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Joint Interim Standing Committee on the Judiciary  
Informational Testimony on Second Look Sentencing  
February 23, 2023

Thank you, Chair Miller, Vice Chair Scheible and members of the Joint Interim Standing Committee on the Judiciary for the opportunity to submit testimony on behalf of FAMM regarding second look sentencing and the need for Nevada to explore these reforms during the 2025 Legislative Session.

FAMM is a nonpartisan, nonprofit organization that seeks to create a more fair and effective justice system that respects our American values of individual accountability and dignity while keeping communities safe. We advocate sentencing policies that are individualized and fair, protect public safety, and preserve families. As part of our national [Second Chances Agenda](#), FAMM advocates for second look sentencing across the country and at the federal level.

### **What is Second look sentencing?**

Second look sentencing laws allow courts or other sentencing review boards (parole board, indeterminate sentence board, etc.) to reevaluate a person's sentence after a significant period of time in prison and determine if that sentence is still necessary. These laws grant people serving lengthy prison sentences the opportunity to have their sentences reviewed and potentially be released if they have successfully rehabilitated themselves. Decision-makers retain discretion to reduce a sentence, grant release, or leave the existing sentence in place.

Second look sentencing laws come in many different forms. Legislatures have ample flexibility to determine a mechanism that best fits their existing criminal justice system and prison populations. For example, some second look sentencing laws are limited to people of a certain age (*e.g.* emerging adults who were under the age of 25 at the time of the offense, or people considered geriatric by correctional standards); others can only be initiated by a motion from a state prosecutor (often referred to as prosecutor-initiated resentencing).

FAMM has developed Principles for Second Look for legislators when crafting second look policy:

*Broad eligibility criteria.* Since many people grow out of criminal behavior<sup>1</sup>, the opportunity to demonstrate rehabilitation and be considered for release should be available to all people serving long sentences, without categorical exclusions based on type of offense. The potential fiscal benefits of a second look law are also the largest if people serving the longest sentences are eligible. Recall that second look is discretionary; release is never automatic and only occurs after all relevant circumstances are considered. Decision-makers retain authority.

*Require a reasonable, evidence-based minimum time served before eligibility.* People can change tremendously in a decade. Incarcerating someone for longer than necessary wastes taxpayer money and can disrupt supportive relationships, cause job skills to atrophy, and make it harder to

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<sup>1</sup> Prescott, J.J., Pyle, B., and Starr, S.B. (2020). Understanding Violent-Crime Recidivism. *Notre Dame Law Review*, 95:4, 1643- 1698. <http://ndlawreview.org/wp-content/uploads/2020/05/9.-Prescott-et-al.pdf>. 1688-1690

successfully transition back into society. The Model Penal Code recommends judicial second look after 15 years.<sup>2</sup>

*Focus decision-making on the person's situation and condition today.* The second look decision-maker's primary question should be whether continued incarceration is necessary to protect the public now. People grow and change, and recidivism drops as people age.<sup>3</sup> The crime itself, like disciplinary infractions that are more than five years old, do not provide much insight into answering this question, and should therefore not be primary considerations. However, this does not preclude consideration of evidence suggesting that the person should not have received such a severe sentence in the first place (*e.g.*, they were not the primary actor, were young at the time of the crime, or received an irrational or now-illegal mandatory sentence).

*Include presumptions in favor of release for people who meet certain criteria.* As mentioned, many people "age out of crime," and data shows that there is a diminished risk of someone past their 50s being reincarcerated for a new criminal offense once released.<sup>4</sup> As such, second look mechanisms could benefit from a presumption of release for people who meet certain criteria, such as advanced age.

*Avoid unduly long or onerous post-release supervision.* Most reoffending by people under community supervision happens within the first two years.<sup>5</sup> Lengthy terms of supervision and unnecessary conditions of release do not improve public safety, and instead waste taxpayer resources while setting people up to fail.<sup>6</sup>

*Provide access to reentry programming and supports both during and after incarceration to help ensure that people given second chances are able to successfully transition back into their communities.* While reentry support is important for anyone leaving prison, it is especially vital for people who have been disconnected from their communities for decades. Reentry planning must take place early and often, and include wraparound services upon release.

