

THE COST OF MANDATORY MINIMUM SENTENCES

*Maggie E. Harris**

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I. INTRODUCTION

The United States is currently in the midst of an economic crisis, and several factors have led to the collapse of the economy.¹ The national debt grows every day, and the government cannot continue to spend more than it takes in.² In difficult economic times, important financial decisions must be made on how to most effectively and efficiently spend tax dollars.³ The economic and fiscal challenges have

* Candidate for Juris Doctor, December 2013, Florida Coastal School of Law.

¹ See Thomas Heffner, *What Has Caused Our Economic Crisis?*, ECON. IN CRISIS (May 12, 2012), <http://economyincrisis.org/content/what-has-caused-our-economic-crisis> (outlining six policy issues that have contributed to the economic collapse).

² See *id.* (warning that the continued reliance on foreign debt will result in “massive inflation, declining real wages, . . . a shrinking tax base[,] . . . fewer social services, increased poverty, rising social strife and major national security concerns”).

³ See John Boehner, *Spending Your Tax Dollars Wisely*, JOHN BOEHNER: 8TH DISTRICT OF OHIO, <http://boehner.house.gov/issues/issue/?IssueID=3943> (last visited May 10, 2013) (presenting an outline of Senator John Boehner’s proposed budget).

forced leaders to take a closer look at wasteful government spending.⁴ The prison system is one area in particular that warrants addressing.⁵ Prison budgets have grown into the billions while legislatures have cut important state funding budgets for education, healthcare, and infrastructure.⁶ There is undoubtedly a necessity to imprison violent and predatory offenders for the safety of our society.⁷ However, the finances allocated to the prison system continue to drain public resources.⁸ The longer a person is exposed to incarceration, the more difficult it becomes for that person to successfully reenter society.⁹ It is often difficult to find employment as a convicted felon, and, as a result, the price of incarceration extends beyond release.¹⁰

The United States currently has the largest prison population in the world.¹¹ The International Center for Prison Studies conducted a recent study reporting that the United States houses 737 prisoners per 100,000 people.¹² The only other country with a prison population close to that of the United States is Russia, which houses 615 prisoners per 100,000 people.¹³ Contrastingly, Japan has 62 prisoners per 100,000 people, China has 118 prisoners per 100,000 people, and England has 148 prisoners per 100,000 people.¹⁴ The United States consists of less than 5% of the world's population but accounts for nearly

⁴ Michael Santos, *Economic Crisis Opens Possibilities for Prison Reform*, PRISON NEWS BLOG (Mar. 4, 2009), <http://prisonnewsblog.com/2009/03/economic-crisis-opens-possibilities-for-prison-reform/>.

⁵ *See id.* (noting that mismanaged prisons fail to provide prisoners with preparation and support, resulting in a return to criminal behavior upon release).

⁶ *Id.*

⁷ *See id.* ("Certainly, citizens have a need to isolate psychopaths who thrive on crime, violence, and predatory behavior.").

⁸ *Id.*

⁹ *Id.*

¹⁰ *See* Scott Zuke, *The Economics of Prison Reform*, PURE ONSENSE (May 25, 2011), <http://pureonsense.com/2011/05/the-economics-of-prison-reform/>.

¹¹ *World Prison Populations*, BBC NEWS, <http://news.bbc.co.uk/2/shared/spl/hi/uk/06/prisons/html/nn2page1.stm> (last visited May 10, 2013).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

25% of the world's prison population.¹⁵ The increasing prison population has led to a crisis of overcrowding and overextended resources.¹⁶

The high number of people imprisoned in the United States is a relatively recent phenomenon.¹⁷ Throughout the twentieth century the federal and state prison populations remained around 200,000 people.¹⁸ In the 1970s the prison population began to soar, and as of 2008 the number of people incarcerated totaled 2.3 million.¹⁹ There are many theories on why the United States has such an astonishing incarceration rate.²⁰ Under the American legal system, criminals may be incarcerated for crimes that seldom result in prison time in other countries.²¹ Compared to other countries, the United States incarcerates prisoners for longer periods of time.²² To account for the large prison population, criminologists and legal experts look to the high level of violent crimes, harsh sentencing laws, the "War on Drugs," and even democracy.²³

An increase in harsh sentencing mandates at both the state and federal levels may explain the growth in prison populations.²⁴ Traditionally, the justice system in the United States permitted judges to examine the facts of the case in order to determine an appropriate sentence

¹⁵ Adam Liptak, *U.S. Prison Population Dwarfs That of Other Nations*, N.Y. TIMES, Apr. 23, 2008, <http://www.nytimes.com/2008/04/23/world/americas/23iht-23prison.12253738.html>.

¹⁶ Zuke, *supra* note 10.

¹⁷ Chris Sturr, *The Political Economy of the Prison Crisis*, DOLLARS & SENSE, January/February 2006, available at <http://www.dollarsandsense.org/archives/2006/0106sturr.html>.

¹⁸ *Id.*

¹⁹ See *Criminal Justice Fact Sheet*, NAACP, <http://www.naacp.org/pages/criminal-justice-fact-sheet> (last visited May 10, 2013) (theorizing that the incarceration rate is related to high levels of violent crime, unforgiving sentencing laws, a history of racial turmoil, harsh illegal drug policy, American ideology, and a lack of any social safety nets).

²⁰ Liptak, *supra* note 15.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ N.C. Aizenman, *New High in U.S. Prison Numbers: Growth Attributed to More Stringent Sentencing Laws*, WASH. POST, Feb. 29, 2008, <http://www.washingtonpost.com/wp-dyn/content/story/2008/02/28/ST2008022803016.html>.

for a convicted offender.²⁵ Mandatory minimum sentences have existed in our country since the late 1700s but have grown in popularity since the early 1950s.²⁶ The United States initially passed mandatory minimum sentences in response to a growing drug epidemic and viewed them as a way to deter criminal activity by imposing lengthy mandated prison sentences on offenders.²⁷ Mandatory minimum sentencing laws statutorily require a judge to automatically impose a minimum prison sentence for offenders convicted of certain crimes.²⁸ These sentencing laws limit judicial discretion in sentencing by not allowing for the evaluation of specific circumstances surrounding the crime or for the review of mitigating factors.²⁹ The surge in mandated sentencing and lack of judicial discretion have had a significant impact on the increase of the prison population and resulted in increased spending.³⁰ Mandatory minimum sentences result in extended incarceration of many low-level and nonviolent offenders who could be effectively sentenced to shorter periods of incarceration, saving taxpayers millions of dollars.³¹ Many commentators have voiced concerns about the social and economic effects associated with mandatory minimum sentencing statutes.³²

This Article will explore the history of mandatory minimum sentencing laws and also examine the associated costs and implications. Part II of this Article will explain in detail the history of mandatory minimum sentencing laws. Part III will explore the facts about mandatory minimum sentencing laws in Florida. Part IV will examine

²⁵ FAMILIES AGAINST MANDATORY MINIMUMS, FAMM PRIMER ON MANDATORY SENTENCES 1 [hereinafter FAMM PRIMER], available at <http://www.prisonpolicy.org/scans/famm/Primer.pdf> (last visited May 10, 2013).

²⁶ See *infra* Part II.

²⁷ See *infra* Part II.

²⁸ CONN. GEN. ASSEMBLY, MANDATORY MINIMUM SENTENCES BRIEFING, available at http://www.cga.ct.gov/2005/pridata/Studies/Mandatory_Minimum_Sentences_Briefing.htm (last visited May 10, 2013).

²⁹ *Id.*

³⁰ See *id.* (noting that the prison populations and the state prison budgets in Connecticut, and nationally, have increased at a dramatic rate because of mandatory minimum sentences).

³¹ BARBARA S. VINCENT & PAUL J. HOFER, FED. JUDICIAL CTR., MANDATORY MINIMUM PRISON TERMS: A SUMMARY OF RECENT FINDINGS 1 (1994), available at [http://www.fjc.gov/public/pdf.nsf/lookup/conmanmin.pdf/\\$file/conmanmin.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/conmanmin.pdf/$file/conmanmin.pdf).

³² Christopher Mascharka, *Mandatory Minimum Sentences: Exemplifying the Law of Unintended Consequences*, 28 FLA. ST. U. L. REV. 935, 938 (2001).

the high cost of mandatory minimum sentencing laws in Florida. Part V will discuss the differing views concerning mandatory minimum sentencing laws, and Part VI will examine if these laws are effectively deterring and reducing criminal activity. The Article concludes in Part VII.

