

# FAMMMGram

*Sentences that fit. Justice that works.*

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## Stars align for sentencing reform

**WEEKS BEFORE A DEAL WAS STRUCK** to reform the nation's oldest mandatory minimums, Sheldon Silver, the powerful Speaker of the New York Assembly, sensed an historic moment had arrived. "The stars are aligned," Silver said, referring to sentencing reform. He was right. Within a month, the state legislature passed and the governor signed a measure to repeal most of New York's notorious Rockefeller drug laws.

Yet the stars have not aligned in New York alone. In Washington, D.C., and across the country, momentum for sentencing reform is growing. Lawmakers can no longer afford to ignore the crisis in our prison system, driven largely by federal and state mandatory minimums.

## Federal bills in motion

In Congress, four important bills have been introduced to reform mandatory minimums, including one measure to repeal all drug-related mandatory sentences. In addition, Senators Jim Webb (D-Va.) and Arlen Specter (R-Penn.) have introduced legislation that would establish a federal commission to review the criminal justice system from top to bottom and offer recommendations for reform. "America's criminal justice system has deteriorated to the point that it is a national disgrace. With five percent of the world's population, our country houses 25 percent of the world's prison population," said Sen. Webb.

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**DID YOU NOTICE THE NEW TAGLINE ON THE COVER? Sentences that Fit. Justice that Works.**

It is what we do and why we matter. Molly Gill, our special projects director, summed it up in those six words. We are about fitting sentences to the crime and the culpability of the defendant so that justice can be achieved in each case. That's right – each case. Not just for drugs but for every crime that carries a mandatory minimum sentence. The American justice system was founded on individualized justice and that is what FAMM seeks – **Sentences that Fit. Justice that Works.**

Every day we're moving closer to that goal. From the halls of Congress to statehouses across the country, policymakers are addressing the costs and consequences of mandatory minimum sentencing policies. That's the upside to this economic downturn – the pressure to reduce corrections expenditures now and for the long-term. The demise of the Rockefeller drug laws in New York is significant, not only because they are the oldest and harshest mandatory minimum drug laws in the country, but because New York is reassuring other states that it's safe and smart to reform mandatory sentencing laws.



Julie Stewart

We have to respond to these new opportunities and that's why we have launched FAMM's May Challenge – to raise \$100,000 in one month! It's a big goal. One that some believe we can't meet, but I think we can. I'm

driven by two things: first, the sentencing reform opportunities popping up all over the country that are begging to be pushed over the edge with a little extra help; and second, my refusal to believe that anything is impossible.

I admit, this economy stinks. FAMM was hit with a double-whammy when the economy collapsed, as did our largest foundation grant when Bernie Madoff tumbled. We're making the necessary adjustments to live within our means, but we can't affect as many lives as we would like to at a time when prospects for improving sentencing policies are popping up everywhere. That's why I need you – to support FAMM, to tell your friends to support us, to visit our website, to join our Facebook page, and to help us seize this moment of hope and opportunity! I know we can do it!

**Staff changes**



**Tom Burkert & William Blake**

FAMM said goodbye to two staff members, Tom Burkert and William Blake, in January.

Tom's work with FAMM began in 1997, not long after his wife, Laura Sager, became FAMM's project director in Michigan. His part-time position eventually became a full-time job for Tom, who enjoyed working with members in Michigan and helping them understand and get involved in FAMM's legislative efforts. After Michigan repealed the 650 Lifer Law in 1998, Tom and Laura moved to Washington, D.C. Tom became FAMM's office manager and was a trusted source of information for thousands of families and prisoners, who wrote and called FAMM's D.C. office for updates. In 2004, Tom and Laura moved back to Michigan and Tom continued to answer prisoner letters until his departure in January 2009. True to

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Since 1991

Mission: FAMM is the national voice for fair and proportionate sentencing laws. We shine a light on the human face of sentencing, advocate for state and federal sentencing reform, and mobilize thousands of individuals and families whose lives are adversely affected by unjust sentences. The *FAMMGram* is published three times a year.

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March 18, 2009

Time is now for drug law reform

“Most sentencing reform efforts fail because legislators get sucked into the fear of being seen as soft on crime if they vote for change. In fact, voting for mandatory minimum reform is not the apocalyptic, career-ending event many legislators think it will be.”

—Opinion editorial by Julie Stewart, FAMM president



February 26, 2009

Urban penalty

“The data is there. It’s in black and white. And it’s been provided by the state [sentencing commission] itself. It has this obscenely racial disparity that cannot be explained away by who’s using drugs. It’s penalizing people based on where they live.

It’s important to address the misconception that this cuts anyone slack—it doesn’t. What people don’t realize is we already have statutes with stiff penalties for selling drugs to minors, and for using kids in drug transactions. We’ve already got those bases covered. We’re just talking about not heaping on another two to 15 years, depending on where your home is located.”

—Barbara Dougan, FAMM’s Massachusetts project director, talking about evidence showing the ineffectiveness and inequity of the Massachusetts school-zone law.



February 15, 2009

Lincoln, Obama and clemency

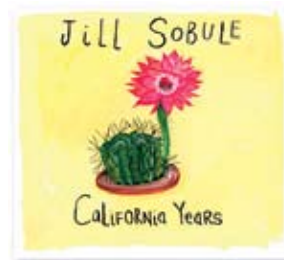
“Many presidents (including our current one) want to be like Abraham Lincoln, and President Obama already has much in common with the Great Emancipator. But to be truly Lincolnesque, Mr. Obama must pardon like Lincoln: frequently, strategically and with a great deal of compassion.”

—Opinion editorial by Molly Gill, FAMM director special projects director

## Sobule supporting FAMM on tour

### JILL SOBULE, A SINGER-SONGWRITER

best known for her 90’s hit, “I Kissed a Girl,” is touring the country in support of her new album, California Years. Jill’s CD received national coverage on CNN, VH1 and NPR’s Marketplace. A strong supporter of FAMM, Jill is raising awareness about sentencing injustice by distributing FAMM postcards at her shows. Come out and see Jill perform and support FAMM. Visit [www.jillsobule.com](http://www.jillsobule.com) for tour dates.