*Ensure that victims and victims' families are kept informed about the case and provided with services and resources to help support their healing.* To ensure that justice, not vengeance, is the touchstone of our criminal justice system, the U.S. Constitution guarantees that society at large, not crime victims, determines what crimes to charge, who will be convicted (hence the right to trial by jury), and what sentence is appropriate. Decisions regarding second chances should likewise be made in the interest of justice, safety, and broader community needs. At the same time, it is crucial to provide appropriate support to survivors of crime, particularly as people are released from prison.<sup>7</sup> Additionally, virtually all second look sentencing mechanisms provide an opportunity for victims to be heard and provide an impact statement for consideration in the event of resentencing.

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<sup>2</sup> Model Penal Code § 305.6. Modification of Long-Term Prison Sentences; Principles for Legislation, <http://www.thealiadviser.org/wp-content/uploads/2019/03/Modification-of-Long-Term-Prison-Sentences.pdf>

<sup>3</sup> Prescott, 1688.

<sup>4</sup> Id, 1688.

<sup>5</sup> Bradner, K., et al. (2020). More Work to Do: Analysis of Probation and Parole in the United States, 2017-2018, Columbia Justice Lab, at 13.

<https://justicelab.columbia.edu/sites/default/files/content/More%20Work%20to%20Do.pdf>

<sup>6</sup> Doleac, J.L. (2018). Study after study shows ex-prisoners would be better off without intense supervision, The Brookings Institution, <https://www.brookings.edu/blog/up-front/2018/07/02/study-after-study-shows-ex-prisoners-would-be-better-off-without-intense-supervision>.

<sup>7</sup> Sered, D. (2019). Until We Reckon, The New Press, at 27-28.

*Include a right to counsel and funding for defense attorneys.* A right to counsel helps ensure that second look cases are presented to the court effectively and efficiently, particularly given the challenges of hearing *pro se* and long-closed cases from prison.<sup>8</sup>

*Include a right to appeal.* A right to appeal promotes fairness and consistency and helps ensure that the decision-making process aligns with the legislature’s intent in enacting the second look law.<sup>9</sup> The right to appeal can be tailored to address the factors in the second look law and not create a new cause of action for all issues.

*Allow people denied release the opportunity to reapply at reasonable intervals, and require that rejections include guidance on what an individual should do to become a strong candidate at their next review.* Growth is an ongoing process. Someone who is not currently ready for release may be ready in several years, if given direction for improvement. Those who have fulfilled the recommendations from a prior review should receive a presumption in favor of release.

*Include data collection and reporting requirements.* These are necessary in order to monitor and address any disparities that may arise, and ensure that any other shortcomings are identified and improved.

### **Why does Nevada need second look sentencing?**

Nevada’s sentencing policies have resulted in a significant proportion of the prison population serving long and life sentences. As of December 2023, there are 560 people serving life without parole sentences, and 1,892 people serving life with parole sentences.<sup>10</sup> Finally, there are 1,888 offenders with sentences longer than 15 years, and 1,272 people who have served more than 15 years.<sup>11</sup>

Evidence supports the idea that Nevada should give judges the opportunity to revisit old, lengthy sentences. They can determine if the sentence is still in the interest of justice and an appropriate use of Nevada’s finite public safety resources. While not everyone will be ready to come home, many will be.

First, we know that lengthy sentences are not an effective deterrent against criminal behavior. As the Department of Justice’s National Institute of Justice (NIJ) states, “the certainty of being caught is a vastly more powerful deterrent than punishment.”<sup>12</sup> “Prisons are good for punishing criminals and

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<sup>8</sup> Murray, J. et al. (2021). Second Look = Second Chance: Turning the Tide Through NACDL’s Model Second Look Legislation, National Association of Criminal Defense Lawyers, 13-14.

<https://www.nacdl.org/getattachment/c0269ccf-831b-4266-bbaf76679aa83589/second-look-second-chance-turning-the-tide-through-nacdl-s-model-second-look-legislation.pdf>.

<sup>9</sup> Id. at 16.

<sup>10</sup> Data pull from the Nevada Department of Sentencing Policy on February 15, 2024 based on Nevada Department of Corrections total population on December 31, 2023.

