adult correctional institutions alone.
- **Growing larger:** Since FY 2007, the DOC budget appropriation has increased 24 percent.
- **Wasting taxpayer dollars:** Evidence shows that mandatory prison terms are ineffective and keep many people locked up longer than necessary. This depletes funds that could be better spent on more effective public safety policies.

HB 1739 & SB 748: Smart Sentencing Solutions That Save Missouri Millions

HB 1739 (Rep. C. Smith) and SB 748 (Sen. Emery) will reduce excessive sentences and restore fiscal responsibility to the Department of Corrections through the creation of a “safety valve” exception to mandated prison terms. **These safety valve bills will:**

- **Avoid \$3.9 million per year in prison costs by permitting more reasonable sentences for some MPT offenders:** The safety valves allow – but do not require – judges to depart from minimum prison term (MPT) sentencing provisions¹ for offenders that fit certain criteria.² Based on calendar year 2016 DOC admissions data,
 - 1,616 offenders sentenced to minimum prison terms would have been eligible for a reduced sentence had the safety valve been in place. Of these,
 - 950 were sentenced to a 40% MPT;
 - 411 were sentenced to a 50% MPT;
 - 255 were sentenced to an 80% MPT.
 - The safety valve would have reduced sentences for these 1,616 offenders by an average of 1.28 years;
 - Assuming that only 20 percent of these eligible MPT offenders actually received a sentence reduction under the safety valve, Missouri would avoid **\$3.9 million** in future corrections costs.³
- **Avoid an additional \$165,000 per year in prison costs by permitting more reasonable sentences for some people facing *statutory (non-MPT) minimum prison terms*:** The bills also give judges flexibility to give qualifying offenders less prison time than the applicable statutory minimum sentence, even if the person is not facing an MPT. Based on calendar year 2016 DOC admissions data,
 - 654 offenders sentenced to a statutory minimum sentence would have been eligible for a reduced sentence had the safety valve been in place. Of these, the vast majority were convicted of class C felonies, as follows:
 - 10 were convicted of a class A felony (10-year statutory minimum);
 - 93 were convicted of a class B felony (5-year statutory minimum);
 - 551 were convicted of a class C felony (3-year statutory minimum).

- A safety valve reduction of the statutory minimum sentence by just one year would save the state
 - \$1,521.25 per class A and B offender and per class C DWI offender;
 - \$1,217 per class C drug and nonviolent offender.
- If only 20 percent of eligible offenders in each felony class and offense type actually received a sentence just one year shorter than the statutory minimum under the safety valve, Missouri would avoid **\$165,633.70** in future corrections costs.
- **Use taxpayer dollars more responsibly:** Shorter prison sentences for less dangerous offenders save money that Missouri can reinvest in more effective methods of promoting public safety. The **\$4 million saved by HB 1739 and SB 748** could be spent on drug treatment, overdose prevention, victim services, rape kit testing, or community policing, for example – all of which save lives and make Missouri safer.

Safety Valves Are State-Tested and State-Approved

Safety valves have been utilized in states across the country to reduce wasteful spending and improve public safety. **For example:**

- In 2013, Georgia passed HB 349, granting judges the use of a safety valve. This reform was part of a package that helped Georgia avoid spending \$246 million on corrections and the construction of new prisons. The state was instead able to reinvest \$47 million into their accountability court systems. The rate of nonviolent offenders in Georgia prisons has fallen by 4 percent since 2012.

¹ Section 558.019, RSMo, requires people to serve 40, 50, 80, or 85 percent of the sentence, depending on the person's number of prior prison commitments, before becoming eligible for parole.

² In both bills, people would be ineligible for the safety valve if the crime involved the use, attempted use, or threatened use of serious physical force by the defendant against another person, resulted in serious physical injury to another person by the defendant, involved sexual conduct against a minor, or involved the brandishing or use of a firearm by the defendant.

³ This figure is based on the Missouri DOC CY2016 admissions of individuals serving a minimum prison term (MPT) under section 558.019 of the Missouri Revised Statutes, assuming that 20% of eligible offenders in each group would receive relief. Our cost estimate was calculated by first finding the average sentence length for each offender group, the average time served under MPT for each offender group, and the average time served should they be sentenced under the guidelines and not MPT. We then calculated reduction in sentence by finding the estimated difference between time served under MPT and time served under guidelines. This number was then multiplied by the direct cost of incarceration (\$6,085 per year). Finally this average cost savings per offender was multiplied by the estimated number of prisoners who would have received relief in 2016. Our estimates throughout this factsheet do not include the offsets to avoided costs that might accrue due to offender recidivism.



THE CASE FOR A SENTENCING SAFETY VALVE IN MISSOURI HB 1739 (C. SMITH) AND SB 748 (EMERY)

Missouri’s minimum prison terms (MPTs) and statutory minimums contribute to high prison population and costs:

- Per 558.019 of the Revised Statutes of Missouri, certain offenders are required to serve a minimum portion of their sentence. These minimum mandatorys are as follows:
 - Offenders with one prior DOC commitment must serve 40% of their sentence or until the offender reaches 70 years of age and has served 30% of their sentence.
 - Offenders with two prior DOC commitments must serve 50% of their sentence or until the offender reaches 70 years of age and has served 40% of their sentence.
 - Offenders with three or more prior DOC commitments must serve 80% of their sentence or until the offender reaches 70 years of age and has served 40% of their sentence.
 - Offenders found guilty of dangerous felonies must serve 85% of their sentence.
- One-third of all new sentence prison admissions each year are MPTs – and serve longer sentences that cost taxpayers more and contribute to a large prison population.¹
- Missouri also has lengthy statutory minimum sentences for Class A (10-year minimum), Class B (5-year minimum), and Class C (3-year minimum) felony offenses. These lengthy statutory minimums can be required even for nonviolent, low-level offenses, including drug offenses.