II. HISTORY

Throughout our nation's history, Congress has imposed mandatory minimum sentences for certain crimes.³³ Mandatory minimum sentences existed for crimes such as murder and piracy as early as 1790.³⁴ Congress or a state legislature can statutorily mandate minimum prison sentences for criminal offenders convicted of certain crimes.³⁵ If a court convicts a person of a crime for which a mandatory minimum sentence has been established, the judge must impose the minimum sentence that the statute requires regardless of the circumstances or facts surrounding the crime.³⁶ The development and historical evolution of mandatory minimum sentencing laws primarily revolves around drug-related crimes, but there are also other crimes for which they have been established.³⁷

Although mandatory minimum sentences have existed for centuries, they were not prevalent in the federal system until the 1950s.³⁸ A major historical milestone in the exploration of mandatory sentencing laws was the Boggs Act, which Congress passed in 1951.³⁹ The Boggs Act imposed mandatory minimum sentences for convicted narcotic offenders.⁴⁰ Congress passed the Act in response to an increase in drug

³³ MOLLY M. GILL, *FAMILIES AGAINST MANDATORY MINIMUMS, CORRECTING COURSE: LESSONS FROM THE 1970 REPEAL OF MANDATORY MINIMUMS* 7 (2008), available at http://www.famm.org/repository/files/8189_famm_boggsact_final.pdf (last visited May 10, 2013).

³⁴ *Id.*

³⁵ *Id.* at 5.

³⁶ *Id.*

³⁷ See *infra* notes 38-63 and accompanying text.

³⁸ Stephen J. Schulhofer, *Rethinking Mandatory Minimums*, 28 WAKE FOREST L. REV. 199, 200-01 (1993).

³⁹ Boggs Act of 1951, Pub. L. No. 82-255, 65 Stat. 767 (1951).

⁴⁰ *Id.*

trafficking and addiction in America.⁴¹ The Act was named after Louisiana Congressman Thomas Boggs Sr., who sponsored the bill because he believed drug-sentencing laws were too lenient.⁴² The purpose was to deter both drug use and distribution by imposing mandatory prison sentences and fines for people convicted of drug-related crimes.⁴³ Under the Boggs Act, a first offense for a drug-related crime resulted in a two- to five-year mandatory prison sentence.⁴⁴ A second offense resulted in a five- to ten-year prison sentence, while a third offense meant ten to fifteen years in prison.⁴⁵ No distinction between drug possession and drug trafficking existed.⁴⁶ Five years later, in response to the continuing growth of the drug epidemic, Congress passed the Narcotics Control Act of 1956, which imposed harsher sentences than originally contained in the Boggs Act.⁴⁷ The Narcotics Control Act also removed the ability of judges to exercise discretion and impose probation in cases they felt did not mandate prison time.⁴⁸ As a result of the Boggs Act and the Narcotics Control Act of 1956, judges sentenced a large amount of offenders to lengthy mandatory prison sentences.⁴⁹

Over the next fourteen years, America witnessed a cultural increase in drug use, and the implementation of mandatory minimum prison sentences seemingly did little to deter the crime.⁵⁰ By the 1960s, critics attacked mandatory minimum sentences claiming they were “unduly severe and inflexible, interfered with the judiciary’s role in individualized sentencing, treated low-level offenders the same as ‘hardened criminals,’ and did not lead to reduction in drug law violations.”⁵¹ In 1970 Congress voted to repeal nearly all provisions imposing mandatory minimum sentences for drug-related crimes due to

⁴¹ GILL, *supra* note 33, at 7.

⁴² *Id.* at 2, 7.

⁴³ *Id.* at 7.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Mascharka, *supra* note 32, at 939.

⁴⁸ GILL, *supra* note 33, at 9.

⁴⁹ Mascharka, *supra* note 32, at 939.

⁵⁰ GILL, *supra* note 33, at 12.

⁵¹ *Sentencing History Repeating?*, FAMMGRAM (Families Against Mandatory Minimums, Washington, D.C.), Spring 2007, available at <http://www.famm.org/Repository/Files/FGspring5%5B1%5D.pdf>.

criticism from families, prosecutors, and prison personnel.⁵² Congressman George H. W. Bush supported the repeal and stated,

Contrary to what one might imagine, this bill will result in better justice and more appropriate sentences . . . Federal judges are almost unanimously opposed to mandatory minimums, because they remove a great deal of the court's discretion As a result [of repealing mandatory minimums], we will undoubtedly have more equitable action by the courts, with actually more convictions where they are called for, and fewer disproportionate sentences.⁵³

Congress also stated that "lengthening prison sentences 'had not shown the expected overall reduction in drug law violations.'" ⁵⁴

Over the next decade, Americans continued to engage in drug use.⁵⁵ Along with the 1980s came the development of crack cocaine.⁵⁶ The drug quickly became prevalent because it was inexpensive and easily transported.⁵⁷ In response to the crack-cocaine epidemic, Congress implemented a series of laws that have developed into the current system of federal mandatory minimum sentences.⁵⁸ In 1984 mandatory minimum sentences were reestablished for many drug offenses.⁵⁹ Further, Congress mandated that an offender serve an additional five-year term if they carried a gun during the commission of a violent crime.⁶⁰ In subsequent years Congress enacted additional mandatory minimum sentences and increased the existing sentences.⁶¹ Consequently, there are over 100 mandatory minimum sentence provisions in the federal code.⁶² The comprehensive *Sentencing Commission Report* acknowl-

⁵² GILL, *supra* note 33, at 12.

⁵³ *Sentencing History Repeating?*, *supra* note 51.

⁵⁴ Mascharka, *supra* note 32, at 939 (citing S. REP. No. 91-613, at 2 (1969)).

⁵⁵ GILL, *supra* note 33, at 18-19.

⁵⁶ *Id.* at 18.

⁵⁷ *Id.*

⁵⁸ *Id.* at 18-19.

⁵⁹ Schulhofer, *supra* note 38, at 201.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

edged six objectives of the federal mandatory minimum sentences which include, “assuring ‘just’ (i.e., appropriately severe) punishment, more effective deterrence, more effective incapacitation of the serious offender, elimination of sentence disparities, stronger inducements for knowledgeable offenders to cooperate in the investigation of others, and judicial economies resulting from increased pressure on defendants to plead guilty.”⁶³

States have also implemented mandatory minimum sentencing statutes.⁶⁴ Although not all states have adopted these statutes, many states have embraced mandatory minimum sentencing.⁶⁵ The first states to adopt sentencing guidelines include Minnesota, Pennsylvania, Washington, and Florida.⁶⁶ The next section will discuss the evolution of Florida’s sentencing laws.

III. FACTS ABOUT MANDATORY MINIMUM SENTENCES IN FLORIDA

Florida has rigid mandatory sentencing laws and currently implements longer prison sentences than any other state in the nation.⁶⁷ Before October 1, 1983, Florida law followed an unstructured sentencing policy that allowed for judicial discretion in the application of sanctions ranging from fines to incarceration.⁶⁸ As a result, concerns grew regarding judicial discretion and a lack of uniformity in sentencing.⁶⁹ In response, Florida adopted a structured sentencing policy through the en-

⁶³ *Id.*

⁶⁴ Mascharka, *supra* note 32, at 941.

⁶⁵ *Id.*

⁶⁶ BUREAU OF JUSTICE ASSISTANCE, U.S. DEP’T OF JUSTICE, NATIONAL ASSESSMENT OF STRUCTURED SENTENCING 17 (1996), available at <https://www.ncjrs.gov/pdffiles/strsent.pdf>.

⁶⁷ Dina Rasor, *In Florida, Minimum Mandatory Sentencing Laws Fuel Push for Private Prisons*, TRUTHOUT (June 28, 2012), <http://truth-out.org/news/item/10020-in-florida-minimum-mandatory-sentencing-laws-fuel-push-for-private-prisons> (noting that extreme sentencing procedures have made Florida the leader for longest prison sentences in the United States).

⁶⁸ BUREAU OF RESEARCH & DATA ANALYSIS, FLA. DEP’T OF CORR., FLORIDA’S CRIMINAL PUNISHMENT CODE: A COMPARATIVE ASSESSMENT 3 (2001), available at http://www.dc.state.fl.us/pub/sg_annual/0001/sentencing_assessment_2001.PDF.

