

Statement of Julie Stewart, President
Families Against Mandatory Minimums
Submitted to the Senate Judiciary Committee
for a hearing on
“Reevaluating the Effectiveness of Federal Mandatory Minimum Sentences”

September 18, 2013
Washington, DC

Introduction

I appreciate the opportunity to submit this written statement on behalf of Families Against Mandatory Minimums (FAMM). FAMM is a nonpartisan, nonprofit organization advocating for fair, proportionate, and individualized sentences that fit the crime and the offender and protect the public. FAMM supports punishment for those who violate our nation’s laws and believes incarceration is necessary to protect public safety from dangerous and violent offenders. We know, however, that mandatory minimum sentences are not essential to reducing crime and that Congress can improve public safety and save taxpayer dollars by enacting common sense sentencing reforms.

FAMM has enjoyed working with many members of this committee to make our federal sentencing laws more just and rational. In particular, we would like to thank Chairman Leahy for his strong and steadfast leadership on this issue. We want to thank Senators Durbin and Lee for their commitment to reforming federal mandatory minimum laws, as evidenced by their introduction of S. 1410, the Smarter Sentencing Act. We also thank Senator Sessions for his leadership on reforming crack cocaine laws. Finally, though he is not a member of the committee, we want to thank Senator Paul for bringing a unique perspective to this issue and for sponsoring S. 619, the Justice Safety Valve Act, with Chairman Leahy.

We hope the members of this committee will embrace the type of mandatory minimum sentencing reform that has helped states all across the country reduce their crime rates *and* prison budgets. Public policy leaders and criminal justice experts and advocates from across the political spectrum have already announced their support for federal mandatory minimum reform, including former Bush administration attorney general Michael Mukasey, the American Correctional Association, over 50 former federal prosecutors and judges, former National Rifle Association president David Keene, Americans for Tax Reform president Grover Norquist, the ACLU, conservative columnist George Will, the National Association of Evangelicals, Justice Fellowship/Prison Fellowship Ministries, the NAACP, and the Leadership Conference on Civil and Human Rights, just to name a few. As members of this committee are well aware, Attorney General Eric Holder recently announced that the Justice Department wants to work with Congress to enact mandatory minimum sentencing reform.

Summary

FAMM has spent the past 22 years pointing out the many flaws of mandatory minimum sentencing laws. We have tried to show how these inflexible laws violate the fundamental

American ideal that people should be treated as individuals. We have put a human face on mandatory sentencing laws to prove that one size really does not fit all. And we have sought to highlight the unsustainable economic and public safety costs of imposing lengthy mandatory sentences on tens of thousands of offenders.

In brief, FAMM believes that:

- **Mandatory minimum sentencing laws do not reduce unwarranted sentencing disparity, but instead create it.** Their reliance on single factors, such as the weight of a drug or the presence of a gun, can result in wildly different sentences for equally culpable offenders. Moreover, they can cause a first-time, low-level offender to receive a much longer sentence than a violent and dangerous criminal;
- **Conversely, mandatory sentencing laws produce unwarranted uniformity - that is, they treat very different offenders alike.** We see this problem most clearly in drug cases in which low-level offenders and addicts receive the same lengthy sentences that kingpins and major suppliers receive;
- **Mandatory minimums are not needed to protect public safety.** The federal and state governments' real-world experiences over the past 20 years make clear that crime rates can be reduced without mandatory minimum sentencing laws. In fact, the more pressing concern today is whether crime rates can remain low with mandatory sentencing laws in place. Because these laws force the government to spend so much money to detain nonviolent offenders for lengthy sentences, they divert resources from proven crime-fighting programs and personnel, such as police, investigators, and prosecutors; and
- **Enacting modest reforms would make a major difference.** Two bipartisan bills, the Justice Safety Valve Act, S. 619, and the Smarter Sentencing Act, S. 1410, would improve public safety while saving the government hundreds of millions of dollars. Specifically, FAMM believes Congress should adopt a broad "safety valve" for all nonviolent offenders facing mandatory minimum sentences. Further, we believe Congress should make the Fair Sentencing Act of 2010 retroactive.

The Crack Disparity Model

Before I begin, I want to recall this committee's leadership in passing the Fair Sentencing Act of 2010, legislation that dramatically reduced the crack-powder cocaine sentencing disparity. In 2009, this committee took the lead in reducing the infamous and indefensible disparity between the two drugs. Many members of the committee and others in Congress stated that they simply no longer believed the arguments that had supported the 100:1 disparity when Congress created it in 1986. Members said that the case for disproportionately lengthy crack sentences was based on premises that had not stood the test of time or the burden of real-world experience. The Justice Department, former federal prosecutors like Asa Hutchinson, who later served in Congress and as George W. Bush's head of the Drug Enforcement Administration (DEA), and ideologically diverse interest groups all urged Congress to support reform. The Fair Sentencing Act (FSA) ultimately reduced the crack-powder disparity to 18:1 by raising the amounts of crack that would trigger the five- and ten-year mandatory minimums. The bill also eliminated the

mandatory minimum sentence for crack possession.¹ It passed with unanimous, bipartisan support.

We have only a few years of data available since the FSA was adopted to judge the law's effect. While many criminologists would likely caution against drawing too many conclusions from such a limited sample, we think it is obvious that, had violent crime or crack use skyrocketed in the wake of the FSA's passage, mandatory minimum supporters would use those facts to argue against any additional changes to our federal sentencing laws. They aren't, because that hasn't happened.

Instead, federal judges have continued to give out stiff sentences for crack offenses. In 2012, the 3,388 defendants sentenced for crack cocaine received average sentences of 97 months, just 14 months shorter than the pre-FSA crack sentences.² Also, the number of people entering federal prison for relatively minor crack offenses has fallen. In FY 2010, 4,897 were sentenced for crack cocaine offenses. That number fell 31 percent, to 3,388 in FY 2012.³ The combination of fewer prosecutions and slightly shorter sentences saved federal taxpayers nearly \$156 million in FY 2012 alone.

Most important, this enormous benefit came at zero cost to public health and safety. Both the national violent crime rate and crack use have fallen since the FSA's passage.⁴ In short, after this committee reformed and eliminated crack mandatory minimum sentences the country enjoyed less crime, less drug abuse, and less prison spending. These results are similar to what we experienced after Congress adopted the original drug safety valve in 1994. It's a record that proponents of mandatory minimums cannot explain and one for which members of this committee should take great satisfaction.

