

**Statement of Julie Stewart, President,
Families Against Mandatory Minimums,
to the Charles Colson Task Force on Federal Corrections**

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Washington, DC

Thank you for giving Families Against Mandatory Minimums (FAMM) the opportunity to submit testimony and recommendations to the Charles Colson Task Force on Federal Corrections. We are grateful for the Task Force's hard work and commitment to addressing the serious problems in our federal prison system, and we look forward to continuing to work with you and share our expertise and resources with your members and staff.

FAMM is a nonpartisan, nonprofit organization that advocates for the repeal of mandatory minimum sentencing laws and the adoption of sentences that are just and cost-effective, protect public safety, and preserve families. Over the last 24 years, our advocacy in Congress and state legislatures has led to, among other reforms, the repeal of Michigan's draconian life without parole and other mandatory minimum sentences for drug trafficking; the creation of the federal "safety valve" exception to mandatory minimum drug sentences, which has ensured fairer punishments for 90,000 people; and the reform of the insupportable disparity between federal crack and powder cocaine mandatory minimum sentences. We are currently working closely with members of Congress in both parties to support the Smarter Sentencing Act (S. 502/H.R. 920) and the Justice Safety Valve Act (S. 353/H.R. 706).

This Task Force conducts its important work at a tipping point in criminal sentencing history. There is wide, unprecedented, bipartisan support in and outside of Congress to reform the mandatory minimum drug sentencing laws that were created in a perfect storm of fear, high

crime, and “get tough” politics in the 1980s. In the last 30 years, the federal imprisonment rate has increased 518 percent, from 11 to 68 inmates for every 100,000 U.S. residents.¹ Annual spending on federal prisons has risen 595 percent, from \$970 million to more than \$6.7 billion in inflation-adjusted dollars.² Prison costs have expanded from 14 percent of the Justice Department’s budget to 23 percent, straining funding for law enforcement, victim services, and national security programs.³ Federal prisons are now at 133 percent of their capacity, with even higher overcrowding in medium- and high-security facilities.⁴

Mandatory minimum sentences bear the lion’s share of blame for this explosive growth in federal prison populations and costs. The Urban Institute succinctly describes the cause of prison growth: it is “the combination of volume of admissions and length of time served that drives the inmate population.”⁵ Our love of long, mandatory punishments – particularly for drug offenses – and our over-zealous use of them in the last 30 years have produced an unsustainable growth in the federal prison system and devastated families and communities across the country. Half of all federal prisoners are now serving sentences of 10 years or more.⁶ Almost 60 percent of federal prisoners were convicted of offenses carrying mandatory minimum sentences, and about three quarters of them were not relieved from those punishments at sentencing.⁷ Approximately 23,000 federal drug offenders are sentenced annually, and two-thirds face mandatory minimum sentences of five, 10, 20 years or even life without parole for their crimes.⁸ One of every three federal offenders sentenced annually is a drug offender.⁹ Unsurprisingly, half of all federal prisoners are now drug offenders.¹⁰

Lengthy mandatory minimum sentences are both expensive (the current annual cost of federal incarceration is about \$29,000 per inmate, per year)¹¹ and misapplied. In FY2013, half of all federal drug offenders had little or no criminal record;¹² 84 percent did not possess or use

weapons;¹³ only 7 percent played a leadership role in the offense;¹⁴ yet 62 percent were subject to the five-, 10-, or 20-year mandatory minimum drug sentences¹⁵ that Congress intended for “major” and “serious” traffickers.¹⁶ The person most likely to receive a mandatory minimum drug sentence in federal court is not a drug kingpin, but a street-level seller distributing grams and ounces, not kilograms, of drugs.¹⁷ The Heritage Foundation agrees: “The immediate and most urgent problem facing America’s criminal justice system is that district courts must impose unduly severe mandatory minimum sentences on certain small-scale drug offenders.”¹⁸ No action, however beneficial, of the president or attorney general can fix these systemic problems. Fortunately, Congress is considering several bipartisan reform initiatives that could help.

