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Task Force on Sentencing Reforms for Opioid Drug Convictions
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I want to thank Chairman Murphy, Chairman Davis, and the members of the Task Force on Sentencing Reform for Opioid Drug Convictions for the opportunity to present to the task force on the subject of mandatory minimum drug sentencing. Over 30 years of evidence has shown that mandatory minimum sentencing laws have failed to have a meaningful impact on public safety in North Carolina and nationwide. Instead of improving public safety and reducing drug use, mandatory minimums have led to crowded prisons, broken families and communities, and a bloated corrections budget. I greatly appreciate this deliberative body's diligent review of North Carolina's drug sentencing laws and urge this task force to recommend the repeal of mandatory minimums for drug convictions in North Carolina.

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.

FAMM supports the repeal of mandatory minimum drug sentencing laws because every offender and every case is unique, and because more discretion at sentencing increases public safety. One-size-fits-all sentences do not permit courts to consider all of the relevant facts and circumstances about the crime and its impact on the community, or the offender's criminal record, role, motive, profit from the offense, age, likelihood of rehabilitation, or need for mental health or drug treatment. All of these factors should be taken into consideration when crafting an appropriate sentence. Mandatory minimums ban judges from considering any of them.

At the same time, mandatory minimums often make a single fact the *only* relevant variable in sentencing. One good example is tying mandatory sentences to particular drug amounts, like North Carolina does currently. This sentencing structure is inherently arbitrary, and leads to arbitrary results, including what we call "cliff effects."

Consider that judges have greater discretion to sentence offenders convicted of possession with intent to distribute 3.9 grams of heroin; that offense does not carry a mandatory minimum prison term under North Carolina law. But for a conviction of possession with intent to distribute 4 grams of heroin, judges' hands are tied by a mandatory minimum sentence. We trust judges to handle sentencing of distribution cases below the threshold, but add one-tenth of a gram, and current statutes assume they lose all competence to impose an appropriate sentence.

Consider further a drug addict who sells small amounts of heroin to feed his own habit. The addict is arrested with possession of 4 grams of heroin from both their personal consumption and small-time distribution. Now consider a mid-level drug dealer who does not use and whose drug distribution is completely profit-motivated. He is arrested with 13.9 grams of heroin and charged with possession with intent to distribute. Despite clear differences in the motives and involvement of both individuals, the judge is required to give both offenders the same 70-month sentence. Sentencing addicts or street-corner drug sellers as if they are more serious dealers or kingpins is expensive, unfair, and ineffective. It decreases respect for the criminal justice system. The public is not safer when high-risk offenders do not get a long enough sentence, but it is also not safer when low-risk offenders go to prison for too long. Prisons are scarce and expensive resources that must be used wisely, and money wasted on incarcerating low-risk offenders too long is money that cannot be spent on improving law enforcement, victim services, or drug treatment in our communities.

Because mandatory minimums strip the courts of their ability to assess the most appropriate punishment in each and every case, these policies have been an abject failure in reducing crime. The Department of Justice's National Institute of Justice has disproven the deterrence theory framework that many use to support the existence of mandatory minimums, finding that it is the certainty of being caught, not the severity of punishment, that deters crime.¹ Furthermore, a recent 50-state study by the Pew Charitable Trust found no statistically significant relationship between drug sentencing and three major indicators of drug problems: drug arrests, drug use, and drug overdoses.² And simply putting more people in prison does not reduce crime. Another Pew Charitable Trust study found that 35 states reduced their prison populations and crime rates simultaneously.³

Not only are mandatory minimums ineffective at reducing or stopping crime, they result in misuse of public funds. A 1997 study by the RAND Corporation found that mandatory minimums were the least cost-efficient way to reduce cocaine-related crime. The report concludes that \$1 million spent on mandatory minimum sentences was a far less effective crime reduction strategy than spending \$1 million on treating heavy drug users.⁴ Assuming the principle of this study applies to all drug mandatory minimums, it would be unsafe for North Carolina to continue to spend on average \$205,636 per low-level opiate- or heroin-related mandatory minimum sentence.

¹ "Five Things About Deterrence" Washington, D.C.: National Institute of Justice, 2016.

