



**Written Statement of Maria Goellner, Esq.
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Virtual Public Hearing Before the Pennsylvania Sentencing Commission
March 9, 2022**

I thank Chairman Stephens and the [members and staff of the Pennsylvania Commission on Sentencing](#) (“Commission”) for considering this statement regarding the Working Draft of Sentencing Guidelines Proposals. FAMM applauds the Commission for seeking meaningful public input.

FAMM is a nonpartisan, nonprofit organization that advocates sentencing policies that are individualized and fair, protect public safety, and preserve families. Thousands of Pennsylvanians support FAMM. Our members include people from all walks of life, including Pennsylvanians with incarcerated loved ones or themselves returning home from prison. Many of our families have suffered from both incarceration and crime. These experiences are not mutually exclusive.

Too many people in Pennsylvania are serving long prison terms that don’t make communities safer. People who do not pose a risk to public safety languish in prison for decades because Pennsylvania’s laws don’t give them a second chance. We must act immediately – and not just legislatively but in every way we can – to begin to remedy Pennsylvania’s decades-long addiction to extreme sentencing.

Our Commonwealth’s historical fixation on extreme sentencing is a high-cost, low-value proposition for taxpayers. There is no evidence that severe sentencing policies discourage people from choosing to engage in crime. Harsh sentences are not necessary for preventing recidivism, because the vast majority of people who commit crimes – even very serious crimes – naturally grow out of criminal behavior as they age and mature. For example, of the 174 Philadelphia juvenile lifers – all originally convicted of homicide – who were resentenced and released following landmark U.S. Supreme Court decisions, only two (1.1%) had been reconvicted of any offense as of 2020.

FAMM recently issued a report, [Time for Justice: The Urgent Need for Second Chances in Pennsylvania’s Sentencing System](#), that outlines our current crisis. We found that Pennsylvania’s prison population has been shaped by some of the harshest sentencing policies in the country. In 2019, Pennsylvania imprisoned more than seven times the number of people than it did in 1970. That growth was driven by punitive policy choices, not increases in crime, and *it did not make Pennsylvania safer*. We urge you to read this report in full and reach out to discuss it further.

Pennsylvania is a national leader in imposing extreme sentences. This ranking is driven largely by two laws: the mandatory minimum sentence of life imprisonment required for first- and second-degree murder, and the denial of parole eligibility to anyone serving a life sentence. In



Pennsylvania prisons, 13.4% of people are serving life without parole (LWOP), compared to only 3.6% nationally. The population serving extreme sentences in Pennsylvania has surged over the last few decades. There were more than nine times as many people serving extreme sentences in 2019 than there were in 1980.

Pennsylvania's extreme sentencing practices have overwhelmingly impacted people of color, especially Black people, who make up less than 11% of Pennsylvania's population but 65% of people serving life sentences and 58% of those serving non-life sentences of 20 years or longer. Pennsylvania's extreme sentencing practices have created a large (and growing) elderly prison population, which increased thirtyfold from 1979 to 2019.

Based on average incarceration costs, the Pennsylvania Department of Corrections (DOC) is spending \$220 million per year to incarcerate 3,892 people who have already served at least 20 years. The true cost is undoubtedly higher, because incarceration costs increase dramatically as people age and need more medical care. The average cost for incarcerated individuals in skilled or personal care units is \$500 per day (or \$182, 625 per year), more than three times the cost for the general population.

Extreme sentences are often unjust, excessive, and imposed without considering individuals' level of culpability or other mitigating factors. Mandatory LWOP deprives judges of the opportunity to make individualized sentencing decisions that consider all important facts of a case, including one's family background and present circumstances. Nearly half of those serving LWOP were under age 25 at the time of the crime. That means that their brains were still developing and their level of culpability was diminished but that they will generally spend more time in prison than people who were older. More than 2,000 people incarcerated in Pennsylvania have spent more time in prison than the amount of time *that they were alive* prior to their crime.

Existing release mechanisms fail to remedy extreme sentences. Parole grant rates have declined since the 1970s and early 1980s, and Pennsylvania is 1 of only 7 states that denies parole eligibility to all lifers. The lifer population is the population that most needs parole – and the population that will generate the most cost savings to taxpayers if given the opportunity for parole. [Pennsylvania's law allowing for release of incarcerated people with terminal medical conditions](#) is extremely narrow, procedurally cumbersome, and hardly used. Pennsylvania does not have a geriatric release mechanism.