Missouri’s lengthy statutory minimum sentences add to prison population and costs:

- Prisoners are expensive to incarcerate: \$20,896 (\$57.25/day) per person, per year
- Despite recent steps in the right direction, Missouri’s prison population of 33,000 is still the 8th largest in the nation.
- Without reform, Missouri’s prison population will continue to grow to 35,000 by 2021, requiring the state to build two new prisons, which would cost upwards of \$200 million in the first two years alone.²

The safety valve: “Goldilocks” sentencing that is just right for Missouri.

- The safety valve is a state-tested policy that permits courts to depart from the statutory or minimum mandatory sentence when that minimum prison term is not necessary to protect the public.
- By permitting, not requiring, judges to depart from the statutory or minimum mandatory, the safety valve allows courts to avoid unreasonably lengthy punishments and account for special facts and circumstances in a case.

¹ MISSOURI DEP’T OF CORRECTIONS, 2016 PROFILE OF THE INSTITUTIONAL AND SUPERVISED OFFENDER POPULATION 56-58 (June 30, 2016), <https://doc.mo.gov/Documents/publications/Offender%20Profile%20FY16.pdf> (published Mar. 2, 2017).

² Council of State Governments, Justice Reinvestment in Missouri: Final Presentation to the Missouri State Justice Reinvestment Task Force 49 (Dec. 13, 2017), http://www.stltoday.com/news/multimedia/final-presentation-to-the-justice-reinvestment-task-force/pdf_4e9f77d6-65b8-5fea-a519-8a9dccb46c4b.html.

- A safety valve could fill the gap in Missouri drug sentencing, creating a range of prison sentence options between the 120-day and long-term commitment and the statutory minimum – so a judge can find the sentence that is just right for the case and the offender. This “Goldilocks” approach would allow a court to give 7 years in prison instead of 10 to a Class A drug felon, for example, if the facts of the case warrant it.
- Safety valve legislation will help Missouri reserve valuable and finite prison resources for the most dangerous and deserving prisoners.
- The safety valve can be limited so that it does not apply to people who used violence during the crime.

Missouri should join fellow conservative states in reducing crime and incarceration.

- More than 30 states have reduced, eliminated, or reformed their mandatory minimum laws over the past decade – and crime in those states has gone down, not up.
- In 2017, Louisiana repealed many of its mandatory minimum sentences.
- In 2016 and 2017, Iowa’s legislature unanimously halved some of its mandatory minimum drug sentences, and eliminated others entirely.
- In 2015, Oklahoma introduced a safety valve for some of its mandatory minimum drug trafficking sentences.
- In 2013, Georgia unanimously adopted safety valve legislation that has already saved the state \$20 million.

How Does it Work, and Who is Eligible?
The Justice Safety Valve Act: HB 1739 (Rep. C. Smith)/SB 748 (Sen. Emery)

The Justice Safety Valve Act is a smart sentencing solution to Missouri’s rising prison population and prison-related costs. The bills will cut the prison population and associated costs by granting judges discretion to sentence defendants below the applicable minimum term on a case-by-case basis. This bill will not fling open the prison doors or eliminate minimum sentencing requirements. Rather, it will ensure that minimum prison terms do not produce unjust results that do not make Missouri safer. Offenders are not eligible for the safety valve if their offenses:

- Included the use, attempted use, or threatened use of serious physical force against another person, or resulted in serious physical injury to another person;
- Involved any sexual offense by the defendant against a minor, except if the victim was 14 years old or older and the defendant was not more than 4 years older than the victim; or
- Included the brandishing or discharge of a firearm by the defendant.

Additionally, to use the safety valve, a judge must find that the applicable minimum sentence would result in substantial injustice to the defendant or is not necessary to protect the public.

The below table provides examples of offenses in each felony class that are safety valve-eligible, and those that are not.

Felony Class	Eligible	Not Eligible
Class A 10-30 years	<ul style="list-style-type: none"> • Certain first degree drug trafficking offenses • Delivery of a controlled substance in protected location 	<ul style="list-style-type: none"> • First degree assault • Second degree murder • First degree kidnapping • First degree robbery
Class B 5-15 years	<ul style="list-style-type: none"> • Certain first degree drug trafficking offenses • Theft of \$25,000 or more • Habitual DWI 	<ul style="list-style-type: none"> • First degree burglary • First degree child molestation • Unlawful use of a weapon • Second degree robbery
Class C 3-10 years	<ul style="list-style-type: none"> • Second degree drug trafficking offense • Second degree burglary • Forgery • Chronic DWI 	<ul style="list-style-type: none"> • Second degree domestic assault • Involuntary manslaughter while operating a vehicle under the influence • Second degree assault