THE COST OF MANDATORY MINIMUM SENTENCES

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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

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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”)
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The prison system is one area in particular that warrants addressing.\footnote{See id. (noting that mismanaged prisons fail to provide prisoners with preparation and support, resulting in a return to criminal behavior upon release).}
Prison budgets have grown into the billions while legislatures have cut important state funding budgets for education, healthcare, and infrastructure.\footnote{Id.}
There is undoubtedly a necessity to imprison violent and predatory offenders for the safety of our society.\footnote{See id. (“Certainly, citizens have a need to isolate psychopaths who thrive on crime, violence, and predatory behavior.”).}
However, the finances allocated to the prison system continue to drain public resources.\footnote{Id.}
The longer a person is exposed to incarceration, the more difficult it becomes for that person to successfully reenter society.\footnote{Id.}
It is often difficult to find employment as a convicted felon, and, as a result, the price of incarceration extends beyond release.\footnote{See Scott Zuke, \textit{The Economics of Prison Reform}, \textit{Pure Onsense} (May 25, 2011), http://pureonsense.com/2011/05/the-economics-of-prison-reform/.
}

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The International Center for Prison Studies conducted a recent study reporting that the United States houses 737 prisoners per 100,000 people.\footnote{Id. 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.\footnote{Id. 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.\footnote{Id.} The United States consists of less than 5% of the world’s population but accounts for nearly}
25% of the world’s prison population. The increasing prison population has led to a crisis of overcrowding and overextended resources.

The high number of people imprisoned in the United States is a relatively recent phenomenon. Throughout the twentieth century the federal and state prison populations remained around 200,000 people. In the 1970s the prison population began to soar, and as of 2008 the number of people incarcerated totaled 2.3 million. There are many theories on why the United States has such an astonishing incarceration rate. Under the American legal system, criminals may be incarcerated for crimes that seldom result in prison time in other countries. Compared to other countries, the United States incarcerates prisoners for longer periods of time. 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.

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

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.
for a convicted offender. Mandatory minimum sentences have existed in our country since the late 1700s but have grown in popularity since the early 1950s. 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. Mandatory minimum sentencing laws statutorily require a judge to automatically impose a minimum prison sentence for offenders convicted of certain crimes. 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. 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. 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. Many commentators have voiced concerns about the social and economic effects associated with mandatory minimum sentencing statutes.

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

26 See infra Part II.
27 See infra Part II.
29 Id.
30 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).
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


\(^{34}\) Id.

\(^{35}\) Id. at 5.

\(^{36}\) Id.

\(^{37}\) See infra notes 38-63 and accompanying text.


\(^{40}\) Id.
trafficking and addiction in America. The Act was named after Louisiana Congressman Thomas Boggs Sr., who sponsored the bill because he believed drug-sentencing laws were too lenient. The purpose was to deter both drug use and distribution by imposing mandatory prison sentences and fines for people convicted of drug-related crimes. Under the Boggs Act, a first offense for a drug-related crime resulted in a two- to five-year mandatory prison sentence. A second offense resulted in a five- to ten-year prison sentence, while a third offense meant ten to fifteen years in prison. No distinction between drug possession and drug trafficking existed. 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. 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. 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.

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. 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.” 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.
criticism from families, prosecutors, and prison personnel.\textsuperscript{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.\textsuperscript{53}

Congress also stated that “lengthening prison sentences ‘had not shown the expected overall reduction in drug law violations.’”\textsuperscript{54}

Over the next decade, Americans continued to engage in drug use.\textsuperscript{55} Along with the 1980s came the development of crack cocaine.\textsuperscript{56} The drug quickly became prevalent because it was inexpensive and easily transported.\textsuperscript{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.\textsuperscript{58} In 1984 mandatory minimum sentences were reestablished for many drug offenses.\textsuperscript{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.\textsuperscript{60} In subsequent years Congress enacted additional mandatory minimum sentences and increased the existing sentences.\textsuperscript{61} Consequently, there are over 100 mandatory minimum sentence provisions in the federal code.\textsuperscript{62} The comprehensive \textit{Sentencing Commission Report} acknowl-
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.”