Commutations, the only way that people serving life sentences can leave prison alive, used to be common but have become rare. That is in part due to the requirement that for lifers, the Board of Pardons must unanimously vote in favor of clemency for an application to be sent to the governor. And clemency alone will never be sufficient to address all excessive sentences doled out in Pennsylvania in the era of mass incarceration. **So, what can the Commission do?** First, FAMM acknowledges the positive steps that the Commission has already taken.

FAMM Commends the Pennsylvania Commission on Sentencing for:

- Proposing reducing the impact of the prior record score;
- Proposing more opportunities for reducing the prior record score through lapsing and adjustment;
- Supporting restorative sanctions without probation in the sentencing matrix;
- Soliciting the input of incarcerated people in recent public hearings;
- Supporting the early identification of eligible and appropriate candidates for programs at the Dept. of Corrections (note that until fairly recently, only females were screened for trauma upon intake to the state correctional system);
- Convening the Academic Review Panel and paying attention to racial justice;
- Recognizing Pennsylvania's over-reliance on incarceration and long periods of community supervision.

Thank you for these items, and generally for your hard work and dedication to this body. You have a very important job and there is more that must be done. We urge you to implement the items listed below as soon as possible, to stop the crisis of family and fiscal harm occurring in our Commonwealth as the result of decades of extreme sentencing.

FAMM Recommendations for the Commission on Sentencing:

- Support amendments to [42 Pa.C.S. § 2155](#). This statute enumerates the parties the Commission must allow to testify about revisions to the sentencing guidelines. Of the 12 enumerated groups, 7 are law enforcement or law enforcement adjacent (Pennsylvania District Attorneys Association, Chiefs of Police Associations, Fraternal Order of Police, Pennsylvania Parole Board, Pennsylvania Department of Corrections, Pennsylvania Wardens Association, and Pennsylvania Association on Probation, Parole and Corrections). Only 1 enumerated category (Public Defenders Organization) gives statutory voice to those directly impacted by sentencing and their families. FAMM applauds the Commission for seeking public input from incarcerated people and “any other interested person or organization.” However, steps toward balance must also be enshrined in law. Currently, the balance is far off-kilter.
- Consider the voices of directly impacted people and their families more heavily when convening “criminal justice stakeholders” generally, not just in relation to official proposed revisions. People who are directly impacted by sentencing and their families are stakeholders. They should be affirmatively recognized as such with proportional representation in forums such as Strategic Planning Working Groups, etc.

- Do not increase prison terms in the sentencing guidelines. As noted above, Pennsylvania is an outlier nationwide in extreme sentencing. Mass incarceration is real, and it has harmed generations of families. The Commission must take every possible step to address this family and fiscal crisis by ensuring that the new sentencing guidelines matrix does not increase incarceration. The Commission should not expand the number of offense gravity scores while narrowing the guideline ranges. This will limit opportunities for judges to mitigate sentences. Additionally, the Commission should not raise the floor of the sentencing ranges.
- The proposed guidelines contain more recidivist penalties, *i.e.* harsher punishment for second and subsequent offenses. The Commission must ensure that these priors are not double counted, resulting in unnecessarily harsh sentences. The Commission should prohibit the stacking of aggravating adjustments and enhancements. Additionally, previous offenses in a person's prior record score should not be counted in the prior record score if the current offense gravity score already includes an increase for the same prior offense.
- Prior record score. Go further in reducing the impact of the prior record score by adopting the proposed guidelines of the Academic Review Panel to make it a secondary factor at sentencing; the primary factor being the conviction offense and related factors. Support changes to the Commission's enabling legislation rather than choosing to view the enabling legislation as a permanent impediment to adopting this recommendation. Also, ensure that the proposed recalculations to the prior record score do not result in harsher penalties being applied to people with less serious, but more frequent contact with the criminal justice system; particularly individuals with mental health and/or substance abuse issues. Finally, go further in lapsing provisions and opportunities for downward adjustment.
- Restorative sanctions. We commend the Commission for continuing to include restorative sanctions that do not include probation in the sentencing matrix. We ask that you go further, and ask courts to do the same. Currently, courts are hampered from tailoring creative, effective community accountability because of status quo norms that over rely on incapacitation and supervision. While many courts impose creative conditions (victim/survivor dialogue, community service, essays, mentorship, specialized therapy, occupational incentives), they are not typically able to *substitute* these types of accountability for traditional means of punishment like prison, parole, and probation supervision. The Commission should add more options for restorative sanctions without probation to the matrix. Courts will use that tool when appropriate – and it is appropriate in more cases than we think.
- The Commission creates and distributes guideline sentencing forms, and educates stakeholders on sentencing issues. The Commission should instruct probation departments to prepare these forms after consultation with both the prosecutor and defense counsel. The involvement of the defense attorney is critical and should be enshrined in the Commission's instructions and education for practitioners.

