



April 25, 2023

Rep. Joe Moody, Chair
House Criminal Jurisprudence Committee
Capitol Station
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E1.420
Austin, TX 78768-2910

Rep. David Cook, Vice Chair
House Criminal Jurisprudence Committee
1100 Congress Avenue
Capitol Extension, Room E1.410
Austin, TX 78701

Dear Chair Moody and Vice Chair Cook:

I write to urge you and the House Criminal Jurisprudence Committee not to advance SB 23, a bill that would create a mandatory minimum sentence of 10 years imprisonment for anyone who uses or exhibits a gun in the course of committing a first, second, or third degree felony. SB 23 will be expensive, deprive judges of vital discretion at sentencing, dramatically increase Texas's prison population and lead to costly prison construction, and produce unjust and unintended sentences.

FAMM (which originally stood for Families Against Mandatory Minimums) is a national, nonprofit, nonpartisan sentencing and prison reform advocacy organization. For more than 30 years, we have advocated sentences that are fair, individualized, protect public safety, and preserve families. We are not against prisons or punishment. We are against one-size-fits-all sentences that take away judicial discretion, produce absurd and unfair results that diminish respect for the justice system, and increase prison costs for taxpayers without making them safer.

FAMM appreciates the seriousness of gun crime and violence in Texas and agrees that those using and exhibiting guns in the course of other offenses should be held accountable – and that may warrant serious prison time. What we oppose is the creation of a lengthy, costly 10-year mandatory minimum prison sentence for these offenses when all the evidence shows that these mandatory sentences do not actually reduce or deter crime, but do cost a fortune.

We were so concerned about SB 23's lengthy sentences that we requested an impact analysis from Recidiviz,¹ a nonpartisan data analysis group that specializes in projecting the impact of proposed sentencing policies on prison populations and costs. Their analysis finds that SB 23's 10-year mandatory minimum sentences for gun use and exhibition will

- Cost taxpayers an **additional \$55 million in prison costs** over the next 5 years;
- **Increase Texas's prison population by more than 6,000** in the next 5 years;
- **Fill Texas prisons to over 99 percent of their current capacity** – which will lead to new, extremely expensive construction of additional prison facilities.

¹ See <https://www.recidiviz.org/>.



This projected outlay of money – potentially hundreds of millions of dollars if new prison construction results – might be worthwhile if mandatory minimum sentences worked. But they do not, including for gun crime. Decades of study and data show that it is the certainty of apprehension, not the length of sentence, that deters crime.² Other states and the federal government have created similar mandatory minimum gun sentences in the hope that they would reduce homicides and gun violence. Studies of these efforts showed that the mandatory minimum sentences had no impact on and could not be causally connected to reductions in violent crime.³

The money Texas would spend on SB 23 would be much better spent on more community violence prevention and policing, more street lighting, hiring more homicide detectives to close cases, and more forensic testing to produce evidence that can lead to convictions. All of these tools are a good use of \$55 million because they increase the certainty of apprehension and lead to convictions. Solving more crimes, not indiscriminately locking people up for decades, actually deters and reduces crime.

SB 23 would be indiscriminate in its application, leading to unjust and unintended consequences. Millions of Texans own guns and carry them regularly under open or concealed carry laws. SB 23 is silent as to whether any open carry of a firearm during the commission of a first, second, or third degree felony could be considered “exhibition” of a gun and trigger a 10-year mandatory minimum sentence. Possession of five pounds of marijuana is a third degree felony that normally carries a 10-year maximum sentence; if committed by someone who openly carries a firearm at all times, it appears the court would be forced to impose the maximum sentence – the 10-year mandatory minimum. Arguably, a person who gets in a drunken car crash that injures another could receive a 10-year mandatory minimum if the person openly carried a pistol at the time of the accident. Any warning shot or gun-waving in attempted defense of self or others that doesn’t pass legal muster could lead to a mandatory 10-year prison stay. *Accidental* discharge of a gun triggers the mandatory minimum 10-year term under SB 23.

SB 23 prohibits Texas’s judges – who are elected and not known for being lenient – from considering important factors and issuing a justifiable sentence below the mandatory minimum 10-year term. SB 23 requires judges to give these 10-year mandatory sentences to people who have no criminal record, are mentally ill, are struggling with a treatable addiction, commit the offense under duress from an abusive partner, or are young and foolish but do not need 10 years in prison to learn their lesson and improve their behavior. These are just a few examples of why Texas should preserve judicial discretion and reject SB 23.

Thank you for considering our views on this legislation.

Molly Gill
Vice President of Policy

cc: Members of the House Criminal Jurisprudence Committee

² National Academy of Sciences, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, Chap. 5 (2014), <https://nap.nationalacademies.org/read/18613/chapter/5#82>.

³ See, e.g., Stephen Raphael and Jens Ludwig, *Prison Sentence Enhancements: The Case of Project Exile*, https://gspp.berkeley.edu/assets/uploads/research/pdf/Exile_chapter_2003.pdf.