



# DISCRETION ON THE BENCH

*Implementing a Judicial  
Safety Valve in Florida*

SEPTEMBER 2016



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**Michelle A. Robinson**  
Chairman of the Board of Trustees

**Dominic M. Calabro**  
President & Chief Executive Officer

Dear fellow taxpayer,

In the last several decades, the approach to criminal justice sentencing in the United States has seen its share of drastic changes. State and national reforms during the “War on Drugs” 1980s and 90s brought swift, certain penalties that, while well intentioned, have resulted in the long-term imprisonment of thousands of low-level offenders.

Many of these individuals could be much better served through treatment and mental health programs, at a significantly lower cost to taxpayers and with little to no risk to public safety. Mandatory minimums currently restrict judges’ ability to use their professional discretion to consider factors of a crime by requiring one-size- fits-all punishment for transgressions that are anything but.

One reform gaining traction across the nation, at both federal and state levels, is the inclusion of a “judicial safety valve” that can authorize judges to deviate from mandatory minimums for low-level offenders under certain circumstances. This analysis highlights this increasingly popular reform, and provides recommendations for Florida’s policymakers.

Sincerely,

A handwritten signature in black ink that reads "Dominic M. Calabro".

Dominic M. Calabro  
President & CEO

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## EXECUTIVE SUMMARY

Mandatory minimums and other stringent sanctions implemented during the 1980s and 1990s have led Florida prisons to incarcerate low-level offenders for unnecessarily lengthy sentences when many could be better served through alternative treatments and sanctions. This approach to sentencing results in the waste of valuable resources, at great expense to Florida taxpayers.

This report recommends the implementation of a “Judicial Safety Valve” that would give judges the discretion to deviate from mandatory minimums for low-level offenders, but maintain the rights of victims, offenders, their attorneys, and the state to have input on sentencing decisions at sentencing hearings. Judicial Safety Valves targeting varying populations of offenders implemented by federal and other state governments have improved offender outcomes and reduced strains on corrections systems and taxpayers at little or no risk to public safety.

## INTRODUCTION & BACKGROUND

When Florida’s policymakers sought to improve public safety in the 1980s and 1990s, it is safe to assume they did not specifically intend to redefine the word “dangerous” in ways that were unjust, but today’s prisons, once reserved for truly dangerous offenders, have become places where we put “people we’re mad at,”<sup>1</sup> instead of institutions reserved for people who pose a sincere threat to public safety.

The problem with this application of justice policy is that it wastes millions of dollars on low-level offenders who could be better served through alternative treatments and sanctions. The state and its counties use valuable resources housing low-risk offenders in prisons and local jails that could be better used for evidence-based prevention, treatment, and reentry programs.

The purpose of this report is not to seek the eradication of mandatory minimums, but to create a state “Judicial Safety Valve,” which would authorize judges to apply their professional discretion to sentencing and deviate from a mandatory minimum in certain circumstances. Safety valves may be narrow or broad, may be applied to select offenses or the full range of criminal convictions, and do not impede on victims’, defendants’, or their attorneys’ right to have input on sentencing decisions.<sup>2</sup> The addition of a state “Judicial Safety Valve” to the Florida Statutes would help reduce strain on Florida’s corrections system and restore a necessary element of discretion to sentencing without compromising public safety.

### *The Shift to Stringent Sanctions*

In the 1970s, Florida’s criminal codes reflected indeterminate sentencing guidelines that placed the highest priority on offender rehabilitation. Judges had very wide sentencing latitude and parole commissions were quick to award gain time to reduce sentences for eligible offenders.<sup>3</sup> The goal was to shorten prison stays to minimize the negative consequences of institutionalization.<sup>4</sup>

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1 This statement has been made by numerous individuals, including: Texas House Representative, Jerry Madden; Director of Right on Crime, Marc Levin; Pennsylvania Corrections Secretary John Wetzel; Director of the American Conservative Union Foundation, Pat Nolan; and more.

2 Art. 1, Section 16 (b) of the Florida Constitution.

3 “A State of Incarceration.” (April 2015). Florida TaxWatch.