- Actively support legislative efforts to expand opportunities for all people to demonstrate rehabilitation and earn time off of their sentences (*e.g.* expanding earned credit via the [Recidivism Risk Reduction Initiative](#) (RRRI); creating earned credits for educational attainment (see [HB 2030](#))). It would also be valuable to have the Commission do a study on the immediate and future impact of repealing the existing prohibition on double credit for time served in [42 Pa.C.S. 9760\(4\)](#). Other jurisdictions do not have this prohibition and courts can deal more efficiently in crediting and closing multiple cases.
- Whenever the legislature proposes bills that would increase or reduce sentences, create or repeal enhancements or consecutive sentencing requirements, make reforms retroactive, or require the Commission to increase or decrease guideline sentences or enhancements, we encourage the Commission to proactively analyze that legislation to determine its impact on our prison population, bed space, costs, and demographics. Make the results of that analysis available to lawmakers and the general public on the Commission’s website before the legislation receives floor votes in either house of the General Assembly. Lawmakers should know the full impact of proposed sentencing changes before they vote.
- Support legislative efforts to make all sentencing reforms retroactive, and encourage decision-makers to provide relief for those who did not benefit from retroactivity in prior landmark cases or legislation. For example, there are still people serving decades-long mandatory minimums in Pennsylvania prisons even though the particular mandatory minimum in their cases were struck down by the Pennsylvania Supreme Court in 2015.
- Oppose the return of mandatory minimums in whatever form they take, and support individualized sentencing in every case in this Commonwealth, *e.g.* [HB 1587](#); [HB 1590](#). Read [FAMM’s letter to the Pennsylvania House of Representatives](#) outlining our analysis of mandatory minimums and mandatory sentencing enhancements.
- When adopting guideline changes that eliminate enhancements, create mitigating factors, permit use of alternatives to incarceration, or reduce sentences, do not limit application of those changes to people convicted of only “nonviolent” offenses. The labeling of offenses as “violent” or “nonviolent” is often subjective and sometimes legally inaccurate, as in the case of felony murder in which the defendant did not personally kill the victim, or certain gun offenses that involve only possession. Whenever possible, we encourage the Commission to give courts the ability to apply sentence-reducing guidelines to all people, regardless of the offense for which they were sentenced.
- FAMM encourages the Commission to [adopt people-first language](#), as [former Secretary of Corrections John Wetzel did for the Pa. Dept. Corrections](#), in all of its written and public communications. The [literature on the dehumanizing impact](#) of applying negative labels to human beings is widely known. It is not neutral to call human beings “inmates,” “prisoners,” “offenders,” “felons,” “convicts,” etc. The Commission should be neutral. This language colors our view of the world and our policy choices. It is more factually accurate and less biased to use descriptive and plain terminology like “people,” “incarcerated people,” “people in prison,” “people with felony convictions,” etc.

- FAMM encourages the Commission to learn about and support second look sentencing and legislation. Second look mechanisms allow decision-makers (courts, the Parole Board, the Board of Pardons) to reevaluate a person's sentence after a defined period and consider release if the person has successfully rehabilitated themselves. People change over time, and locking people up long past the point of necessity makes no one safer. [The Model Penal Code recommends a second look sentencing provision](#) that allows people to be considered for sentence modification after they have served 15 years in prison, and reconsidered every 10 years after that. Currently, Pennsylvania courts may only look at a snapshot in time – the day of sentencing – and the decisions emanating from that snapshot *affect families for decades, regardless of transformation or rehabilitation*. Across the country, there is a growing recognition that second look mechanisms are an effective way to safely vet and release people who no longer need to be in prison. [Learn more about second look sentencing here](#). Examples of current, pending second look bills in Pennsylvania can be found [here on FAMM's Pennsylvania web page](#).

FAMM stands ready and willing to work with the Commission on legislative drafting, testimony, data, story gathering, events, education, and more. We encourage all Commission members and staff to visit with people serving extreme sentences in Pennsylvania prisons and we are happy to facilitate this.

Thank you for considering our views. For more information, contact Maria Goellner, Esq. at mgoellner@famm.org or (717) 945-9089.