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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON
Petitioner

v.

ALVIN WITHERSPOON
Respondent.

FILED

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CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY

BRIEF OF AMICUS
WASHINGTON ASSOCIATION OF CRIMINAL DEFENSE
LAWYERS AND THE WASHINGTON DEFENDER ASSOCIATION

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I. INTEREST OF AMICUS CURIAE

The interests of amici are found in the motion to file this brief.

II. STATEMENT OF THE CASE

This brief relies upon the petitioner's statement of the case.

III. INTRODUCTION

In his previous briefing in the Court of Appeals and this Court, Mr. Witherspoon has addressed the many reasons why this Court should reverse his conviction and sentence. After the Court of Appeals decided his case and after the petition for review was filed the United States Supreme Court decided *United States v. Descamps*, - U.S. -, 133 S. Ct. 2276, 186 L. Ed. 2d 438 (2013).

That case sets the limits on how far the sentencing court may go to ascertain the "fact of a prior conviction" without violating the Sixth Amendment. In amicus' view, the sentencing fact-finding in this case exceeded the limits set in *Descamps* of the narrow exception to the Sixth Amendment for prior convictions and violated Witherspoon's Sixth Amendment right to a jury trial.

Washington's three-strike law also violates the Eighth Amendment's prohibition on cruel and unusual punishment and the Washington state constitution's prohibition on cruel punishment. Our society's "evolving standards of decency" no longer support harsh

mandatory sentencing policies. There is a strong national trend away from harsh mandatory sentences, especially for less serious offenses.

IV. ARGUMENT

A. The Sentencing Fact Finder Exceeded the Narrow Limits Set in *United States v. Descamps* of the Sixth Amendment Exception for Prior Convictions and Violated Witherspoon's Sixth Amendment Right to a Jury Trial

In this case, the State sought to enhance Witherspoon's punishment, changing it from a minimum sentence of four years to a mandatory life sentence by proving the existence of two or more prior "strike" convictions.

The necessity of proving each element of a crime has long been constitutionally required. *In re Winship*, 397 U.S. 358, 397, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). The United States Supreme Court has already applied this standard to enhancement elements. *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000). In that case the Court held that the Sixth Amendment generally requires that "any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Apprendi v. New Jersey*, 530 U.S. 466, 490.

Washington's three strikes law subjects the defendant to a substantially greater penalty, life without the possibility of parole, if the

sentencing judge makes a factual determination that the defendant has three qualifying prior convictions. Accordingly Washington's three strikes law would seem to violate the Sixth Amendment. The only reason it does not - at least for the time being - is the limited exception to the general Sixth Amendment rule: a judge may find the "fact of a prior conviction." *Apprendt*, at 489-90 (exception in light of *Alemendarez-Torres v. United States*, 523 U.S. 224, 118 S.Ct. 1219, 140 L.Ed.2d 350 (1998)).

Accordingly, Washington's three strikes provision is constitutional only to the extent that it is construed to restrict judicial fact-finding to the narrow limits of the *Alemendarez-Torres* exception.

Like Washington's three strikes provision, the federal Armed Career Criminal Act (ACCA) provides for the enhancement of the sentence of a defendant who is convicted of a federal firearms offense involving interstate or foreign commerce and who has three previous convictions for violent felonies or serious drug offenses as defined in the statute in any court. 18 U.S.C.A. § 924(e). The statute provides for a minimum mandatory jail term. To determine whether a past conviction is for a violent felony, including burglary, arson, or extortion, within the meaning of the ACCA, courts use the "categorical approach," under which they compare the elements of the statute forming the basis of the defendant's conviction with the elements of the "generic crime," the

offense as commonly understood; the prior conviction qualifies as an ACCA predicate only if the statute's elements are the same as, or narrower than, those of the generic offense. 18 U.S.C.A. § 924(e).