## American Violet

### AMERICAN VIOLET IS A NEW MAJOR MOTION PICTURE

based on the real life story of Regina Kelly, an African-American, single mother of four girls who was arrested in 2000 in a military-style drug raid triggered by untrustworthy informants.

Kelly refused to plead guilty and took her case to trial, where she was represented by Graham Boyd, a lawyer with the ACLU Drug Reform Project. Eventually, the charges against Kelly were dropped (as were the charges against most of the others arrested in the same drug raid due to the same informant’s lack of credibility). The case resulted in a change in Texas state law, whereby now, cases cannot be prosecuted based solely on the claims of a single informant.

Kelly’s on-screen character is named Dee Roberts (played by newcomer Nicole Beharie) and the ACLU lawyer in the film is played by Tim Blake Nelson. Alfre Woodard, Charles Dutton, Will Patton, Michael O’Keefe and Xzibit also star. The town of Melody and certain other characters and events are fictitious. American Violet opened in theaters across the country on April 17.





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Sen. Specter's views on the crisis are equally strong. In a Philadelphia Daily News column he wrote, "I also believe we need to restore judicial discretion in low-level drug cases and other nonviolent crimes. With our federal prisons at 140 percent capacity and with 7.3 million Americans incarcerated or on probation or parole - a number equivalent to 1 in every 31 adults - the issue cannot wait."

### **Obama: Sentencing reform supporter?**

Another star in the firmament is the new president. President Obama is filling up federal departments and agencies with new appointees, many of whom seem more receptive to the arguments FAMM has been making against mandatory sentences. President Obama himself has been the most vocal.

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 nonviolent offenders."

FAMM worked closely with the transition team at the Department of Justice and looks forward to working with President Obama to keep his commitment. Presidential attention and leadership on this issue could be the difference between success and further delay.

### **State opportunities shine**

Nowhere do the stars for reform appear brighter than across the states. Mandatory minimum reform has triumphed in New York State and bills are moving in Minnesota, Connecticut, and Ohio, among others. FAMM is leading the way toward reform in other forward-looking states, including Massachusetts, Michigan and New Jersey.

Just one year after launching a full-scale campaign to reform mandatory minimums in Massachusetts, FAMM-sponsored legislation has been introduced in the state house. FAMM's Massachusetts Director, Barbara J. Dougan, has watched the state's FAMM membership double in just one year and sees momentum growing all across the state government.

In Michigan, FAMM is promoting legislation that will resolve inconsistencies and omissions left over

from historic reforms of the state's mandatory minimum drug laws in 1998 and 2003. Those reforms made Michigan a national leader in smart on crime sentencing policies and had overwhelming bipartisan support. Once again, FAMM's bills enjoy sponsorship by Republicans and Democrats.

Finally, New Jersey's legislature appears poised to enact significant reforms that will eliminate mandatory minimum penalties for violators of the drug-free school zones law. The New Jersey law currently ensnares individuals not involved in the sale of drugs to school children. FAMM has been working to restore the original intent of the law by reducing the size of the school zones and to eliminate the mandatory penalty so that judges can use their discretion when unintended targets get charged.

### **The final frontier**

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 associated with mandatory minimum sentences. This is an especially tough time now since state budgets are being harmed by the general economic downturn.

FAMM has a practical, front-end, and permanent solution - mandatory minimum sentencing reform - that can help states and the federal government climb out of their budget black holes without jeopardizing public safety. Fortunately, some lawmakers are beginning to catch on.

This is an exciting time for FAMM and all proponents of sentencing reform. From Congress to the Justice Department, from the White House to the state houses, it certainly seems like the stars are aligned for major reform. **FG**

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### **Staff changes**

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his kind and conscientious nature, Tom continues volunteering for FAMM and cares about people affected by mandatory sentencing laws.

In the four months he was with FAMM, William helped raise our visibility in the media by responding quickly to sentencing news stories, generating national coverage of the final Bush commutations and placing op-eds on sentencing in The Buffalo News and The Philadelphia Inquirer.

We deeply appreciate the contributions of both Tom and William to FAMM.

# Seizing the moment for justice

Confronted by skyrocketing prison populations, soaring corrections costs and shamefully long sentences for nonviolent prisoners, Congress is responding. As always, FAMM is in the mix, working with legislative staff and pushing for broader sentencing reform. Here are some of the important bills FAMM is following.

## Bill calls for elimination of mandatory minimum drug sentences

**CONGRESSWOMAN MAXINE WATERS** (D-Calif.) introduced H.R. 1466, the Major Drug Trafficking Prosecution Act of 2009, on March 12. The bill would eliminate all mandatory minimum sentences for drug offenses, curb federal prosecutions of low-level drug offenders, and allow courts to place offenders on probation or suspend their sentence.

Rep. Waters is a longtime advocate for sentencing reform, sponsoring bills to reform mandatory minimum drug sentences in previous Congressional sessions. In

a speech to Congress, Rep. Waters observed that mandatory minimums have “utterly failed to achieve Congress’s goal” of stopping major drug traffickers. She told her colleagues that repeal was not unprecedented, citing FAMM’s 2008 report, “*Correcting Course: Lessons from the 1970 Repeal of Mandatory Minimums*,” which describes how Congress first enacted mandatory drug sentences in the 1950s, then repealed them 20 years later because they failed to reduce drug trafficking.



Rep. Maxine Waters

## Webb commission to study criminal justice system

**ON MARCH 26, SENATOR JAMES WEBB** (D-Va.) introduced S. 714, the National Criminal Justice Commission Act of 2009, legislation that would create a blue-ribbon commission charged with conducting an 18-month, top-to-bottom review of the nation’s entire criminal justice system and offering concrete recommendations for reform. The bill would create an 11-member commission, nominated by the majority and minority leaders in the House and Senate, and the Democratic and Republican Governors Associations. The chairperson would be appointed by President Obama.