<sup>11</sup> Id.

<sup>12</sup> U.S. Department of Justice, Office of Justice Programs, National Institute of Justice (2016), Five Things About Deterrence. <https://www.ojp.gov/pdffiles1/nij/247350.pdf>.

keeping them off the street, but prison sentences (particularly long sentences) are unlikely to deter future crime.”<sup>13</sup>

Furthermore, the relationship between age and criminal behavior reveals that lengthy sentences can reach a point of diminishing return as it results to incapacitation and specific deterrence – in other words, prevent an individual from engaging in future criminal behavior. Because young people’s brains are still developing through their mid-20s, they are more impulsive and susceptible to peer influence than older adults, and less able to inhibit inappropriate behavior, manage intense emotions, and fully consider consequences of their behavior.<sup>14</sup> Consequently, criminal activity peaks during the late teen years and early 20s. In fact, breaking the law is normal behavior during that period: In self-reporting surveys, most adolescents report having done so.<sup>15</sup> Fortunately, people grow and change.

As people get older, they become less and less likely to engage in crime. One recent recidivism study found significantly low recidivism rates, defined as reincarceration for a new criminal offense within three years of release, in people in their 40s, 50s, and beyond.<sup>16</sup> The report revealed a recidivism rate of six percent for people between the ages of 45 and 55 years and a recidivism rate of three percent for people over the age of 55.<sup>17</sup> This relationship held true for people convicted of violent crimes. Only four percent of people convicted of violent crimes released between ages 45 and 54 and one percent released at 55 or older were reincarcerated for new crimes within three years.<sup>18</sup> Among people previously convicted of murder, those rates fell to 1.5% and 0.4%, respectively.<sup>19</sup>

There is also promising data in states that have either enacted second look policies or have released a significant number of individuals from lengthy sentences through other means:

- In Philadelphia, 174 people were resentenced and released after having been sentenced to life without parole (LWOP) for homicides committed as children. After they had been in the community for an average of 21 months, only two (1.1%) had been reconvicted of any offense.<sup>20</sup>
- In Maryland, 188 people serving LWOP, mostly for murder or rape, were released after serving 30 or more years because a court ruled that jury instructions in their cases had been unconstitutional. Six years later, only five (2.7%) had returned to prison for either violating parole or a new crime.<sup>21</sup>

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<sup>13</sup> Id.

<sup>14</sup> Center for Law, Brain & Behavior at Massachusetts General Hospital (2022). White Paper on the Science of Late Adolescence: A Guide for Judges, Attorneys and Policy Makers (January 27th, 2022) at 12. <https://clbb.mgh.harvard.edu/white-paper-on-the-science-of-late-adolescence>

<sup>15</sup> Bonnie, R.J., et al. (Eds.). (2013). Reforming Juvenile Justice: A Developmental Approach. National Academy of Science, 100. <https://www.nap.edu/read/14685/chapter/6#100>.

<sup>16</sup> Prescott, 1688.

<sup>17</sup> Id, 1688.

<sup>18</sup> Id, 1688-1690.

<sup>19</sup> Id, 1688-1690.

<sup>20</sup> Daftary-Kapur, T. & Zottoli, T. (2020). *Resentencing of Juvenile Lifers: The Philadelphia Experience*, Montclair State University. <https://secondchanceslibrary.org/wp-content/uploads/2022/06/Resentencing-of-Juvenile-Lifers-The-Philadelphia-Experience.pdf>.

<sup>21</sup> Justice Policy Institute. (2018). The Ungers, 5 Years and Counting: A Case Study in Safely Reducing Long Prison Terms and Saving Taxpayer Dollars. <https://abell.org/publications/ungers-5-years-and-counting-case-study-safely-reducing-long-prison-terms-and-saving>.