The modified categorical approach to determining whether a prior offense was a violent felony under the ACCA applies when a prior conviction is for violating a so-called "divisible statute," meaning a statute that sets out one or more elements of the offense in the alternative, for example, stating that burglary involves entry into a building or an automobile. 18 U.S.C.A. § 924(e).

In *Descamps*, the Court discussed these two approaches and the limits of judicial fact-finding as it relates to prior convictions. 133 S.Ct. 2276. In that case the defendant argued that his California burglary conviction was not an ACCA predicate offense under the categorical approach. The district court said that under the modified categorical approach it could look at certain documents underlying the California plea including the plea colloquy to see if Decamps had "admitted to the elements of generic burglary in the California state court proceedings." *Id.* at 2283.

The Supreme Court held that that type of fact finding by a judge at sentencing was impermissible. The Court ruled that the lower court "*erred in invoking the modified categorical approach to look behind Descamps'*

conviction in search of record evidence that he actually committed the generic offense.” Id. at 2293 (emphasis added).

The question is, thus, how far may a Washington sentencing court go to ascertain the “fact of a prior conviction” under our three strikes provision without violating the limitations on judicial fact-finding as explained in *Descamps*.

Here, the record reflects that for at least one of Witherspoon's two prior convictions, the trial court engaged in an extensive fact-finding. As the parties have detailed, Mr. Witherspoon did not admit the prior conviction so the State called a fingerprint examiner to testify as to his examination of the fingerprints on records related to the prior convictions. Snohomish County Superior Court in 99-1-1322-5 was a guilty plea from February 2000, involving two counts of residential burglary. At sentencing, Sequim Police Officer Chris Wright testified that the booking fingerprints included with the certified judgment and sentence from February 17, 2000, conclusively matched Witherspoon's booking fingerprints taken after his arrest in November 2009. The court found that the State had established that Alvin Witherspoon was convicted of that offense.

As to the second prior conviction for a serious violent offense, Snohomish County cause number 94-1-711-9, however, the State did not

ask Wright to compare booking fingerprints from a judgment and sentence, with Witherspoon's 2009 booking prints. Moreover, the information related to that plea lists the defendant's date of birth as "9/22/74," not Witherspoon's stated July 22, 1974 date of birth in, the 2009 booking, information. In addition, the 2009 booking information listed Witherspoon's ethnicity as White, whereas the 1994 booking information lists the defendant's ethnicity as American Indian or Alaskan Native. And, it appears that the trial court accepted the prosecutor's assertion that the State needed to prove only identity by a preponderance of the evidence—not beyond a reasonable doubt—the trial court ruled that identity had been established.

In this case the sentencing procedure went far beyond simply examining the record of conviction to confirm that the person convicted of the prior offenses was the same person who being sentenced. It went far beyond reviewing the record of the prior conviction plea colloquy. The Superior actually held a hearing, heard expert testimony and, arguably a failure of sufficient proof of one prior conviction. The procedure violated the Witherspoon's Sixth Amendment right to a jury trial and did not acknowledge the very limited exception for proof of prior convictions. Certainly if the United States Supreme Court found that the far more limited judicial factfinding in the federal "modified categorical approach",

violated the Sixth Amendment, the far ranging judicial factfinding in this case is likewise unconstitutional.

B. Washington's Three Strike Law Violates the Eighth Amendment's Prohibition on Cruel and Unusual Punishment and the Washington State Constitution's Prohibition on Cruel Punishment.

Washington's three-strike law violates the Eighth Amendment's prohibition on cruel and unusual punishment and the Washington state constitution's prohibition on cruel punishment.¹ Our society's "evolving standards of decency" no longer support harsh mandatory sentencing policies. There is a strong national trend away from harsh mandatory sentences, especially for less serious offenses.