4 “Truth in Sentencing in State Prisons,” Bureau of Justice Statistics Special Report, January 1999.

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This approach to sentencing was largely abandoned as crime spiked to new highs in the 1980s.<sup>5</sup> At the same time, the popularity of television shows like *Miami Vice* and movies like the now-iconic *Scarface* brought the problems of drug trafficking into living rooms and theatres around the country and All-American basketball player Len Bias died from a cocaine overdose only days after being a first round choice of the Boston Celtics.<sup>6</sup> As all these events occurred, citizens began to demand swift and certain punishment for offenders. As a result, eradicating drugs and violent crime became a top priority of political leaders and law enforcement officials across the nation.

2 | The Comprehensive Crime Control Act of 1984, the first comprehensive revision of the U.S. criminal code since the 1900s, trumpeted this call for change in criminal justice philosophy, with the strong support of President Ronald Reagan.<sup>7</sup> This law reinstated the death penalty and mandatory minimum sentences of 20 years or longer for drug and violent offenses, with multipliers for habitual and violent felons. The Department of Defense was added to the mix of law enforcement assets dedicated to stopping drug runners,<sup>8</sup> and parole was abolished.<sup>9</sup> Ten years later, the Federal Violent Crime Control and Law Enforcement Act of 1994 created “three strikes and you’re out” laws to lock repeat offenders away, and encouraged states to pass “truth in sentencing” statutes requiring all prisoners to complete at least 85 percent of their sentences.<sup>10</sup>

5 Florida TaxWatch analysis of crime data from FBI Uniform Crime Reports between 1980 and 2014.

6 “Maryland Basketball Star Len Bias is Dead at 22.” (6/20/1986). Keith Harriston and Sally Jenkins, The Washington Post.

7 “An Overview of the Comprehensive Crime Control Act of 1984 – The Prosecutor’s Prospective,” Joseph DiGenova, 22 Am Crim L Rev 707 (1984-1985).

8 “Reluctant Recruits: The US Military and the War on Drugs,” Transnational Institute, August 1997.

9 “An Overview of the Comprehensive Crime Control Act of 1984 – The Prosecutor’s Prospective,” Joseph DiGenova, 22 Am Crim L Rev 707 (1984-1985).

10 Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796

Most states followed suit and began changing their criminal codes to reflect the federal government’s “tough on crime” approach.<sup>11</sup> Florida implemented federal reforms including the Crime Control Act, the Armed Career Criminal Act, and the Violent Crime Control and Law Enforcement Act, revamping Florida law on sentencing and corrections policy.<sup>12</sup> This changed sentencing in Florida to a determinate sentencing scheme, which mirrored the federal system, eliminating parole and imposing an 85 percent sentence completion requirement.

### *The Rise of Mandatory Minimums*

A component of the Comprehensive Crime Control Act of 1984, the Sentencing Reform Act sought to limit judicial discretion through the creation of the United States Sentencing Commission.<sup>13</sup> This commission created sentencing guidelines that regulated the discretionary sentencing decisions of judges<sup>14</sup> and eventually influenced the development of mandatory minimum statutes enacted by Congress.<sup>15</sup>

By 1986, flexibility in sentencing for drug offenders and specific violent offenders had been all but eliminated. Congress accomplished this through a number of sentencing reforms, including the Armed Career Criminal Act of 1984<sup>16</sup> and the Anti-Drug Abuse Act of 1986.<sup>17</sup> These two acts are merely examples of a variety of stringent sentencing policies enacted over the past few decades.

11 “The Growth of Incarceration in the United States,” National Academies of Science, April 2014.

12 “Truth in Sentencing in State Prisons”, Bureau of Justice Statistics Special Report, January 1999.

13 Sentencing Reform Act of 1984, Pub. L. No. 98-473, Ch. II, 98 Stat. 1987 (codified as amended at 18 U.S.C. §§ 3551-3586 (2006).

14 Ibid.

15 “Mandatory Sentencing was Once America’s Law and Order Panacea.: Here’s Why it’s Not Working,” Families Against Mandatory Minimums (FAMM) primer on mandatory sentences.