⁶⁹ *See id.* at 4 (discussing the legislature’s concerns about broad judicial discretion and inconsistent sentences).

actment of the 1983 Florida Sentencing Guidelines.⁷⁰ The policy adopted a point system to assess offenses and apply sanctions ranging from fines to life imprisonment.⁷¹ Florida's guidelines abolished parole eligibility for most offenses.⁷² The guideline structure consisted of nine worksheets of "offense categories such as murder, sexual offenses, drug offenses, etc."⁷³ Points accrued based on the prior record of the offender, the offense, and the victim's injuries.⁷⁴ The total point score determined the sanction imposed.⁷⁵

Several factors, including the crack-cocaine epidemic; "the passage of unfunded mandatory minimum sentence legislation; and [a] significant growth in the [prison] population," led to the diminished integrity of the 1983 Sentencing Guidelines.⁷⁶ In 1994 the "Safe Streets Act" replaced this system.⁷⁷ The primary objective was to allocate finite state funding and focus incarceration toward serious violent or repeat offenders.⁷⁸ The structure attempted to correct previous problems by eliminating the nine separate worksheets that grouped crimes.⁷⁹ Under the new structure, crimes were ranked and assigned escalating point values as the rank increased.⁸⁰ The total point score provided the

⁷⁰ *Id.* (noting that the legislature's enactment of guidelines attempted to resolve the concerns stemming from the previously inconsistent sentences).

⁷¹ *See id.* (explaining that, under the new guidelines, a court would decide punishment with a point system that determines fines and prison sentences).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* (noting that points accrue based on various considerations, such as the severity of injuries to the victim, any prior offenses, and the nature of the offense at issue).

⁷⁵ *See id.* (examining the various punishments resulting from the point score, which range from monetary sanctions to life sentences).

⁷⁶ *Id.* (recognizing several causes for the deterioration of the effectiveness of the 1983 Sentencing Guidelines).

⁷⁷ *Id.* at 5.

⁷⁸ *See id.* (noting that the purpose of the new legislation was to preserve resources by limiting incarceration to more heinous offenses).

⁷⁹ *Id.* (stating that the previous guidelines, which placed offenses into specific categories, lacked consideration for the type of offense and required a number of worksheets all contributed to the prior system's difficulties).

⁸⁰ *Id.* (explaining that the guidelines allocate points according to the increased ranking of an offense based on the principal offense, other offenses, and the individual's previous record).

sanction or length of imprisonment.⁸¹ For example, a score under forty mandated a nonprison sentence, a score between forty and fifty-two allowed for discretion between prison and a nonprison sanction, and a score above fifty-two points equated to a mandated prison sanction.⁸²

One year later, the legislature increased the “Safe Streets Act” sanctions through the passage of the Crime Control Act of 1995.⁸³ The 1994 guideline structure endured.⁸⁴ However, the legislature enhanced the recommended sentences for murder and sexual offenses and imposed mandatory sentences for certain crimes including burglary, battery, and lewd acts on a child.⁸⁵ Subsequently, the Florida Supreme Court ruled in *Heggs v. State* that the 1995 sentencing guidelines were unconstitutional due to a violation of the single subject rule.⁸⁶ As a result, the 1997 Florida Legislature enacted the Criminal Punishment Code.⁸⁷ The Code applies to offenses committed on or after October 1, 1998, and is the primary sentencing code currently followed in Florida.⁸⁸ “The Code contains . . . both structured and unstructured sentencing policies” but maintains the goals of previous sentencing guidelines.⁸⁹ It allows for imprisonment, up to a statutory maximum, for any felony offender regardless of his or her point score.⁹⁰ In comparison to the previous guidelines, the Criminal Punishment Code permits greater upward discretion in sentencing, increased sanctions, and lower mandatory prison thresholds.⁹¹ Florida uses additional statutes in

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.* at 6 (noting that the increased point values in the new Act led to weightier sanctions).

⁸⁴ *Id.*

⁸⁵ *Historical Summary of Sentencing and Punishment in Florida*, FLA. DEP’T OF CORRECTIONS, <http://www.dc.state.fl.us/pub/history/index.html> (last visited May 10, 2013).

⁸⁶ *Heggs v. State*, 759 So. 2d 620, 627 (Fla. 2000) (noting that the “law constitutes a classic act of logrolling, which is the evil sought to be prevented by the single subject rule” and holding that the law violates the Florida Constitution).

⁸⁷ *See, e.g., Historical Summary of Sentencing and Punishment in Florida*, *supra* note 85.

⁸⁸ *See id.* (applying the Code to offenses occurring on or after October 1, 1998, and listing the Criminal Punishment Code as the current sentencing code in Florida).

⁸⁹ BUREAU OF RESEARCH & DATA ANALYSIS, *supra* note 68, at 6.

⁹⁰ *Historical Summary of Sentencing and Punishment in Florida*, *supra* note 85.

⁹¹ BUREAU OF RESEARCH & DATA ANALYSIS, *supra* note 68, at 6.

conjunction with Florida's Criminal Punishment Code to determine if a mandatory minimum sentence is applicable to a felony offense.⁹² The remaining portion of this section will highlight some of the mandatory minimum sentencing laws currently imposed in Florida.⁹³

Most mandatory minimum sentences apply to drug-related offenses; however, they have also been enacted for gun crimes and repeated criminal offenses.⁹⁴ Traditionally, Florida has enacted strict gun laws, but the 1999 Florida Legislature took a more serious stance with the passage of section 775.087, Florida Statutes, commonly referred to as the "10-20-Life Law."⁹⁵ The law adopts a zero-tolerance approach and imposes harsh mandatory minimum sentences for gun-related crimes.⁹⁶ The law currently mandates ten years in prison if an offender commits or attempts to commit certain felonies while possessing a firearm or other destructive device.⁹⁷ If an offender discharges the firearm during the commission of the felony, the judge must impose a twenty-year mandatory sentence.⁹⁸ Additionally, if the offender uses the firearm to injure or kill someone, the law mandates imposing a prison sentence of twenty-five years to life.⁹⁹ Florida implemented the law to deter offenders from repeating violent gun-related crimes.¹⁰⁰ Judges have no latitude to evaluate the circumstances surrounding the crime and must impose the mandated sentence.¹⁰¹ For example, a Florida resident was found guilty of aggravated assault after firing a warning shot in the air during an altercation with an abusive husband.¹⁰² Although there were no injuries, firing a weapon during the commission of certain

⁹² *Florida Sentencing and the Criminal Punishment Code*, 24-7 PRESS RELEASE (March 28, 2012), <http://www.24-7pressrelease.com/press-release/florida-sentencing-and-the-criminal-punishment-code-271002.php>.

⁹³ See *infra* notes 97-99, 103 and accompanying text.

⁹⁴ See *infra* Part III.

⁹⁵ *Rasor*, *supra* note 67.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ The Byrd Law Firm, P.A., *Understanding the Florida 10-20-Life Law*, JD SUPRA LAW NEWS (Dec. 3, 2012), <http://www.jdsupra.com/legalnews/understanding-the-florida-10-20-life-law-24641/>.

¹⁰¹ *Id.*

¹⁰² *Id.*

felonies, including aggravated assault, carries a twenty-year mandated prison sentence.¹⁰³ However, if the women had killed her husband, she most likely would have been charged with manslaughter and received a much lighter sentence.¹⁰⁴ The inflexibility of mandated sentencing laws prevents judges from assessing the circumstances surrounding the crime,¹⁰⁵ resulting in excessively long prison sentences at an exorbitant cost to taxpayers.¹⁰⁶

Florida's close proximity to other countries has led to a history of drug trafficking and abuse.¹⁰⁷ In an effort to solve the problem, the Florida Legislature implemented the use of mandatory minimum sentencing.¹⁰⁸ Florida's drug-related mandatory minimum sentences are among the most severe in the country.¹⁰⁹ For example, a conviction for possession of over twenty-eight grams of illegal prescription drugs mandates a minimum sentence of twenty-five years in prison.¹¹⁰ In Texas, the same conviction mandates a minimum two-year prison sentence.¹¹¹ The current laws make no distinction between drug offenders and drug traffickers, and the punishment applies regardless of the role in the crime or prior criminal history.¹¹² A person who "knowingly sells, purchases, manufactures, delivers, or brings into the state, or who is knowingly in actual or constructive possession of" between 28 and 200 grams of cocaine is subject to a three-year mandatory minimum prison sentence and a \$50,000 fine.¹¹³ If the amount of cocaine increases to

¹⁰³ *See id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ FAMILIES AGAINST MANDATORY MINIMUMS, THE FACTS ABOUT MANDATORY MINIMUM DRUG LAWS IN FLORIDA: A FAILURE OF PUBLIC SAFETY, PUBLIC HEALTH, AND FISCAL RESPONSIBILITY 1-2 (2009) [hereinafter MANDATORY MINIMUM DRUG LAWS], available at http://www.famm.org/Repository/Files/FL%20General%20MM%20fact%20sheet%20_8-27-09_.pdf.