Eighth Amendment jurisprudence has evolved away from harsh, mandatory sentencing and toward greater judicial discretion. Since *Woodson v. North Carolina*, where the Supreme Court held that the mandatory imposition of the death penalty for first-degree murders violated the Eighth and Fourteenth Amendments, our courts have recognized that a sentence may be unconstitutional where it "departs

¹ This section of the brief focuses on national trends because the Petitioner's brief thoroughly explains the issues related to the Wash. Const. art. I, §14 prohibition against cruel punishment. However, because "the Washington Constitution provides greater protection than the federal constitution," *State v. Witherspoon*, 171 Wn. App. 271, 301, 268 P.3d 996, this brief's claims of disproportionate punishment under the federal constitution also apply to the Washington Constitution. *See State v. Flores*, 114 Wn. App. 218, 223, 56 P.3d 622 (2002), *review denied*, 148 Wash.2d 1025, 67 P.3d 1096 (2003).

markedly from contemporary standards” and fails to allow consideration of an offender’s past and character in relation to the punishment imposed. 428 U.S. 280, 301, 96 S. Ct. 2978, 2989, 49 L. Ed. 2d 944 (1976).

Recent Eighth Amendment cases have limited the imposition of mandatory sentences. This has been clearest in juvenile court, where the Supreme Court prohibited capital punishment for juveniles in *Roper v. Simmons*. 543 U.S. 551, 578, 125 S. Ct. 1183, 1200, 161 L. Ed. 2d 1 (2005). In *Graham v. Florida*, the Court rejected life without parole sentences for juveniles who commit non-homicide offenses, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010), and two years later, the Court extended the Eighth Amendment’s prohibition against cruel and unusual punishment to include mandatory life without parole sentences for juvenile homicide offenders. *Miller v. Alabama*, ___ U.S. ___, 132 S. Ct. 2455 (2012). Both *Graham* and *Miller* reject *Woodson*’s “death is different” qualification, and recognize that mandatory life without parole sentences are unconstitutional where the court fails to allow for “particularized consideration of relevant aspects of the character and record of each convicted defendant” *Woodson*, 428 U.S. at 303-304. See *Miller*, ___ U.S. at ___; *Graham*, 560 U.S. at ___.

National support for sentencing reform also suggests our society’s “evolving standards of decency” no longer recognize mandatory life

without parole as an appropriate punishment for some three-strike felonies.

Changing public opinion and policy initiatives are driving states to move away from mass incarceration and to reevaluate sentencing policies, especially for nonviolent offenses. Most notably, California voters recently reformed their three-strikes law by significantly narrowing the class of felonies that can count as third strikes to only the most serious and violent offenses. Cal. Penal Code § 667 (Revised November 7, 2012). Other states are more broadly promoting sentencing reform, including Oregon's recent comprehensive overhaul that eliminates mandatory minimum sentences for certain drug offenses, reduces sentences for property crimes, authorizes a post-prison reentry court, and much more. House Bill 3194, ch. 649, 2013 Or. Laws. Even states well known for "tough on crime" policies are focusing on alternatives to mass incarceration to reduce recidivism. For example, Texas and Arkansas both recently implemented policies promoting sentencing alternatives for nonviolent offenses. Erica Goode, *U.S. Prison Populations Decline, Reflecting New Approach to Crime*, THE NEW YORK TIMES (July 25, 2013), <http://www.nytimes.com/2013/07/26/us/us-prison-populations-decline-reflecting-new-approach-to-crime.html>. Many states are also

reforming their drug laws to eliminate or reduce mandatory minimum sentences for low-level drug offenses. Appendix 1.

The policy rationales that support this trend apply equally to certain felonies in Washington's three-strike law. Like drug offenses, some three-strike felonies including assault, second-degree robbery, or an attempt to commit any "most serious offense" felony do not require violence. RCW 9.94A.030. Where a crime is defined as "violent", but where no violent act actually occurs, mandatory sentences removing judicial discretion result in unfair sentences that are grossly disproportionate to the crimes committed.