- In California, of 860 people convicted of murder who were granted parole between 1995 and 2011, only five (0.5%) had been reincarcerated for a new crime as of 2011.<sup>22</sup>
- In Washington State as of May 2023, 98 people serving sentences for crimes they committed prior to age 18 have been released from prison prior to their expected release date. Of them, only 2 (2.1%) have been convicted of a new felony crime (both were assault in the third degree), and 5 (5.2%) have their parole revoked and were returned to prison for technical violations (as opposed to new criminal violations).<sup>23</sup>

### Which states have second look sentencing?

FAMM [publicly tracks](#) pending second chances legislation and existing second look laws and models. The following states have some form of second look: California, Colorado, Connecticut, the District of Columbia, Illinois, Louisiana, Minnesota, New Mexico, Oregon, and Washington.

These existing policies vary in scope and structure. FAMM has long held up the second look policy in Washington, D.C. as the best second look mechanism in the nation. Under D.C. law, people who are serving a sentence for an offense that occurred before their 25<sup>th</sup> birthday are eligible to petition the court for resentencing after serving 15 years of their sentence.<sup>24</sup> This mechanism does not exclude anyone based on offense type. D.C.'s second look law originally only applied to people who were under 18 at the time of the crime, but after seeing the success of people released under that law, the D.C. City Council extended it to people who were under 25 at the time of the crime.<sup>25</sup>

In determining whether or not resentence a person, the court must consider:

1. The person's age at the time of the offense;
2. The person's history and characteristics;
3. Whether the person has substantially complied with the rules of the institution, and whether the person has completed any educational, vocational, or other program, where available;
4. Any report or recommendation received from the prosecutor;
5. Whether the person has demonstrated maturity, rehabilitation, and a fitness to reenter society sufficient to justify a sentence reduction;
6. Any statement, provided orally or in writing by a victim of the offense for which the person is imprisoned, or by a family member of the victim if the victim is deceased;
7. Any reports of physical, mental, or psychiatric examinations conducted by licensed health care professionals;
8. The person's family and community circumstances at the time of the offense, including any history of abuse, trauma, or involvement in the child welfare system;

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<sup>22</sup> Weisberg, R., Mukamal, D.A., and Segall, J.D. (2011). *Life in Limbo: An Examination of Parole Release for Prisoners Serving Life Sentences with the Possibility of Parole in California*. Stanford Criminal Justice Center. [https://law.stanford.edu/index.php?webauth-document=childpage/164096/doc/slspublic/SCJC\\_report\\_Parole\\_Release\\_for\\_Lifers.pdf](https://law.stanford.edu/index.php?webauth-document=childpage/164096/doc/slspublic/SCJC_report_Parole_Release_for_Lifers.pdf).

<sup>23</sup> Beckett, K. & Goldberg, A. (2023). *Sentencing Reform in Washington State: Progress and Pitfalls*, University of Washington, at 28. <https://secondchanceslibrary.org/wp-content/uploads/2024/01/Sentencing-reform-in-WA.pdf>.

<sup>24</sup> Code of the District of Columbia Section sec. 24-403.03. [https://code.dccouncil.gov/us/dc/council/code/sections/24-403.03#:~:text=\(b\)\(1\)%20A,affidavits%20or%20other%20written%20material](https://code.dccouncil.gov/us/dc/council/code/sections/24-403.03#:~:text=(b)(1)%20A,affidavits%20or%20other%20written%20material).

<sup>25</sup> "Second Look Amendment Act of 2019 (Bill number 23-0127), Council of the District of Columbia, passed December 15, 2020. <https://lims.dccouncil.gov/Legislation/B23-0127>

9. The extent of the person's role in the offense and whether and to what extent another person was involved in the offense;
10. The diminished culpability of juveniles and persons under age 25, as compared to that of older adults, and the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate risks and consequences, which counsel against lengthy terms in prison, despite the nature of any particular crime, and the personal circumstances that support an aging out of crime; and
11. Any other information the court deems relevant to its decision.