The Smarter Sentencing Act (S. 502/H.R. 920) targets the root cause of federal prison growth by making the length of mandatory minimum drug sentences more reasonable. The bipartisan bill, introduced by Congressmen Raul Labrador (R-ID) and Bobby Scott (D-VA) and Senators Mike Lee (R-UT) and Richard Durbin (D-IL), would reduce 20-, 10-, and five-year mandatory minimum sentences for nonviolent drug offenses to 10, 5, and 2 years, respectively, and reduce the mandatory life without parole sentence for a third drug offense to a term of 25 years (Senate version) or 20 years (House version). Second, it would expand the scope of the drug “safety valve”¹⁹ to allow more low-level, nonviolent offenders to be sentenced to terms shorter than the mandatory minimum term.²⁰ Third, it would make Congress’s unanimously-adopted Fair Sentencing Act (FSA) reforms²¹ to crack cocaine punishments retroactively applicable to approximately 8,800 people – 88 percent of whom are black²² – still serving the old sentences based on the repudiated 100-to-one differential in crack and powder sentencing.²³ Beneficiaries from similar 2007 retroactive reductions to crack cocaine sentences re-offended at slightly lower rates than those who received no reduction.²⁴

Both the Urban Institute and the Congressional Budget Office have conservatively concluded that the Smarter Sentencing Act would save at least \$3 billion over 10 years.²⁵ A Justice Department estimate that included the averted costs of building 16 new prisons and hiring thousands of additional correctional officers found that the Smarter Sentencing Act would save \$24 billion over 20 years.²⁶ The prison population-reducing and cost-cutting power of mandatory minimum sentencing reform is undeniable.²⁷ It is the essential element of any meaningful overhaul of the federal prison system.

Another reform that would address the irrational and unreasonable sentencing outcomes produced by mandatory minimum sentencing laws is the Justice Safety Valve Act (S. 353/H.R. 706), cosponsored by Congressmen Robert Scott (D-VA) and Thomas Massie (R-KY) and Senators Patrick Leahy (D-VT) and Rand Paul (R-KY). This bill would create a new “safety valve” provision that would allow federal judges to sentence a person below the mandatory minimum sentence whenever the required minimum does not fulfill the purposes of punishment listed in 18 U.S.C. § 3553(a) (e.g., rehabilitation, just punishment). This legislation would apply to all mandatory minimum sentences in the federal code. Without eliminating a single mandatory minimum term, the Justice Safety Valve Act would, over time, also help alleviate the growth of the federal prison population and its high costs for taxpayers and the Justice Department, and prevent some of the absurd and unintended consequences inevitably produced by mandatory minimum laws.²⁸

Recommendations

We ask the Task Force to:

1. **Urge Congress to pass the Smarter Sentencing Act (S. 502/H.R. 920)** or similar reforms that would reduce or eliminate mandatory minimum drug sentences (including

the 20-year and life without parole terms for repeat offenders), make the Fair Sentencing Act retroactive, and expand “safety valve” exceptions to these laws;

2. **Urge Congress to pass the Justice Safety Valve Act (S. 353/H.R. 706)** or similar reforms that would create safety valves for those convicted under other mandatory minimum laws; and
3. **Urge Congress to reform 18 U.S.C. § 924(c)’s mandatory minimum sentences for gun possession.** These laws have a disparate impact on African Americans,²⁹ dramatically increase sentence length, can be used to inflict a “trial penalty” for those who choose to exercise their constitutional right to a jury trial rather than plead guilty,³⁰ and often produce disproportionate and irrational sentences.³¹ In particular, reforms should include reducing or eliminating the mandatory minimum sentences and ensuring that consecutive sentencing for a second or subsequent § 924(c) offense applies only to “true recidivists,” those whose first § 924(c) offense was a final and separate conviction.³²

Study after study shows our mandatory minimum sentencing policies have filled prisons (and increased costs) without producing a significant and meaningful impact on crime rates.³³ Both public opinion and state sentencing policy are shifting, too: 30 states have reformed or eliminated mandatory minimum sentencing laws,³⁴ and crime has continued to drop.³⁵ Recent polls show that 63% of the public thinks these sentencing reforms are a positive development,³⁶ and 70 percent of Americans support repealing mandatory minimum sentences entirely for nonviolent offenses.³⁷ The time for mandatory minimum sentencing reform has come, and the Task Force can help by asking Congress to act. Thank you for considering our views, and please contact us if we can be of more assistance to the Task Force or its staff.

¹ PEW CENTER ON THE STATES, PUBLIC SAFETY PERFORMANCE PROJECT, GROWTH IN FEDERAL PRISON SYSTEM EXCEEDS STATES² (Jan. 22, 2015), available at <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2015/01/growth-in-federal-prison-system-exceeds-states>.

² *Id.*

³ *Id.*

⁴ Michael Horowitz, Office of the Inspector General, U.S. Dep't of Justice, Top Performance Challenges Facing the Department of Justice – 2014, Nov. 10, 2014, available at <http://www.justice.gov/oig/challenges/2014.htm>.

⁵ Nancy LaVigne, Julie Samuels & Samuel Taxy, *Stemming the Tide: Strategies to Reduce the Growth and Cut the Cost of the Federal Prison System* 10 (Nov. 2013), available at <http://www.urban.org/UploadedPDF/412932-stemming-the-tide.pdf>.