The High Cost of Mandatory Minimums

Mandatory minimum sentences carry unsustainably high costs for American families, taxpayers, and communities. These laws have not eliminated or reduced unwarranted disparity in sentencing. Further, they do not deter crime or increase public safety. As the states experienced first, and the U.S. Department of Justice (DOJ) and Bureau of Prisons (BOP) have come to learn, these failures are not cheap. Billions of taxpayer dollars are being wasted on sentencing policies

¹ Pub. L. 111-220, 111th Cong. (2010).

² U.S. SENTENCING COMMISSION, 2012 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS Figure J (2012) [hereinafter 2012 SOURCEBOOK], *available at* http://www.ussc.gov/Research_and_Statistics/Annual_Reports_and_Sourcebooks/2012/sbtoc12.htm.

³ *Cf.* U.S. SENTENCING COMMISSION, 2010 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS Figure J (2011), *available at* http://www.ussc.gov/Research_and_Statistics/Annual_Reports_and_Sourcebooks/2010/sbtoc10.htm, with 2012 SOURCEBOOK at Figure J.

⁴ U.S. DEP'T OF HEALTH AND HUMAN SERVICES, SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES, RESULTS FROM THE 2012 NATIONAL SURVEY ON DRUG USE AND HEALTH: SUMMARY OF NATIONAL FINDINGS ("The number of past year initiates of crack cocaine ranged from 209,000 to 353,000 in 2002 to 2008 and declined to 95,000 in 2009. The number of initiates of crack cocaine has been similar each year since 2009 (e.g., 84,000 in 2012)."), *available at* <http://www.samhsa.gov/data/NSDUH/2012SummNatFindDetTables/NationalFindings/NSDUHresults2012.htm#ch5>.
⁴ For violent crime statistics, *see* FEDERAL BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS for 2010, 2011, and 2012, *at* <http://www.fbi.gov/about-us/cjis/ucr/ucr-publications#Crime>.

that do not make the public safer. No government program or policy with such an awful track record deserves to survive, no matter how righteous its purpose.

The Injustice of Mandatory Minimum Sentences

Congress created the federal sentencing guidelines and the U.S. Sentencing Commission (USSC) in 1984 with the goal of fostering national uniformity in sentencing, on the grounds that judges were misusing their sentencing discretion in ways that led to unwarranted disparities. Guideline supporters claimed that a defendant's sentence depended on a game of "judge roulette": a judge in Boston might sentence a drug dealer to probation, while a judge in Sioux Falls might give another dealer 10 years in prison for essentially the same crime. Guidelines would ensure uniformity between these similarly situated offenders.

Concern about unbridled judicial discretion and unwarranted sentencing disparities has also been one of the policy justifications for Congress's creation of mandatory minimum sentences over the last 30 years. In the 1980s, Congress, with nearly unanimous bipartisan support, created mandatory minimum sentences for drug offenses in response to public concern about drug abuse. The goal was to deter and incapacitate "serious" and "major" drug dealers.⁵ As Congress has adopted more and more mandatory minimums, proponents have increasingly claimed that these laws are necessary to rein in judicial discretion and ensure that offenders receive at least a "rock bottom" minimum prison term.

In theory, mandatory minimum sentences ensure that similar offenders receive at least the same minimum punishment for similar crimes nationwide. In reality, mandatory minimum sentences create more unwarranted disparity than they prevent. In fact, mandatory minimums create both unwarranted disparity and unwarranted uniformity in sentencing. Mandatory minimums treat nonviolent offenders as if they had committed the most violent and heinous of crimes. Mandatory sentences treat low-level, street-corner drug sellers as if they were kingpins. They treat people who merely possess even legally-owned and properly-registered guns and ammunition as if they had used those weapons and bullets to injure or kill others. They also treat similarly culpable codefendants differently based on how each person is charged and which person has the best information to offer to prosecutors as "substantial assistance" in exchange for a shorter sentence.

American citizens expect to be treated like individuals when they enter our courts of law. They expect punishments that fit their crimes and their culpability. They are shocked and dismayed and lose respect for the justice system when they discover that they must be treated like a far worse offender who committed a more serious crime, or must be punished more harshly than others like them who committed the same crime. Mandatory minimums proliferate both unwarranted disparity and unwarranted uniformity in punishment, two flaws that any system committed to equal justice should not tolerate.

⁵ U.S. SENTENCING COMMISSION, REPORT TO THE CONGRESS: MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM 23-24 (2011) [hereinafter MM REPORT], *available at* http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Mandatory_Minimum_Penalties/20111031_RtC_Mandatory_Minimum.cfm.

Over the past 22 years, FAMM has identified thousands of cases where mandatory minimum sentencing laws have *created* shocking injustices and an appalling waste of human lives, taxpayer dollars, and public safety resources. Here are a few examples:

Weldon Angelos. In 2002, the 24 year-old, up-and-coming music producer was sentenced to 55 years in prison for selling marijuana to a police informant on three occasions. During one transaction, Angelos carried a pistol in an ankle holster. During another, he left his handgun in his car. When police searched his home, they found a gun in a safe. Although Mr. Angelos did not use or even threaten anyone with a weapon when selling the marijuana, the primary federal gun law imposes a severe mandatory minimum for “possessing” a gun “in furtherance” of a drug deal. Each gun conviction must run consecutively; five years for the first, 25 years for the second, and 25 years for the third. U.S. District Judge Paul Cassell of Utah, a conservative appointed by President George W. Bush, railed against the absurdity of the 55-year sentence he was forced to impose. **He pointed out that Mr. Angelos would have received a shorter sentence had he been convicted of hijacking an airplane (25 years), a terrorist bombing intended to kill a bystander (20 years), or kidnapping (13 years).** The judge noted that just two hours earlier, he had imposed a sentence of 22 years in a case in which a man beat a senior citizen to death with a log. “Is there a rational basis,” Cassell asked, “for giving Mr. Angelos more time than the hijacker, the murderer, the rapist?” Cassell called the 55-year sentence “unjust, cruel, and even irrational” but said that the law left him “no choice.”

