



**Written Testimony of Julie Stewart,  
President, Families Against Mandatory Minimums  
On  
“Exploring the National Criminal Justice Commission Act of 2009”**

**Submitted to the  
Senate Judiciary Committee  
Subcommittee on Crime and Drugs**

**June 11, 2009**

Richard Paey's life did not flash before his eyes. Instead, he watched his life slip away day by day, hour by hour, and minute by minute. Saddled with chronic pain from a car injury and then diagnosed with multiple sclerosis, Paey needed high doses of prescription drugs to dull the pain. His Florida physician refused to prescribe them. So, Paey's former doctor in New Jersey mailed him undated prescription painkillers for two years. This supply was ultimately uncovered by local sheriffs and Paey was charged and convicted with drug trafficking. He was sentenced under one of Florida's harsh mandatory minimum sentencing laws to an unconscionable 25 years in prison, even though he was a first-time, non-violent offender trying to cope with debilitating pain.

Thanks to the indefatigable support of his wife, and with help from Families Against Mandatory Minimums, Richard Paey is free today. He served three years before Governor Charlie Crist, stating, "we aim to right a wrong," granted him a full pardon in 2007. His ordeal remains a powerful example of the failings of our criminal justice system.

I am Julie Stewart, President of FAMM. FAMM is a national nonprofit, nonpartisan organization whose mission is to promote fair and proportionate sentencing policies and to challenge inflexible and excessive penalties required by mandatory sentencing laws. FAMM works every day to ensure that sentencing is individualized, humane and no greater than necessary to impose just punishment, secure public safety and support successful rehabilitation and reentry. In our view, punishment should fit the individual and the crime. Too frequently it does not.

On behalf of Richard Paey and the thousands of others like him – including the hundreds of individuals and their loved ones I have met over the past 18 years who have been forced to deal with the consequences of one-size-fits-all sentencing – thank you for holding a hearing on the effort to launch a comprehensive review of the nation's criminal justice system. I appreciate the opportunity to share FAMM's views on the National Criminal Justice Commission Act. We also want to express our appreciation to Senator Jim Webb for his commitment to addressing criminal justice reform in a comprehensive manner.

We agree with Senator Webb that our nation's criminal justice system – both at the federal and state level – is broken. Mass incarceration is the most obvious symptom of the problem. The United States is home to 5 percent of the world's population but 25 percent of the world's reported prisoners. Our nation's current incarceration rate of 756 inmates per 100,000 citizens is nearly five times higher than the world average. According to a recent Pew Foundation Report, one in every 31 adults in the United States is now in prison, in jail, or on supervised release. The cost of this incarceration spree is skyrocketing. Federal, state, and local spending on corrections now costs roughly \$68 billion per year.

We at FAMM, however, think some of the most devastating consequences of our criminal justice systems do not lend themselves to measurement in dollars and cents. After all, what is the true cost to society of millions of children being raised without the help and influence of an incarcerated parent? How do we measure the lost trust in a criminal justice system that appears to penalize people differently based on the color of their skin? No, not all of our losses can be monetized.

We also agree with Senator Webb that the only way to achieve real reform is to look at every aspect of the criminal justice system in a comprehensive and thoughtful way. When Congress acts prudently and after careful study, it usually makes the best policy. Conversely, when Congress acts rashly, it often makes its worst mistakes.

In the mid- and late 1980s, Congress reacted to the high-profile drug overdose of basketball star Len Bias by rushing through new mandatory minimums sentences for certain drug crimes and gun offenses. Congress enacted the new laws without any hearings, debate, study or consideration. A number of states followed suit.

The mandatory minimums are obligatory. A conviction of a given charge will result in a pre-determined and, for the most part, inescapable sentence, even if the court believes that sentence is too long given the circumstances of the case.

By any standard, including their proponents' stated goals, the mandatory minimums enacted in the 1980s have failed. Specifically:

- They have not discouraged drug use or abuse. Drug use rates had already declined before Congress passed the 1986 and 1988 anti-drug laws. Crack and powder cocaine use only dropped when negative media coverage increased the perception that these drugs were dangerous and socially unacceptable.
- They have failed to reduce drug trafficking. Despite 50 years of experimenting with mandatory minimums, supporters cannot point to a single study that conclusively demonstrates any positive impact between mandatory minimum sentences and drug trafficking rates.
- Mandatory minimums' failure comes with billion-dollar direct costs. Expanded use of prison sentences for drug crimes and longer sentences required by mandatory minimums have caused a dramatic increase in state and federal corrections costs. State corrections spending jumped from \$6 billion in 1982 to over \$50 billion in 2008.<sup>1</sup>
- Mandatory minimums impose substantial indirect costs. Not only do longer prison sentences make it more difficult for prisoners to re-enter society successfully, but they also put a heavy burden on families and children who must live without a spouse or parent while that person is incarcerated.
- Mandatory minimum sentences are not applied evenly. In practice, mandatory minimum sentences have not been applied equally when viewed by race of the defendant. Further, two equally culpable defendants can receive vastly different sentences based on the value of the information they have to share with prosecutors.