¹⁰⁷ COMMITTEE ON CRIMINAL JUSTICE, THE FLORIDA SENATE, A POLICY ANALYSIS OF MINIMUM MANDATORY SENTENCING FOR DRUG TRAFFICKERS 1 (2009), available at <http://www.famm.org/Repository/Files/Senate%20Issue%20Brief%20MMs%20for%20Drug%20Trafficking%2010.09.pdf>.

¹⁰⁸ *Id.*

¹⁰⁹ MANDATORY MINIMUM DRUG LAWS, *supra* note 106.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ FLA. STAT. § 893.135(1)(b)(1)(a) (2011).

between 200 and 400 grams, the person is subject to a seven-year mandatory minimum sentence and a \$100,000 fine.¹¹⁴ If the amount is between 400 grams and 150 kilograms, Florida law mandates a fifteen-year minimum sentence and a \$250,000 fine.¹¹⁵ The statute also applies to prescription drugs, which include, but are not limited to, hydrocodone, oxycodone, and amphetamines.¹¹⁶ Drawing the line at weight to determine imprisonment means that possession of just one more gram of cocaine or one prescription pill results in a much harsher sentence.¹¹⁷

The legislature has also implemented enhanced mandated sentences for certain repeat offenders such as habitual felony offenders, violent felony offenders, violent career criminals, and prison release reoffenders.¹¹⁸ Florida first enacted this legislation on October 1, 1988.¹¹⁹ A habitual felony offender is a person who has prior convictions of any combination of two or more felonies in Florida and then commits another felony while in prison or within five years of the date of the prior conviction.¹²⁰ The statute also applies to felonies committed “within 5 years of the defendant’s release from a prison sentence, probation, community control, control release, conditional release, parole or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for a felony or other qualified offense, whichever is later.”¹²¹ For example, if a person previously committed two felonies in Florida, and within five years of his or her date of conviction or prison release, whichever is later, commits a first-degree felony, the statute mandates a minimum sentence of fifteen

¹¹⁴ *Id.* § 893.135(1)(b)(1)(b).

¹¹⁵ *Id.* § 893.135(1)(b)(1)(c).

¹¹⁶ *Id.* § 893.135(1)(c)(1).

¹¹⁷ Amy Pavuk, *Rx for Danger: Total Weight of Pills, Not Amount of Drugs in Them, Triggers Longer Sentences*, ORLANDO SENTINEL, Oct. 15, 2011, http://articles.orlandosentinel.com/2011-10-15/health/os-prescription-drug-weight-sentencing-20111015_1_prescription-drug-trafficking-drug-laws-prescription-drugs.

¹¹⁸ *Florida Sentencing Enhancements*, RICHARD E. HORNSBY, P.A., <http://www.richardhornsby.com/criminal/penalties/enhancements.html> (last visited May 10, 2013).

¹¹⁹ *Historical Summary of Sentencing and Punishment in Florida*, *supra* note 85.

¹²⁰ FLA. STAT. § 775.084 (2012).

¹²¹ *Id.*

years.¹²² Under the statute, commission of a second-degree felony mandates a ten-year sentence, and commission of a third-degree felony mandates a five-year prison sentence.¹²³

Another form of mandatory minimum sentences Florida exercises is for prison releasee reoffenders.¹²⁴ Florida passed the Prison Releasee Reoffender Act on May 30, 1997.¹²⁵ Under the statute, if an offender commits a specified crime within three years of release, they are subject to mandatory incarceration and must serve 100% of their sentence.¹²⁶ A prison releasee reoffender is any person who is released from prison after serving a prison sentence and within three years of that release commits or attempts to commit a crime listed in section 775.082(9), Florida Statutes.¹²⁷ Some of the offenses include, but are not limited to, treason, murder, sexual battery, robbery, arson, and kidnapping.¹²⁸ For example, if a prison releasee reoffender commits or attempts to commit a first-degree felony punishable by life, the statute mandates a minimum life sentence.¹²⁹ If a prison releasee reoffender commits or attempts to commit a first-degree felony not punishable by life, the statute mandates a minimum sentence of thirty years.¹³⁰

Florida's sentencing policies have evolved dramatically over the last twenty years.¹³¹ A harsh mandated sentencing policy replaced an indeterminate and discretionary system.¹³² Additionally, in 1995 Florida passed the "Truth in Sentencing" law mandating that inmates serve 85% of their sentences in prison before release.¹³³ As a result of this law and Florida's other mandatory minimum sentencing laws, the

¹²² *See id.*

¹²³ *Id.*

¹²⁴ *Historical Summary of Sentencing and Punishment in Florida*, *supra* note 85.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ FLA. STAT. § 775.082(9).

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Historical Summary of Sentencing and Punishment in Florida*, *supra* note 85.

¹³² *Id.*

¹³³ *Florida Leads the Nation in Length of Prison Terms*, FIRST COAST NEWS (June 7, 2012), <http://www.firstcoastnews.com/news/article/259214/4/Florida-leads-the-nation-in-length-of-prison-terms>.

prison population has grown significantly.¹³⁴ It seems counterintuitive that, in Florida, a person could potentially serve more time in prison for a drug-related conviction than for a manslaughter conviction.¹³⁵ The law mandates the same twenty-five year sentence for a conviction of possessing twenty-eight grams of oxycodone as a conviction for child molestation.¹³⁶ “As Florida’s prison population continues to swell and the state budget continues to shrink, some are asking whether mandatory sentences still are advisable from a standpoint of finances, fairness, and effectiveness at deterring crime.”¹³⁷ The next section discusses the costs associated with this drastic change in Florida’s sentencing policies.

IV. THE HIGH COST OF MANDATORY MINIMUMS IN FLORIDA

A. Cost to Taxpayers

Mandatory minimum sentences require judges to impose prison sentences without discretion.¹³⁸ Often, this results in lengthy prison sentences, which are not only costly to taxpayers but also to the families of inmates.¹³⁹ In 2001, \$167 billion was spent on the criminal justice system compared to \$36 billion in 1982.¹⁴⁰ In the last two decades, state spending on the prison system “has risen at six times the rate of spending on higher education.”¹⁴¹ The policies Florida implemented throughout the 1980s and 1990s account for the rapid growth of the prison population and cost.¹⁴²

¹³⁴ *Id.*

¹³⁵ Cindy Swirko, *Florida Drug Sentences Too Harsh?*, THE GAINESVILLE SUN (Aug. 14, 2010), <http://www.gainesville.com/article/20100814/articles/8141011>.

¹³⁶ *See id.*

¹³⁷ *Id.*

¹³⁸ CONN. GEN. ASSEMBLY, *supra* note 28.

¹³⁹ *Id.*

¹⁴⁰ Sturr, *supra* note 17.

¹⁴¹ Adam Gopnik, *The Caging of America*, THE NEW YORKER, Jan. 30, 2012, http://www.newyorker.com/arts/critics/atlarge/2012/01/30/120130crat_atlarge_gopnik.

¹⁴² JUST. POL’Y INST., *WRONG TRACK FOR SAVINGS: HOW FLORIDA’S PRISON POPULATION BECAME A RUNAWAY TRAIN, AND WHY BETTER POLICIES, NOT PRIVATE PRISONS, CAN PUT THE BRAKES ON CORRECTIONAL COSTS* (2012), *available at* <http://www.justicepolicy.org/uploads/justicepolicy/documents/florida-reform-not-privatization-fact-sheet-updated.pdf>.

In 2010, one year in a state prison cost \$20,553 per inmate in Florida.¹⁴³ In the fiscal year of 2012, projections showed that Florida taxpayers would spend over \$2.3 billion on corrections.¹⁴⁴ In 2008, 98,192 people were incarcerated in Florida state prisons, making Florida third, behind only Texas and California, in the country's prison population.¹⁴⁵ By January 1, 2010, the population of the Florida prison system reached 103,915 inmates.¹⁴⁶ Over the last two decades, Florida has experienced a rapid increase in its prison population growing from 33,681 people in 1988 to 98,192 people in 2008.¹⁴⁷ Growth has doubled since 1990 and nearly quadrupled since 1984.¹⁴⁸ This expansion equates to a 192% increase, exceeding the national prison population growth rate of 133%.¹⁴⁹ Pennsylvania is the only state in the country whose prison population growth rate exceeds Florida's.¹⁵⁰ A significant portion of the prison-population increase consists of nonviolent drug and property offenders who now account for 50% of the prison population.¹⁵¹ In October of 2008, there were 5,859 inmates in Florida prisons serving mandatory minimum drug sentences, costing the state over \$117 million per year.¹⁵² The average time served in prison is 8.4 years and will cost Florida taxpayers over \$983 million.¹⁵³ Inmates incarcerated under a prescription drug offense account for 544 prisoners at a cost of \$10 million per year.¹⁵⁴ These prisoners serve, on average, an 8.7-year prison sentence, costing Florida taxpayers \$95 million.¹⁵⁵

¹⁴³ CHRISTIAN HENRICHSON & RUTH DELANEY, VERA INST. OF JUST., *THE PRICE OF PRISONS: WHAT INCARCERATION COSTS TAXPAYERS* 9 (2012), available at http://www.vera.org/download?file=3542/Price%2520of%2520Prisons_updated%2520version_072512.pdf.