Mandy Martinson. In 2007, Ms. Martinson, a first-time offender, received a 15-year mandatory minimum sentence for nonviolent drug and gun possession offenses. Mandy was leading a full, productive life before her drug problems escalated, taking everything from her in a matter of months. After becoming addicted to methamphetamine, she began dating and living with a man who sold the drug and gave some to her. She occasionally drove with him when he went to pick up or drop off drugs, and she helped him count his earnings. After the two were arrested and charged, Judge James Gritzner, another George W. Bush appointee, was forced to sentence Ms. Martinson to the mandatory minimum term: 10 years in prison for the drugs, plus an additional five years for possessing a gun in the course of the drug crime. Ms. Martinson never used, fired, or threatened others with a gun. At her sentencing, Judge Gritzner said that Mandy’s “possession of the firearm was at the direction of [her ex-boyfriend] and was facilitated by [her ex-boyfriend],” but these important facts could not be used to give her a fair and proportionate sentence. The judge despaired that “[u]nder any possible sentence that the law would allow for Ms. Martinson, the sentence will exceed that of [her ex-boyfriend].” **Her sentence (180 months) was longer than the average sentence imposed in federal court in 2007 for kidnapping (169 months), nearly four times as long as the average sentence for manslaughter (48.7), and roughly twice as long as the average sentences for sexual abuse (94.3) and robbery (85.1).**⁶ Ms. Martinson’s case, often referred to as a “girlfriend case,” is not unique.

⁶ See U.S. SENTENCING COMMISSION, 2007 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS Table 13 (2007), available at http://www.ussc.gov/Research_and_Statistics/Annual_Reports_and_Sourcebooks/2007/sbtoc07.htm.

Stephanie George. Ms. George worked hard to support her three young children, but her salary alone wasn't enough. She dated several men who were involved in selling drugs and, in exchange for some financial support, she would occasionally deliver and sell drugs and take messages for them. Ms. George was arrested twice – once while sitting on the front porch next to a bag containing cocaine residue and another time for selling small amounts of crack to a confidential informant. She pled guilty and served nine months in a county jail with work release for these offenses. Nearly three years later, Ms. George was arrested a third time and charged, along with her drug-dealer boyfriend, for her involvement in his crack cocaine conspiracy. **Despite her limited role – the judge described her as “a girlfriend and bag holder and money holder” – Ms. George received a mandatory sentence of life without parole due to her two prior drug convictions.** At sentencing, Judge Roger Vinson, a Ronald Reagan appointee, said, “[T]here’s no question that Ms. George deserves to be punished. The only question I have is whether it should be a mandatory life sentence ... I wish I had another alternative.” Short of death, life without parole is the harshest punishment available in the United States, and it is usually reserved for those convicted of premeditated murder.

None of these people were innocent, and each deserved to be punished. But the sentences these defendants received greatly exceeded the sentences regularly imposed on far more dangerous offenders. This is an inevitable consequence of mandatory minimums, which hinge on certain factors that are often poor reflectors of actual dangerousness and blameworthiness, e.g., the weight of the drug sold and the presence of a firearm (whether used or not). As soon as one of these triggering facts is found, the judge must impose the mandatory minimum sentence regardless of any other factors, such as whether the defendant is nonviolent, a low-level or first-time offender, or simply less blameworthy than any coconspirators.

Mandatory minimum sentences also impose very different penalties on offenders who commit similar offenses and have similar culpability. The case of Christopher Williams illustrates this point.

Christopher Williams. Mr. Williams operated a medical marijuana dispensary in Montana, as permitted by state law. In 2012, Mr. Williams and his partners were charged with violating federal drug laws. Mr. Williams chose to exercise his right to trial, and prosecutors responded by charging him with four counts of possessing a gun in the commission of a drug crime. Williams kept legally registered pistols and shotguns at his marijuana operation. He didn't use or even wield them, but that does not matter under federal law. Simply having guns – even legally compliant ones – condemned him to the notorious gun “stacking” mandatory minimum terms found in 18 U.S.C. § 924(c): a five-year mandatory prison sentence for the first gun charge and 25 years in prison for each subsequent offense. The law requires that the sentences must be served consecutively. **Thus, after a jury found Williams guilty, he faced a mandatory minimum of 80 years in prison. On the other hand, two of Mr. Williams’ partners, who also carried legal guns, received probation.**

The idea that three business partners can commit the same crimes and yet one receives 80

years in prison while the other two get probation makes a mockery of any sense of fairness. Fortunately for Mr. Williams, the backlash against the unwarranted disparity was so great that the federal prosecutor offered him a plea deal *after the jury convicted him!* Three of the gun charges were dismissed in return for Mr. Williams forfeiting his right to appeal. When federal prosecutors can all-but-singlehandedly knock 75 years off a “mandatory” sentence after a jury has already returned a conviction, the contention that mandatory minimums apply equally and promote parity in sentencing becomes laughable.

Mr. Williams’ case was a high-profile media event because of the national debate over medical marijuana. Most disparity-creating cases are usually hidden from the public, as was the case with Michael Mahoney.

Michael Mahoney. In 1979, when Mr. Mahoney was 24 years old, he was using methamphetamine and selling the drug to support his habit. He made three sales to an undercover officer within a one-month period and was arrested. He pled guilty to all three counts and served almost two years in jail in Texas. After his release in 1981, Michael successfully completed his probation in 1990. Mr. Mahoney moved to Tennessee in 1991 and turned his life around, opening a successful local restaurant and pool hall business. In 1993, he bought two revolvers from a pawnshop for personal protection, because he carried a large amount of cash at closing time. Federal agents reviewing the pawnshop’s record arrested Michael for being a felon in possession of a firearm. Although Mr. Mahoney had no idea his decade-old convictions made it illegal for him to buy a gun, he was charged as a felon in possession of a firearm, a penalty that carries a 15-year mandatory minimum sentence under the Armed Career Criminal Act. U.S. District Judge James Todd deliberately postponed Mr. Mahoney’s sentencing in an effort to find a way around the mandatory minimum, but ultimately realized the law gave him no choice. **Judge Todd, a Ronald Reagan appointee, stated at sentencing: “So it doesn’t matter how compelling your circumstances may be, it doesn’t matter how long ago those convictions were, and it doesn’t matter how good your record has been since those prior convictions. [The law] requires in your case that you receive a sentence of fifteen years...[I]t seems to me this sentence is just completely out of proportion to the defendant’s conduct in this case...[I]t just seems to me this is not what Congress had in mind.”**

The unintended consequences of mandatory minimums are both common and well-documented.⁷

⁷ The misapplication of federal mandatory minimum laws to situations Congress clearly did not intend is so common that there are no outlier cases. Common examples abound in the area of gun and ammunition possession offenses. For example, Dane Yirkovsky served a 15-year sentence for possession of a single .22-caliber bullet. In December 1998, he found the bullet while doing remodeling work for a friend who was giving him a place to stay in exchange for the work. Yirkovsky put the bullet in a box in his bedroom. Later that month, the police found the bullet while searching Yirkovsky’s room after receiving a call from his former girlfriend, who claimed he had some of her possessions. Because of Yirkovsky’s prior convictions for burglary, federal prosecutors charged him under the Armed Career Criminal Act, although he had not threatened anyone and did not have a gun. In a similar case, Edward Young received a 15-year mandatory sentence for finding shotgun shells in a piece of furniture he was helping a neighbor sell. See Nicholas D. Kristof, *Help Thy Neighbor and Go Straight to Prison*, N.Y. TIMES, Aug.

