

The Honorable Phil Berger
North Carolina Senate
16 W. Jones St., Room 2007
Raleigh, NC 27601

The Honorable Dan Blue
North Carolina Senate
16 W. Jones St., Room 1129
Raleigh, NC 27601

The Honorable Danny Earl Britt
North Carolina Senate
300 N. Salisbury St., Room 525
Raleigh, NC 27603

The Honorable Bill Rabon
North Carolina Senate
16 W. Jones St., Room 2010
Raleigh, NC 27601

September 17, 2019

Dear Leaders Berger and Blue, and Chairs Britt and Rabon:

We write to express our concerns with HB 511, the North Carolina First Step Act, and explain why our organization, which represents hundreds of North Carolina families and their incarcerated loved ones, must withdraw its support for the bill. We are grateful for and applaud the leadership and vision of the bill’s drafters and sponsors, Rep. Holly Grange and Sens. Danny Britt, Warren Daniel, Jim Davis, and Bob Steinburg. These members of the legislature understand that North Carolina’s mandatory minimum drug sentencing laws are excessive, expensive, misapplied to low-level and addicted offenders, and fail to protect public safety. North Carolina’s current mandatory minimum sentences waste prison resources on those who do not pose a public safety risk and have utterly failed to prevent or stop the state’s problems with drug abuse.

As originally written, the North Carolina First Step Act would have ensured that the courts have flexibility to reserve the state’s very lengthy mandatory prison terms for the most serious and high-level drug offenders. The bill would have allowed courts to give a sentence other than the mandatory minimum term (e.g., 10 years in prison instead of 15) if the mandatory minimum sentence was unjust and unnecessary to protect the public, and the person was not a leader in a continuing criminal enterprise. This increased judicial discretion, known as a “safety valve,” is not revolutionary: 17 states across the country have adopted similar safety valves, and the original text of HB 511 is based on model legislation adopted by the American Legislative Exchange Council. The federal government has used a safety valve for its mandatory minimum drug sentences since 1994, and Congress recently expanded the applicability of that safety valve in the First Step Act, signed into law by President Donald Trump in December 2018.

Safety valves allow courts to impose sentences that fit the crime and the offender’s role and needs. This helps courts reserve expensive prison cells and lengthy sentences for more serious offenders, as well as make distinctions that matter at sentencing – for example, whether the person was a street seller or a large-quantity drug manufacturer, addicted to drugs, mentally ill, or was a “trafficker” only because he or she possessed more drugs than the statutory threshold allows.

Unfortunately, HB 511 has since been amended in ways that make FAMM unable to endorse the legislation. In its current form, a person qualifies for the safety valve and a sentence below the mandatory minimum term only if he or she meets 10 distinct criteria. These revised eligibility criteria are so strict and narrow that we do not believe the bill would apply to a meaningful number of North Carolinians, generate cost savings, and prevent the unjust application of mandatory minimum sentences.

The bill excludes many addicts who may also sell or transport drugs.

First and most importantly, HB 511 automatically excludes most drug offenders from safety valve consideration: those involved in sale, transport, distribution, or delivery of drugs are completely ineligible for relief. This includes all people who may be engaged in this conduct because of an addiction. Many people who become addicted to drugs sell drugs to fund their own addiction, or transport drugs for their dealers in exchange for drugs or to pay off a drug debt. Many addicted people share or split drugs with other drug users, which is considered drug distribution. All of these addicted people would find no relief under the safety valve as it stands now in HB 511.

The bill applies mandatory minimums to many low-level drug trafficking offenders.

HB 511 excludes low-level mules, couriers, or street sellers from eligibility for a sentence other than the mandatory minimum term. These small fish are exactly the people whose lengthy incarceration provides little or no public safety benefit to the community. Low-level drug offenders are significantly less culpable than higher-level drug suppliers and manufacturers, and their extended incarceration does nothing to dismantle or deter drug networks because they are easily and quickly replaced. To ensure fair and proportionate sentencing, courts must be allowed to consider a person's role in the drug offense – even if that offense was a trafficking or distribution offense. Mandatory minimums prevent this, and HB 511 does not remove this fatal flaw.

The bill excludes many addicts with a history of drug convictions.

Even if HB 511 is intended only to apply to addicted offenders, it currently limits safety valve eligibility to those with no prior felony drug trafficking convictions. This applies regardless of how old the prior conviction is and even if the previous drug conviction was a “trafficking” offense solely because the person possessed more drugs than the quantities listed in the statutory thresholds. Many people struggling with addiction commit several or even many drug offenses – including felony offenses and trafficking offenses – to finance their addictions or pay off drug debts over time. Again, the modified HB 511 fails to allow judges to consider the individual circumstances, history, and needs of an offender and creates a criterion that will exclude many people the bill was intended to help. The recently enacted federal First Step Act expanded federal drug safety valve eligibility to people with lengthier criminal records precisely to ensure that people with criminal records driven by addiction or mental illness did not receive excessive and counterproductive mandatory minimums. HB 511 does the opposite.

The bill excludes people who cannot access drug treatment programs.

The amended version of HB 511 also limits application of the safety valve to those who are currently completing drug treatment or promise to do so in the future. This criterion is

problematic because drug treatment is scarce and inaccessible both in the community and in jails and prisons in North Carolina. Even people committed to recovery will not be able to complete drug treatment in time to benefit from the bill. Requiring people to obtain the unobtainable before they can become safety valve-eligible guarantees that the bill will not help the exact people who should not be receiving mandatory minimum prison terms: those who struggle with addiction.

The bill excludes addicts from relief simply because they are gun owners.

Finally, the bill also excludes all people who possessed a firearm from eligibility for consideration for a sentence below the mandatory minimum prison term. North Carolinians who lawfully own guns simply do not go and sell all those guns before getting hooked on opioids or other drugs. Simply having a gun in one's home where one also possesses more pain pills than the statutory threshold allows makes a person an armed drug trafficker – and ineligible for relief from the mandatory minimum under HB 511. It is exactly these unintended consequences that the bill was intended to prevent – and in its current form, the bill fails to do so.

The bill fails to prevent unjust sentences for Kenneth Stanley – and others like him.

Our concerns about the limited applicability and impact of HB 511, as amended, are not theoretical. Consider the real people the amended bill will ignore. Greensboro native Kenneth Graham Stanley is serving a 15-year mandatory minimum sentence and would not be safety valve-eligible under HB 511's criteria. At the time of his offense, Stanley was addicted to cocaine, was not receiving drug treatment, and had no prior convictions. He agreed to drive a package of drugs to a drug sale arranged by a friend and an undercover officer, never set hands on the drugs or profited from their sale, and did not possess any weapons or commit violent acts. Under the amended HB 511, he would nonetheless be ineligible for the safety valve; he would still receive a 15-year mandatory minimum sentence. Stanley is exactly the kind of person who should not receive such a mandatory minimum term, and he is not alone.

FAMM believes North Carolina should eliminate all of its mandatory minimum sentencing laws so that every resident of the state who runs afoul of the law can be held accountable in a way that is proportionate to the facts and circumstances of his or her offense. We understand that not everyone shares our position. We believed HB 511 was a good-faith compromise to address those instances when mandatory minimum sentences were clearly counterproductive. It was, as its name suggested, a first step. Unfortunately, the amended bill is not even that. We urge the legislature to either restore the original text or find other ways to enact the meaningful and cost-saving drug sentencing reform the state needs.

Thank you for considering our views.

Sincerely,

Kevin Ring
President

cc: Members of the North Carolina Senate