Despite these significant reforms in other states, Washington lags behind. Currently, there are only two other states in the nation that would have imposed the same mandatory sentence for Mr. Witherspoon's crimes. Petitioner's Amended Supplemental Brief at 7, *State v. Witherspoon*, 107 Wn. 2d 1007, 300 P.3d 416 (2013) (No. 88118-9).

Similarly, national leaders at the federal level advocate "smart on crime" policies that emphasize moving away from mandatory sentences and providing greater judicial discretion. In a poll of federal district court judges, sixty-two percent of them believe mandatory sentencing is too harsh. See Tony Mauro, *Federal Judge Speaks Out Against Mandatory Minimum Sentencing*, THE NATIONAL LAW JOURNAL (June 27, 2007),

http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=900005484708&Federal_judge_speaks_out_against_mandatory_minimum_sentencing; Mark W. Bennett, *How Mandatory Sentencing Forced Me to Send More Than 1,000 Nonviolent Drug Offenders to Federal Prison*, THE NATION (October 24, 2012), <http://www.thenation.com/article/170815/how-mandatory-minimums-forced-me-send-more-1000-nonviolent-drug-offenders-federal-pri#axzz2dOADVUjq>. Some who regret the harsh mandatory sentences they were forced to impose on nonviolent offenders have called for reform. *Id.*

Even the federal criminal justice community has endorsed being smart of crime, seeking to reduce mandatory minimum sentences and bolstering alternative sentencing policies. Attorney General Eric Holder has emphasized that “We need to ensure that incarceration is used to punish, deter and rehabilitate—not merely to warehouse and forget.” Eric Holder, United States Attorney General, Remarks at the Annual Meeting of the American Bar Association House of Delegates (August 12, 2013). The Attorney General’s new initiative calls for greater judicial discretion, early release for certain elderly and nonviolent offenders, and bolstering alternatives to incarceration. The U.S. Sentencing Commission has followed up with a unanimous vote to address mandatory minimum prison penalties and consider expanding exemptions. Associated Press,

*Sentencing Commission Votes to Focus Attention on Mandatory Minimum
Prison Penalties*, THE WASHINGTON POST (August 15, 2013),

[http://articles.washingtonpost.com/2013-08-](http://articles.washingtonpost.com/2013-08-15/politics/41412415_1_commission-votes-drug-sentences-low-level-drug-offenders)

[15/politics/41412415_1_commission-votes-drug-sentences-low-level-](http://articles.washingtonpost.com/2013-08-15/politics/41412415_1_commission-votes-drug-sentences-low-level-drug-offenders)

[drug-offenders](http://articles.washingtonpost.com/2013-08-15/politics/41412415_1_commission-votes-drug-sentences-low-level-drug-offenders). Congress has already begun taking steps to reduce

mandatory sentencing. The recently-formed “Overcriminalization Task
Force” is making mandatory minimum sentencing reform a priority.

Bipartisan Effort Establishes House Judiciary Committee

Overcriminalization Task Force, NATIONAL ASSOCIATION OF CRIMINAL
DEFENSE LAWYERS (May 7, 2013),

<http://www.nacdl.org/NewsReleases.aspx?id=27752>. Two recent bills

with bipartisan support aim to mitigate mandatory minimum sentences.²

These reform efforts from prominent national leaders and similar reforms
at the state level show our society is moving away from the penal policies
of mass incarceration and incapacitation and toward the goal of
rehabilitation.

² The Justice Safety Valve Act of 2013 attacks mandatory minimum sentences broadly. It aims to allow federal judges more discretion to consider the nature of the offender and the offense and impose sentences below mandatory minimums for any federal crime where the punishment does not fulfill penal goals or creates disproportionate sentencing, among other factors. S. 619, 113th Cong. (2013); H.R. 1695, 113th Cong. (2013). The Smarter Sentencing Act of 2013 would reduce some mandatory minimum drug sentences and permit greater judicial sentencing discretion for certain drug offenses. S. 1410, 113th Cong. (2013).