States have also implemented mandatory minimum sentencing statutes. Although not all states have adopted these statutes, many states have embraced mandatory minimum sentencing. The first states to adopt sentencing guidelines include Minnesota, Pennsylvania, Washington, and Florida. 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. 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. As a result, concerns grew regarding judicial discretion and a lack of uniformity in sentencing. In response, Florida adopted a structured sentencing policy through the en-

63 Id.
64 Mascharka, supra note 32, at 941.
65 Id.
69 See id. at 4 (discussing the legislature’s concerns about broad judicial discretion and inconsistent sentences).
The enactment of the 1983 Florida Sentencing Guidelines. The policy adopted a point system to assess offenses and apply sanctions ranging from fines to life imprisonment. Florida’s guidelines abolished parole eligibility for most offenses. The guideline structure consisted of nine worksheets of “offense categories such as murder, sexual offenses, drug offenses, etc.” Points accrued based on the prior record of the offender, the offense, and the victim’s injuries. The total point score determined the sanction imposed.

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. In 1994 the “Safe Streets Act” replaced this system. The primary objective was to allocate finite state funding and focus incarceration toward serious violent or repeat offenders. The structure attempted to correct previous problems by eliminating the nine separate worksheets that grouped crimes. Under the new structure, crimes were ranked and assigned escalating point values as the rank increased. 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. 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.

One year later, the legislature increased the “Safe Streets Act” sanctions through the passage of the Crime Control Act of 1995. The 1994 guideline structure endured. 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. 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. As a result, the 1997 Florida Legislature enacted the Criminal Punishment Code. The Code applies to offenses committed on or after October 1, 1998, and is the primary sentencing code currently followed in Florida. “The Code contains . . . both structured and unstructured sentencing policies” but maintains the goals of previous sentencing guidelines. It allows for imprisonment, up to a statutory maximum, for any felony offender regardless of his or her point score. In comparison to the previous guidelines, the Criminal Punishment Code permits greater upward discretion in sentencing, increased sanctions, and lower mandatory prison thresholds. Florida uses additional statutes in

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81 Id.
82 Id.
83 Id. at 6 (noting that the increased point values in the new Act led to weightier sanctions).
84 Id.
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.\footnote{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.} The remaining portion of this section will highlight some of the mandatory minimum sentencing laws currently imposed in Florida.\footnote{See infra notes 97-99, 103 and accompanying text.}

Most mandatory minimum sentences apply to drug-related offenses; however, they have also been enacted for gun crimes and repeated criminal offenses.\footnote{See infra Part III.} 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.”\footnote{Rasor, supra note 67.} The law adopts a zero-tolerance approach and imposes harsh mandatory minimum sentences for gun-related crimes.\footnote{Id.} 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.\footnote{Id.} If an offender discharges the firearm during the commission of the felony, the judge must impose a twenty-year mandatory sentence.\footnote{Id.} 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.\footnote{Id.} Florida implemented the law to deter offenders from repeating violent gun-related crimes.\footnote{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/.} Judges have no latitude to evaluate the circumstances surrounding the crime and must impose the mandated sentence.\footnote{Id.} 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.\footnote{Id.} Although there were no injuries, firing a weapon during the commission of certain
felonies, including aggravated assault, carries a twenty-year mandated prison sentence.\textsuperscript{103} However, if the women had killed her husband, she most likely would have been charged with manslaughter and received a much lighter sentence.\textsuperscript{104} The inflexibility of mandated sentencing laws prevents judges from assessing the circumstances surrounding the crime,\textsuperscript{105} resulting in excessively long prison sentences at an exorbitant cost to taxpayers.\textsuperscript{106}