Among the commission’s duties are a comparison of incarceration policies in countries with similar politi-

cal systems and an examination of current drug policy and its impact on incarceration, crime and violence, sentencing, and reentry programs.

In a statement on the legislation, the principal Republican cosponsor of the bill, Senator Arlen Specter (R-Penn.), ranking member of the Senate Judiciary Committee, outlined the outcomes he hopes to see from the commission, including the proper role of incarceration as a means to achieve accountability and public security.

FAMM is a leading organization developing support and working for passage of the legislation.



Sen. Jim Webb

## Good time legislation would restore pre-1986 federal good time policy

**ON MARCH 12, REP. DANNY DAVIS** (D-Ill.) introduced H.R. 1475, the Federal Prison Work Incentive Act of 2008, a bill that would substantially revive the good time system that existed before November 1, 1987.

As defined in H.R. 1475, good time credit is the amount of time a prisoner, whose incarceration record shows substantial observance of Bureau of Prisons (BOP) regulations, is eligible to have deducted from the term of his or her sentence. The amount would vary, depending on the length of the prisoner’s sentence, among other things.

Congressman Davis’s proposal would increase earned good time, restore “industrial” good time (providing for additional opportunities to reduce one’s sentence by engaging in work opportunities), allow forfeiture of all good time credit in the event of infractions in prison, and provide for potential restoration of forfeited good time credit.

Although H.R. 1475 technically would apply to all prisoners sentenced on or after November 1, 1987, it would not be retroactive. It would not recalculate good time already earned under the current system.



Rep. Danny Davis

## Crack cocaine reforms in Congress



Rep. Bobby Scott, Julie Stewart and Rep. John Conyers



Rep. Sheila Jackson Lee and Karen Garrison, FAMM member

**THREE BILLS IN THE HOUSE** of Representatives would address, in varying degrees and different ways, the deeply unjust consequences of the Anti-Drug Abuse Act of 1986, which created federal mandatory minimums for drug offenses and imposed disparate sentences for possession or use of two forms of cocaine: powder cocaine and cocaine base, or crack.

H.R. 1459, the Fairness in Cocaine Sentencing Act of 2009, introduced by Rep. Robert “Bobby” C. Scott (D-Va.), would treat crack and powder cocaine identically and eliminate mandatory minimums for cocaine offenses.

H.R. 265, the Drug Sentencing Reform and Cocaine Kingpin Trafficking Act of 2009, introduced by Rep. Sheila Jackson Lee (D-Texas), would eliminate the man-

datory minimum for simple possession of crack cocaine, raise the crack quantity that triggers a five-year mandatory minimum to the level of powder cocaine required to trigger the same sentence, and authorize funds for substance abuse treatment.

A third bill H.R. 79, introduced by Rep. Roscoe Bartlett (R-Md.), would equalize the crack and powder cocaine sentences by lowering the triggering quantities for the powder cocaine mandatory minimums to those for crack cocaine. FAMM agrees with the congressman that the disparity is unjust, but does not support his proposed solution.

FAMM anticipates legislation will be forthcoming in the Senate that will also address the cocaine sentencing disparity. We are working closely with members of Congress and are a member of the Crack the Disparity Coalition, which is urging the 111th Congress to act swiftly to reform the federal cocaine penalty structure.

## Other sentencing bills in Congress

**H.R. 1529, the Second Chance for Ex-Offenders Act of 2009.** On March 6, Rep. Charles Rangel (D-NY) introduced legislation that would permit expungement of records of certain nonviolent criminal offenses.

Two bills have been introduced in response to the convictions of two Border Patrol agents, Jose Compean and Ignacio Ramos. On February 3, Congressman Ted

Poe (R-Texas) introduced **H.R. 834, the Ramos and Compean Justice Act of 2009.** The bill would exempt law enforcement officers from the mandatory minimum sentences of five, seven and 10 years for possession or use of a firearm in connection with a crime of violence if the firearm was authorized to be carried for the performance of their job and was used in relation to the performance of their job to commit a crime of violence.

On February 4, Congressman Kevin Brady (R-Texas) introduced **H.R. 866, the Law Enforcement Protection Act.** The bill would provide an exception to mandatory minimum sentence requirements for a law enforcement officer who uses, carries, or possesses a firearm during and in relation to a crime of violence committed while pursuing or apprehending a suspect.

Rep. Sheila Jackson Lee (D-Texas) introduced **H.R. 61, the Federal Prison Bureau Nonviolent Offender Relief Act of 2009** on January 6. The bill would direct the Bureau of Prisons to release individuals from prison who have served 50 percent or more of his or her term of imprisonment if that prisoner (1) is 45 years of age or older; (2) has never been convicted of a crime of violence; and (3) has not engaged in any violation, involving violent conduct, of institutional disciplinary regulations.

### How a federal bill becomes a law

Remember that bills do not become law until they pass both the House of Representatives and the Senate and are signed by the president. If the House and the Senate pass different versions of the same overall legislation, then typically a special conference committee composed of representatives of both chambers meets to try to settle the differences. If they reach agreement, the compromise is sent back to the floors of the House and Senate for a final vote. If both bodies approve it, the compromise is sent to the president.

The bill has to travel through Congress and be signed by the president during the congressional term in which they are introduced. Each congressional term is two years. If the bill does not pass both the House and Senate and get signed by the president before the end of Congress, the bill does not become law.

## US Sentencing Commission hears from FAMM in Atlanta

**KICKING OFF A SERIES** of regional public hearings across the country, the United States Sentencing Commission began its tour in Atlanta on February 10-11. The Commission is holding public hearings to gather feedback on federal sentencing practices and the operation of the federal sentencing guidelines from a wide range of witnesses: judges, law enforcement, prosecutors, defense attorneys, community interest groups (including FAMM), and sentencing experts.

Although the hearings are about the U.S. sentencing guidelines, mandatory minimum sentencing laws seemed to be the focus of many witnesses, including FAMM and a panel of federal judges.