Clearly, mandatory minimum sentences do not guarantee that similar offenders will be treated similarly, or that different offenders will be treated differently. Mandatory minimums create both unworkable sentencing disparity and sentencing uniformity. These disparities not only burden families and taxpayers, but also undermine both public trust in the justice system and public safety.

The Illusion of Greater Public Safety

Probably the most popular false premise cited in support of mandatory minimum sentences is that these laws are largely responsible for reducing crime. In the past, the Justice Department and other law enforcement officials have argued that mandatory minimum penalties deter crime by imposing predictable and generally severe punishment.⁸ Some prosecutors and police argue that stiff mandatory minimums help law enforcement extract guilty pleas and cooperation and secure convictions without the time and monetary cost of winning trials. In sum, the safety argument can be boiled down to the following: Crime rates will drop whenever mandatory minimums are enacted and rise when mandatory sentences are repealed or reduced.

The problem with this argument is that it's simply not true. **Despite 30 years of experience with mandatory sentences at the federal and state level, there is no evidence that lengthy, one-size-fits-all punishments reduce crime.** In fact, given the wasteful spending these laws necessitate, there is a strong argument that they actually jeopardize public safety.

The Federal Experience

Recall that Congress passed strict five- and 10-year mandatory sentences for buying and selling cocaine, marijuana, heroin, and other drugs in 1986. Beginning the following year, **when the new mandatory sentencing law took effect, the violent crime rate actually rose over the next four years by a startling 24 percent and did not return to its 1987 level until a decade later.**⁹

Before it reached that point, however, Congress acknowledged that the new mandatory minimum prison sentences were excessive in some cases. In 1994, at the urging of many members of this committee, and spearheaded by then-Congressman Schumer, Congress passed the current drug safety valve, 18 U.S.C. § 3553(f). This provision exempts certain first-time, nonviolent, and low-level drug offenders from mandatory minimums. If an offender met the safety valve's criteria, federal courts were authorized to impose individualized sentences based on the defendant's actual guilt and role in the crime.

10, 2013, available at http://www.nytimes.com/2013/08/11/opinion/sunday/kristof-help-thy-neighbor-and-go-straight-to-prison.html?pagewanted=all&_r=0.

⁸ MM REPORT at 87.

⁹ See UNITED STATES CRIME RATES 1960-2011, at <http://www.disastercenter.com/crime/uscrime.htm>; FEDERAL BUREAU OF INVESTIGATION, UNIFORM CRIME REPORT 2011 Table 1 (2011), available at <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/tables/table-1> (showing a violent crime rate (per 100k population) in 1987 of 609.7. Four years later, in 1991, it was 758.1. In 1997, it was 611.0.).

If the claims made by mandatory minimums' proponents were correct, crime should have increased when this significant carve-out was created. In reality, *since the safety valve was implemented, roughly 86,000 drug offenders have received shorter sentences*¹⁰ - *and the crime rate has dropped a whopping 44 percent*.¹¹ Needless to say, a theory that says that mandatory sentences reduce crime cannot explain how the crime rate dropped so far and so fast when tens of thousands of drug offenders were spared the full weight of such sentences.

The State Experience

The experience of the states is even more devastating to the theory that mandatory minimums reduce crime. Like the federal government, many states adopted lengthy mandatory sentences in the 1980s and 1990s. And, as with federal crime rates, state crime rates fell over the next 20 years. But when budget pressures caused by the economic downturn forced states to look for ways to reduce their prison spending, governors and lawmakers began implementing reforms to reduce their prison populations. Many states, both red and blue, enacted comprehensive sentencing and prison reform. Some, like New York, Rhode Island, South Carolina, and Delaware, repealed mandatory minimum sentences. Others, like California and Minnesota, reformed their mandatory sentencing laws by reducing penalties or limiting the number of cases to which they would apply. What happened? State crime rates kept on falling, sometimes at faster rates than before the reforms. **Indeed, all 17 states that reduced their prison populations over the past decade, including by reforming mandatory minimums, have also experienced a reduction in crime.**¹²

We expect to see more sentencing reform successes in the states very soon. Earlier this year, Georgia's Republican Governor Nathan Deal sought and won passage of a drug safety valve that is similar to the existing federal safety valve.¹³ Also, the American Legislative Exchange Council (ALEC), an organization of conservative state lawmakers from around the country, recently adopted model safety valve legislation to enable judges to depart from mandatory minimum sentences in cases in which defendants did not use or threaten violence.¹⁴

What we have learned from the federal and state experiences over the past few decades is that while punishment is important, forcing courts to impose lengthy mandatory prison sentences on everyone does not make us safer. University of Chicago economist and *Freakonomics* author Steven D. Levitt was perhaps the most influential supporter of pro-prison policies in the 1990s. He said that sending more people to prison was responsible for as much as 25 percent of the

¹⁰ See U.S. SENTENCING COMMISSION, SOURCEBOOK OF FEDERAL SENTENCING STATISTICS, FY 1995-2012, available at http://www.ussc.gov/Research_and_Statistics/Annual_Reports_and_Sourcebooks/Archives.cfm.

¹¹ See FEDERAL BUREAU OF INVESTIGATION, UNIFORM CRIME REPORT 2011 Table 1 (2011), available at <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/tables/table-1> (showing that the violent crime rate (per 100k population) in 1995 was 684.5. In 2011, it was 386.3.).

¹² PEW CENTER ON THE STATES, TIME SERVED: THE HIGH COST, LOW RETURN OF LONGER PRISON TERMS 7 (2012), available at http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/Pew_Time_Served_report.pdf (the 17 states are Alaska, California, Connecticut, Delaware, Georgia, Maryland, Massachusetts, Michigan, Mississippi, Nevada, New Jersey, New York, Oklahoma, South Carolina, Texas, Utah, and Wisconsin).