16 18 U.S.C. § 924 (1984).

17 21 U.S.C. § 801, 841, 951 (1986)

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By August 6, 2012, the federal government had implemented almost 150 sentencing guideline provisions related to mandatory minimums.<sup>18</sup>

Advocates of mandatory sentencing cite the advantages of such laws as crime deterrence and uniformity in sentencing.<sup>19</sup> Together, they ensure swift, certain, and severe sanctions for dangerous and violent offenders, locking them away consistently and for lengthier periods of time. Without mandatory minimums, geographic differences in sentencing for these dangerous offenders (due to regionality, biases, etc.) often went unchecked.<sup>20</sup>

Mandatory minimums were created to promote public safety and ensure justice is served for victims and their families.<sup>21</sup> Despite these benefits and good intentions, mandatory minimums also have some significant drawbacks.

## DRAWBACKS OF DETERMINATE SENTENCING

First, mandatory minimums do not eliminate discretion as much as shift it from the judge to the prosecutor, granting prosecutors a lot of power when it comes to plea bargaining. The threat of mandatory minimums makes many low-level offenders reluctant to take their chances in court, and for good reason. A 2013 report found that the average sentence for a federal drug offender was about three times shorter for a plea bargainer (roughly five years)

versus a defendant who went to trial (about 16 years).<sup>22</sup>

Second, mandatory minimums preclude the consideration of mitigating factors. While good for locking away dangerous and violent offenders, this approach often leads low-level offenders to serve unnecessarily lengthy sentences. A 42 year-old Orange County man, for example, was arrested in Florida while attempting suicide using a family member's Vicodin. Fortunately, the police intervened before he was able to take a lethal dose, but he still had 31 pills in his possession,<sup>23</sup> and was sentenced to a mandatory sentence of 15 years in prison for drug trafficking.<sup>24</sup>

The judge presiding over the case commented about being on "autopilot"<sup>25</sup> due to mandatory minimums, saying this during sentencing:

*"I do believe this is an inappropriate sentence for you...But there are restraints placed on my ability to stray from the statutory framework that would result in [your] early release... if there should be some change in the legislative framework that would result in [your] early release... no one would be happier than I.."*<sup>26</sup>

In the two decades that followed the implementation of determinate sentencing strategies like mandatory minimums and "truth in sentencing" laws, crime rates in Florida and the country dropped dramatically and returned to 40-year lows, or roughly where they were prior to the spike in the 1980s.

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18 "Federal Mandatory Minimums," FAMM, 2012.

19 "Reconsidering Mandatory Minimum Sentences: The Arguments for and Against Potential Reforms." (Feb. 2014). Evan Bernick and Paul Larkin, The Heritage Foundation.

20 Bowers & Pierce. (1980). Deterrence or brutalization: What is the effect of executions? *Crime and Delinquency*, 26, 453-484.

21 "Time Served from 1979 to 2004 – Section 2: Violent crimes." (Aug. 2004). Florida Department of Corrections.

22 "An Offer You Can't Refuse: How US Federal Prosecutors Force Drug Defendants to Plead Guilty," Human Rights Watch, December 5, 2013.

23 "Families Against Mandatory Minimums Hopes to Change Sentencing Laws in Florida." (2/8/2011). *Broward Palm Beach New Times*.

24 Erin Fuchs, *Business Insider*. (4/23/2013). "10 People Who Received Outrageous Sentences for Drug Convictions."

25 "Todd Hannigan." (accessed 3/20/2016). Families Against Mandatory Minimums.

26 *Ibid*.