Monica Pratt Raffanel, FAMM communications director, represented FAMM members on the community interest group panel, urging the Sentencing Commission to update its seminal 1991 report on mandatory minimums and to call on Congress to eliminate mandatory sentencing laws from federal criminal law. She was supported by 11 FAMM members who traveled to Atlanta to attend the hearing.

Four federal trial judges, Chief Judge Bob Conrad (Western District of North Carolina), Judge Gregory Presnell (Middle District of Florida), Chief Judge Robert Hinkle (Northern District of Florida), and Chief Judge William Moore (Southern District of Georgia) eloquently criti-

cized mandatory minimum sentencing laws.

“Sentencing decisions are always difficult, but the required application of mandatory minimums in cases where they are not warranted is repugnant,” said Judge Conrad. “Last year, I was forced to impose a life sentence on a low-level drug conspirator in a large-scale drug-trafficking ring. The sentence was not just and served no statutory purpose. I can tell you that I did not sleep well the night before the sentencing hearing knowing what was coming; afterwards, I did not feel that I had contributed to the furtherance of a just society.”

Complaining about the amount of power given to prosecutors when Congress enacted mandatory minimums Judge Hinkle said, “The theory, apparently, is that the prosecutor is better able to determine whether the defendant has substantially assisted the government. It is a curious theory. One might have thought the Constitution allocated fact finding to judges and juries in part because they are unbiased. Letting the prosecutor decide the facts without disclosing all of the information on which the decision is based is a dramatic departure from the usual approach.”

FAMM Litigation Advisory Board member Ronald Wright, a law professor of at Wake Forest University School of Law, also testified on a panel devoted to the views of academics.

For a full list of panelists and to read testimony from the Atlanta hearing, visit [www.ussc.gov/AGENDAS/20090210/20090210\\_Agenda.htm](http://www.ussc.gov/AGENDAS/20090210/20090210_Agenda.htm).

## Dozens visit Capitol Hill, hundreds call in support reform “Crack the Disparity” month activities a hit

**DOZENS OF CITIZENS**, advocates and FAMM members headed to Capitol Hill on April 28 to visit their federal lawmakers and call for an end to the ineffective, racially discriminatory crack cocaine sentencing laws. Hundreds more called their lawmakers on April 23 to make sure federal lawmakers heard the message loud and clear: the cocaine sentencing disparity must go!

Organized by the Crack the Disparity Coalition, of which FAMM is a member, the visits and calls to Congress were part of a month-long coordinated push to eliminate the sentencing disparity between crack and powder cocaine. FAMM members asked Congress to eliminate the dispar-

ity between crack and powder cocaine sentences because the current law:

- overstates the relative danger of crack cocaine to powder cocaine;
- contributes to the growth of our prison population;
- disproportionately affects African Americans, and
- uses limited federal resources on low-level street dealers rather than on the major drug traffickers.

FAMM will update members on the progress of these efforts at [www.famm.org](http://www.famm.org) and in the Fall *FAMMGram*. **FG**



# New York leads the way

*For states embracing sentencing reform*



## Start spreading the news...

**New York is repealing many of its mandatory minimum drug sentences, known as the Rockefeller drug laws.**

Since 1973, New York's Rockefeller drug laws have packed prisons, often with nonviolent, first-time drug offenders. On March 27, New York Governor David Paterson, Assembly Speaker Sheldon Silver, and Senate Majority Leader Malcolm Smith announced a deal that reforms some of the worst injustices of New York state drug sentencing laws. The deal will restore judicial discretion in most drug cases, expand drug treatment and alternatives to incarceration, and provide retroactive sentencing relief for people serving prison time for low-level drug offenses.

Advocates are celebrating this momentous step forward, while acknowledging that work remains to repair all of the wrongs caused by mandatory sentencing laws. "This is the beginning of the end of the Rockefeller Drug Laws," said Caitlin Dunklee, director of the Drop the Rock Coalition in New York.

## One in 31 under criminal justice control

A recent report by Pew Center on the States shows why the lawmakers are embracing sentencing reform. One in 31 Americans are under some form of criminal justice control – in prison, on probation or on parole – and one in 100 are in prison or jail. The cost of this over-reliance on corrections is staggering – last year it was the fastest expanding major segment of state budgets, and over the past two decades, its growth as a share of state expenditures has been second only to Medicaid. State corrections costs now top \$50 billion annually and consume one in every 15 discretionary dollars.

A driving force in skyrocketing prison populations is mandatory minimums. Many states and the federal government followed New York's lead and enacted mandatory minimums in the 1970s and 1980s, believing these "one-size-fits-all" sentences would dry up the drug supply and eliminate drug addiction. Sadly, mandatory minimums in New York and elsewhere have the opposite effect, filling prisons with drug addicts instead of drug kingpins, and causing the erosion of faith in the fairness of the criminal justice system because of severe racial disparities caused by these laws.

## States embrace reform

States all around the country are waking to the idea that mandatory minimum sentences lead to bloated budgets, fail to protect public safety, and are, plain and simple, bad criminal justice policy. After 36 years, New York is joining the growing number of states that recognize the harmful and disproportionate nature of mandatory minimums. From Michigan's mandatory minimum drug reforms in 1998 and 2003, to Nevada's decision to repeal mandatory sentencing enhancements and expand "good time" eligibility in 2007, sentencing reform is flourishing.

# Massachusetts

## FAMM's state bills kick off campaign

FAMM's Massachusetts campaign for sentencing reform is underway! Already, state lawmakers filed two bills drafted by FAMM for Massachusetts' 2009 - 2010 legislative session (see below). Members are using our Action Center to write letters to legislators in support of the bills and sentencing reform, generating hundreds of letters in a month. It's an exciting time to be involved with FAMM in Massachusetts.

### Our bills

**Mandatory minimum repeal bill (House 1755/Senate 1740).** This bill would repeal all mandatory minimum sentences for drug offenses. Judges could impose sentences that fit the facts of each case, including probation or shorter sentences than are now allowed. The bill would also allow drug offenders, including those now in prison, to apply for parole, work release and "good time" credits. Rep. Benjamin Swan (D-Springfield) sponsored the House version, while Sen. Thomas McGee (D-Lynn) sponsored the Senate version.