These reforms on the state and federal levels in other jurisdictions are receiving bipartisan support because leaders across the political spectrum are recognizing the mounting human and fiscal costs associated with mass incarceration and mandatory minimum sentencing. Whether for policy reasons, fiscal concerns, or both, members across the political spectrum are joining “the recent trend... to re-examine the traditional tough on crime approach in favor of a more practical and compassionate view of criminal justice.” Lawrence Bader, *Imagine This – Détente Between the Right and Left on Prison Reform!*, FORBES (June 26, 2013), <http://www.forbes.com/sites/insider/2013/06/26/imagine-this-detente-between-the-right-and-the-left-on-prison-reform/>.

In Washington, the fiscal concerns for mandatory life without parole are particularly significant. The average cost of incarcerating an individual in Washington State was over \$32,000 per year as of 2012. *DOC Institutional Costs, Average Daily Population (ADP), and Cost Per Offender Per Day*, Washington State Department of Corrections (October 29, 2012), <http://www.doc.wa.gov/aboutdoc/docs/CostperOffenderFY2010-FY2012.pdf>. Three-strikes costs vastly surpass this amount because three-strikes offenders will all age and then die in prison with the sentence of mandatory life without parole. Because prisoners age at a rate much more rapidly than the general

population, Washington agencies consider prisoners “elderly” at the age of 50. Melissa Lee and Beth Colgan, *Washington’s Three Strikes Law: Public Safety & Cost Implications of Life Without Parole*, Columbia Legal Services 9, www.columbialegal.org/files/3Strikes.pdf. Almost half of all three-strikes offenders currently incarcerated are considered “elderly,” and each costs the state an estimated \$98,000 per year to incarcerate. *Id.*

Meanwhile, criminal activity and recidivism tends to drop off after age 50. *Id.* In addition to incarceration costs, the three-strike law greatly increases trial costs, as three-strike defendants are much more likely to elect for a trial over a plea, especially on their third strike.³ *Id.* at 11.

In addition to strong political support for sentencing reform, public opinion supports sentencing reform, especially for people like Mr. Witherspoon: those who are sentenced to harsh mandatory punishments for a crime that did not include violence or physically harm another. Even at the time when Washington voters passed the three-strike law and support for it was stronger, the public disapproved of the way the law could be applied. For example, a 1996 study that shows strong public

³ In Washington, only 4.7 percent of criminal cases on average go to trial, but 63 percent of those convicted of strike offenses choose to go to trial. 82 percent choose trial on their third strike. Melissa Lee and Beth Colgan, *Washington’s Three Strikes Law: Public Safety & Cost Implications of Life Without Parole*, Columbia Legal Services 11-12, www.columbialegal.org/files/3Strikes.pdf.

support for three-strikes laws demonstrates that the same people surveyed favored much lower sentences when presented with specific situations of three-strikes offenses. Brandon K. Applegate et. al, *Public Support for Three-Strikes-and-You're Out Laws: Global Versus Specific Attitudes*, 42 CRIME & DELINQUENCY 517 (1996). The study also found the public disfavored mandatory sentencing (especially mandatory life without parole) and was willing to make exceptions to three-strikes laws, even for recidivists. *Id.* at 528. If public opinion disapproved of sentencing repeat offenders to life in prison at the height of three-strike implementation, opposition today should be stronger, especially in an era of less public support for mass incarceration.⁴

Society's "evolving standards of decency" no longer support harsh mandatory sentences, especially those that can result from Washington's three-strike law. Our most prominent national leaders have made public

⁴ See Amanda Paulson, *Poll: 60% of Americans Oppose Mandatory Minimum Sentences*, THE CHRISTIAN SCIENCE MONITOR (September 25, 2008), <http://www.csmonitor.com/USA/Justice/2008/0925/p02s01-usju.html> (60 percent of Americans oppose mandatory minimums for nonviolent offenders); Erica Goode, *U.S. Prison Populations Decline, Reflecting New Approach to Crime*, THE NEW YORK TIMES (July 25, 2013), <http://www.nytimes.com/2013/07/26/us/us-prison-populations-decline-reflecting-new-approach-to-crime.html> ("[C]hanging public attitudes are also a major driver behind the declining prison numbers. Dropping crime rates over the last 20 years have reduced public fears and diminished the interest of politicians in running tough-on-crime campaigns.").