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While many political leaders tout this as evidence of the success of more punitive sanctions, it is clear that not all of these policies promote public safety the way they purport to, and researchers further note that national crime trends (despite states' varying approaches to crime and incarceration) indicate that this decrease in crime is likely not a result of "tough on crime" sentencing policies like mandatory minimums.<sup>27</sup>

In fact, states that have stepped away from these policies have continued to see declines in crime. **California**, for example, passed Proposition 36, which modified the "three strikes" mandatory minimum law to make it only applicable to serious, violent felonies. These reforms were also made retroactive. Despite these changes, California's crime rate decreased by roughly 11 percent by 2014.<sup>28</sup>

consideration of all evidence regarding the commission of the offense and its aftermath (including input from defendants, victims, their attorneys, and the state),<sup>29</sup> as well as aggravating or mitigating circumstances unique to the defendant. Judges spent considerable time deliberating punishment based on these factors, and it was their exclusive responsibility to strike an appropriate balance among punishment, deterrence, and rehabilitation. It is essential that these positive aspects of judicial discretion be restored to increase public safety, improve offender outcomes, and reduce criminal justice expenditures.

Simply put, true justice dictates that punishment for a crime should actually fit the crime. This reasoning was supported in a powerful, comprehensive study by the National Research Council which stated:

*"...criminal sentences should be proportionate to the seriousness of the crime and should not exceed the minimum need to achieve its legitimate purpose... current policies have been...more harmful than effective and are inconsistent with U.S. history and notions of justice."*<sup>30</sup>

Florida judges (in cooperation with prosecutors, defense counsel, and others in the criminal justice system) are fully capable of determining just consequences for crimes committed by low-level mandatory minimum offenders. These offenders, many of whom criminal justice experts insist are not a threat to public safety and should be referred to alternative programs, and our communities would benefit from improved judicial

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29 Art. 1, Section 16 (b) of the Florida Constitution

30 The Growth of Incarceration in the United States: Exploring Causes and Consequences. (2014). National Research Council of the National Academies, The National Academies Press: Washington D.C.

## THE SOLUTION: RESTORING JUDICIAL DISCRETION

Prior to changes in sentencing policies during the 1980s, sentencing discretion was inherent in the judicial role. Judges were entrusted with the responsibility of fashioning individual sentences in criminal cases based on the

27 See: Blumstein et al., 1997, "Deterrence and Incapacitation – Estimating the Effects of Criminal Sanctions on Crime Rates"; Lynch & Sabol, 1997, "Did Getting Tough on Crime Pay? Policy Report No. 1"; Doob & Webster, 2003, "Sentence Severity and Crime: Accepting the Null Hypothesis"; Mauer & Ghandnoosh, 2014, "Fewer Prisoners, Less Crime: A Tale of Three States."

28 Florida TaxWatch analysis of California crime data and U.S. Census Bureau state population estimates. The total decrease in crime rate between 2012 and 2014 was 347.6, or 10.9 percent. The crime rate in 2012 was 3177.9 per 100,000 California residents: (160,629 violent +1,048,764 property crimes)/38,056,055 California residents= .0318 crimes per resident. The crime rate in 2014 was 2,830.3 per 100,000 California residents: (151,245 violent + 946,682 property crimes)/38,792,291 California residents= 0.0283 crimes per resident. Sources: "CJSC Statistics: Crimes and Clearances." (accessed 7/19/2016). State of California Department of Justice, Office of the Attorney General; "Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2015: 2015 Population Estimates." (accessed 7/19/2016). U.S. Census Bureau.

discretion.<sup>31</sup> These views are shared by federal and state policymakers, who have implemented or attempted reforms to address this issue.

### *Federal Reforms*

The first step in the series of federal reforms to restore judicial discretion came with the 1994 inclusion of a “Safety Valve” in the United States Code, which ameliorated mandatory minimums in cases of first-time, low-level drug offenders whose crimes did not involve guns or violence.<sup>32</sup>

The implementation of the federal Safety Valve was followed by the Fair Sentencing Act of 2010; the first law to erase a mandatory minimum sentence imposed during the 1980s war on crime and drugs.<sup>33</sup> No new safety valves have been implemented at the federal level, but there have been attempts to broaden the scope of the existing one:

**The Safety Valve Fairness Act** was sponsored first by Representative Albert Wynn (D-MD) in 2001 and again by Senator Carl Levin (D-MI) in 2002 and 2003.<sup>34</sup> The Act sought to make the drug crime safety valve created in the 1994 crime bill retroactive, allowing prisoners who had been sentenced for eligible drug crimes before 1994 to petition for reconsideration of their sentences.<sup>35</sup>