**School zone reform bill (House Bill 1754).** This bill would reduce the size of school zones to 100 feet and would not apply to drug offenses that occur at a home located in a school zone (although the offense itself could still be prosecuted). Both of these changes would greatly reduce the overly harsh sentences that urban residents receive. In addition, school zone sentences could be served at the same time as other sentences. This bill was only filed in the House, where Rep. Swan is the lead sponsor.

### FAMM meets with Patrick Administration

Governor Deval Patrick is expected to file bills on several criminal justice issues. Gov. Patrick previously made important statements about the need to overhaul the state's mandatory minimum drug sentencing laws and to focus more on drug treatment rather than lengthy prison sentences for nonviolent drug offenders. In March, FAMM met with high-ranking Public Safety officials and urged the Patrick Administration to more actively support sentencing policies that are fair, fiscally responsible and promote successful reentry.

## What happens next?

The FAMM bills have been assigned to the Judiciary Committee. We will notify our members as soon as a hearing date is scheduled. For a description of each bill and fact sheets explaining the need to reform Massachusetts' drug sentencing laws, please go to our website or contact FAMM's Massachusetts Project. The legislative process is complicated and usually slow. FAMM's chart, "How Laws are Made in Massachusetts," shows 10 major steps. FAMM will keep you updated on the status of each bill. You can follow along on our website or by contacting Massachusetts Project Director Barbara Dougan.



Banner by Massachusetts FAMM member Francisco Carmona.

Don't miss important announcements – be sure to sign up for Massachusetts email alerts by visiting [www.famm.org/AboutFAMM/ContactUs.aspx](http://www.famm.org/AboutFAMM/ContactUs.aspx).

## New school zone report

The Prison Policy Initiative released a new study, *Reaching Too Far, Coming Up Short: How Large Sentencing Enhancement Zones Miss the Mark*. It looks at statewide figures on the hundreds of prisoners serving school zone sentences and the enormous cost to the public. Massachusetts Project Director Barbara Dougan was interviewed about the report by the Bay State Banner, the Valley Advocate and Boston's Neighborhood Network News. For a copy of the report, go to [www.prisonpolicyinitiative.org/toofar/](http://www.prisonpolicyinitiative.org/toofar/).

For more information on the Massachusetts FAMM campaign, contact Barbara Dougan at (617) 543-0878, [bdougan@famm.org](mailto:bdougan@famm.org), or write to P.O. Box 57, Newton, MA 02468.

## Welcome home

Marie Russo's son Sal was released this spring after serving a 15-year mandatory minimum sentence. For over 10 years, Marie served as FAMM's volunteer coordinator for Massachusetts and is still one of our most active members. Even though her son did not benefit from her hard work, Marie has no plans to "retire." "I'll keep on working," said a determined Marie, "because there are so many prisoners who don't have anyone to fight for them."

## Michigan

### Bills seek earlier parole eligibility for deserving prisoners

The FAMM reform package is off to a strong start this year, with bipartisan bill sponsors and a package of bills that is ready to go. Representatives Bert Johnson (D-Detroit), Dan Scripps (D-Leland), Rick Jones (R-Grand Ledge) and Eileen Kowall (R-White Lake) are each sponsors of one of the four bills in the package and Noah Smith, FAMM's lobbyist in Michigan, is working to move the bills through the early stages of the legislative process.

In 1998 and 2002, Michigan legislators enacted sweeping reforms of the harshest mandatory minimum drug laws in the United States. Those reforms made Michigan a national leader in smart on crime sentencing policies and had overwhelming bipartisan support. The 2009 package of bills will resolve technical problems, inconsistencies, and omissions in the law from those reforms, especially in those provisions affecting parole eligibility.

As with the 2003 reforms, the provisions only allow the parole board to consider individuals – the bills do not change sentences or guarantee release on parole. The parole board still determines an individual's suitability for release on parole.

The new bills will:

**EXTEND** the 2003 earlier parole eligibility provisions to some individuals serving consecutive sentences for under-50 gram offenses (consistent with 2003 reforms).

**PROVIDE** earlier parole eligibility provisions for individuals serving consecutive drug sentences.

**PROVIDE** earlier parole eligibility for some individuals serving life for drug offenses who had prior low-level drug offenses.

**CONFORM** parole eligibility for all individuals sentenced for over 650 gram drug offenses before 2003.

**REPEAL** redundant, rarely used remaining mandatory minimums for drug offenses, including life without

parole for certain repeat drug offenses. In the future, individuals would be sentenced under the habitual felon provisions, as are individuals convicted of all other repeat crimes.

**PROVIDE** parole eligibility for individuals serving life without parole for a repeat drug offense, consistent with 1998 reforms of drug lifer law.

The Michigan economy is in dire straits and legislators are hoping to trim corrections costs. Making more nonviolent drug offenders eligible for parole earlier makes good sense, especially in light of the success of the 1998 and 2003 reforms.

FAMM was very disappointed that this package stalled in the eleventh hour last session, but the bills have been thoroughly vetted and, hopefully, this process will be much speedier this session.

### What you can do

As soon as the bills receive new numbers, we will let you know via email and the FAMM web page. Since there are 44 new members in the House of Representatives, it will be important to write them to indicate your support of these bills, when we let you know the time is right. In the meantime, it will be helpful to take any opportunity to speak with your local representatives about the bill package. Michigan members with questions or concerns should write the Washington, D.C., FAMM office, and put "Attention: Michigan" on the envelope.

### Member receives commutation

Ibis Lazo, sentenced to two consecutive "650 Life" sentences, is now at home with her family. Our great thanks to Margaret Raben, FAMM attorney volunteer, for her continuing work to support commutations for FAMM members.

## Nevada

### FAMM brings "safety valve" to Nevada

FAMM recently began work in Nevada to reform a variety of its mandatory minimum laws. The work paid off quickly when Assemblyman Bernie Anderson, on behalf of the Assembly Judiciary Committee, introduced a reform bill on March 23.