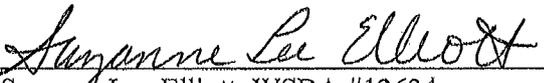
statements; other states, including those known for their historically tough approach to crime, are reforming their sentencing policies; our national government is taking steps toward reform; and public opinion does not support mandatory life without parole for many three-strikes offenses.

C. CONCLUSION

As amicus noted at the outset, Witherspoon has presented many reasons why this Court should reverse his conviction and sentence. Should this Court reject all of those issues, it must still consider the decision in *Descamps* and reverse based upon that recent decision. In addition, amicus would urge this court to find that Mr. Witherspoon's sentence constitutes cruel and unusual punishment under the United States' Constitution's Eighth Amendment and prohibition against cruel punishment found in Art. I, §14 of the Washington Constitution.

DATED this 26th day of September, 2013.

Respectfully submitted,


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Appendix 1
From
<http://www.famm.org/Repository/Files/FS%20List%20of%20State%20Reforms%202.25.13.pdf>

SENTENCES THAT FIT
FAMM
JUSTICE THAT WORKS

RECENT STATE-LEVEL REFORMS TO MANDATORY MINIMUM LAWS

- California** On November 6, 2012, California voters passed Proposition 36. Almost 70 percent of voters supported its changes to the "three strikes and you're out" mandatory minimum law, which required a life sentence for a third offense, even if it was minor or petty (e.g., stealing a slice of pizza). Proposition 36 requires that mandatory minimum life sentences can only be imposed for a third strike if the third conviction is for a serious or violent felony. The reforms were also made retroactive, allowing judges to reduce sentences for about 3,500 prisoners serving life for non-serious or non-violent third convictions, if the person does not pose an unreasonable risk to public safety. Proposition 36 is projected to save the state \$70-\$100 million annually.
- Ohio** On June 29, 2011, Ohio enacted legislation that repeals mandatory minimum sentences for certain drug offenders, requires first-time nonviolent offenders to be sent to community control, job training or treatment programs instead of prison, and allows for shorter sentences for low level trafficking and possession offenses.
- Delaware** A decade after its first reforms, Delaware enacted a new law on April 20, 2011 that eliminated mandatory minimum sentences for some first-time drug offenders and reduced minimum prison sentences for drug felonies. The new law also reduced the size of drug-free school zones law from 1,000 feet to 300 feet, to restore the original intent of the law.
- Massachusetts** On August 2, 2012, a new sentencing law took effect that: reduces the length of some drug mandatory minimum sentences, increases the quantity of drugs needed to trigger certain low level trafficking offenses, reforms the state's "school zone" law, and makes some drug offenders now in prison eligible for the same reentry opportunities - parole, work release and earned good time - that are available to most other prisoners. In 2010, the Massachusetts legislature eased restrictions on drug offenders serving mandatory minimum sentences at county Houses of Correction. They are now eligible for parole after serving half of their sentences, unless the drug offense involved violence, a weapon or children, or if the drug offender "directed the activities of another" during the offense.
- Georgia** In May 2012, Georgia passed a new prison reform law that included minor reform to the state's drug mandatory minimums. Specifically, the law reduced the mandatory term required for possession of very small amounts of drugs.
- Arkansas** Arkansas enacted a prison reform bill in March 2011 that reduced mandatory minimum penalties for possession of drugs and reduced some of the harsher mandatory terms for distribution of drugs.

