



Written Testimony of Molly Gill
Vice President of Policy, FAMM
Hearing on HB 113
January 31, 2019
Special Committee on Criminal Justice

I would like to thank Chair Dogan and Vice-Chair Evans and the members of the committee for the opportunity to submit written testimony on behalf of FAMM. We support HB 113, 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 113, 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 113 is based on model legislation adopted by the American Legislative Exchange Council (ALEC). States as varied as Georgia, Florida, Oklahoma, Virginia, Maryland, Montana, Maine, Mississippi, and Minnesota have adopted versions of HB 113 for both violent and nonviolent offenses and repeat offenders.

HB 113 is also similar to a federal law that was recently expanded in the First Step Act, which was passed by an overwhelming bipartisan majority in both houses of Congress and signed into law by President Donald Trump on December 21, 2018. The First Step Act expanded existing federal law to give federal judges even more flexibility to avoid mandatory minimum prison sentences for drug trafficking offenses. This historic bill – and the historic sentencing reforms passed in more than 35 states over the last 15 years – show that America is moving away from simply locking everyone up for a long time and moving toward an efficient, smart, public safety-focused preservation of long prison sentences for the most serious 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 is the eighth highest 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 113 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 113 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 113 will not fling open the prison doors. Under HB 113, a judge's discretion is limited to prevent more dangerous offenders from receiving unjustified leniency. HB 113 clearly states that people who used or threatened to use violence, seriously injured others, committed a sexual offense against a minor, or brandished or discharged 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 suggest 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 113 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 113.

Thank you again for considering this bill and our written statement. FAMM is happy to provide further assistance to you as this legislation advances.