⁶ U.S. SENTENCING COMM'N, QUICK FACTS: FEDERAL OFFENDERS IN PRISON – JANUARY 2015, at 2, available at http://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick-Facts_BOP.pdf.

⁷ *Id.* at 2.

⁸ U.S. SENTENCING COMM'N, 2013 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS, Tbl. 43 (2013), available at <http://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2013/Table40.pdf>. The U.S. Sentencing Commission uses mandatory minimum sentences as the baseline for calculating all drug offenses under the federal sentencing guidelines. Therefore, all drug sentences – even those with no applicable mandatory minimum term – have increased dramatically, and drug guideline sentences can be substantially longer than the mandatory minimum terms. In short, mandatory minimum terms have increased incarceration by making all federal drug sentences longer. See Nathan James, Congressional Research Service, The Federal Prison Population Buildup: Overview, Policy Changes, Issues, and Options, at 8, April 15, 2014, available at <http://fas.org/sgp/crs/misc/R42937.pdf>.

⁹ U.S. SENTENCING COMM'N, 2013 SOURCEBOOK, at Figure A, available at <http://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2013/FigureA.pdf>.

¹⁰ BUREAU OF PRISONS, INMATE STATISTICS: OFFENSES, at http://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp.

¹¹ 79 FR 26996 (May 12, 2014), available at <https://www.federalregister.gov/articles/2014/05/12/2014-10859/annual-determination-of-average-cost-of-incarceration>.

¹² U.S. SENTENCING COMM'N, 2013 SOURCEBOOK, Tbl. 37, available at <http://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2013/Table37.pdf>.

¹³ *Id.* at Table 39, available at <http://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2013/Table39.pdf>.

¹⁴ *Id.* at Table 40, available at <http://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2013/Table40.pdf>.

¹⁵ *Id.* at Table 43, available at <http://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2013/Table40.pdf>.

¹⁶ U.S. SENTENCING COMM'N, REPORT TO CONGRESS: MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM 24 (Oct. 2011), available at http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/mandatory-minimum-penalties/20111031-rtc-pdf/Chapter_02.pdf.

¹⁷ *Id.* at 171, Fig. 8-11.

¹⁸ Evan Bernick & Paul Larkin, *Reconsidering Mandatory Minimum Sentences: The Arguments for and Against Potential Reforms* (Feb. 10, 2014), at <http://www.heritage.org/research/reports/2014/02/reconsidering-mandatory-minimum-sentences-the-arguments-for-and-against-potential-reforms>.

¹⁹ 18 U.S.C. § 3553(f) (2014).

²⁰ 18 U.S.C. § 3553(f) currently permits courts to sentence a drug offender to a term shorter than the applicable mandatory minimum sentence if the person fulfills the following five criteria: (1) the person has one or fewer criminal history points under the federal sentencing guidelines; (2) the person did not possess weapons or use violence in the commission of the offense; (3) no death or serious bodily injury resulted to others; (4) the person was not a leader, manager, organizer, or supervisor; (5) the person truthfully provides the government with information pertaining to their involvement in the crime. The Smarter Sentencing Act (H.R. 920/S. 502) alters only the first part of this test, allowing people with up to three criminal history points under the sentencing guidelines to be sentenced below the applicable mandatory minimum term, so long as the person fulfills all other safety valve criteria.

²¹ The Fair Sentencing Act of 2010 reduced the so-called “100-to-one disparity” between crack and powder cocaine sentences. Under the old law, five grams of crack cocaine and 500 grams of powder cocaine triggered five-year mandatory minimum sentences, and 50 grams of crack cocaine and 5,000 grams of powder cocaine triggered 10-year mandatory minimum sentences. The Fair Sentencing Act changed the amounts of crack cocaine to 28 grams and 280 grams, respectively, for the five- and 10-year mandatory minimum sentences. This produced the current 18-to-one differential between crack and powder cocaine mandatory minimum sentences.

²² Statement of Judge Patti Saris, Chair, U.S. Sentencing Comm’n, submitted to the U.S. Senate Judiciary Committee for the Hearing on “Reevaluating the Effectiveness of Mandatory Minimum Sentences,” Sept. 18, 2013, at 10, *available at* http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Submissions/20130918_SJC_Mandatory_Minimums.pdf.

²³ Under the Smarter Sentencing Act, federal prisoners must petition the court for a sentence reduction in accord with the FSA’s new 18-to-one ratio, and petitions can be denied in the interest of public safety. Courts, prosecutors, probation officers, and public defenders ably handled large numbers of requests for retroactively applicable crack guideline sentence reductions in 2007 and 2011. *See, e.g.*, U.S. SENTENCING COMM’N, PRELIMINARY CRACK RETROACTIVITY DATA REPORT, FAIR SENTENCING ACT Table 1 (Apr. 2014), *available at* <http://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/fsa-amendment/20140415-USSC-Crack-Retro-Report-Post-FSA.pdf> (showing that federal courts have granted 7,539 of 12,634 requests for guideline sentence reductions).