¹⁴⁴ FLA. TAXWATCH, *REVIEW OF CRIMINAL JUSTICE DATA* 4 (2011), available at <http://www.floridataxwatch.org/resources/pdf/CSJFindings.pdf>.

¹⁴⁵ THE SENTENCING PROJECT, *INCARCERATION TRENDS IN FLORIDA: 1988-2008* (2009), available at http://www.sentencingproject.org/doc/publications/inc_FLTrends.pdf.

¹⁴⁶ FLA. TAXWATCH, *supra* note 144, at 4.

¹⁴⁷ THE SENTENCING PROJECT, *supra* note 145.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ FLA. TAXWATCH, *supra* note 144, at 5.

¹⁵¹ THE SENTENCING PROJECT, *supra* note 145.

¹⁵² MANDATORY MINIMUM DRUG LAWS, *supra* note 106.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

In the fiscal year of 2011, Florida taxpayers spent \$97.5 million on the incarceration of inmates under a mandatory minimum sentence relating to drug charges.¹⁵⁶ Of the mandatory minimum drug inmates in Florida prisons, 85% have no violent felony record with the Florida Department of Corrections, and 75% have never previously served time in prison.¹⁵⁷

Although some of these prison sentences are necessary, a complete lack of discretion in sentencing is not.¹⁵⁸ It costs between \$950 and \$2,500 per year for drug treatment in a Florida drug court, and this treatment drastically reduces recidivism rates.¹⁵⁹ Many other states have implemented alternatives to lengthy mandatory minimum sentences with drug convictions and are saving millions of dollars as a result.¹⁶⁰ For example, Michigan saved \$115 million by granting parole eligibility to drug offenders serving mandatory minimum sentences.¹⁶¹ In addition, New York permitted judges to have discretion in sentencing nonviolent first- and second-time drug offenders by imposing treatment instead of a mandatory minimum sentence.¹⁶² With the current fiscal crisis, the rising cost of incarcerating nonviolent drug offenders is competing with education and other state services for funding.¹⁶³

Florida is among a list of states that spend more money on corrections than on education.¹⁶⁴ Resources available to Florida citizens are limited, and Florida must make decisions on how to appropriately and most effectively allocate and spend the budget.¹⁶⁵ Mandated prison sentences are primarily responsible for the high incarceration rate in Florida.¹⁶⁶ By eliminating parole and mandating that inmates serve 85% of their sentences, Florida keeps inmates behind bars longer, at a

¹⁵⁶ FLA. TAXWATCH, *supra* note 144, at 31.

¹⁵⁷ *Id.*

¹⁵⁸ MANDATORY MINIMUM DRUG LAWS, *supra* note 106.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ THE SENTENCING PROJECT, *supra* note 145.

¹⁶⁴ Mascharka, *supra* note 32, at 952.

¹⁶⁵ *Cost of Florida Prisons: Too Many in Prison Too Long*, THE LEDGER (Oct. 24, 2011), <http://www.theledger.com/article/20111024/EDIT01/111029708?p=1&tc=pg>.

¹⁶⁶ *Id.*

high cost.¹⁶⁷ Right on Crime, a prison reform group, recently stated, “If Florida imprisoned people at the same rate it did in 1972-1973, the [S]tate would have only 23,848 inmates and be spending \$446 million a year on prisons instead of \$2.4 billion.”¹⁶⁸ The current state criminal justice budget is unsustainable, and alternative methods must be explored.¹⁶⁹ Florida is spending entirely too much of its funding on keeping nonviolent and low-level drug criminals in correctional facilities for extended periods of time under mandatory minimum sentences.¹⁷⁰

B. Cost to Recipients and Families

Mandatory minimum sentences are not only financially costly, but they also are emotionally costly to the individuals incarcerated and their families.¹⁷¹ Scott Earle, for example, was admitted to the emergency room in September of 1995 for diverticulitis, and the attending physician prescribed him Vicodin.¹⁷² Several days after his release from the hospital, Mr. Earle met a woman at a local bar.¹⁷³ After getting to know Mr. Earle, she learned of his recent hospital visit and asked for some of his pills for her back pain.¹⁷⁴ He agreed and gave her some of his own prescription medication.¹⁷⁵ Mr. Earle did not know, however, that the woman was an undercover police officer.¹⁷⁶ She soon began calling Mr. Earle both at home and work asking for more pain medication.¹⁷⁷ Although he no longer had a Vicodin prescription, he

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ See Barbara Richards, *Helping Ex-Inmates Can Cut Prison Costs*, HERALD-TRIB., May 19, 2011, <http://www.heraldtribune.com/article/20110519/COLUMNIST/110519474?p=3&tc=pg>.

¹⁷⁰ Mascharka, *supra* note 32, at 951-52.

¹⁷¹ Creasie Finney Hairston, *Prisoners and Families: Parenting Issues During Incarceration* (Dec. 2001), available at <http://aspe.hhs.gov/hsp/prison2home02/hairston.htm>.

¹⁷² *State Profiles: Scott Earle – Florida*, FAMILIES AGAINST MANDATORY MINIMUMS, <http://www.famm.org/ProfilesOfInjustice/StateProfiles/ScottEarle.aspx> (last visited May 10, 2013).

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

contacted a friend for the woman.¹⁷⁸ The undercover officer initially purchased small amounts and then requested larger quantities.¹⁷⁹ Mr. Earle acted as a middleman between the undercover officer and the supplier and did not benefit financially from the transactions.¹⁸⁰ Three months later the undercover officer arrested Mr. Earle for felony drug trafficking and conspiracy.¹⁸¹ Mr. Earle, a nonviolent first-time offender, received four concurrent twenty-five-year mandatory minimum sentences.¹⁸² The sentencing judge stated, “I have to express my deep concern about this particular situation[;] . . . this punishment does not fit the crime. We are not talking about a first or second degree murder [W]ith a great deal of reluctance I will have to sentence the defendant [to] 25 years minimum mandatory.”¹⁸³ Mr. Earle’s anticipated release date is October 20, 2019.¹⁸⁴

In September of 2009, Ronald Thompson, a sixty-two-year-old disabled veteran, decided to visit an elderly friend in Keystone Heights, Florida.¹⁸⁵ During the visit, the grandson of his friend returned home with three friends.¹⁸⁶ After the children were refused entry into the home, the grandson, who had a violent history, began yelling and cursing at his grandmother.¹⁸⁷ Mr. Thompson, after becoming frightened, grabbed his pistol and fired two shots directly into the ground to scare off the grandson and his friends.¹⁸⁸ Mr. Thompson had a conceal-carry license.¹⁸⁹ The State of Florida charged Mr. Thompson with four counts of aggravated assault, and a jury convicted him.¹⁹⁰ However, although Florida’s 10-20-Life Law mandated a twenty-year mandatory

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *State Profiles: Ronald Thompson – Florida*, FAMILIES AGAINST MANDATORY MINIMUMS, <http://www.famm.org/facesofFAMM/StateProfiles/RonaldThompson.aspx> (last visited May 10, 2013).