The Washington, D.C. second look has been a great success – allowing D.C. to safely resentence individuals and loosen its reliance on life and long sentences. As of June 2023, 195 people had been released under this expanded second look law, and only 7 (4%) had been rearrested.<sup>26</sup> People released under this bill have found employment and success, taking full advantage of their second chance – with some dedicating their time to preventing future violence in their communities.<sup>27</sup>

As previously mentioned, some second look mechanisms require the prosecuting attorney to bring the motion for resentencing. These policies are often referred to as “prosecutor-initiated resentencing”. Such policies have been enacted in Oregon, Washington, Illinois, and Louisiana but the first prosecutor-initiated resentencing policy was enacted in California.<sup>28</sup> In 2018, the California legislature passed AB 2942 which granted District Attorneys the power to petition the courts for recall and resentencing.<sup>29</sup> The policy was expanded upon in 2021 with the passage of AB 1540 which, among other improvements, created a presumption favoring resentencing for any motions brought by a District Attorney (or other public safety officials such as the Attorney General and head of the California Department of Corrections and Rehabilitation).<sup>30</sup>

California further invested in this second look approach through the creation of a three-year, nine county pilot program that required district attorney’s offices to set up policies for resentencing considerations and a partnership with the county public defender offices.<sup>31</sup> While it is too early to determine recidivism rates for those released, preliminary data analyses from the RAND Corporation show that the California system has resulted in a number of resentencing. In the first 18 months of the county pilot program, 105 cases were referred to the court for resentencing and, as of October 1, 2023, 91 cases have resulted in resentencing with 63 people released from prison.<sup>32</sup>

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<sup>26</sup> Testimony of Warren Allen at Hearing on B25-291 before the Committee on the Judiciary and Public Safety of the Council of the District of Columbia (2023). <https://www.sentencingproject.org/app/uploads/2023/06/Warren-Allen-Safer-Stronger-Amendment-Act-2023-Testimony.pdf>.

<sup>27</sup> District of Second Chances (Wynette Yao, 2023) <https://famm.org/districtofsecondchances/>

<sup>28</sup> Christina Carrega, “This Law Gives Prosecutors Authority to Reduce Mass Incarceration,” Capital B News, October 6, 2023. <https://capitalbnews.org/prosecutor-resentencing-law/#:~:text=As%20he%20found%20satisfaction%20as,decade%20and%20life%20sentence%20cases.>

<sup>29</sup> A.B. 2942, 2017-2018 California Legislative Session, [https://leginfo.ca.gov/faces/billHistoryClient.xhtml?bill\\_id=201720180AB2942](https://leginfo.ca.gov/faces/billHistoryClient.xhtml?bill_id=201720180AB2942)

<sup>30</sup> California Penal Code sec. 1172.1 [https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PEN&sectionNum=1172.1](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=1172.1).

<sup>31</sup> Davis, Lois M., Louis T. Mariano, Melissa M. Labriola, Susan Turner, and Matt Strawn, Evaluation of the California County Resentencing Pilot Program: Year 1 Findings. Santa Monica, CA: RAND Corporation, 2022 at iii. [https://www.rand.org/pubs/research\\_reports/RRA2116-1.html](https://www.rand.org/pubs/research_reports/RRA2116-1.html).

<sup>32</sup> Davis, Lois M., Louis T. Mariano, Melissa M. Labriola, Susan Turner, Andy Bogart, Matt Strawn, and Lynn A. Karoly, Evaluation of the California County Resentencing Pilot Program: Year 2 Findings. Santa Monica, CA: RAND Corporation, 2023 at vi. [https://www.rand.org/pubs/research\\_reports/RRA2116-2.html](https://www.rand.org/pubs/research_reports/RRA2116-2.html).



Last year saw continued the advancement of second look reforms across the country. Six states passed legislation to either expand or create new second look mechanisms.<sup>33</sup> Colorado, for example, passed HB 23-1293 which grants people sentenced as habitual offenders the ability to petition for resentencing after serving 10 years of the sentence.<sup>34</sup> Additionally, Connecticut expanded their youth parole mechanism to include people sentenced before 2005 for an offense that occurred before their 21<sup>st</sup> birthday.<sup>35</sup> Furthermore, Minnesota passed an omnibus criminal justice bill that included a prosecutor-initiated resentencing policy similar to California's.<sup>36</sup>

In addition to existing policies, two legal organizations have adopted “model” second look policies for adoption at the state and federal level. The American Legal Institute’s Model Penal Code includes a provision that would allow incarcerated individuals, regardless of offense type, to petition for resentencing after 15 years, with a reapplication available within 10 years the initial petition.<sup>37</sup> The American Bar Association adopted a resolution urging federal, state, local, territorial, and tribal governments to adopt second look mechanisms that allow people to petition for second look resentencings after serving ten years of their sentence.<sup>38</sup>