## In memoriam

Retired Oakland County **JUDGE DAVID BRECK**, a longtime champion of justice and FAMM supporter, died after a brief battle with leukemia. His support and guidance will be greatly missed.

The bill, AB 498, proposed a “safety valve” for the courts, allowing judges to sentence below the mandatory minimum when he or she deems it appropriate. Judges would consider the facts and circumstances of the offense, the individual’s criminal history, the impact of the offense on any victim, mitigating factors, and any other relevant information, before using the safety valve.

In Nevada, mandatory minimum sentences only apply to certain crimes, including many drug and property offenses. The bill covered some, but not all, crimes that have mandatory minimum sentences, including drug trafficking, drug conspiracy, repeat burglaries, and repeat gaming offenses. Crimes against children, sexual offenses, crimes against people (murder, assault, domestic violence, etc.), and drunk driving offenses were not covered.

There is evidence that Nevada judges would be willing to utilize a safety valve in appropriate circumstances. In 2007, 42 out of 72 drug trafficking offenders in Clark County (Las Vegas) received minimum sentences of one or two years, the lowest possible sentence permitted by statute. If judges already give prisoners the shortest sentence possible, the safety valve will allow them to sentence below those minimums when those minimums are too long.

On April 8, the Assembly Judiciary Committee tabled the bill, but FAMM will continue cultivating the safety valve legislation in Nevada.

## New Jersey

### Final push for school zone reform

FAMM is slowly moving closer to giving courts discretion when sentencing defendants under the drug-free school zone law. In June 2008, the New Jersey Assembly passed A-2762 and took a huge step toward adopting school zone reform. Since then, FAMM members and allies have concentrated on getting an identical companion bill, S-1866, passed in the state Senate. This bill was introduced by Senators Raymond J. Lesniak (D-Bergen) and Sandra B. Cunningham (D-Hudson) and was referred to the Senate Judiciary Committee for Legislative Action.

Joseph Greer, NJ campaign director, FAMM lobbyist Lynn Nowak, and Deborah Fleischaker, FAMM’s director of state legislative affairs, have been meeting with members of the Senate Judiciary Committee, key Republican and Democratic Senate members, executive and legislative staff members, and organizational leaders to encourage the senate to pass this bill.

The current drug-free school zone law imposes a mandatory three-to-five year sentence for distributing, dispensing or possessing with intent to distribute a controlled dangerous substance within 1,000 feet of a school. Courts must impose lengthy and costly mandatory minimum terms without considering other mitigating factors. With approximately 10 percent of all New Jersey prisoners, or 2,556 people, currently serving a mandatory minimum under the drug-free school zone law, the law is enormously expensive. Based on the mandatory minimum term alone, these 2,556 offenders will cost New Jersey between \$98 and \$295 million.

If passed, these bills will help New Jersey improve public safety, reduce recidivism and address racial disparity in the prison system. In addition, it will save valuable tax dollars. The bills are supported by Governor Jon Corzine, Attorney General Anne Milgram, The New Jersey Commission to Review Criminal Sentencing, GEAR Task Force on Sentencing and Corrections and prosecutors throughout the state’s 21 counties.



## Ohio

### Ohio prosecutors support elimination of many drug mandatory minimums

Ohio’s county prosecutors publicly recommended on March 23 that mandatory prison sentences for drug crimes be removed, except in the most serious cases.

According to John E. Murphy, executive director of the Ohio Prosecuting Attorneys Association, “we do support a lot of mandatory penalties that deal with violence. But for crimes like drug trafficking, we have some reservation about whether there should be a mandatory prison sentence.” In addition, the prosecutors suggest expanding diversion options and giving judges more flexibility in sending second-time drug offenders to treatment instead of prison.

While the prosecutors’ proposals are designed to counter a proposal made by the Strickland administration to increase “earned credit” in order to ease prison overcrowding in the state, the fact that the prosecutors are acknowledging that mandatory minimums generally are unnecessary is significant. According to David Diroll, head of the Ohio Criminal Sentencing Commission, the prosecutors’ proposal is “an historic change.” **FG**



## PART IV: Get support for your commutation petition

# Steps for filing your commutation petition

*Now that you've built your community of supporters, stirred up media interest, and written your petition, it's time to gather support letters to add to your petition.*

### FIRST STEP

#### DECIDE WHO YOU WILL ASK FOR SUPPORT.

Ask everyone on the “master list” of potential supporters you created back in Part I to write a support letter. Also consider seeking letters of support from the sheriff, police chief, or federal agent who investigated and arrested you; the mayor of your hometown; successful community or business leaders in your hometown; clergy and members from your place of worship; former employers or coworkers, and any mental health or drug treatment professionals who can write about your successful rehabilitation or treatment.

Support letters from your judge, the U.S. Attorney, and your legislators are particularly important to include in a commutation petition. Ask them to write a support letter on your behalf and include a support raising packet with your letter (see below). Ask your outside advocate or attorney to follow up with a phone call or a meeting to ask for their support in person. Have the prosecutor, judge and legislators send their letters to the Office of the Pardon Attorney and the White House. If they won't write a support letter, ask them if they would instead write a letter that says only that they “do not object” to a commutation.

### SECOND STEP

#### GIVE PEOPLE A “SUPPORT RAISING PACKET”

The packet should show people how to write support letters on your behalf. Include a brief profile of your case and a photo of you; a sample support letter; your outside advocate's contact information (address, phone, and email), and an envelope that is stamped and addressed to your outside advocate (your supporters will use this to send their letters to your outside advocate).

The profile of your case should look something like the “Profiles of Injustice” you see in FAMM's newsletter (see p. 14).

The sample support letter should include:

1. Blank space for people to describe how they know you;
2. An explanation of why your sentence is too long and why you deserve a commutation, and
3. Blank space for people to describe how, if at all, they will help you if you are released.

