

Testimony of Julie Stewart
President
Families Against Mandatory Minimums
To the United States Sentencing Commission
Public Hearing on Proposed Amendments to the Federal Sentencing Guidelines
March 13, 2014
Washington, D.C.

Judge Saris and Commissioners, thank you for inviting me to testify today on behalf of Families Against Mandatory Minimums (FAMM). I founded FAMM in 1991 to bring together opinion leaders, citizens, prisoners and their families to challenge inflexible sentencing laws. FAMM has appeared before the Commission from those very early days. Today, FAMM's board, staff and 75,000 supporters continue the fight for smart sentencing laws that treat defendants individually while maintaining public safety.

I am pleased to share our views with you on the proposed amendment to the Drug Quantity Table, a change we have long championed and whole-heartedly support. FAMM was an active advocate in the Commission's work to lower the crack cocaine guidelines by two levels in 2007, and we strongly support the similar effort today to lower the base offense levels for all drug sentences by two levels.

We believe the Commission got it wrong when it not only tied the guidelines to mandatory minimum sentences, but made the lowest possible guideline sentence higher than the mandatory minimum. We view the proposed amendment as a modest correction, not a major change in policy.

Arguments in favor of the current drug guidelines make little sense when viewed against the facts. The guidelines were intentionally set above the statutory mandatory minimums to provide prosecutors bargaining chips when seeking to induce guilty pleas and cooperation. Putting aside the criticism that increased prison terms should not be imposed as a penalty for going to trial (the ease of securing a guilty plea not among the purposes of sentencing according to federal law), evidence from post-2007 crack cocaine guideline sentences undermine that rationale. The Commission's data show that guilty pleas remained stable; the 2007 crack amendment had no impact of the trial rate of crack cocaine defendants. Beyond that token justification for the original guidelines, there is no evidence to support guideline ranges above the corresponding mandatory minimum sentences.

There are, however, compelling policy, fiscal and fairness reasons to abandon the current structure. The policy argument is that unduly high guidelines drive judges to sentence below the guidelines. They do so because they must. They are directed to comply with the mandate in federal law that they impose a sentence no greater than necessary to serve the ends of punishment. Politicians then point to these lower sentences as evidence supporting the need to gain more control over judges by adopting new and

more mandatory minimums. The Commission should not foster a system that puts judges in that position.

The fiscal argument is that keeping people in prison longer than is necessary has created a budget crisis; one that threatens our public safety. Our sentencing policies have led to serious overcrowding in the federal Bureau of Prisons, which today consumes one of every four dollars available to the Department of Justice. It has become so dire that the Department of Justice has called the situation “unsustainable.” Keeping the BOP funded crowds out funding needed for prosecutors, investigators, and others who detect and prosecute crimes. It also limits the ability of the Bureau of Prisons to offer the type of programming that can reduce recidivism. We are delighted to see the Sentencing Commission doing its part to ease the burden by adjusting the drug guidelines.

The most compelling argument is the human one. If changes to the Drug Quantity Table are approved, prison sentences would fall on average about 11 months - from 62 months to 51 months. It is easy to get lost in the talk of months and bed savings as if we are talking about widgets or spread sheets instead of humans who are fathers, mothers, sisters, brothers, wives and husbands. If this amendment is adopted, the average drug sentence in this country will still be over four years long! That is not an insignificant amount of time in a person’s life.

In many cases, adoption of the amendment will simply mean that a very long sentence would be slightly less long. Dana Bowerman’s case is a good example. Dana was addicted to methamphetamine and played a relatively minor role in a methamphetamine conspiracy of 15 people that included her own father. In 2001, at age 30, Dana was sentenced, after trial, to 235 months in prison – 19 years and 7 months. If this amendment had been in place at the time of Dana’s sentencing, she would have received a sentence of 188 months – 15 years and 6 months – still a very long time (and probably still too long) behind bars for a first offender with a drug addiction. At present, Dana will not be released until February 2018.

Our modern criminal justice system has, since the mid-1980s, been addicted to using lengthy prison sentences to solve the vexing social, public safety and public health problems caused by drugs. These unduly long sentences have created more problems than they could ever hope to solve. We are delighted that the Commission is taking this modest and well-supported step to begin a long-overdue reversal of course.

FAMM urges the Commission to adopt the amendment to the Drug Quantity Tables across all drugs.