²⁴ U.S. SENTENCING COMM’N, RECIDIVISM AMONG OFFENDERS RECEIVING RETROACTIVE SENTENCE REDUCTIONS: THE 2007 CRACK COCAINE AMENDMENT 3 (May 2014), *available at* http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20140527_Recidivism_2007_Crack_Cocaine_Amendment.pdf (showing that 43.3% of recipients of retroactive sentence reductions recidivated, compared with 47.8% of those who did not).

²⁵ Nancy LaVigne, Julie Samuels & Samuel Taxy, *Stemming the Tide: Strategies to Reduce the Growth and Cut the Cost of the Federal Prison System* 24-25, App. A. (Nov. 2013), *available at* <http://www.urban.org/UploadedPDF/412932-stemming-the-tide.pdf>; CONGRESSIONAL BUDGET OFFICE, CONGRESSIONAL BUDGET OFFICE COST ESTIMATE: S. 1410, SMARTER SENTENCING ACT OF 2014 (Sept. 11, 2014), *available at* https://www.cbo.gov/sites/default/files/s1410_0.pdf.

²⁶ U.S. Dep’t of Justice, Cost Savings Estimate of Smarter Sentencing Act of 2014, *available at* <http://famm.org/wp-content/uploads/2014/02/DOJ-SSA-Cost-Savings-Estimate-2014.pdf>.

²⁷ *Stemming the Tide*, at 36, App. A.

²⁸ *Id.* at 27, App. A (showing cost savings of \$835 million and 81,000 prison bed years over 10 years).

²⁹ U.S. SENTENCING COMM’N, REPORT TO CONGRESS: MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM 274, Tbl. 9-1 (Oct. 2011), *available at* http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/mandatory-minimum-penalties/20111031-rtc-pdf/Chapter_09.pdf.

³⁰ *See* HUMAN RIGHTS WATCH, AN OFFER YOU CAN’T REFUSE 60-66 (Dec. 2013), *available at* http://www.hrw.org/sites/default/files/reports/us1213_ForUpload_0.pdf.

³¹ *See, e.g., id.*; FAMILIES AGAINST MANDATORY MINIMUMS, WELDON ANGELOS, <http://famm.org/weldon-angelos/> (describing how a nonviolent seller of approximately \$1,000 worth of marijuana received a 55-year mandatory minimum sentence for three convictions under 18 U.S.C. § 924(c) because of the application of consecutive mandatory minimum sentences; his sentence was longer than those for offenses such as airplane hijacking and rape of a child).

³² *See, e.g.*, H.R. 2405 (113th Congress), Firearm Recidivist Sentencing Act of 2013, *available at* <http://thomas.loc.gov/cgi-bin/query/z?c113:H.R.2405:>.

³³ BRENNAN CENTER FOR JUSTICE, WHAT CAUSED THE CRIME DECLINE 4 (2015), *available at* https://www.brennancenter.org/sites/default/files/publications/What_Caused_The_Crime_Decline.pdf; NATIONAL RESEARCH COUNCIL, THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES (2014), *available at* http://www.nap.edu/catalog.php?record_id=18613.

³⁴ VERA INSTITUTE OF JUSTICE, PLAYBOOK FOR CHANGE?: STATES RECONSIDER MANDATORY MINIMUM SENTENCES (Feb. 2014), at <http://www.vera.org/sites/default/files/resources/downloads/mandatory-sentences-policy-report-v2b.pdf>.

³⁵ PEW CENTER ON THE STATES, PUBLIC SAFETY PERFORMANCE PROJECT, STATES CUT BOTH CRIME AND IMPRISONMENT (Dec. 19, 2013), *availale at* <http://www.pewtrusts.org/en/multimedia/data-visualizations/2013/states-cut-both-crime-and-imprisonment>.

³⁶ *See* PEW RESEARCH CENTER, AMERICA'S NEW DRUG POLICY LANDSCAPE: TWO-THIRDS FAVOR TREATMENT, NOT JAIL, FOR USE OF HEROIN, COCAINE 8 (Apr. 2, 2014), *at* <http://www.people-press.org/files/legacy-pdf/04-02-14%20Drug%20Policy%20Release.pdf>. This view predominated among respondents of all party affiliations.

³⁷ Reason-Rupe December 2013 National Survey, Question 48 (Dec. 2013), *available at* <http://reason.com/poll/2013/12/13/reason-rupe-december-2013-national-surve>.