¹³ HB 349, 152nd Gen. Assem., Reg. Sess. (Ga. 2013).

¹⁴ American Legislative Exchange Council, Justice Safety Valve Act, at <http://www.alec.org/model-legislation/justice-safety-valve-act/>.

decade's crime drop. Proponents of mandatory sentences cited Levitt at every turn. That was then. Members of the committee are not likely to hear about Professor Levitt today, however, because he recently concluded that, as the crime rate continued to drop and the prison population continued to grow, the increase in public safety diminished. He told the *New York Times* earlier this year, "In the mid-1990s I concluded that the social benefits approximately equaled the costs of incarceration." But now, Levitt says, "I think we should be shrinking the prison population by at least one-third."¹⁵ Eliminating mandatory minimum sentences (or enacting a broad safety valve to prevent their application in cases where they are not warranted) is a far more modest change, but it would maintain public safety while reducing the prison population.

How Mandatory Minimums Harm Public Safety

For years, Congress has passed mandatory minimum sentencing laws without doing sufficient cost-benefit analysis. This habit has now put the Justice Department in a bind that could result in dangerous cuts in anti-crime spending.

The federal Bureau of Prisons (BOP) is consuming a greater and greater proportion of the DOJ's budget. Today, the BOP takes up 25 percent of the DOJ budget; by 2018, if unchecked, it will reach 30 percent.¹⁶ These spending increases are tied to the growing federal prison population, which has risen by over 800 percent since 1980, while the U.S. population has grown just 36 percent during that period.¹⁷ BOP facilities are operating at 37 percent above capacity and will be at 45 percent over capacity if current trends continue.¹⁸ The Congressional Research Service has stated that the increasing use of mandatory minimum sentences has been a major contributor to the rise in prison costs.¹⁹ While most Americans would gladly pay whatever it takes to keep us safe from terrorists and violent offenders, we are actually paying for a federal prison system that is stuffed with nonviolent offenders: half of all federal prisoners are incarcerated for drug offenses.²⁰

These costs are forcing tough choices. In a July 2013 letter to the USSC, Jonathan Wroblewski, DOJ's director of the Office of Policy and Legislation, delivered a dire warning:

¹⁵ John Tierney, *For Lesser Crimes, Rethinking Life Behind Bars*, NEW YORK TIMES (Dec. 11, 2012), available at <http://www.nytimes.com/2012/12/12/science/mandatory-prison-sentences-face-growing-skepticism.html?pagewanted=all>.

¹⁶ Statement of Michael E. Horowitz, Inspector General, U.S. Department of Justice, before the U.S. House of Representatives Committee on Appropriations Subcommittee on Commerce, Justice, Science and Related Agencies concerning Oversight of the Department of Justice 8 (Mar. 14, 2013) [hereinafter Horowitz Statement], available at <http://appropriations.house.gov/uploadedfiles/hhr-113-ap19-wstate-horowitzm-20130314.pdf>.

¹⁷ CONGRESSIONAL RESEARCH SERVICE, THE FEDERAL PRISON POPULATION BUILDUP: OVERVIEW, POLICY CHANGE, ISSUES, AND OPTIONS 1 (Jan. 22, 2013) (emphasis added) [hereinafter CRS REPORT], available at <http://www.fas.org/sgp/crs/misc/R42937.pdf>. ("The number of inmates under the BOP's jurisdiction has increased from approximately 25,000 in FY1980 to nearly 219,000 in FY2012"); cf. U.S. CENSUS BUREAU, 1980 FAST FACTS, at http://www.census.gov/history/www/through_the_decades/fast_facts/1980_new.html (showing U.S. population of 226.5 million in 1980) with U.S. CENSUS BUREAU, USA QUICK FACTS, at <http://quickfacts.census.gov/qfd/states/00000.html> (showing U.S. population of 308.7 million in 2010, a 36 percent increase).

¹⁸ Horowitz Statement at 8.

¹⁹ CRS REPORT at 8.

²⁰ BUREAU OF PRISONS, QUICK FACTS, at <http://www.bop.gov/news/quick.jsp> (last updated Aug. 24, 2013).

If the current spending trajectory continues and we do not reduce the prison population and prison spending, there will continue to be fewer and fewer prosecutors to bring charges, fewer agents to investigate federal crimes, less support to state and local criminal justice partners, less support to treatment, prevention, and intervention programs, and cuts along a range of other criminal justice priorities.²¹

In short, we have reached the point where mandatory minimum sentencing laws, which are applied predominantly to nonviolent offenders, are on the verge of forcing cuts to anti-crime programs and personnel, including those that target serious and violent criminals.

Diverting money from police, investigators, and prosecutors to pay for lengthy prison sentences for offenders who do not need them takes the lessons learned over the past 30 years and stands them on their head. Indeed, leading criminologists like the late James Q. Wilson and UCLA professor Mark A.R. Kleiman have said, in almost identical words, that crime is deterred when punishment is swift and certain, not severe.²² If we want to discourage people from committing crime, we need to make detection and punishment more certain by capturing and prosecuting more offenders. The DOJ cannot pursue this strategy if it must cut its number of investigators and prosecutors so that it can pay to incarcerate nonviolent offenders serving excessive mandatory prison terms.

Legislative Proposals for Reform

FAMM supports the elimination of all federal mandatory minimum sentencing laws, but we think there are some common sense reforms Congress can adopt if political support for full repeal does not yet exist.

The Justice Safety Valve Act of 2013, S. 619

S. 619, the Justice Safety Valve Act of 2013, sponsored by Senator Paul and Chairman Leahy, seeks to build on the success of the existing drug safety valve by authorizing judges to depart below the statutory minimum in more cases where the minimum is not warranted. The bill does not repeal any mandatory minimum sentencing laws, but it represents the boldest reform introduced to date.

²¹ U.S. Dep't of Justice, Comments to U.S. Sentencing Comm'n on Proposed Priorities for FY2014, at 7 (July 11, 2013) (emphasis added), *available at* http://www.ussc.gov/Meetings_and_Rulemaking/Public_Comment/20130801/Public_Comment_DOJ_Proposed_Priorities.pdf.

²² Mark A.R. Kleiman, WHEN BRUTE FORCE FAILS: HOW TO HAVE LESS CRIME AND LESS PUNISHMENT 3 (2009) (“We know that punishment deters crime, but we also know that it is probably the swiftness and certainty of being imprisoned more than the severity of the penalty that has the largest effect.”); James Q. Wilson, CRIME AND PUBLIC POLICY 624 (2011) (“The right answer, as far as the operations of the criminal justice system are concerned, will use the minimum amount of punishment necessary to achieve any given level of crime control. That in turn requires that most punishments be swift and certain, rather than severe. Theory and evidence agree that: swift and certain punishments, even if not severe, will control the bulk of offending behavior.”).