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

minimum sentence, the judge refused to impose the sanction.¹⁹¹ The judge imposed a three-year sentence claiming the 10-20-Life Law was unconstitutional.¹⁹² The prosecutor subsequently appealed, and the court of appeals ultimately imposed the twenty-year mandatory minimum.¹⁹³ Mr. Thompson is diabetic, uses a cane, has high blood pressure, and has undergone three surgeries while incarcerated.¹⁹⁴ Mr. Thompson's projected release date is 2029.¹⁹⁵

Mandatory minimum sentences impact many families, and there are many circumstances where the exercise of judicial discretion could result in more appropriate sentencing.¹⁹⁶ Families and children suffer emotionally and financially as a result of mandatory minimum sentences.¹⁹⁷ Children of inmates grow up without parental support and, when possible, family members must step in to provide care.¹⁹⁸ When family is not available, the State must place the children in foster care.¹⁹⁹ There is a tremendous cost associated with maintaining the foster care system and providing welfare assistance to the families of inmates.²⁰⁰

In 2000, 1,500,000 children had a parent in the prison system—500,000 more than in 1991.²⁰¹ These children may be at risk of ending up in prison without the proper support of their parents.²⁰² Although punishment is necessary, an excessively long mandated sentence is not

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ See FAMILIES AGAINST MANDATORY MINIMUMS, WORKING FOR FAIR AND PROPORTIONATE SENTENCING LAWS: THE CASE FOR FEDERAL MANDATORY SENTENCING REFORM [hereinafter FEDERAL MANDATORY SENTENCING REFORM], available at http://www.famm.org/repository/files/8136_fammfedbro_v8.pdf (last visited May 10, 2013).

¹⁹⁷ Hairston, *supra* note 171.

¹⁹⁸ *Id.*

¹⁹⁹ See generally *id.* (explaining the concern of incarcerated parents when children are placed under the custody of the state).

²⁰⁰ *Id.*

²⁰¹ FEDERAL MANDATORY SENTENCING REFORM, *supra* note 196.

²⁰² *Id.*

the answer.²⁰³ Myron Bright, judge for the Eighth Circuit Court of Appeals, stated, “These unwise sentencing policies which put men and women in prison for years not only ruin lives of prisoners and often their family members, but also drain the American taxpayers of funds which can be measured in billions of dollars.”²⁰⁴

V. PROPONENTS AND OPPONENTS OF MANDATORY MINIMUM SENTENCING LAWS

Crime and punishment are important public policy concerns.²⁰⁵ It is the function of the judiciary to ensure fair implementation of laws, and if broken, the judiciary is to evaluate and apply the law accordingly.²⁰⁶ In criminal cases, the judge must apply the appropriate punishment if a court convicts a person of a crime.²⁰⁷ The objectives of mandatory minimum sentences are to decrease crime; regulate judicial discretion over sentencing decisions; increase prison sentences for serious and violent offenders; and send a message to the public and potential criminals that drug use and violent crime will not be tolerated.²⁰⁸

Americans seem persistently concerned with crime and drugs in our nation.²⁰⁹ The public has a perception that criminals too often receive sentences that are not appropriate.²¹⁰ Some people believe taking a harsh stance on crime and drugs will help the American society with these issues.²¹¹ The American public believes increasing sentencing will fix societal problems and supported mandatory minimum sentencing laws with an 80% approval rating in the 1990s.²¹²

²⁰³ *See id.*

²⁰⁴ FAMM PRIMER, *supra* note 25.

²⁰⁵ CONN. GEN. ASSEMBLY, *supra* note 28.

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ Mascharka, *supra* note 32, at 965.

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.* at 965-66.

Supporters state that mandatory minimum sentences are keeping serious offenders off the streets, resulting in safer communities.²¹³ First, proponents of mandatory minimum sentences for drug-related offenses argue that judges were not imposing appropriate sentences for crimes and were often too lenient.²¹⁴ Primarily, taking away the judge's discretion to impose light sentences on what Congress views as a serious crime provides society with reassurance that offenders receive a severe and appropriate punishment.²¹⁵ Second, supporters also believe that mandatory minimums act as a deterrent to crime.²¹⁶ Third, drug offenders would not be able to commit additional related crimes seeing as their prison sentences are now much longer.²¹⁷ Fourth, those arrested will be more willing to cooperate with law enforcement if faced with the possibility of a lengthy mandatory minimum sentence.²¹⁸ Fifth, there would be uniformity in sentencing, and mandatory minimums would eliminate unfair disparity in sentencing because the same punishment would be applied to the same crime across the board.²¹⁹ The certainty and severity of mandatory minimum sentences help ensure the goals of incarceration.²²⁰

Mandatory minimum sentences were implemented with honest intentions of solving societal problems and deterring crime.²²¹ However, many critics of mandatory minimum sentences argue there is no evidence illustrating that harsh, mandated prison sentences are acting as a deterrent from committing serious crimes.²²² First, in response to proponents of drug-related mandatory minimums, judicial discretion is nec-

²¹³ *Have Mandatory Minimum Jail Sentences Been an Effective Tool in the War on Drugs?*, PROCON.ORG, <http://aclu.procon.org/view.answers.php?questionID=000727> (last updated Nov. 24, 2009).

²¹⁴ Stephen Murdoch, *The Debate Over Mandatory Minimums*, DC BAR, Nov. 2001, http://www.dcbar.org/for_lawyers/resources/publications/washington_lawyer/november_2001/minimums.cfm.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Are Mandatory Minimum Drug Sentences Cost-Effective?*, RAND, http://www.rand.org/pubs/research_briefs/RB6003/index1.html (last visited May 10, 2013).

²²¹ FEDERAL MANDATORY SENTENCING REFORM, *supra* note 196.

²²² *See id.*

essary to evaluate each situation individually.²²³ In some situations the imposition of a mandated sentence may place a productive, tax-paying citizen in prison for an unreasonable period of time.²²⁴ Judicial discretion allows for a judge to evaluate the facts and analyze the implications of the sentence.²²⁵ Second, mandatory minimum sentences do not deter crime.²²⁶ In practice, sentences are arbitrarily applied and result in applying the same penalty for different offenses and individuals.²²⁷ This impedes the deterrent aspect of the sentences.²²⁸ Third, although people are unable to commit related crimes while incarcerated, the majority of drug offenders serving mandatory minimum sentences have a low level of involvement.²²⁹ Fourth, although people may be willing to provide information to prosecutors in return for a sentence reduction, they often have no information to provide because they are low-level offenders.²³⁰ Because they have no information to provide, this often results in harsh sentences for couriers, addicts, and girlfriends because conspirators receive the same sentence as kingpins.²³¹ Fifth, sentences are applied evenly across the board; however, it is necessary to review the facts surrounding the circumstances in order to administer a just punishment.²³² Considering the many competing views concerning mandatory minimum sentencing, the following section will discuss if mandatory minimum sentencing laws are working.

VI. ARE MANDATORY MINIMUM SENTENCES WORKING?

Mandatory minimum sentences appeal to many members of society.²³³ Supporters claim they deter crime and act as a valuable drug

²²³ Thomas Ehrlich, *Judicial Discretion or Mandatory Sentencing/Guidelines?*, LAW OFFICES OF THOMAS P. EHRLICH (Feb. 26, 2012), <http://www.notguiltynj.com/judicial-discretion-or-mandatory-sentencingguidelines/>.

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ FEDERAL MANDATORY SENTENCING REFORM, *supra* note 196.

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ Mascharka, *supra* note 32, at 966.

control measure,²³⁴ but are they really working? Mandatory minimum sentences often result in excessively severe sentences.²³⁵ Twice in the last fifty years, Congress has enacted mandatory minimum sentencing laws in response to drug abuse and trafficking.²³⁶ Both times the laws have failed to alleviate these problems.²³⁷ Additionally, the implementation of the laws has resulted in vast growth of the prison population and increased correctional spending at taxpayer expense.²³⁸

The goals of punishment conventionally include deterrence, incarceration, retribution, and rehabilitation.²³⁹ Mandatory minimum sentences have had little effect on crime and arrest rates.²⁴⁰ There is no conclusive data showing a link between mandatory sentences and a reduction in crime, and, in fact, research suggests that it is improbable that mandated sentences would have such an impact.²⁴¹ Mandatory minimum sentences have not acted as a deterrent for drug use and have failed to reduce drug trafficking offenses.²⁴² Judge Mark W. Bennet stated,

If lengthy mandatory minimum sentences for nonviolent drug addicts actually worked, one might be able to rationalize them. But there is no evidence that they do. I have seen how they leave hundreds of thousands of young children parentless and thousands of aging, infirm and dying parents childless. They destroy families and mightily fuel the cycle of poverty and addiction. In fact,

²³⁴ See *supra* Part V.

²³⁵ *Have Mandatory Minimum Jail Sentences Been an Effective Tool in the War on Drugs?*, *supra* note 213.

²³⁶ See *supra* Part II.

²³⁷ *Have Mandatory Minimum Jail Sentences Been an Effective Tool in the War on Drugs?*, *supra* note 213.

²³⁸ *Id.*

²³⁹ CONN. GEN. ASSEMBLY, *supra* note 28.