Florida’s close proximity to other countries has led to a history of drug trafficking and abuse.\textsuperscript{107} In an effort to solve the problem, the Florida Legislature implemented the use of mandatory minimum sentencing.\textsuperscript{108} Florida’s drug-related mandatory minimum sentences are among the most severe in the country.\textsuperscript{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.\textsuperscript{110} In Texas, the same conviction mandates a minimum two-year prison sentence.\textsuperscript{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.\textsuperscript{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.\textsuperscript{113} If the amount of cocaine increases to

\textsuperscript{103} See id.
\textsuperscript{104} Id.
\textsuperscript{105} Id.
\textsuperscript{108} Id.
\textsuperscript{109} Mandatory Minimum Drug Laws, supra note 106.
\textsuperscript{110} Id.
\textsuperscript{111} Id.
\textsuperscript{112} Id.
between 200 and 400 grams, the person is subject to a seven-year mandatory minimum sentence and a $100,000 fine.\textsuperscript{114} If the amount is between 400 grams and 150 kilograms, Florida law mandates a fifteen-year minimum sentence and a $250,000 fine.\textsuperscript{115} The statute also applies to prescription drugs, which include, but are not limited to, hydrocodone, oxycodone, and amphetamines.\textsuperscript{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.\textsuperscript{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 releasee reoffenders.\textsuperscript{118} Florida first enacted this legislation on October 1, 1988.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{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

\textsuperscript{114} Id. § 893.135(1)(b)(1)(b).
\textsuperscript{115} Id. § 893.135(1)(b)(1)(c).
\textsuperscript{116} Id. § 893.135(1)(c)(1).
\textsuperscript{119} Historical Summary of Sentencing and Punishment in Florida, supra note 85.
\textsuperscript{120} FLA. STAT. § 775.084 (2012).
\textsuperscript{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

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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.
prison population has grown significantly.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{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.\textsuperscript{138} Often, this results in lengthy prison sentences, which are not only costly to taxpayers but also to the families of inmates.\textsuperscript{139} In 2001, $167 billion was spent on the criminal justice system compared to $36 billion in 1982.\textsuperscript{140} In the last two decades, state spending on the prison system “has risen at six times the rate of spending on higher education.”\textsuperscript{141} The policies Florida implemented throughout the 1980s and 1990s account for the rapid growth of the prison population and cost.\textsuperscript{142}

\textsuperscript{134} Id.
\textsuperscript{136} See id.
\textsuperscript{137} Id.
\textsuperscript{138} CONN. GEN. ASSEMBLY, supra note 28.
\textsuperscript{139} Id.
\textsuperscript{140} Sturr, supra note 17.
In 2010, one year in a state prison cost $20,553 per inmate in Florida.\textsuperscript{143} In the fiscal year of 2012, projections showed that Florida taxpayers would spend over $2.3 billion on corrections.\textsuperscript{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.\textsuperscript{145} By January 1, 2010, the population of the Florida prison system reached 103,915 inmates.\textsuperscript{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.\textsuperscript{147} Growth has doubled since 1990 and nearly quadrupled since 1984.\textsuperscript{148} This expansion equates to a 192% increase, exceeding the national prison population growth rate of 133%.\textsuperscript{149} Pennsylvania is the only state in the country whose prison population growth rate exceeds Florida’s.\textsuperscript{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.\textsuperscript{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.\textsuperscript{152} The average time served in prison is 8.4 years and will cost Florida taxpayers over $983 million.\textsuperscript{153} Inmates incarcerated under a prescription drug offense account for 544 prisoners at a cost of $10 million per year.\textsuperscript{154} These prisoners serve, on average, an 8.7-year prison sentence, costing Florida taxpayers $95 million.\textsuperscript{155}

\textsuperscript{146} Fla. TaxWatch, supra note 144, at 4.
\textsuperscript{147} The Sentencing Project, supra note 145.
\textsuperscript{148} Id.
\textsuperscript{149} Id.
\textsuperscript{150} Fla. TaxWatch, supra note 144, at 5.
\textsuperscript{151} The Sentencing Project, supra note 145.
\textsuperscript{152} Mandatory Minimum Drug Laws, supra note 106.
\textsuperscript{153} Id.
\textsuperscript{154} Id.
\textsuperscript{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.\textsuperscript{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.\textsuperscript{157}