The drug safety valve has been a tremendous success. It has enabled federal courts to impose better-fitting, individualized sentences on roughly 86,000 offenders and has saved taxpayers the costs of thousands of years of unnecessary incarceration of nonviolent offenders. And, as noted above, the national violent crime rate has dropped steadily since the safety valve was adopted. Building on the success of the 1994 safety valve, a broader safety valve targeted at nonviolent offenders is needed to improve sentencing outcomes, use federal crime-fighting money wisely, and reduce the federal prison population.

The Need for a Broader Safety Valve

As written and interpreted by the courts, it has become clear that the existing safety valve is too narrow. Mandatory minimum sentences continue to be imposed in drug cases even when they do not fit the crime or the offender. In 2012, for example, only 24 percent of drug offenders benefitted from the safety valve, despite the fact that (1) more than half of all federal drug offenders had little or no criminal history; (2) almost 85 percent did not have or use any weapons; and (3) only 7 percent were considered leaders, managers, or supervisors of others.²³

The main reasons people fail to qualify for the safety valve are:

- (1) Criminal history: All prior felony convictions (e.g., drug possession, possession of drug paraphernalia) are counted when determining a person's criminal history points, and even some misdemeanor and petty offenses (e.g., careless driving, insufficient funds check) are counted if they resulted in sentences of more than a year of probation or at least 30 days imprisonment. Even very minor prior convictions can exclude a person from the safety valve's coverage; and
- (2) The presence of a gun: Mere possession of even a lawfully obtained and registered gun is enough to disqualify an otherwise nonviolent, low-level offender from the safety valve. This is true even if the defendant did not use or intend to use the weapon.

Protecting Public Safety

The Justice Safety Valve Act is not a get-out-of-jail-free card. It would authorize – but not require – judges to issue shorter sentences in some cases, but not to let an offender avoid prison completely. Current law already prevents judges from issuing probation sentences in drug cases involving mandatory minimums,²⁴ and the bill does nothing to change that. Everyone convicted of a federal drug trafficking offense that triggers a mandatory minimum sentence would still go to prison.

Some might claim that expanding the safety valve to more offenders will jeopardize public safety. In truth, though, we are already comfortable with significant and frequently-applied breaks from mandatory minimum sentences, offered by prosecutors. Prosecutors realize that mandatory minimums are not necessary in every case, including in those where the existing

²³ 2012 SOURCEBOOK at Tbls. 37, 39, 40, 44.

²⁴ 21 U.S.C. § 841 (2012) (“Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under [21 U.S.C. §§ 841(a), (b)]”).

drug safety valve does not apply. In FY 2010, for example, nearly 20 percent of drug offenders who did not qualify for the safety valve received shorter sentences because prosecutors argued that they had provided the government “substantial assistance.”²⁵ For example, in FY 2010, federal prosecutors recommended shorter-than-statutory-minimum sentences for 25 percent of all “high-level suppliers and importers,” those at the top of the drug trafficking chain, as well as for 44 percent of all “managers and supervisors.”²⁶

It is also worth noting that the breaks in drug sentences promoted by prosecutors are much greater than those given by judges under the drug safety valve. Specifically, in FY 2010, the average extent of substantial assistance reductions in drug offenses was 48.8 percent, or 67 months, below the minimum of the governing guideline range. The average extent of drug safety valve reductions granted by judges in drug offenses that carried a mandatory minimum penalty was 29.8 percent, or 34 months, from the governing guideline range.²⁷ Prosecutors would not approve of large sentence reductions if the offender were a real threat to the public. The Justice Safety Valve Act would permit judges to make similar judgments.

Prosecutorial leniency is not limited to federal drug offenders. It is also frequently used in cases involving gun mandatory minimum sentences. While many gun offenses can be serious, few actually involve violence, threats, or injuries. In fact, in FY 2010, most offenders receiving mandatory minimum sentences under 18 U.S.C. § 924(c) (the main enhancement for possessing or using a firearm in the commission of a crime of violence or drug crime) did so for merely possessing a gun rather than brandishing or discharging it. In FY 2010, nearly 65 percent of all § 924(c) convictions involved the five-year mandatory sentence for possession of a gun; only 22.7 percent involved the seven-year mandatory sentence for brandishing a gun; and a mere 8.8 percent involved the 10-year mandatory sentence for discharging a gun or possessing a short-barreled rifle, shotgun, or semiautomatic assault weapon.²⁸ *Under the existing drug safety valve, the mere presence of a weapon during a drug offense is enough to disqualify an otherwise worthy offender from its coverage – regardless of whether the person is charged with a § 924(c) offense. As evidenced by the cases of Weldon Angelos, Mandy Martinson, and Chris Williams, there is currently no relief from the mandatory minimum, other than substantial assistance, for those convicted of § 924(c) charges – no matter how nonviolent the crime.*

While current mandatory minimum laws have no safety valve to permit courts to impose shorter sentences in gun cases, prosecutors nonetheless secure sentence reductions for nearly a quarter of all offenders convicted of violating § 924(c). Offenders convicted of multiple counts under § 924(c) received sentencing relief from prosecutors even more often - nearly 36.7 percent of the time.²⁹ This may reflect prosecutors’ acknowledgement that multiple, lengthy mandatory sentences for § 924(c) convictions often produce absurd or unjust results. Such use of discretion is laudable; judges should have similar opportunities to prevent such outcomes, too.

We appreciate that Congress long ago authorized prosecutors to move to reduce the

²⁵ MM REPORT at 158.

²⁶ *Id.* at 171, Fig. 8-11.

²⁷ *Id.* at 163-64.

²⁸ *Id.* at 273.

²⁹ *Id.* at 280.

sentences of those offenders who they determine have provided substantial assistance, usually by providing evidence against others. But we do not believe that prosecutors would jeopardize public safety by helping individuals who they believed were dangerous criminals to get back on the street sooner. Rather, we believe that prosecutors are demonstrating through their actions, i.e., in seeking reduced sentences for some “high-level” drug suppliers and gun law offenders, that mandatory minimum terms are not always appropriate for some offenders who do not qualify for the existing safety valve. The Justice Safety Valve Act simply acknowledges that federal judges, approved by Congress, should also have flexibility to distinguish between the truly violent and dangerous and those who are not when applying mandatory sentences.