SENTENCES THAT FIT
FAMM
 JUSTICE THAT WORKS

RECENT STATE-LEVEL REFORMS TO MANDATORY MINIMUM LAWS

Missouri	In May 2012, Missouri reduced its crack-powder cocaine disparity by increasing the amount of crack cocaine that triggers a mandatory minimum sentence. With the new law, Missouri's crack-powder disparity decreased from 75:1 to 18:1.
Louisiana	Louisiana enacted new three-prison reform laws in May 2012, including one that gave prosecutors discretion to waive mandatory minimum prison terms for non-violent, non-sex offenses.
South Carolina	In 2010, South Carolina removed the 10-year mandatory minimum sentence for school zone violations, allowed the possibility of probation for certain second and third drug possession convictions, and eliminated mandatory minimum sentences for first convictions of simple drug possession.
New Jersey	In 2010, New Jersey signed into law a bill that would give judges discretion when sentencing defendants convicted of drug-free "school zone" violations.
Rhode Island	In 2009, Rhode Island repealed all mandatory minimum sentencing laws for drug offenses. Previously, drug offenders received 10 and 20-year sentences, even for possession offenses, along with \$10,000 and \$25,000 fines.
New York	In 2009, New York enacted comprehensive drug policy reforms that greatly expand treatment options while repealing most mandatory minimum sentences for drug offenses. Certain drug offenders will be allowed to enter treatment under close supervision by specially trained drug court personnel, instead of automatically being sent to prison. Judges will have the greater discretion to impose sentences that fit the circumstances of an individual's case while still protecting public safety.
Minnesota	In 2009, the Minnesota legislature amended the law to allow courts to sentence fifth-degree felony controlled substances sale or possession offenders without regard to the mandatory minimum.
Nevada	In 2007, the Nevada legislature repealed mandatory sentencing enhancements and expanded "good time" eligibility for certain offenses.
Pennsylvania	In 2007, Pennsylvania lawmakers directed the Commission on Sentencing to study the effectiveness of mandatory minimum sentences and their impact on recidivism, cost-efficiency, and fairness in sentencing. The Commission, which published its report in 2009, questioned the efficacy of mandatory minimums and called for the repeal of the drug-free school zone mandatory penalty.

SENTENCES THAT FIT
FAMM
JUSTICE THAT WORKS

RECENT STATE-LEVEL REFORMS TO MANDATORY MINIMUM LAWS

Michigan	Michigan passed sweeping reforms of its mandatory minimum drug penalties in 2003 and 1998. In 1998, lawmakers repealed mandatory life sentences without parole for certain drug offenses and made those serving such sentences eligible for parole. In 2003, the legislature repealed almost all drug mandatory minimums, changed lifetime probation to a five-year probationary period and implemented new sentencing guidelines. In 2010, the state passed additional reforms that provide earlier parole eligibility to most of the drug offenders who were not affected by the earlier reforms.
Maine	In 2003, Maine legislators reduced the mandatory minimum sentence for murder from 25 to 20 years, and authorized courts to suspend other mandatory prison sentences altogether if they are found to create a "substantial injustice" and if doing so would not diminish the gravity of the offense nor endanger public safety.
New Mexico	In 2002, the New Mexico legislature repealed a mandatory sentence enhancement that required prosecutors to charge defendants with a prior drug conviction as habitual offenders. The sentence enhancement is now discretionary, allowing judges to determine whether it is appropriate on a case-by-case basis.
Connecticut	In 2001, Connecticut legislators gave courts some leeway to relax mandatory minimum sentencing laws for sale or possession of drugs if there is "good cause," even if the offense occurred within a drug-free school zone.

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From: suzanne-elliott@msn.com [<mailto:suzanne-elliott@msn.com>] **On Behalf Of** Suzanne Elliott
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Subject: State v. Witherspoon 88118-9

Attached please find an Amicus Brief, a motion to file an Amicus Brief and a motion to enlarge the time to file an Amicus Brief.

Thank you.

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