Although some of these prison sentences are necessary, a complete lack of discretion in sentencing is not.\textsuperscript{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.\textsuperscript{159} Many other states have implemented alternatives to lengthy mandatory minimum sentences with drug convictions and are saving millions of dollars as a result.\textsuperscript{160} For example, Michigan saved $115 million by granting parole eligibility to drug offenders serving mandatory minimum sentences.\textsuperscript{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.\textsuperscript{162} With the current fiscal crisis, the rising cost of incarcerating nonviolent drug offenders is competing with education and other state services for funding.\textsuperscript{163}

Florida is among a list of states that spend more money on corrections than on education.\textsuperscript{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.\textsuperscript{165} Mandated prison sentences are primarily responsible for the high incarceration rate in Florida.\textsuperscript{166} By eliminating parole and mandating that inmates serve 85\% of their sentences, Florida keeps inmates behind bars longer, at a

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{156} \textsc{Fla. TaxWatch}, \textit{supra} note 144, at 31.
  \item \textsuperscript{157} \textit{Id.}
  \item \textsuperscript{158} \textsc{Mandatory Minimum Drug Laws}, \textit{supra} note 106.
  \item \textsuperscript{159} \textit{Id.}
  \item \textsuperscript{160} \textit{Id.}
  \item \textsuperscript{161} \textit{Id.}
  \item \textsuperscript{162} \textit{Id.}
  \item \textsuperscript{163} \textsc{The Sentencing Project}, \textit{supra} note 145.
  \item \textsuperscript{164} Mascharka, \textit{supra} note 32, at 952.
  \item \textsuperscript{165} \textsc{Cost of Florida Prisons: Too Many in Prison Too Long}, \textsc{The Ledger} (Oct. 24, 2011), http://www.theledger.com/article/20111024/EDIT01/111029708?p=1&tc=pg.
  \item \textsuperscript{166} \textit{Id.}
\end{itemize}
\end{footnotesize}
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.
170 Mascharka, supra note 32, at 951-52.
173 Id.
174 Id.
175 Id.
176 Id.
177 Id.
contacted a friend for the woman. The undercover officer initially purchased small amounts and then requested larger quantities. Mr. Earle acted as a middleman between the undercover officer and the supplier and did not benefit financially from the transactions. Three months later the undercover officer arrested Mr. Earle for felony drug trafficking and conspiracy. Mr. Earle, a nonviolent first-time offender, received four concurrent twenty-five-year mandatory minimum sentences. 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.” Mr. Earle’s anticipated release date is October 20, 2019.

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

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178 Id.
179 Id.
180 Id.
181 Id.
182 Id.
183 Id.
184 Id.
186 Id.
187 Id.
188 Id.
189 Id.
190 Id.
minimum sentence, the judge refused to impose the sanction.\textsuperscript{191} The judge imposed a three-year sentence claiming the 10-20-Life Law was unconstitutional.\textsuperscript{192} The prosecutor subsequently appealed, and the court of appeals ultimately imposed the twenty-year mandatory minimum.\textsuperscript{193} Mr. Thompson is diabetic, uses a cane, has high blood pressure, and has undergone three surgeries while incarcerated.\textsuperscript{194} Mr. Thompson’s projected release date is 2029.\textsuperscript{195}

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

In 2000, 1,500,000 children had a parent in the prison system—500,000 more than in 1991.\textsuperscript{201} These children may be at risk of ending up in prison without the proper support of their parents.\textsuperscript{202} Although punishment is necessary, an excessively long mandated sentence is not

\begin{flushleft}
\textsuperscript{191} Id.
\textsuperscript{192} Id.
\textsuperscript{193} Id.
\textsuperscript{194} Id.
\textsuperscript{195} Id.
\textsuperscript{197} Hairston, supra note 171.
\textsuperscript{198} Id.
\textsuperscript{199} See generally id. (explaining the concern of incarcerated parents when children are placed under the custody of the state).
\textsuperscript{200} Id.
\textsuperscript{201} Federal Mandatory Sentencing Reform, supra note 196.
\textsuperscript{202} Id.
\end{flushleft}
the answer. 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.”