<https://www.ncjrs.gov/pdffiles1/nij/247350.pdf>

² Gelb, A. (2017, June 19). RE: The Lack of Relationship Between Drug Imprisonment and Drug Problems [Letter to Gov. Chris Christie] <http://www.pewtrusts.org/~media/assets/2017/06/the-lack-of-a-relationship-between-drug-imprisonment-and-drug-problems.pdf?la=en>

³ Gelb, A. and Denney, J. (2018, Jan. 16). National Prison Rate Continues to Decline Amid Sentencing, Re-entry Reforms <http://www.pewtrusts.org/en/research-and-analysis/articles/2018/01/16/national-prison-rate-continues-to-decline-amid-sentencing-re-entry-reforms>

⁴ Caulkins, Jonathan P., C. Peter Rydell, William Schwabe, and James Chiesa. Mandatory Minimum Drug Sentences: Throwing Away the Key or the Taxpayers' Money?. Santa Monica, CA: RAND Corporation, 1997. https://www.rand.org/pubs/monograph_reports/MR827.html. Also available in print form.

Fortunately, many states have finally begun to realize we can do better than mandatory minimums. Some states have never adopted mandatory minimum drug laws. Texas has never used North Carolina style-mandatory minimums, and currently sits at a near 50-year crime low.

Other states have repealed their mandatory minimum drug laws. Michigan, for instance, repealed most of its mandatory minimum drug laws in 2003.^{5 6 7} Since then their prison population has fallen considerably and crime has fallen by 38%.^{8 9} New York's experience is similar. After repealing their "Rockefeller Drug Laws" in 2009,¹⁰ felony drug arrests, convictions, and prison commitments are all down, the prison population has fallen, and the state crime rate is down 20 percent.¹¹

Furthermore, several of North Carolina's neighboring and nearby states have reformed their drug sentencing laws to great success. In South Carolina, the legislature eliminated a number of mandatory minimum drug sentences¹² and in turn has closed six prisons, decreased its index crime rate by 16 percent, and saved \$491 million through averted spending and reduced operating costs.¹³

In nearby Georgia, the state passed a major criminal justice reform package¹⁴ under the direction of Gov. Nathan Deal, which included a "safety valve" that grants judges increased discretion when sentencing certain nonviolent drug offenders. Since enacting these reforms, Georgia has been able to avoid \$264 million in general expenses and prison construction, has reserved prison space for violent and high-risk offenders, and has experienced a six percent decrease in crime.¹⁵

⁵ Public Act 665 of 2002, Michigan Legislature, (91st Legislature, 2002)

[http://www.legislature.mi.gov/\(S\(u5bnqt0g2pwmq0vantno04xv\)\)/documents/2001-2002/publicact/pdf/2002-PA-0665.pdf](http://www.legislature.mi.gov/(S(u5bnqt0g2pwmq0vantno04xv))/documents/2001-2002/publicact/pdf/2002-PA-0665.pdf)

⁶ Public Act 666 of 2002, Michigan Legislature, (91st Legislature, 2002)

[http://www.legislature.mi.gov/\(S\(u5bnqt0g2pwmq0vantno04xv\)\)/documents/2001-2002/publicact/pdf/2002-PA-0666.pdf](http://www.legislature.mi.gov/(S(u5bnqt0g2pwmq0vantno04xv))/documents/2001-2002/publicact/pdf/2002-PA-0666.pdf)

⁷ Public Act 670 of 2002, Michigan Legislature, (91st Legislature, 2002)

[http://www.legislature.mi.gov/\(S\(u5bnqt0g2pwmq0vantno04xv\)\)/documents/2001-2002/publicact/pdf/2002-PA-0670.pdf](http://www.legislature.mi.gov/(S(u5bnqt0g2pwmq0vantno04xv))/documents/2001-2002/publicact/pdf/2002-PA-0670.pdf)

⁸ "2016 Statistical Report," Michigan Department of Corrections, September 5, 2017, C-11

https://www.michigan.gov/documents/corrections/MDOC_2016_Statistical_Report_599836_7.pdf

⁹ Crime in the United States 2002 and 2016, Federal Bureau of Investigations. <https://ucr.fbi.gov/ucr-publications>

¹⁰ S. 56 – B, New York Legislature, (198th Legislature, 2009),

http://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=S00056&term=2009&Summary=Y&Text=Y

¹¹ "Index Crimes Reported to Police by Region: 2008-2017," New York State Division of Criminal Justice Services.

