



**Written Testimony of Molly Gill
Vice President of Policy, FAMM
Virginia Senate Committee on Judiciary
Hearing on SB 5046
August 20, 2020**

I thank Chair Edwards and members of the Senate Judiciary Committee for the opportunity to submit written testimony in support of SB 5046 on behalf of FAMM.

FAMM is a nonpartisan, nonprofit organization that advocates sentencing and prison policies that are individualized and fair, protect public safety, and preserve families. We are pleased to see the Virginia General Assembly consider SB 5046, which would eliminate mandatory minimum sentencing laws prospectively. Repealing mandatory minimum sentences has been a part of FAMM's mission since our creation in 1991.

Virginia has an extensive list of crimes that carry mandatory minimum sentences, and with the exception of a few drug offenses, judges do not have discretion to depart from the applicable minimum prison sentence.¹ As a result, judges are required to impose lengthy prison sentences without considering the circumstances of each case or the needs or role of each person. This one-size-fits-all sentencing scheme is unjust and does not increase public safety. In fact, these laws waste public safety resources, harm communities, and diminish respect for the justice system by putting the wrong people in prison and keeping people in prison too long.

FAMM supports eliminating mandatory minimums because **there is no evidence to support the claim that mandatory minimum sentences reduce crime or drug use.** Criminologists have long made it clear that the certainty of being caught and punished quickly, not lengthy sentences, deters crime. As it relates to drug-related crime, the body of evidence weighs even more heavily against lengthy punishment. A 50-state study from the Pew Charitable Trusts found no significant relationship between drug sentencing and three key indicators of drug epidemics: illicit drug use, drug arrests, and overdoses rates.² Indeed, Virginia's mandatory drug sentences did not prevent or mitigate its ongoing opioid problems. There is also no credible evidence that mandatory minimums deter gun violence or gun crimes. Crime rates respond to policies that ensure swift and certain sanctions on those who choose to break the law. It is the certainty of apprehension, not the severity of punishment, that deters crime.

Further, **repealing mandatory minimums would eliminate unreasonable, unnecessary, costly, and counterproductive prison sentences.** Sentences should fit the crime and each person's unique role and needs. One-size-fits-all sentences do not allow courts to consider all of

¹ Virginia Criminal Sentencing Commission, "Appendix B: Mandatory Minimum Laws in Virginia."

<http://www.vcsc.virginia.gov/VCCs/2020/Mandatory%20Minimums.pdf>

² Pew Charitable Trusts, "More Imprisonment Does Not Reduce State Drug Problems." Mar. 8, 2018.

<https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/03/more-imprisonment-does-not-reduce-state-drug-problems>



the relevant facts and circumstances about the crime and its impact on the community, or the person's criminal record, role, motive, age, likelihood of rehabilitation, or need for mental health or drug treatment, for example. Too often, the mandatory minimum sentence is unjust, irrational, or even counterproductive. The public is not safer when the wrong people go to prison for too long. Repealing mandatory sentences does not mean people go without accountability. It means judges would be able to decide appropriate sentences rather than apply one-size-fits-all punishments. It means families and communities would not be ripped apart for decades by unjust sentences. It means the state would focus expensive prison resources wisely to increase public safety. Sentencing reform will save Virginia money at a time when the state faces a serious budget shortfall and there is no end of the COVID-19 pandemic in sight.

Reforming mandatory sentencing laws is critical to achieving the legislature's goal of restoring racial equity in the state's criminal justice system. Black people make up 19 percent of the state's population but 58 percent of its prison and jail population,³ and mandatory sentences have long been shown to contribute to racial disparities in the justice system. A study of federal sentencing patterns shows that prosecutors are more likely to charge Black people of offenses that carry mandatory sentences, which ultimately lengthens their sentences and contributes to racial disparities in sentence length.⁴ Eliminating mandatory sentences would help mitigate racial disparities in sentencing, restore some equity in sentencing, and increase respect for our justice system.

The only aspect of this bill that falls short, in our view, is its lack of retroactive application to people who have already been sentenced. This bill is a response to the persistent, proven unfairness and inefficacy of mandatory minimum sentences, and many of those sentences were unfair and ineffective no matter when they were imposed. Getting a fair punishment should not depend on something as arbitrary as the date a person went to court. It is as important to fix past injustices as it is to prevent future ones. We urge the committee and the Senate to consider creating an avenue for people to seek resentencing in court. Many people currently serving mandatory minimum sentences in state prisons are ready to come home to their families and pose no threat to the community, and their release would save the state precious resources at a time of dire fiscal need. Such releases would also help limit the spread and impact of COVID-19 in Virginia's state prisons, where social distancing is impossible, and the communities around them.

We are pleased to see the Virginia General Assembly consider eliminating mandatory sentences, and we stand ready to provide our unique expertise and any resources you need as you consider this important issue. Thank you for considering our views.

³ Prison Policy Institute, Blacks Are Overrepresented in Virginia's Prisons and Jails. 2010. https://www.prisonpolicy.org/graphs/2010percent/VA_Blacks_2010.html

⁴ M. Marit Rehavi and Sonja B. Starr. "Racial Disparity in Federal Criminal Sentence." 2014. <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2413&context=articles>