V. PROPONENTS AND OPPONENTS OF MANDATORY MINIMUM SENTENCING LAWS

Crime and punishment are important public policy concerns. 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. In criminal cases, the judge must apply the appropriate punishment if a court convicts a person of a crime. 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.

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

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. \footnote{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).} 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. \footnote{Id.} 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. \footnote{Id.} Second, supporters also believe that mandatory minimums act as a deterrent to crime. \footnote{Id.} Third, drug offenders would not be able to commit additional related crimes seeing as their prison sentences are now much longer. \footnote{Id.} Fourth, those arrested will be more willing to cooperate with law enforcement if faced with the possibility of a lengthy mandatory minimum sentence. \footnote{Id.} 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. \footnote{Id.} The certainty and severity of mandatory minimum sentences help ensure the goals of incarceration. \footnote{Id.}

Mandatory minimum sentences were implemented with honest intentions of solving societal problems and deterring crime. \footnote{Are Mandatory Minimum Drug Sentences Cost-Effective?, RAND, http://www.rand.org/pubs/research_briefs/RB6003/index1.html (last visited May 10, 2013).} 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. \footnote{Federal Mandatory Sentencing Reform, supra note 196.} First, in response to proponents of drug-related mandatory minimums, judicial discretion is nec-
necessary to evaluate each situation individually.\footnote{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/.} In some situations the imposition of a mandated sentence may place a productive, tax-paying citizen in prison for an unreasonable period of time.\footnote{224}{Id.} Judicial discretion allows for a judge to evaluate the facts and analyze the implications of the sentence.\footnote{225}{Id.} Second, mandatory minimum sentences do not deter crime.\footnote{226}{Id.} In practice, sentences are arbitrarily applied and result in applying the same penalty for different offenses and individuals.\footnote{227}{Id.} This impedes the deterrent aspect of the sentences.\footnote{228}{Id.} 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.\footnote{229}{Id.} 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.\footnote{230}{Id.} 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.\footnote{231}{Id.} 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.\footnote{232}{Id.} 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.\footnote{233}{Mascharka, supra note 32, at 966.} Supporters claim they deter crime and act as a valuable drug
control measure, but are they really working? Mandatory minimum sentences often result in excessively severe sentences. Twice in the last fifty years, Congress has enacted mandatory minimum sentencing laws in response to drug abuse and trafficking. Both times the laws have failed to alleviate these problems. Additionally, the implementation of the laws has resulted in vast growth of the prison population and increased correctional spending at taxpayer expense.

The goals of punishment conventionally include deterrence, incarceration, retribution, and rehabilitation. Mandatory minimum sentences have had little effect on crime and arrest rates. 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. Mandatory minimum sentences have not acted as a deterrent for drug use and have failed to reduce drug trafficking offenses. 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,

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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.
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.\footnote{Mark W. Bennet, How Mandatory Minimums Forced Me to Send More Than 1,000 Nonviolent Drug Offenders to Federal Prison, \textit{The Nation}, Oct. 24, 2012, http://www.thenation.com/article/170815/how-mandatory-minimums-forced-me-send-more-1000-nonviolent-drug-offenders-federal-prison.}

There are no conclusive studies demonstrating whether mandatory minimums are reducing drug activity.\footnote{Gill, supra note 33, at 12.} 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.\footnote{Id.}