Maintaining Efficiency Through Guilty Pleas

By retaining all federal mandatory minimum laws, the Justice Safety Valve Act also preserves what prosecutors have routinely cited as an important tool in disposing of cases efficiently: the threat of a lengthy mandatory sentence, which may convince some defendants to plead guilty and cooperate.³⁰ If the Justice Safety Valve Act is passed, many defendants are still likely to choose to plead guilty to avoid the mandatory minimum, rather than roll the dice by pursuing an expensive trial and hoping a jury will acquit them, or that a judge will find them worthy of a lower sentence. Data from the USSC raise some doubts about whether mandatory minimums actually procure more guilty pleas, and they raise the intriguing suggestion that the drug safety valve may actually incentivize pleas.³¹ Mandatory minimum sentences are no guarantee of a guilty plea; nonetheless, S. 619, the Justice Safety Valve Act, does not seek to repeal them.

Saving Money Through Modest Reform

The Justice Safety Valve Act would vastly improve current sentencing law and save taxpayers millions of dollars. When viewed in proper context, however, the bill would affect only a modest number of offenders. Consider that over 73,000 individuals were sentenced in federal court in 2010. Of that total, 10,600 were sentenced to a mandatory minimum term.³² Though it is impossible to say for certain how often judges will depart below the mandatory minimum if the Justice Safety Valve Act were law, one reasonable guide is the rate at which judges currently vary from the federal sentencing guidelines. In 2012, that rate was 17.8 percent.³³ **This guide suggests that 1,886 individuals would have been eligible for shorter prison terms in 2012, a number that represents just two percent of the total population**

³⁰ FAMM has serious concerns about the way some prosecutors use this leverage. We fear that heavy-handed attempts to coerce pleas and testimony against others have led some defendants to forfeit their constitutional right to trial and some witnesses to offer false testimony. Abuses like these have been written about extensively.

³¹ MM REPORT at 127 (showing that safety valve-eligible drug offenders pled guilty at a higher rate (99.4%) than those offenders who were not eligible for safety valve relief (94.6%)); *id.* at 125 (showing that, in FY 2010, 94.1 percent of those convicted of an offense carrying a mandatory minimum pled guilty while 97.5 percent of the offenders not facing a mandatory minimum pled guilty); *id.* at 126 (finding that “the longer the mandatory minimum penalty an offender faces, the less likely he or she is to plead guilty.”); 2012 SOURCEBOOK at Figure C (showing a historically high guilty plea rate of 97 percent of all offenders in FY 2012); *id.* at Table 11 (showing that crimes like robbery, burglary, larceny, embezzlement, and forgery/counterfeiting, for which there are few mandatory minimum penalties, also carried high guilty plea rates of between 96 and 99 percent).

³² MM REPORT at Table 7-1.

³³ 2012 SOURCEBOOK at Table N.

sentenced in federal court that year. Whereas Professor Levitt suggested that the nation's prison population could be reduced by at least one-third, **the Justice Safety Valve Act would simply give federal courts the authority to reduce the prison terms of one quarter of one percent of offenders nationwide.**³⁴ This is modest reform, indeed.

The limited impact of the Justice Safety Valve Act shows that its implementation will not jeopardize public safety or produce large increases in crime. But the bill's passage would ensure that low-level, nonviolent offenders who do not fall within the drug safety valve's current scope nonetheless get just punishments. The bill would also produce modest cost savings and, over time, prison bed space savings. If just one in 10 of the 10,600 offenders who received mandatory minimum sentences in 2010 received a sentence reduction of just one year under the Justice Safety Valve Act, the savings would be over \$30 million per year in incarceration costs.³⁵ With \$30 million, DOJ could hire 492 entry-level Assistant U.S. Attorneys (annual salary: GS-11, step 1, \$62,467, Washington, DC area), 631 entry-level U.S. Marshals (annual salary: GL-0082-07, \$48,708), 439 entry-level FBI special agents (annual salary: \$69,900), or provide 61,480 bulletproof vests for law enforcement officers (using a price of \$500/vest). These are real savings with meaningful public safety ramifications.

At a time when every dollar literally counts, the modest but tangible cost-saving and public safety-enhancing nature of the Justice Safety Valve Act is nothing to sniff at. Every dollar we spend on locking up a nonviolent offender for longer than necessary to keep the public safe is a dollar that can't be spent on protecting society from terrorism and the truly violent and dangerous.

The Smarter Sentencing Act, S. 1410

The Smarter Sentencing Act, S. 1410, also is worthy of support, especially because it includes a provision to apply the Fair Sentencing Act of 2010 (FSA) retroactively. FAMM strongly supports making the FSA retroactive. As I said at the outset of my testimony, Congress was right to admit that the original justification for enacting the 100:1 crack-powder sentencing disparity was no longer tenable. And Congress deserves credit for correcting its mistake. But it is unfair to continue to deny relief to those serving excessive sentences under the old regime simply because they made their mistakes before Congress fixed its own.

No doubt some will raise fears about the public safety impact of releasing crack law offenders early. There is strong reason to believe, however, that there will be absolutely no impact. Again, we can learn from experience. After Congress voted to repudiate the 100:1 crack-powder cocaine sentencing disparity, the USSC wisely decided to change its guidelines to reflect Congress's correction *and* to apply the new sentence recommendations to those who were already in prison. FAMM strongly supported the USSC's decision, but some in Congress

³⁴ See BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2011, at 11 (2012) (showing that 668,800 individuals were admitted to federal and state prisons across the country in 2011), *available at* <http://www.bjs.gov/content/pub/pdf/p11.pdf>.

³⁵ This calculation uses an annual per-person cost of incarceration of \$29,000. If 10 percent of the 10,600 offenders receiving mandatory minimums in FY 2010 received one-year reductions based on the Justice Safety Valve Act, the savings would be: \$29,000 * 1,060 offenders * 1 year = \$30.4 million.

attacked it. They said it would be a major threat to public safety and would squander federal resources on resentencing hearings for eligible prisoners.

