



**Testimony of Molly Gill  
Vice President of Policy, FAMM  
Hearing on HB 2361  
February 6, 2019  
Arizona House Judiciary Committee**

I thank Chair Allen, Vice Chair Blackman, and the members of the House Judiciary Committee for the opportunity to submit testimony on behalf of FAMM. **We support HB 2361 because it increases public safety and fairness in Arizona’s criminal justice system by preventing people who are not true repetitive offenders from being sentenced as if they were.**

FAMM is a nonpartisan, nonprofit criminal justice reform advocacy group founded in Washington, D.C. in 1991. FAMM and its Arizona members support sentencing and prison policies that are cost-effective, protect public safety, preserve families, and ensure individualized, proportional punishment and rehabilitation. 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.

HB 2361 would amend sentencing under Section 13-703, Arizona Revised Statutes, so that people convicted of multiple felonies in a single criminal proceeding would not be considered “repetitive offenders” and receive enhanced sentences. Under current law, people can be given longer sentences as a “repetitive offender” if they are sentenced for multiple charges in one indictment – even if those charges happened within hours of each other, are part of the same case, or it is the person’s first time ever being charged with any crime. This practice is often referred to as alleging “*Hannah* priors” (based on the *State v. Hannah* case from 1980). For example, a person may sell drugs to an undercover officer several times in one week, and all the charges can be brought in one indictment. Each charge becomes a *Hannah* prior that can be used to give the person a longer sentence as a “repetitive offender.”

**While we agree that longer sentences for some repeat offenders may be justified and necessary, current law requires longer punishments for essentially first-time offenders, producing sentences that are arbitrary, unjust, excessive, and do not increase public safety.** Current law undermines respect for the justice system, creates disproportionate sentencing, and increases the risk of arbitrariness because becoming a “repetitive offender” depends solely on how a person is charged. Most importantly, current law undermines public safety by wasting limited prison resources and longer prison stays on people who have less criminal history and thus have a lower risk of recidivism.

**President Donald Trump recently fixed a nearly identical problem in federal law.** Under 18 U.S.C. § 924(c), people receive consecutive sentences of five years for possessing a gun during a drug trafficking offense or crime of violence, with a consecutive 25-year term for each second and subsequent conviction. Because of a drafting error, this statute required people charged with



multiple § 924(c) counts in one indictment, for one course of conduct, to receive extraordinarily lengthy sentences – even if this was their first and only time appearing in court for a crime. For example, Weldon Angelos sold drugs to an undercover officer three times in one week, each time in possession of a gun. He received five years for the first § 924(c) charge, 25 years for the second, and 25 years for the third – for a total of 55 years for his first and only federal conviction. In short, he was sentenced as a repeat offender even though all of his conduct stemmed from one offense and he had never violated federal law before.

**President Trump remedied this defect in federal law by signing the First Step Act on December 21, 2018.** The First Step Act passed with overwhelming bipartisan support in Congress, and President Trump hails it as one of his administration’s major accomplishments. Had Angelos been sentenced under the First Step Act, he would have received 15 years – five years for each gun offense, running consecutively – but would not receive the 25-year penalty unless he went to prison, came home, and committed another § 924(c) offense later. In other words, now people are not sentenced as repeat offenders under § 924(c) unless they truly are repeat offenders.

HB 2361 solves a similar problem in Arizona law. Some repeat offenders may deserve and need lengthy prison stays to protect the public. **But people should not be punished as repetitive offenders in Arizona until they have truly earned that legal status.** Because HB 2361 increases fairness in the system and reserves longer sentences and prison beds for people with more serious criminal records, FAMM urges the Committee to advance the bill.

Thank you for considering our views.