



Testimony of Molly Gill
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Hearing on HB 99
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House Committee on Judiciary, Rules, and Administration

I thank Chair Dayley, Vice Chair Chaney, and the House Committee on Judiciary, Rules, and Administration for the opportunity to submit testimony on behalf of FAMM. **We support HB 99 because it eliminates unreasonable, unnecessary, and counterproductive prison sentences; it creates fairness in sentencing and restores respect for Idaho’s justice system; and it is evidence-based policy.**

FAMM is a nonpartisan, nonprofit sentencing reform advocacy group founded in Washington, D.C. in 1991. FAMM’s mission is to protect public safety and promote efficiency in the criminal justice system by advocating for individualized, proportional criminal sentencing laws. 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.

Should Idaho enact HB 99, it will join a growing list of states that have improved public safety while saving their residents money through smart, evidence-driven sentencing reform. In the last two decades, dozens of states including Utah, North Dakota, Iowa, South Carolina, Michigan, and Louisiana have significantly reformed their sentencing laws to return discretion to the courts and reduce their state’s reliance on lengthy prison sentences as a response to crime. HB 99 is based on model legislation adopted by the American Legislative Exchange Council (ALEC). States as varied as Georgia, Florida, Oklahoma, Virginia, Maryland, Montana, Maine, Mississippi, and Minnesota have adopted versions of HB 99 for both violent and nonviolent offenses and repeat offenders.

HB 99 is also similar to a federal law that was recently expanded in the First Step Act, which was passed by an overwhelming bipartisan majority in both houses of Congress and signed into law by President Donald Trump in December 2018. The First Step Act expanded existing federal law to give federal judges even more flexibility to avoid mandatory minimum prison sentences for drug trafficking offenses. This historic bill – and the historic sentencing reforms passed in more than 35 states over the last 15 years – show that America is moving away from simply locking everyone up for a long time and moving toward an efficient, smart, public safety-focused preservation of long prison sentences for the most serious offenders.

Idaho’s mandatory drug sentencing laws are not in the best interest of public safety nor are they effective resource allocation. A recent report by the Idaho Center for Fiscal Policy found that Idaho’s incarceration rate outpaces all six of its neighboring states. In Fiscal Year 2018, drug offenders made up a third of Idaho’s prison population, according to Idaho Department of



Correction data.¹ Idaho spends eight percent of its state budget on corrections, which is a 204 percent increase in spending since 1992.² The state prisons are nearing capacity, and recently proposed plans to build a new prison and expand existing prisons would cost Idaho nearly \$500 million.³ Idaho simply cannot afford to continue its current sentencing practices. The costs of excessive incarceration siphon off money that could be better invested in other public safety priorities, like smarter policing, more victim services, or more drug treatment programs to reduce the demand for drugs. Mandatory minimum sentences also hurt families, the economy, and the justice system. Mandatory sentences deprive spouses of breadwinners, children of parents, and the economy of labor and tax revenue.

FAMM supports **HB 99 because it eliminates unreasonable, unnecessary, and counterproductive prison sentences.** Sentences should fit the crime and each offender's unique role and needs. One-size-fits-all sentences do not permit courts to consider all of the relevant facts and circumstances about the crime and its impact on the community, or the offender's criminal record, role, motive, profit, age, likelihood of rehabilitation, or need for mental health or drug treatment, for example. The mandatory minimum sentence sometimes is the right punishment in a particular case. But many other times, these penalties may be unjust, irrational, or even counterproductive. Mandatory minimums force judges to send people who pose little threat to public safety to prison for as long as people who are far more dangerous. The public is not safer when the wrong people go to prison for too long.

HB 99 will create fairness in sentencing and restore respect for Idaho's justice system. HB 99 would give judges discretion to differentiate between drug kingpins and low-level dealers, who are often addicts. Consider, for a moment, a drug addict who sells small amounts of cocaine to feed his own habit. The addict is arrested with constructive possession of 28 grams of cocaine for both their personal use and habit-funding distribution. Now consider a mid-level drug dealer who does not use, but rather preys on the addictions of others for his own personal income. This individual is arrested with 150 grams of cocaine. Under current Idaho law, the courts would be unable to consider the first individual's troubles with addiction or each individual's risk to public safety. Both would receive the same three-year mandatory minimum sentence. Sentencing addicts or street-corner drug sellers as if they are more serious dealers or kingpins is expensive, unfair, and diminishes respect for the justice system. The public is not safer when high-risk offenders do not get a long enough sentence, but it is also not safer when low-risk offenders go to prison for too long. Prisons are scarce and expensive resources that must be used wisely, and money wasted on incarcerating low-risk offenders too long is money that cannot be spent on improving law enforcement, victim services, or drug treatment in our communities.

Most importantly, **there is no evidence to support the claim that mandatory minimum sentences reduce crime or drug use.** The Federal Government's National Institute of Justice has made clear that it is the certainty of being caught, not the severity of the punishment, that

¹"Population Overview FY 2018," Idaho Department of Correction, https://www.idoc.idaho.gov/content/document/fy_2018_population_overview

²"Idaho Prisons," Idaho Center for Fiscal Policy, <http://idahocfp.org/new/wp-content/uploads/2018/10/ICFP-2018-Idaho-Prisons-Fact-Sheet-3.pdf>

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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 overdose rates. States that have passed reforms have seen crime drop at the same time that they have reduced their prison populations and costs. Additionally, a 1997 study by the RAND Corporation found that mandatory minimums are the least cost-efficient way to reduce cocaine-related crime. The report concludes that \$1 million spent on mandatory minimum sentences was a far less effective crime reduction strategy than spending \$1 million on treating heavy drug users.

Repealing mandatory minimum sentences does not mean no one goes to prison or serious offenders escape punishment. Rather, it means expensive prison cells and long sentences are used wisely, not indiscriminately. Everyone is safer when that wisdom prevails. Therefore, **we urge you to support HB 99.**

Thank you for considering our views, and please contact us if we can be of further assistance as you consider this important issue.