May, 2018. <http://www.criminaljustice.ny.gov/crimnet/ojsa/indexcrimes/Regions.pdf>

¹² S 1154, South Carolina Legislature (118th Legislature, 2010). <https://www.scstatehouse.gov/billsearch.php>

¹³ "National Imprisonment and Crime Rates Continue to Fall" Pew Charitable Trusts. December 2016.

http://www.pewtrusts.org/-/media/assets/2017/03/pspp_national_imprisonment_and_crime_rates_fall.pdf

¹⁴ HB 349, Georgia State Legislature (2013-2014 Regular Session) <http://www.legis.ga.gov/Legislation/en-US/display/20132014/HB/349>

¹⁵ Boggs, M.P, and Miller, C.A. "Report of the Georgia Council on Criminal Justice Reform." Georgia Council on Criminal Justice Reform. February 2018.

https://dcs.georgia.gov/sites/dcs.georgia.gov/files/related_files/site_page/2017-2018%20Report%20of%20the%20GA%20Council%20on%20Criminal%20Justice%20Reform.pdf

Finally, last summer Louisiana – a deep red state whose incarceration rate was once the highest in the nation – repealed most of its mandatory minimum drug trafficking laws.¹⁶ In the year since this historic legislation, Louisiana has seen a 20 percent drop in nonviolent prisoners and a 42 percent decrease in those sent to prison for drug possession, allowing Louisiana to focus the majority of its bed space on violent criminals. This stark decrease has resulted in \$14 million in savings for the state and has allowed the state to shed the title of the nation’s top jailer.¹⁷

North Carolina simply cannot afford to continue its current sentencing practices. With the opioid epidemic deeply affecting states throughout the nation, continued use of mandatory minimums is not a sound public safety strategy. Mandatory minimum sentences have done nothing to prevent the opioid epidemic, and it is the definition of insanity to do more of the same and expect different results. Evidence has repeatedly shown at the state and national levels that mandatory prison sentences for drug offenders are not a cost-effective way to address crime or reduce drug abuse. While FAMM certainly agrees that prison is an appropriate punishment in many cases, we believe that courts must be given discretion to weigh every pertinent factor in determining the appropriate sentence for each individual offender.

FAMM urges this task force to recommend the passage of legislation to repeal mandatory minimums. In addition to repealing mandatory minimum sentences, the task force should also recommend passage of legislation to provide current prisoners the opportunity to have their mandatory minimum sentences reviewed and considered for resentencing. Sentencing reforms have been made retroactive with great success in states such as Iowa¹⁸ and Maryland,¹⁹ as well as at the federal level.^{20 21} Considering North Carolina’s use of mandatory minimums for the past several decades, there is inevitably a number of individuals serving unnecessary and wasteful sentences. Their continued incarceration is not only unjust but a strain on resources and a hindrance to public safety.

Thank you for considering our views and for inviting FAMM to present before this task force. We would be happy to provide additional information or assistance, as well as copies of the sources cited in this testimony at the request of the task force.

¹⁶ Public Act 281 of 2017, Louisiana State Legislature, (2017 Regular Session), <http://www.legis.la.gov/legis/ViewDocument.aspx?d=1051860>

¹⁷ Toohey, Grace “Louisiana sees large drops in prison population a year after historic criminal justice reforms,” *The Advocate*. June 28, 2018 https://www.theadvocate.com/baton_rouge/news/crime_police/article_a5c01e10-7ad9-11e8-856e-ebf326bf26bc.html

¹⁸ SF 445, Iowa State Legislature (2017 Regular Session), <https://www.legis.iowa.gov/legislation/BillBook?ga=87&ba=SF445>

¹⁹ SB 1005, Maryland State Legislature (2016 Regular Session), http://mgaleg.maryland.gov/2016RS/Chapters_noln/CH_515_sb1005e.pdf

²⁰ Amendment 759, United States Sentencing Commission, https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20110630_RF_Amendment_Retro_0.pdf

²¹ Amendment 782, United States Sentencing Commission, https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20140718_RF_Amendment782.pdf