**The Smarter Sentencing Act** was first introduced in the U.S. Senate in July 2013, and

again in 2014 and 2015.<sup>36</sup> It would have expanded the existing, limited federal safety valve by reducing the mandatory minimum sentences for certain drug offenses, and allowing the court to deviate from statutory minimum sentences provided the offender does not have a significant criminal history.<sup>37</sup> The legislation gained traction in 2014 when Senator Richard Durbin (D-IL) sponsored S. 1410 with 31 co-sponsors from across the political spectrum, including Republicans from Utah, Georgia, Kentucky, and Texas, and Democrats from New York, Texas, Pennsylvania, Virginia and Louisiana.<sup>38</sup>

**The Justice Safety Valve Act** was also introduced in 2013 and again in 2015 by Senator Rand Paul (R-KY) and Senator Patrick Leahy (D-VT). The purpose of this legislation was to take the Smarter Sentencing Act one step further.<sup>39</sup> In both 2013 and 2015, the bill gave judges the standing ability to deviate from any mandatory minimum sentence when the mandated punishment did not take into account mitigating circumstances of the case that would otherwise significantly affect sentencing options.<sup>40</sup> Senator Leahy, a former prosecutor, supplemented the 2013 iteration of the bill with this statement:

*“Our reliance on mandatory minimums has been a great mistake. I am not convinced it has reduced crime, but I am convinced it has imprisoned people, particularly non-violent offenders, for far longer than is just or beneficial. It is time to let our judges go back to acting as*

31 Notable groups and people that share this position are: the Florida Legislature’s Office of Program Policy Analysis and Government Accountability (OPPAGA); the Urban Institute; the National Center for Policy Analysis (NCPA); the President of the United States, Barack Obama; Right on Crime signatories Grover Norquist and Derek Monson; Georgia Governor Nathan Deal; and U.S. Attorney General Eric Holder.

32 See 18 USC § 3553; or Section 5C1.2 of the Federal Sentencing Guidelines.

33 “The fair sentencing act corrects a long-time wrong in cocaine cases,” The Washington Post, April 3, 2010.

34 See S.390—Safety Valve Fairness Act of 2003.

35 Ibid.

36 See H.R. 3382—Smarter Sentencing Act of 2013; see also S. 1410—Smarter Sentencing Act of 2014, S. 502—Smarter Sentencing Act of 2015, H.R. 920—Smarter Sentencing Act of 2015.

37 See S.502 – Smarter Sentencing Act of 2015.

38 See S.1410 – Smarter Sentencing Act of 2014.

39 See S. 353: Justice Safety Valve Act of 2015; see also H.R. 706.

40 Ibid.

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*judges and making decisions based on the individual facts before them. A one-size-fits-all approach to sentencing does not make us safer.”<sup>41</sup>*

The federal Smarter Sentencing Act and the Justice Safety Valve Act could provide a blueprint for states interested in reducing prison populations and lowering the cost of incarceration. These laws taken together could accomplish four primary things:

- Empowering judges to deviate from mandatory minimum sentences in drug cases after affording the prosecution the opportunity to argue on the applicability of the mandatory minimum sentence;
- Extending the Judicial Safety Valve opportunity to all felony cases which impose mandatory minimums;
- Reducing mandatory minimum sentences for low-risk drug offenders; and
- Authorizing retroactive reduction of sentences for non-violent drug offenders.

**Minnesota** has mandatory minimum sentences for using or displaying a weapon while committing certain offenses, including many violent offenses and drug crimes. Their safety valve allows courts to sentence these offenders below the mandatory minimum, or opt for probation instead of a prison sentence, in cases where the court finds “substantial and compelling reasons to do so.”<sup>43</sup>

**New York** has a safety valve for certain gun offenses that would typically warrant an additional mandatory minimum sentence of five years. It allows state courts to ignore the mandatory minimum for these offenses if the court “finds on the record that such additional consecutive sentence would be unduly harsh and not imposing such sentence would be consistent with the public safety and would not deprecate the seriousness of the crime.”<sup>44</sup>