Supporters should send their letters to the outside advocate first, not the Office of the Pardon Attorney. This way, the outside advocate can review them and remove letters that are incomplete or unhelpful. The outside advocate should mail all helpful and complete letters to the Office of the Pardon Attorney. Keep copies of all letters.

### FINAL STEP

#### BE PATIENT. DON'T GIVE UP.

It can take two to seven years before you get a final decision from the Pardon Attorney. Keep gathering support and sending in your letters. Check on the status of your petition by writing to Office of the Pardon Attorney, 1425 New York Avenue N.W., Suite 11000, Washington, D.C. 20530.

For more in-depth guidance, read FAMM's commutations guidance online at [www.famm.org/Programs/Commutations.aspx](http://www.famm.org/Programs/Commutations.aspx).

## Seeking safety valve stories

As the 15th anniversary of the federal safety valve approaches, FAMM is seeking people who benefitted from one of our greatest legislative victories. Did you or someone you know receive a sentence reduction because of the safety valve that was passed in 1993? If so, please share your story with Molly Gill, Special Projects Director, FAMM, 1612 K St. N.W., Suite 700, Washington, D.C. 20006 or email [mjill@famm.org](mailto:mjill@famm.org).

## Brief encourages “rule of lenity” in gun case

One of the most disputed criminal laws is the federal gun statute, found at 18 U.S.C. § 924(c). This spring it was once again at the center of a challenge in the United States Supreme Court in *Dean v. United States*, No. 08-5274.

The federal gun statute sets out three mandatory minimums for firearm use. A person convicted of possessing a gun during or in relation to a drug crime or crime of violence must be sentenced to a five-year mandatory minimum sentence, above and beyond the sentence for the drug or violent crime. If the weapon is brandished, the mandatory minimum increases to seven years, and if it is discharged, the sentence increases to 10 years.

FAMM, the National Association of Criminal Defense Lawyers and the National Association of Federal Defenders joined in an amicus (friend of the court) brief, explaining why the Supreme Court should rule on behalf of Christopher Michael Dean and reduce his mandatory 10-year sentence to seven years.

It was undisputed that Mr. Dean, while robbing a bank, accidentally fired the gun he was brandishing. The issue presented to the Supreme Court was whether the law requires the defendant to have intended to shoot the gun or if a mere accident is enough to trigger the 10-year mandatory minimum for firing the weapon.

Traditionally, criminal law requires that a person cannot be punished for an offense unless he has the “*mens rea*” – the guilty mind or wrongful purpose – to commit the offense. A *mens rea* requirement is particularly essential in the case of mandatory minimum sentences because without it, the judge is prohibited from imposing the sentence that fits the offense, even if the judge believes the defendant does not deserve a 10-year sentence for an accident.

The arguments in this case centered on whether Congress intended a *mens rea* requirement for the 10-year mandatory minimum and, if not whether it should be presumed to be required. The statute sets out a stepping stone series of mandatory minimums, ranging from less to more severe depending on the severity of the offense. Congress clearly required intent for the possession (five-year) and brandishing (seven-year) sections in the wording of the statute.

FAMM’s brief argued “[w]ith respect to the less severe penalties, it is undisputed that Congress has required intent. In that context, it is fair to conclude that Congress did not intend to impose the most severe penalty on accidental conduct.”

The FAMM brief encouraged the Supreme Court to look at the gun statute in the context of the requirement of the generic sentencing statute, 18 U.S.C. § 3553(a), which directs a court to consider the “circumstances of the offense,” among other considerations. One circumstance that the judge would consider is whether the discharge was intentional.

If the court does not agree that the statute on its own requires *mens rea* before the 10-year mandatory minimum can be imposed, we argued that the law is at least ambiguous. Ambiguous laws that impose different penalties depending on how they are interpreted must be read in the way most favorable to the defendant. Applying this “rule of lenity” would result in lowering the sentence from ten years to seven years for brandishing the gun.

The *Dean* case was argued on March 4 and an opinion is expected before the Court ends its term on June 30.

FAMM gratefully acknowledges David Salmons and Robert B. Zener from the Washington D.C. law firm of Bingham McCutchen LLP and the guiding hand of Peter Goldberger, dean of our Litigation Advisory Board. **FG**

### Frequently Asked Questions to the rescue!

Do you have a question about newly enacted federal legislation, like the Second Chance Act? Want to know what a Bureau of Prisons policy statement really means, and who it affects? Then check out the Frequently Asked Questions (FAQ) section of our website. Current fact sheets include:

- BOP’s Elderly Offender Home Detention Pilot Program
- Federal good time credit
- Tips for an effective meeting with Congress
- Tips for an effective meeting on crack cocaine sentencing
- The Second Chance Act
- Crack cocaine amendment retroactivity
- Filing a commutation petition
- Compassionate release
- How to find and work with a lawyer

Visit <http://www.famm.org/UnderstandSentencing/FrequentlyAsked-QuestionsFAQ.aspx> to download these resources. Note: You need Adobe’s free Acrobat Reader to view the files.

## is justice being served?

The following federal and state cases represent FAMM's "profiles of injustice." Are you or a loved one serving a mandatory sentence in federal or state prison? If so, we need you to help to show the human face of sentencing injustice. Please request a profile form from FAMM c/o Profile Researcher, 1612 K St., N.W., Suite 700, Washington, DC, 20006.

### DANETTE MAYFIELD (Federal)

**A SINGLE MOTHER OF TWO**, Danette met a handsome football player at a prestigious local university and fell in love with him. He was also a drug dealer, importing large quantities of drugs into North Carolina since 1995. Danette soon developed a drug addiction and became involved in her boyfriend's drug business, letting him and his associates store drugs and guns in her residence, then delivering money to him, and selling drugs he gave to her. Several months into the relationship, Danette tried to leave her boyfriend, but he threatened her life. Only eight months after Danette

met her boyfriend, she was charged in federal court with money laundering and conspiracy to distribute cocaine, cocaine base, and marijuana. Danette pled guilty and was held accountable for 1.5 kilograms of cocaine base, the same amount the government attributed to the entire organization.