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<sup>1</sup> PEW CENTER ON THE STATES, ONE IN 31: THE LONG REACH OF THE AMERICAN CORRECTIONS 11 (Mar. 2009), available at [http://www.pewcenteronthestates.org/uploadedFiles/PSPP\\_1in31\\_report\\_FINAL\\_WEB\\_3-26-09.pdf](http://www.pewcenteronthestates.org/uploadedFiles/PSPP_1in31_report_FINAL_WEB_3-26-09.pdf) (last visited June 10, 2009).

In all of these ways, mandatory minimums have failed to perform as advertised. And, yet, I can't help but think that, even if they were effective to some degree, they would still be objectionable. Mandatory sentences offend a bedrock principle of justice best articulated in the federal sentencing statute. The core congressional command in the Sentencing Reform Act of 1984 directs courts to impose a sentence "sufficient, but not greater than necessary to comply" with the purposes of punishment.<sup>2</sup> This principle of parsimony has deep roots in American soil and in our sense of fundamental fairness. The law directs judges to exercise reasoned discretion, taking into account considerations such as the need to avoid unwarranted disparity, the history and characteristics of the defendant, and the seriousness of the offense, and then fashion a sentence for the particular individual who stands convicted.<sup>3</sup> Mandatory minimums prohibit courts from complying with that mandate.

Moreover, mandatory minimums challenge basic structures on which our government rests. Federal mandatory minimums offend federalism. They are frequently associated with laws that extend federal jurisdiction over conduct traditionally the domain of state law enforcement. And, because they often impose more severe penalties than similar state laws, they make federal prosecutions appear more attractive in the immediate wake of an offense. In addition, state and federal mandatory sentencing laws distort traditional roles by transferring judicial discretion to legislatures as well as prosecutors, who, by choice of charge, exercise undue and unreviewable influence over sentencing.

All of these problems have caused many former prosecutors, judges, and legal commentators to speak out against mandatory minimums. A report by the non-partisan Federal Judicial Center concluded with this statement about mandatory sentencing laws: "As instruments of public policy [mandatory minimums] do little good and much harm."<sup>4</sup> Today, mandatory minimum repeal enjoys widespread support from leaders in the criminal justice community. The Judicial Conference of the United States<sup>5</sup>, the American Bar Association<sup>6</sup>, the United States Sentencing Commission<sup>7</sup>, and the United States Conference of Mayors<sup>8</sup> are among those who oppose mandatory minimum sentencing.

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<sup>2</sup> 18 U.S.C. § 3553(a) (2008).

<sup>3</sup> The list of sentencing considerations and the parsimony mandate are found in the sentencing statute at 18 U.S.C. § 3553(a)(1)-(7) (2008).

<sup>4</sup> Barbara S. Vincent & Paul Hofer, *The Consequences of Mandatory Minimum Prison Terms*, Federal Judicial Center (1994), at 32 (quoting Michael Tonry, ed., *Mandatory Penalties*, in 16 CRIME & JUSTICE: A REVIEW OF RESEARCH 243-44 (1990))

<sup>5</sup> See, e.g., JUDICIAL CONFERENCE OF THE UNITED STATES, REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES 16 (Mar. 13, 1990) (voting in favor of urging Congress to reconsider the wisdom of mandatory minimum sentences), available at <http://www.uscourts.gov/judconf/90-Mar.pdf> (last visited Nov. 5, 2008); see also Testimony of Honorable Paul Cassell before the House Judiciary Committee Subcommittee on Crime, Terrorism and Homeland Security (June 26, 2007), available at <http://judiciary.house.gov/hearings/June2007/Cassell070626.pdf> (last visited Nov. 5, 2008).

<sup>6</sup> See AMERICAN BAR ASSOCIATION, REPORT # 121-A (Aug. 9-10, 2004), available at <http://www.abanet.org/leadership/2004/annual/dailyjournal/121A.doc> (last visited Nov. 5, 2008).

<sup>7</sup> See U.S. SENTENCING COMMISSION, SPECIAL REPORT TO THE CONGRESS: MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM 25-33 (Aug. 1991) (describing how mandatory minimums undermine the purpose and goals of the federal sentencing guidelines, and concluding that "the intended purposes of mandatory minimums can be equally or better served by guidelines, without compromising the crime control goals to which

President Obama also has spoken of the need for reform. Noting that his predecessor, former President George W. Bush, expressed skepticism about imposing long sentences for first-time drug offenders, then-candidate Obama said, “I agree with the President. The difference is, he hasn't done anything about it. When I'm President, I will. We will review these sentences to see where we can be smarter on crime and reduce the blind and counterproductive warehousing of non-violent offenders.”