**Connecticut** has a safety valve for drug offenses. To deviate from the mandatory minimum, the defendant must not have used/threatened physical force and must provide a good reason to the court why a sentence lower than the minimum is appropriate.<sup>45</sup>

Other safety valves exist in **Maine, Oregon, Montana, Oklahoma, North Dakota,** and **Virginia** and have been proposed in **Georgia** and **Pennsylvania**.<sup>46</sup> States with Judicial Safety Valves have seen reductions in corrections expenditures with no harm to public safety. The safety valve Minnesota implemented in 2010 spared the state 1,200 prison beds and almost \$40 million in prison costs while crime steadily declined.<sup>47</sup>

### *State Reforms*

In addition to the reforms in **California** mentioned previously, **New York, Rhode Island,** and **Delaware** have all repealed the majority of their drug-related mandatory minimum laws while others limited the scope of their current laws or increased drug weight thresholds for felony offenses—like the federal government did with crack cocaine—to keep low-level offenders out of prison.<sup>42</sup>

A number of other states have instituted “Judicial Safety Valves.”

41 “Comment of Senator Patrick Leahy on Attorney General Holder’s Statement on Mandatory Minimums,” Office of U.S. Senator Patrick Leahy, Aug 12, 2013.

42 “Turning off the Spigot: How Sentencing Safety Valves can Help States Protect Public Safety and Save Money.” (June 2013). Families Against Mandatory Minimums.

43 Minn. Stat. § 609.11, subd. 8.

44 N.Y. PEN. LAW § 265.09(2).

45 CGS § 21a-283a (2012)

46 “Turning off the Spigot: How Sentencing Safety Valves can Help States Protect Public Safety and Save Money.” (June 2013). Families Against Mandatory Minimums.

47 Ibid.

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A national push for sentencing reform surrounding mandatory minimums is evident in federal and state legislation and reforms like those mentioned above. While these bills may not represent the ultimate language of the legislation this report aims to inspire, they provide crucial examples of national, bipartisan recognition of the need for sentencing reform.

### *Florida Reforms*

Florida has taken steps towards reforming sentencing to reserve prison for dangerous offenders. During the 2014 Session the Legislature passed bills increasing the quantities of hydrocodone and oxycodone required to constitute a felony and reducing mandatory minimum sentences for those possessing specified quantities of the drug.

The sponsor of the House Bill, Representative Katie Edwards stated publicly that, “too many families have been torn apart by harsh mandatory minimum sentences and this bill helps right that wrong.”<sup>48</sup>

This reform represented the first time Florida has reduced a mandatory minimum sentence or removed minor possession amounts from drug laws designed to punish drug traffickers; however, the law does not add the Judicial Safety Valve feature found in federal proposals and many states across the country.

## EXPLORING A JUDICIAL SAFETY VALVE FOR FLORIDA

The next step for Florida should be to implement a safety valve that adopts the principles of the Justice Safety Valve Act and

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48 “Florida Legislature Reforms Prescription Drug Trafficking Sentences.” (4/11/2014). Families Against Mandatory Minimums.

safety valves in other states, authorizing Judges to deviate from the mandatory minimum sentence in felony cases where a mandatory minimum sentence applies and undeniable proof of mitigating factors that could affect culpability are present.<sup>49</sup> This would reduce strain on prisons and criminal justice budgets with little or no risk to public safety.

The benefits of a Judicial Safety Valve in Florida include improved or maintained public safety at lower cost to state taxpayers. Studies have shown that lengthy prison sentences (particularly for low-level offenders) do little to reduce, and sometimes even increase, the likelihood of recidivism.<sup>50</sup> Further, a PEW analysis found that 14 percent of Florida’s annual released inmates could have served prison terms shorter by up to 2 years without jeopardizing public safety.<sup>51</sup> The same analysis estimated that Florida could reduce its average daily prison population by 2,600 by implementing policies that reduce length of stay for non-violent offenders alone. This seemingly small reduction could mean a cost-avoidance of up to \$50 million each year.<sup>52</sup>

In order to ensure these benefits without reverting to regional disparities in sentencing as seen prior to determinate sentencing or