Although billions of dollars are spent each year on corrections, recidivism rates still rise.\footnote{Fla. TaxWatch, supra note 144, at 7.} Nearly a third of people released from prison return within three years of their release.\footnote{Id.} The percent of releasees that were rearrested for any offense or violation within three years of release totaled 64\% in 2008.\footnote{Id.} The uphill battle inmates face after release from incarceration may explain some of the recidivism rates.\footnote{Richards, supra note 169.} Convicted felons experience higher unemployment than the general public and, as a result, are often left homeless.\footnote{Id.} Employers are unlikely to hire released felons because of “a lack of recent work history, limited job skills, and liability concerns.”\footnote{Id.} Individuals without jobs and who are homeless are more likely to be incarcerated, and, thus, the cycle begins.\footnote{Id.} Lengthy mandated prison sentences are perpetuating the problem, and the reincarceration of individuals is expensive.\footnote{Id.} A recent study found that neither sentence length nor a mandatory minimum sentence alone could be related to recidivism.\footnote{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.\textsuperscript{255} Miami-Dade County formed the first drug court in the United States in 1989.\textsuperscript{256} Over the last twenty-four years the number of drug courts in Florida has increased to 106.\textsuperscript{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.\textsuperscript{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.\textsuperscript{259} The felony recidivism rate for drug-court participants is only 12\% compared to a control group of 40\%.\textsuperscript{260} However, although drug courts have produced proven cost-effective results, Florida continues to use mandatory minimum sentencing drug laws.\textsuperscript{261} These laws can result in longer incarceration for a drug offense than for manslaughter.\textsuperscript{262} As a result, Florida taxpayers are spending millions of dollars on corrections when drug courts are proven to reduce recidivism rates.\textsuperscript{263} “A one percentage point drop in the recidivism rate” translates to 400 fewer incarcerated inmates over a three-year period.\textsuperscript{264} In Florida, the annual cost per inmate is approximately $20,000, which means a savings of $8,000,000 over three years.\textsuperscript{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.\textsuperscript{266}


\textsuperscript{257} Id.


\textsuperscript{259} Id. at 3.

\textsuperscript{260} Blauvelt, supra note 256.

\textsuperscript{261} Id.

\textsuperscript{262} Id.

\textsuperscript{263} Id.

\textsuperscript{264} Just. Pol’y Inst., supra note 142.

\textsuperscript{265} Id.

\textsuperscript{266} Blauvelt, supra note 256.
This reform would not only reduce the recidivism rate but would also save millions of dollars.  

Supporters of drug-related mandatory minimum sentences originally perceived them as a mechanism to fix the nation’s drug problem. Legislators took a harsh stance in hopes that strict punishment would deter drug use and trafficking. However, the effects of mandatory minimums have been costly to taxpayers and families. 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.

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. However, this is not the answer. Although the “War on Drugs” is costly, drug use and trafficking come at a cost to taxpayers and families. Countless accidents and crimes occur yearly as the result of drug abuse. Often times these costs are not absorbed by the drug user but by the victims of their crimes. In 2009 there were 37,485 drug-related fatalities. This totals one life lost every fourteen minutes, doubling the death toll in the last ten years. For the first time since 1979, drug-related fatalities have outnumbered traffic-related fatalities. The complete removal of ramifications for drug-related crimes is not the answer and would increase drug consumption.

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.
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.\textsuperscript{281} The answer may lie in a middle ground, consisting of increasing the use of drug courts and reimplementing judicial discretion in sentencing.\textsuperscript{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.”\textsuperscript{283} Providing support to drug users through rehabilitation and counseling not only helps solve the problem but also is more cost-effective.\textsuperscript{284} According to the Rand Corporation, “[t]reatment of substance abusers is eight to nine times more cost-effective than long sentences.”\textsuperscript{285}

Prior to the acceptance of mandatory minimum sentences, judges had unbridled discretion in sentencing, which led to a wide variety of imposed sentences.\textsuperscript{286} A vast disparity in sentencing is inherently unfair.\textsuperscript{287} Although the exercise of judicial discretion allows for the reduction of unnecessarily lengthy sentences, complete discretion also is not the answer.\textsuperscript{288} Legislatures should replace mandated sentencing laws with certain suggested guidelines to serve as a basis for sentencing in crimes.\textsuperscript{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

\textsuperscript{281} Id. at 968.
\textsuperscript{282} FAMM PRIMER, supra note 25.
\textsuperscript{284} FAMM PRIMER, supra note 25.
\textsuperscript{285} FEDERAL MANDATORY SENTENCING REFORM, supra note 196.
\textsuperscript{287} Id.
\textsuperscript{288} Id.
thus to project the amount of correctional resources needed.”