Last, but certainly not least, the American people support mandatory minimum reform. A 2008 poll found that fully 78 percent of Americans agree that courts, not Congress, should determine an individual's sentence, and 59 percent oppose mandatory minimums for nonviolent offenders.<sup>9</sup>

FAMM is pleased to report that many jurisdictions are now rethinking, reconsidering, and, in some cases, simply repealing their mandatory minimum laws. FAMM was proud to play a leading role in the very first state repeal effort, which took place in Michigan. Several years ago, FAMM helped grow a strong, bipartisan movement that culminated with Republican Governor John Engler signing legislation to repeal nearly all of its mandatory minimum statutes. Just a couple months ago, the State of New York got into the act by repealing the nation's oldest mandatory minimums, the notorious Rockefeller drug laws. Mandatory sentencing reform measures sponsored or supported by FAMM have now been introduced in New Jersey, Massachusetts, and Nevada.

The list of reform-minded states is certain to grow. After all, it is impossible to pick up a newspaper without reading of another state government being forced to come to grips with the skyrocketing corrections costs. Now is an especially tough time, as the general economic downturn is crushing state budgets. More than a few states are scurrying to cut costs by freeing some inmates. But trying to fix over-incarceration on the back end of the problem is extremely short-sighted. We ought to do a better job of getting it right at the beginning. Other policies being implemented by states are less drastic, but are, similarly, short-term solutions with potentially dangerous consequences. According to recent news reports, some states are cutting back the number of meals they serve to inmates, despite studies that show a link between food and discipline problems behind bars, while others are cutting costs by reducing the amount of milk and fresh fruit they serve.<sup>10</sup>

The failings of mandatory minimum sentences are well-documented, and support for reform among judges, policymakers, and the American people is high. So, what is to be done? As noted, history demonstrates that hasty action has resulted in poor policy. But history also

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Congress has evidenced its commitment.”), *available at* [http://www.ussc.gov/r\\_congress/MANMIN.PDF](http://www.ussc.gov/r_congress/MANMIN.PDF) (last visited Nov. 5 2008).

<sup>8</sup> U.S. CONFERENCE OF MAYORS, 74TH ANNUAL MEETING ADOPTED RESOLUTIONS 47-48 (June 2-6, 2006), *available at* [http://usmayors.org/resolutions/74th\\_conference/resolutions\\_adopted\\_2006.pdf](http://usmayors.org/resolutions/74th_conference/resolutions_adopted_2006.pdf) (last visited Nov. 5, 2008).

<sup>9</sup> Families Against Mandatory Minimums/Strategy One poll on mandatory minimums (Aug. 2008), *available at* <http://www.famm.org/Repository/Files/FAMM%20poll%20no%20embargo.pdf> (last visited Nov. 5, 2008).

<sup>10</sup> “Prison Meals: States Slimming Down Inmate Meals,” The Elizabethton Star Online, June 8, 2009, *available at* <http://www.starhq.com/news/html/news/AP/articles.asp?day=Sunday&article=a0468bc-us-prisonermeals06.html> (last visited June 10, 2009).

provides examples of thoughtful, deliberate action that brought about positive change. For example, the Prettyman Commission<sup>11</sup> established by President John F. Kennedy and the Katzenbach Commission<sup>12</sup> created by President Lyndon Johnson studied issues related to drug abuse and crime and concluded that long prison sentences were not an effective deterrent to drug users, that rehabilitation should be a primary objective for the government, and that courts should have wide discretion to deal with drug criminals.

Following these reviews, President Richard Nixon was elected on a platform that included getting tough on drug crime. But rather than add new arbitrary mandatory sentences, the Nixon Administration negotiated a bill that sought to address drug addiction through rehabilitation; provide better tools for law enforcement in the fight against drug trafficking; and provide a more balanced scheme of penalties for drug crimes. As part of this effort, the Administration and Congress repealed mandatory minimums for drug crimes.<sup>13</sup> The Act was praised by both Republicans and Democrats in Congress, including then-Congressman George H.W. Bush (R-TX), who said it would “result in better justice and more appropriate sentences.”

FAMM believes Congress must work on a bipartisan basis once again, this time to fully uncover and help remedy the problems plaguing our federal and state criminal justice systems. We think Senator Webb’s proposal for a bipartisan commission to examine every aspect of the justice system, including mandatory minimums, and to make specific recommendations for improvement holds the most promise for helping to achieve the kind of significant and comprehensive reform our nation needs. For this reason, FAMM fully supports enactment of the National Criminal Justice Commission Act and urges Congress to approve it.

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<sup>11</sup> The official name of the commission was the President’s Advisory Commission on Narcotics and Drug Abuse.

<sup>12</sup> The formal name of the commission was the President’s Commission on Law Enforcement and Administration of Justice. The Commission produced a ten-volume study on federal criminal justice.

<sup>13</sup> For a history of the 1950 mandatory minimum law, the “Boggs Act,” its repeal in 1970, and the lesson we can take from that history, *see* FAMILIES AGAINST MANDATORY MINIMUMS, CORRECTING COURSE: LESSONS FROM THE 1970 REPEAL OF MANDATORY MINIMUMS (2008), *available at* [http://www.famm.org/Repository/Files/8189\\_FAMM\\_BoggsAct\\_final.pdf](http://www.famm.org/Repository/Files/8189_FAMM_BoggsAct_final.pdf) (last visited June 10, 2009).