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49 E.g. firearm was unloaded, no history of violence, only an accomplice, addiction contributed to commission of crime, conduct did not cause/threaten physical harm, conduct a result of circumstances unlikely to recur, potential for reform, etc. For more info on mitigating factors and their pros and cons see: “The Thinking Advocate’s List of Mitigating Factors,” The Sentencing Project, 2003. Available at: [http://www.sentencingproject.org/detail/publication.cfm?publication\\_id=110](http://www.sentencingproject.org/detail/publication.cfm?publication_id=110)

50 “A State of Incarceration.” (April 2015). Florida TaxWatch. See also: Blumstein et al., 1997, “Deterrence and Incapacitation – Estimating the Effects of Criminal Sanctions on Crime Rates”; Lynch & Sabol, 1997, “Did Getting Tough on Crime Pay? Policy Report No. 1”; Doob & Webster, 2003, “Sentence Severity and Crime: Accepting the Null Hypothesis”; Mauer & Ghandnoosh, 2014, “Fewer Prisoners, Less Crime: A Tale of Three States.”

51 “Time Served: The High Cost, Low Return of Longer Prison Terms.” (June 2012). PEW Center on the States.

52 This estimate is calculated using the average state per diem for prison facilities (\$51.65) and includes fixed costs necessary to operate facilities. Without an infrastructure change, the inmate variable per diem is \$15.91, resulting in a conservative cost-avoidance of just over \$15 million.

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disregarding the needs of victims, the state must also ensure checks and balances that guarantee the Judicial Safety Valve will not be abused. To protect against abuse of a Judicial Safety Valve, it is essential that victims, defendants, their attorneys, and the State retain their right to have input on the proper punishment at a sentencing hearing.

Further, State Attorneys must have the right to argue the merits of the case with the judge, and even be given the right to seek immediate appeal to the District Court of Appeals if they believe the Circuit Judge has abused his or her discretion. Parameters to address this potential appellate backlog would need to be set by the Legislature. In addition to the guidelines established and the prosecutor's right of appellate review, should an elected trial judge abuse or misuse the Judicial Safety Valve, that judge would ultimately be held accountable by the people in the ballot box.

Florida to take the next step. The safety valves discussed in this report do not propose radical changes. Instead, these changes are primarily focused on reducing sentences for low-level offenders and giving judges the ability to deviate from mandatory minimums, without impeding the rights of victims or defendants, when appropriate and necessary to avoid an injustice.

## RECOMMENDATIONS

Florida Judges should be afforded the ability to exercise their professional discretion based on the offender's circumstances (record, details of the crime, etc.) and other germane details when making decisions on mandatory minimum cases.

**Florida TaxWatch recommends that the legislature create a "Judicial Safety Valve," which will authorize judges to exercise judicial discretion and deviate from mandatory minimums.**

It is important that previous regional disparities in sentencing not be allowed to reappear. For this reason, Florida TaxWatch also emphasizes that victims, their attorneys, and the State must maintain the right to have their recommendations on sentencing fully considered by the sentencing judge as well as the opportunity to appeal to the District Court of Appeals regarding judges' decisions to exercise discretion through the Judicial Safety Valve.

Together these policies will increase public safety and improve offender outcomes at a reduced cost to Florida taxpayers.

## CONCLUSION

Federal criminal justice statutes and Florida state laws regarding crime and punishment have a common history and reflect similar philosophical approaches. Both moved from indeterminate sentencing schemes popular in the 1970s, to determinate sentencing regimes that abolished parole, required truth in sentencing, and added mandatory minimum sentences in the 1990s.

These changes resulted in huge increases in prison populations and their associated costs to Florida and the nation as a whole. U.S. Senators and Representatives from all regions of the country and from all segments of the political and ideological spectrum have joined to say the time has come to deal with America's mass incarceration problem. It is now time for

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The findings in this Report are based on the data and sources referenced. Florida TaxWatch research is conducted with every reasonable attempt to verify the accuracy and reliability of the data, and the calculations and assumptions made herein. Please feel free to contact us if you feel that this paper is factually inaccurate.

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