Based on everything we have learned to date, including the USSC's July 2013 report on crack retroactivity implementation, it is clear that those dire predictions were wrong. We now know that the federal courts, U.S. Attorneys, and defense bar have worked well to implement the new guidelines. As a result of their efforts, more than 7,300 defendants have received, on average, a 29-month reduction in their sentences. This average reduction lowered the average crack sentence from 12.5 years to just over 10 years. Thus, even with the changes, no one escaped serious prison time. And, yet, the modest sentence reductions have generated roughly half a billion dollars in savings.³⁶

While the crack sentence reductions were being implemented over these past few years, the nation's violent crime rate has continued to fall. Previous data collected by the USSC confirms that those who were released early due to the retroactive guideline changes have been no more likely to reoffend than those who served their full sentences.³⁷ **In short, while crack offenders were given fairer sentences, taxpayers received the same level of crime control for a half-billion dollars cheaper. We strongly encourage Congress to build upon this incredible success by making the FSA retroactive.**

The Smarter Sentencing Act also significantly reduces all drug mandatory minimum prison terms. While FAMM would prefer to eliminate these mandatory minimums outright or to authorize judges to craft individualized sentences based on the particular facts and circumstances of the crime and offender, we believe reducing penalties as the bill recommends would be a positive step. The current drug penalties were established without the benefit of any hearings or debate in Congress. Decades of experience has taught us that the current penalties are appropriate for many cases but simply do not fit many others. Reducing penalties as the bill proposes would ensure fairer sentences for thousands of nonviolent drug offenders. In addition, it would likely lead to fewer low-level drug crimes clogging the federal courts.

The major drawback of the Smarter Sentencing Act, as well as the new charging policies announced by Attorney General Holder last month,³⁸ is that it is unnecessarily narrow. It applies only to drug offenses, despite the fact that some of the worst mandatory minimum sentencing cases FAMM has highlighted over the past two decades (and in this statement) were not drug cases (or, at least, not solely drug cases). To wit, even if the Smarter Sentencing Act had been law at the time, it would not have enabled judges to authorize more appropriate sentences for

³⁶ See U.S. SENTENCING COMMISSION, PRELIMINARY CRACK RETROACTIVITY DATA REPORT, FAIR SENTENCING ACT (July 2013), available at http://www.ussc.gov/Research_and_Statistics/Federal_Sentencing_Statistics/FSA_Amendment/2013-07_USSC_Prelim_Crack_Retro_Data_Report_FSA.pdf. The cost-savings figure is based on 7,300 offenders receiving 29-month average sentence reductions, and an annual incarceration cost of \$29,000 per offender.

³⁷ U.S. Sentencing Commission, Memorandum on Recidivism of Offenders with Sentence Modifications Made Pursuant to Retroactive Application of 2007 Crack Cocaine Amendment, May 31, 2011, at 11 (on file with the author).

³⁸ See U.S. Dep't of Justice, Attorney General Eric Holder Delivers Remarks at the Annual Meeting of the American Bar Association's House of Delegates, San Francisco, Aug. 12, 2013, at <http://www.justice.gov/iso/opa/ag/speeches/2013/ag-speech-130812.html>.

Weldon Angelos, Mandy Martinson, Michael Mahoney, Stephanie George, and many other nonviolent, low-level offenders. The Smarter Sentencing Act would do nothing to ameliorate the unjust and absurd results that so often follow when 18 U.S.C. § 924(c) is applied to nonviolent drug offenders.

Like the attorney general's new charging policy, the Smarter Sentencing Act draws a line between drug and non-drug cases. We respectfully suggest that a better place to draw such a line is between violent and nonviolent offenses. In other words, even if the committee is reluctant to extend the safety valve to all federal offenders, as proposed in the Justice Safety Valve Act, we strongly urge the committee to extend judicial discretion to all nonviolent offenders. As mentioned above, ALEC recently adopted safety valve model legislation for the states to consider. That proposal authorizes judges to depart from a mandatory minimum in cases that did not include "the use, attempted use or threatened use of serious physical force by the defendant against another person or result in the serious physical injury of another person by the defendant."³⁹ This kind of distinction would better serve the stated goals of the Justice Department and congressional reformers: to improve public safety while reducing unnecessary prison spending.

Conclusion

Before concluding, I want to make the committee aware that FAMM members will likely attend this morning's hearing. At least one member will fly across the country to be here. Others will drive several hours. They will come to listen to the testimony of the witnesses, and just by being here, offer their own silent testimony to the unfairness and destructiveness of federal mandatory minimum sentencing laws. I hope committee members will take the opportunity either before or after the hearing to seek some of these family members out and listen to their stories. What you will hear might surprise you. What you will not hear might surprise you more. These family members will not claim their loved one was innocent, and they will not say their son or brother or father did not deserve punishment. They are not here out of self-interest, seeking leniency or any type of favor from the government. The truth is that nothing in the Justice Safety Valve Act can help their loved ones because the bill does not apply retroactively. The reason these family members will travel from across the country to be here is to try to prevent other families from experiencing the same hardships they endured. I hope the members of the committee will recognize that it is not easy or comfortable to share the often private, sometimes embarrassing details of what is the toughest, most painful experience of their families' lives. For two decades, they have been sharing their stories with FAMM so that our advocacy is better informed, and we are grateful. We believe their perspective deserves to be heard, and we hope you will listen.

Mr. Chairman and members of the committee, mandatory minimum sentencing laws, which once enjoyed bipartisan support, have now attracted bipartisan opposition. Federal judges,

³⁹ The ALEC safety valve model also excludes offenses that involve any sexual contact by a defendant against a minor or cases in which the defendant has a prior conviction for the same offense within the past ten years. See American Legislative Exchange Council, Justice Safety Valve Act, at <http://www.alec.org/model-legislation/justice-safety-valve-act/>.

sentencing law experts, members of the defense bar, and civil rights advocates have long raised concerns about the unfairness produced by these laws. In recent years, we have seen a growing number of taxpayer advocates, small government champions, and, yes, law enforcement and prison officials speak in opposition to mandatory minimums. With respected law enforcement leaders like former FBI director Louis Freeh, former Bush attorney general Michael Mukasey, the world's largest association of corrections officers, and dozens of former federal prosecutors promoting mandatory minimum reform, it is clear that the old paradigm of "tough on crime" versus "soft on crime" is being replaced by a new one: Do we want to be "smart on crime" or "stupid on crime"? If we want to be smart and heed the lessons learned over the past 30 years, we will embrace the kind of mandatory minimum sentencing reforms that have helped states across the country reduce crime by focusing more resources on violent offenders, reduce wasteful government spending by letting courts impose punishments that fit the crime, and promote equal justice by eliminating unwarranted disparity in sentencing.

We urge Congress to be smart on crime and to act boldly and quickly to reform our federal mandatory sentencing laws.