Guidelines direct judicial discretion while accomplishing particular sentencing and correctional objectives. Traditionally, the severity of the crime and criminal history were used to prescribe punishment. Guidelines can serve as a foundation, and judges can evaluate the circumstances surrounding the crime and exercise discretion in applying a specific sentence. 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.

Florida has nearly doubled its prison population over the past fifteen years. 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. 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.

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

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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.\footnote{Dale Parent et al., \textit{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.} The laws originated as a response to public concern for crime and drug use in the United States.\footnote{\textit{Id.}} Crime control and public safety are, and should continue to remain, great concerns.\footnote{See \textit{id.}} However, there is a broad consensus that mandatory minimum sentences are counterproductive to a fair and productive justice system.\footnote{Mauer, \textit{supra} note 240, at 40.} Eliminating mandatory minimum sentencing laws ensures a more rational and fair system.\footnote{\textit{Id.}} 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.\footnote{See \textit{supra} Part IV.}

\section{Conclusion}

Mandatory minimum sentences can be a useful tool in the sentencing process.\footnote{\textit{See supra} Part V.} They aim to take away the disparity in sentences, deter crime, and provide clear, concrete rules.\footnote{\textit{See supra} Part V.} However, although mandated minimum sentences seemed fair at the legislative level, they are often too harsh when applied in context to a particular case.\footnote{Schulhofer, \textit{supra} note 38, at 200.} Additionally, mandatory minimum sentences stifle all judicial discretion in the sentencing process.\footnote{\textit{See supra} Part II.} Often, first-time, nonviolent offenders receive lengthy prison sentences at the cost of taxpayers.\footnote{\textit{See supra} Part IV.A.} Proven alternatives such as drug courts are not only cost effective but also proven to reduce recidivism rates.\footnote{\textit{See supra} Part IV.A.} Mandatory minimum sentences remove other sentencing options that may be less costly and more effective than mandatory incarceration.\footnote{Mandatory Minimum Sentencing, \textit{supra} note 254.}
Those who are convicted and found guilty of committing a crime deserve to serve an appropriate prison sentence. 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. Judges should use suggested sentencing guidelines as a basis for sentencing. Sentencing guidelines provide a level of deterrence, predictability, uniformity, and severity and offer legislative guidance to the judiciary. Judicial discretion ensures a court evaluates the specific facts concerning the crime and allows for greater flexibility in sentencing. Through this process, the unnecessary costs and burdens associated with rigid mandatory minimum sentences are avoided. 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.

Mandatory minimum sentences result in unduly lengthy prison sentences without consideration of the facts, at the cost of family members and taxpayers. The prison system accounts for a large portion of available public resources, which could be better spent on education and healthcare. Extended incarceration has not reduced crime or drug abuse. It has not made communities safer and has not solved societal problems. The implementation of mandatory minimum sentences has diminished the traditional role of the judiciary. 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.
in the prison population. The Supreme Court recently ruled in *United States v. Booker* that the mandatory Federal Sentencing Guideline should be advisory. The ruling now requires a sentencing court to consider guideline ranges and specifically tailor the sentence to the individual.

There are many challenges surrounding the U.S. economy. One simple solution, or answer, to solve the budget deficit does not exist. Eliminating mandatory minimum sentences is one area of reform that can save money while addressing economic and social problems. 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. In difficult economic situations, decisions must be made concerning the most effective use of budgets, and wasteful spending must be eliminated. Florida should reform its current sentencing statues and implement the use of judicial discretion based on suggested sentencing guidelines, saving taxpayers millions of dollars.

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323 *Id.*
325 *Id.*
326 *See Zuke, supra* note 10.
327 *Id.*
328 *Id.*
329 *Id.*
330 *See id.*
331 *See supra* Parts III-IV.A.