Though Danette sold small amounts of drugs, she received a longer sentence than any of her codefendants: 24 1/2 years in federal prison. Almost all of Danette's 13 codefendants are now free. Her boyfriend, the leader of

the entire organization, was sentenced to 14 years but served only 10 years before his release.

While incarcerated, Danette has overcome drug addiction and completed numerous college courses in business, law and accounting. She volunteers at the children's center in the prison and receives outstanding work reports.

Danette's family has been deeply impacted by her absence. Her son has a malignant brain tumor, has undergone three surgeries, and is cared for by Danette's cousin, who is often absent due to military duty. Danette's daughter was only 19 months old when her mother was incarcerated and is now a teenager. Danette says her children are "the reason why I have not given up...the reason that I push daily to become a better person and have now made these changes in my life." Danette's projected release date is in 2019.

### ERIC DUPHILY (Massachusetts)

**AFTER GRADUATING FROM HIGH SCHOOL**, Eric found full-time employment with a local contracting company and got engaged to his longtime girlfriend. Unfortunately, youthful

recreational drug use spiraled into a serious cocaine addiction that drove Eric deep into debt to a drug dealer. The dealer promised to forgive the debt if Eric would sell cocaine for him. Eric agreed and sold small amounts of the drug to friends and acquaintances over the next two years. Eric

managed to hide his drug problem from family members, who saw him happily engaged and gainfully employed. In 2003, a person facing drug charges made a deal with the police to make controlled buys of cocaine from Eric, in exchange for a reduced sentence. When the police arrested Eric, they found over 200 grams of cocaine and a small amount of marijuana (less than 1/10 of an ounce) in his apartment. Eric pled guilty and was sentenced to 13 years in prison, with a 10-year mandatory minimum. His fiancée was threatened with a 15-year mandatory minimum because she lived with Eric, but prosecutors agreed to give her probation when Eric pled guilty. Eric has not heard from her since 2006.

Since his incarceration, Eric has turned his life around. He is a peer educator in the Alternatives to Violence Project and is certified to teach fellow prisoners about the risks of HIV and other diseases. Although he is still on the waiting list for an intensive addiction treatment program, Eric has faithfully attended Narcotics Anonymous meetings since 2005. Eric deeply regrets the impact his poor choices have had on his family, especially his mother, whom Eric calls his "biggest support." Eric's projected release date is in 2017. **FG**



Danette with her children



Eric with his mother and aunt

## FAMM is on Facebook!

We invite you to join us on this popular social networking site and help spread FAMM's message of sensible sentencing to all of your family and friends.

FAMM has three official pages on Facebook:

**NONPROFIT PAGE** Learn more about FAMM and mandatory minimum sentencing laws, see pictures documenting FAMM's history, and participate in upcoming FAMM-related events. Become a "fan" of FAMM and encourage your friends and family to get involved!

**GROUP PAGE** Explore information on sentencing and FAMM's programs, share your experiences with others, and participate in discussions.

**CAUSE PAGE** Recruit people you know to FAMM's cause. You can pledge to donate, recruit supporters, and raise money for FAMM.

If you're not already on Facebook, all it takes to join is an email address! Visit [www.facebook.com](http://www.facebook.com) and follow the directions, then search for FAMM. It's easy and free!

## Crime Summit seeks new approach to criminal justice policies

**ON THE SAME DAY THAT NEWSPAPERS** were reporting that one in 31 American adults is caught up in the correctional system, Rep. Robert "Bobby" Scott, chairman of the House Judiciary Subcommittee on Crime, Terrorism and Homeland Security, hosted a Crime Summit in Washington, D.C. with the goal of developing a more enlightened approach to crime. The half-day event on March 3 addressed three broad issues: prevention and intervention, sentencing and alternatives, and reentry and collateral consequences. FAMM participated in the summit.

The sentencing and alternatives panel focused on the reasons behind the incredible growth in the number of people in prison, and those who are otherwise involved in the criminal justice system. The panelists brought three distinct perspectives, for the most part blaming the inflexible and harsh mandatory minimum sentencing regime for growth in the U.S. correctional system.

U.S. District Court Judge Nancy Gertner expressed frustration at the lack of discretion and being unable to weigh the culpability and characteristics of an offender when handing down a sentence. "I don't know if anyone can understand what it's like to sentence a defendant to a sentence which you know to be manifestly unfair."

Kemba Smith, president of the Kemba Smith Foundation and a member of FAMM, shared her story as someone who was sentenced under the laws, receiving 24 ½ years for a first-time, nonviolent crack cocaine offense.

Jim Felman, co-chair of the American Bar Association's Criminal Justice Section and practicing defense attorney, called on Congress to eliminate mandatory minimums and to increase the availability of alternatives to incarceration, including diverting or treating some low-level offenders.

Other panels on prevention, intervention, reentry and collateral consequences explored some of the toughest challenges facing people in the criminal justice system today.

To read the report, Smart on Crime: Recommendations for the Next Administration and Congress, please visit: [www.2009transition.org](http://www.2009transition.org). **FG**





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*Sentences that fit. Justice that works.*

## Take the May Challenge!

Times may be tough, but sentencing reform doesn't stop just because of an economic downturn. The time is ripe for wide-spread change, and FAMM is right in the middle of the action. But unless FAMM has your support, we can't make reform a reality! This May we're aiming higher than ever before. We need your help to:

### **RAISE \$100,000 IN 31 DAYS!**

Rise to the challenge today:

- **Donate to FAMM!** Send us a check, or go to [www.famm.org](http://www.famm.org).
- **Tell your friends to donate to FAMM** – the prison and state with the most donors will get special recognition in the next *FAMMGram*!
- **Ask your place of worship** to take up a collection for FAMM!
- **Ask your employer** to match your donation to FAMM!
- **Become a matcher** and match the gifts of others!
- **Host a movie party at your house!** Invite your friends to watch the film *Perversion of Justice*, collect donations, and send them back to us! (Call FAMM to request a free copy of the film.)

*This is a team effort, so get everyone you know involved. We can't do this without you!*