²⁴⁰ Marc Mauer, *The Impact of Mandatory Minimum Penalties in Federal Sentencing: Mandatory Minimum Penalties Have Not Improved Public Safety But Have Exacerbated Existing Racial Disparities Within the Criminal Justice System*, 94 JUDICATURE 6, 6-7 (July-Aug. 2010), http://sentencingproject.org/doc/publications/s_Viewpoint.pdf.

²⁴¹ *Id.* at 6.

²⁴² GILL, *supra* note 33, at 12.

I have been at this so long, I am now sentencing the grown children of people I long ago sent to prison.²⁴³

There are no conclusive studies demonstrating whether mandatory minimums are reducing drug activity.²⁴⁴ Statistics from the Federal Bureau of Investigation and the Bureau of Justice Statistics show a steady increase in the number of drug offenders arrested at both the state and federal levels over recent decades and also show increases in the amount of drugs law enforcement seizes each year.²⁴⁵

Although billions of dollars are spent each year on corrections, recidivism rates still rise.²⁴⁶ Nearly a third of people released from prison return within three years of their release.²⁴⁷ The percent of releasees that were rearrested for any offense or violation within three years of release totaled 64% in 2008.²⁴⁸ The uphill battle inmates face after release from incarceration may explain some of the recidivism rates.²⁴⁹ Convicted felons experience higher unemployment than the general public and, as a result, are often left homeless.²⁵⁰ Employers are unlikely to hire released felons because of “a lack of recent work history, limited job skills, and liability concerns.”²⁵¹ Individuals without jobs and who are homeless are more likely to be incarcerated, and, thus, the cycle begins.²⁵² Lengthy mandated prison sentences are perpetuating the problem, and the reincarceration of individuals is expensive.²⁵³ A recent study found that neither sentence length nor a mandatory minimum sentence alone could be related to recidivism.²⁵⁴

²⁴³ Mark W. Bennet, *How Mandatory Minimums Forced Me to Send More Than 1,000 Nonviolent Drug Offenders to Federal Prison*, THE NATION, Oct. 24, 2012, <http://www.thenation.com/article/170815/how-mandatory-minimums-forced-me-send-more-1000-nonviolent-drug-offenders-federal-pri#>.

²⁴⁴ GILL, *supra* note 33, at 12.

²⁴⁵ *Id.*

²⁴⁶ FLA. TAXWATCH, *supra* note 144, at 7.

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ Richards, *supra* note 169.

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ *Mandatory Minimum Sentencing*, DRUG WAR FACTS, <http://drugwarfacts.org/cms/?q=node/52> (last visited May 10, 2013).

Drug courts, on the other hand, have been proven to reduce recidivism rates.²⁵⁵ Miami-Dade County formed the first drug court in the United States in 1989.²⁵⁶ Over the last twenty-four years the number of drug courts in Florida has increased to 106.²⁵⁷ Drug court is a process, not a specialty court, by which substance abusers entering the judicial system are placed into treatment, and both a judge and team of treatment professionals monitor the substance abusers.²⁵⁸ Drug courts provide an end to the drug-addiction cycle by increasing accountability and providing incentives for offenders to address substance abuse and addiction.²⁵⁹ The felony recidivism rate for drug-court participants is only 12% compared to a control group of 40%.²⁶⁰ However, although drug courts have produced proven cost-effective results, Florida continues to use mandatory minimum sentencing drug laws.²⁶¹ These laws can result in longer incarceration for a drug offense than for manslaughter.²⁶² As a result, Florida taxpayers are spending millions of dollars on corrections when drug courts are proven to reduce recidivism rates.²⁶³ “A one percentage point drop in the recidivism rate” translates to 400 fewer incarcerated inmates over a three-year period.²⁶⁴ In Florida, the annual cost per inmate is approximately \$20,000, which means a savings of \$8,000,000 over three years.²⁶⁵ Drug courts have provided an affordable and effective alternative to incarceration, and, as a result, the Florida Legislature should reform mandatory minimum sentencing laws.²⁶⁶

²⁵⁵ Greg Newburn, *Right on Crime: Reform Florida's Mandatory Minimum Sentences*, SENTENCESPEAK (Oct. 26, 2012, 10:13 AM), <http://sentencespeak.blogspot.com/2012/10/right-on-crime-reform-floridas.html>.

²⁵⁶ Erin M. Blauvelt, *Florida Could Limit Prison Growth by Turning to its Drug Courts*, RIGHT ON CRIME (Oct. 26, 2012), <http://www.rightoncrime.com/2012/10/florida-could-limit-prison-growth-by-turning-to-its-drug-courts/>.

²⁵⁷ *Id.*

²⁵⁸ SUPREME COURT TASK FORCE ON TREATMENT-BASED DRUG COURTS, REPORT OF FLORIDA'S DRUG COURTS 1 (2004), available at http://www.flcourts.org/gen_public/family/drug_court/bin/taskforcereport.pdf.

²⁵⁹ *Id.* at 3.

²⁶⁰ Blauvelt, *supra* note 256.

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ JUST. POL'Y INST., *supra* note 142.

²⁶⁵ *Id.*

²⁶⁶ Blauvelt, *supra* note 256.

This reform would not only reduce the recidivism rate but would also save millions of dollars.²⁶⁷

Supporters of drug-related mandatory minimum sentences originally perceived them as a mechanism to fix the nation's drug problem.²⁶⁸ Legislators took a harsh stance in hopes that strict punishment would deter drug use and trafficking.²⁶⁹ However, the effects of mandatory minimums have been costly to taxpayers and families.²⁷⁰ Additionally, there is no statistical data that proves mandatory minimum sentences have deterred this behavior, and prison populations continue to grow at an astonishing rate.²⁷¹

Some members of society would like to take the opposite stance on our nation's drug problem and support the legalization of drugs in our country.²⁷² However, this is not the answer.²⁷³ Although the "War on Drugs" is costly, drug use and trafficking come at a cost to taxpayers and families.²⁷⁴ Countless accidents and crimes occur yearly as the result of drug abuse.²⁷⁵ Often times these costs are not absorbed by the drug user but by the victims of their crimes.²⁷⁶ In 2009 there were 37,485 drug-related fatalities.²⁷⁷ This totals one life lost every fourteen minutes, doubling the death toll in the last ten years.²⁷⁸ For the first time since 1979, drug-related fatalities have outnumbered traffic-related fatalities.²⁷⁹ The complete removal of ramifications for drug-related crimes is not the answer and would increase drug consumption.²⁸⁰

²⁶⁷ *Id.*

²⁶⁸ Mascharka, *supra* note 32, at 967.

²⁶⁹ *Id.* at 968.

²⁷⁰ Blauvelt, *supra* note 256.

²⁷¹ *See* GILL, *supra* note 33, at 21.

²⁷² Mascharka, *supra* note 32, at 967.

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ *Id.* at 968.

²⁷⁶ *Id.*

²⁷⁷ *U.S. Drug-Related Deaths Outnumber Traffic Fatalities*, FOX NEWS (Sep. 18, 2011), <http://www.foxnews.com/health/2011/09/18/us-drug-related-deaths-outnumber-traffic-fatalities/>.

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ Mascharka, *supra* note 32, at 967-68.

There seem to be two strong opposing viewpoints on the issue of drugs in our nation—legalization and imposing harsh, mandated penalties for offenders.²⁸¹ The answer may lie in a middle ground, consisting of increasing the use of drug courts and reimplementing judicial discretion in sentencing.²⁸² Stanley Sporkin, a U.S. district judge, stated, “We need to deal with the drug problem in a much more discretionary, compassionate way. We need treatment, not just punishment and imprisonment.”²⁸³ Providing support to drug users through rehabilitation and counseling not only helps solve the problem but also is more cost-effective.²⁸⁴ According to the Rand Corporation, “[t]reatment of substance abusers is eight to nine times more cost-effective than long sentences.”²⁸⁵

Prior to the acceptance of mandatory minimum sentences, judges had unbridled discretion in sentencing, which led to a wide variety of imposed sentences.²⁸⁶ A vast disparity in sentencing is inherently unfair.²⁸⁷ Although the exercise of judicial discretion allows for the reduction of unnecessarily lengthy sentences, complete discretion also is not the answer.²⁸⁸ Legislatures should replace mandated sentencing laws with certain suggested guidelines to serve as a basis for sentencing in crimes.²⁸⁹ “Initially, guidelines were established as a way to address concerns about unfettered judicial discretion and lack of uniform and equal treatment of similarly situated defendants. Later, they were championed as a way to help ensure predictability in sentencing and

²⁸¹ *Id.* at 968.