### **Which States are Considering Second Look Reforms?**

FAMM is currently tracking 82 bills in 23 states that would create or expand upon existing second look sentencing mechanisms. These bills, much like existing second look mechanisms, vary across eligibility and procedure.<sup>39</sup>

As of this testimony, there are many second look sentencing bills working their way through their respective legislatures. Earlier this month, the Virginia Senate passed SB 427 – a bill that would provide people serving long sentences an opportunity for resentencing after serving a set period of time. This bill does not include exclusions based on offense type but has created a tiered system that sets time served requirements of 15, 20, and 25 years based on the severity of the offense.<sup>40</sup>

Additionally, California is considering legislation to provide people serving life without parole sentences an opportunity for resentencing after serving at least 25 years of their sentence. However, this legislation limits its application to people with an offense that occurred before June 5, 1990. The bill passed the Senate last year and will be considered by the Assembly during the second year of California’s two-year legislative session.<sup>41</sup>

Below is a breakdown of all 82 bills that FAMM is tracking and the release mechanism’s parameters:

- 22 bills would create a second look not tied to age

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<sup>33</sup> “Second Chances Success in 2023”, FAMM. n.d.a <https://secondchanceslibrary.org/wp-content/uploads/2023/12/Second-Chances-Successes-in-2023.pdf>

<sup>34</sup> Id.

<sup>35</sup> Id.

<sup>36</sup> Id.

<sup>37</sup> Model Penal Code, 1.

<sup>38</sup> Resolution 502, American Bar Association, August 8-9 2022. <https://www.americanbar.org/content/dam/aba/directories/policy/annual-2022/502-annual-2022.pdf>

<sup>39</sup> Pending Second Chances Legislation, FAMM, [https://docs.google.com/spreadsheets/d/13a-FuNUNGaphzq-GsAd8E54veaZhU\\_nWkmh2gxy-iCs/edit?usp=sharing](https://docs.google.com/spreadsheets/d/13a-FuNUNGaphzq-GsAd8E54veaZhU_nWkmh2gxy-iCs/edit?usp=sharing)

<sup>40</sup> Senate Bill 427, 2024 Regular Session of the General Assembly, <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=241&typ=bil&val=SB427>

<sup>41</sup> SB 94, 2023-2024 California Legislative Session

- 6 of these include exclusions based on offense and/or sentence
- 14 bills include a second look exclusively for people who were under 18 at the time of the crime.
  - 4 of these include exclusions based on offense and/or sentence
- 9 bills would provide a second look for people who were emerging adults at the time of the crime, though the exact age limits vary
  - 4 of these include exclusions based on offense and/or sentence
- 20 bills would provide an opportunity to be considered for release based on advanced age, typically in combination with time-served
  - 7 of these include exclusions based on offense and/or sentence
- 19 bills would provide an opportunity to be considered for release based on medical needs
  - 2 of these include exclusions based on offense and/or sentence
- 7 bills would establish prosecutor-initiated resentencing, but only 1 is exclusively a prosecutor resentencing bill. The remainder generally would establish a second look after people have served a certain amount of time, or at any time with the consent of the prosecutor
- 3 bills would allow resentencing for specific category of people (ex/DV victims or people whose crime was rooted in substance use disorder)
  - All 3 of these include exclusions based on offense and/or sentence
- 16 bills involve retroactive sentencing reform that applies to a specific crime (ex/felony murder) or category of crimes. In some cases, the reform has already been made prospectively and the bill would make the reform retroactive, in other cases the bill includes both prospective and retroactive reform
- 5 bills do not fall into any of these categories (ex/ a bill that removes LWOP as a prospective sentencing option)

FAMM stands ready to assist lawmakers and stakeholders, and has a national network of members who support second look sentencing. Thank you again for your time and consideration of our views. I hope the information provided will prove useful as this committee continues to pursue possible second look legislation during the 2025 legislative session. If you have any questions, please feel free to contact me at [dlandsman@famm.org](mailto:dlandsman@famm.org).