²⁸² FAMM PRIMER, *supra* note 25.

²⁸³ *What the Experts Say*, FAMILIES AGAINST MANDATORY MINIMUMS, <http://www.famm.org/aboutsentencing/WhattheExpertsSay.aspx> (last visited May 10, 2013).

²⁸⁴ FAMM PRIMER, *supra* note 25.

²⁸⁵ FEDERAL MANDATORY SENTENCING REFORM, *supra* note 196.

²⁸⁶ David Risley, *Mandatory Minimum Sentences: An Overview*, DRUG WATCH INT’L, <http://www.drugwatch.org/Mandatory%20Minimum%20Sentences.htm> (last updated June 19, 2001).

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ Kelly Baker, *Issues in Mandatory Minimum Sentencing: Considering Traditional and Alternative Methods of Crime Control in the United States Justice System*, JAMES MADISON UNIV. MADISON WRITING AWARD, 2006, at 13, available at <http://www.jmu.edu/mwa/docs/2006/Baker.pdf>.

thus to project the amount of correctional resources needed.”²⁹⁰ Guidelines direct judicial discretion while accomplishing particular sentencing and correctional objectives.²⁹¹ Traditionally, the severity of the crime and criminal history were used to prescribe punishment.²⁹² Guidelines can serve as a foundation, and judges can evaluate the circumstances surrounding the crime and exercise discretion in applying a specific sentence.²⁹³ Sentencing guidelines will eliminate the rigid mandated sentences, and minor offenders will be less likely to serve a mandated sentence of an excessive length of time.²⁹⁴

Florida has nearly doubled its prison population over the past fifteen years.²⁹⁵ The state has experienced a smaller drop in crime than New York, which has reduced its number of inmates to below its prison population in 1993.²⁹⁶ Adam Gelb, director of the Center’s Public Safety Performance Project who advises states on developing alternatives to incarceration, stated,

There is no question that putting violent and chronic offenders behind bars lowers the crime rate and provides punishment that is well deserved. On the other hand, there are large numbers of people behind bars who could be supervised in the community safely and effectively at a much lower cost—while also paying taxes, paying restitution to their victims and paying child support.²⁹⁷

Mandatory sentencing laws aim to convey a message to potential offenders that if they commit certain specified crimes, they deserve

²⁹⁰ Robin L. Lubitz & Thomas W. Ross, *Sentencing Guidelines: Reflections on the Future*, U.S. DEP’T OF JUSTICE, June 2011, available at <https://www.ncjrs.gov/pdffiles1/nij/186480.pdf>.

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ Baker, *supra* note 289, at 7.

²⁹⁴ *Id.*

²⁹⁵ Aizenman, *supra* note 24.

²⁹⁶ *Id.*

²⁹⁷ *Id.*

and can expect harsh mandated sanctions.²⁹⁸ The laws originated as a response to public concern for crime and drug use in the United States.²⁹⁹ Crime control and public safety are, and should continue to remain, great concerns.³⁰⁰ However, there is a broad consensus that mandatory minimum sentences are counterproductive to a fair and productive justice system.³⁰¹ Eliminating mandatory minimum sentencing laws ensures a more rational and fair system.³⁰² A variety of effective alternatives are available that both deter and punish crime, and the exorbitant cost of mandatory minimum sentences to families and taxpayers is not justified.³⁰³

VII. CONCLUSION

Mandatory minimum sentences can be a useful tool in the sentencing process.³⁰⁴ They aim to take away the disparity in sentences, deter crime, and provide clear, concrete rules.³⁰⁵ However, although mandated minimum sentences seemed fair at the legislative level, they are often too harsh when applied in context to a particular case.³⁰⁶ Additionally, mandatory minimum sentences stifle all judicial discretion in the sentencing process.³⁰⁷ Often, first-time, nonviolent offenders receive lengthy prison sentences at the cost of taxpayers.³⁰⁸ Proven alternatives such as drug courts are not only cost effective but also proven to reduce recidivism rates.³⁰⁹ Mandatory minimum sentences remove other sentencing options that may be less costly and more effective than mandatory incarceration.³¹⁰

²⁹⁸ Dale Parent et al., *Key Legislative Issues in Criminal Justice: Mandatory Sentencing*, U.S. DEP'T OF JUST., Jan. 1997, available at <https://www.ncjrs.gov/txtfiles/161839.txt>.

²⁹⁹ *Id.*

³⁰⁰ *See id.*

³⁰¹ Mauer, *supra* note 240, at 40.

³⁰² *Id.*

³⁰³ *See supra* Part IV.

³⁰⁴ *See supra* Part V.

³⁰⁵ *See supra* Part V.

³⁰⁶ Schulhofer, *supra* note 38, at 200.

³⁰⁷ *See supra* Part II.

³⁰⁸ *See supra* Part IV.A.

³⁰⁹ *See supra* Part IV.A.

³¹⁰ *Mandatory Minimum Sentencing*, *supra* note 254.

Those who are convicted and found guilty of committing a crime deserve to serve an appropriate prison sentence.³¹¹ However, a judge should exercise judicial discretion with every case to ensure that the punishment matches the crime and that tax dollars are not wasted.³¹² Judges should use suggested sentencing guidelines as a basis for sentencing.³¹³ Sentencing guidelines provide a level of deterrence, predictability, uniformity, and severity and offer legislative guidance to the judiciary.³¹⁴ Judicial discretion ensures a court evaluates the specific facts concerning the crime and allows for greater flexibility in sentencing.³¹⁵ Through this process, the unnecessary costs and burdens associated with rigid mandatory minimum sentences are avoided.³¹⁶ The use of sentencing guidelines as a foundational basis for sentencing, and judicial evaluation concerning the specific circumstances of the crime, allow for the initial goals of mandatory minimum sentences to be achieved without the significant adverse effects.³¹⁷

Mandatory minimum sentences result in unduly lengthy prison sentences without consideration of the facts, at the cost of family members and taxpayers.³¹⁸ The prison system accounts for a large portion of available public resources, which could be better spent on education and healthcare.³¹⁹ Extended incarceration has not reduced crime or drug abuse.³²⁰ It has not made communities safer and has not solved societal problems.³²¹ The implementation of mandatory minimum sentences has diminished the traditional role of the judiciary.³²² Consequently, there has been a significant increase in unfair prison sentences and a huge rise

³¹¹ See *supra* text accompanying notes 298, 300.

³¹² See *supra* text accompanying note 31.

³¹³ Schulhofer, *supra* note 38, at 221.

³¹⁴ *Id.*

³¹⁵ *Id.*

³¹⁶ *Id.*

³¹⁷ *Id.*

³¹⁸ See *supra* Part IV.

³¹⁹ See Sturr, *supra* note 17 (“In 2001, spending on the criminal justice system at all levels of government topped \$167 billion (vs. \$36 billion in 1982) . . .”).

³²⁰ See *supra* Part VI.

³²¹ Sturr, *supra* note 17.

³²² Alexander B. Smith & Harriet Pollack, *Curtailing the Sentencing Power of Trial Judges: The Unintended Consequences*, AM. JUDGES ASS’N CT. REV., Summer 1999, at 6-7, available at <http://aja.ncsc.dni.us/courtrv/cr36-2/CR36-2SmithPol.pdf>.

in the prison population.³²³ The Supreme Court recently ruled in *United States v. Booker* that the mandatory Federal Sentencing Guideline should be advisory.³²⁴ The ruling now requires a sentencing court to consider guideline ranges and specifically tailor the sentence to the individual.³²⁵

There are many challenges surrounding the U.S. economy.³²⁶ One simple solution, or answer, to solve the budget deficit does not exist.³²⁷ Eliminating mandatory minimum sentences is one area of reform that can save money while addressing economic and social problems.³²⁸ The U.S. prison system currently drains public resources and is an example of a government service we cannot afford to maintain in its current state.³²⁹ In difficult economic situations, decisions must be made concerning the most effective use of budgets, and wasteful spending must be eliminated.³³⁰ Florida should reform its current sentencing statues and implement the use of judicial discretion based on suggested sentencing guidelines, saving taxpayers millions of dollars.³³¹

³²³ *Id.*

³²⁴ *United States v. Booker*, 543 U.S. 220, 245 (2005).

³²⁵ *Id.*

³²⁶ *See Zuke, supra* note 10.

³²⁷ *Id.*

³²⁸ *Id.*

³²⁹ *Id.*

³³⁰ *See id.*

³³¹ *See supra* Parts III-IV.A.