

**MASSACHUSETTS SENTENCING COMMISSION**

Public Hearing

Gardner Auditorium, Massachusetts State House

Boston, Massachusetts

Wednesday, November 18, 2015

Recording produced by CourtSmart Digital Audio Recording System.  
Transcript produced by Approved Court Transcriber, Donna Holmes.

**A P P E A R A N C E S**

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Associate Justice, Superior Court

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**Vice Chair, Massachusetts Sentencing Commission**  
First Justice, Newton District Court

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P R O C E E D I N G S

1  
2 (9:37 a.m.)

3 JUDGE LU: All right. Good morning everybody.

4 I'm going to speak nice and loud so everyone can hear me  
5 real good.

6 My name is Judge Jack Lu. I'm a Judge of the Massachusetts  
7 Superior Court. I am Chair of the Massachusetts Sentencing  
8 Commission.

9 We are grateful to everyone who is attending this morning  
10 and through the day. We welcome you.

11 We're going to, we're going to exercise some discretion  
12 with the time limit, but there will be a time limit enforced  
13 depending on how many people are waiting.

14 You are being recorded. I don't know if you're being video  
15 recorded, but you're definitely being audio recorded. Please  
16 be aware of that. And your remarks will be very quickly  
17 transcribed and provided, a transcript will be provided to all  
18 of the Members of the Sentencing Commission.

19 Any written comments that you submit in place of or in  
20 addition to your verbal comments are also going to be put  
21 together and bound and given to all Members of the Sentencing  
22 Commission right away.

23 And we'll give careful attention to your, your comments  
24 both verbal and written.

25 I'm going to ask at this time that the Members of the

1 Sentencing Commission introduce themselves.

2 We might as well start right down at the, at the end there  
3 with, with Judge Georges.

4 JUDGE GEORGES: Thank you, Your Honor.

5 Good morning, everyone. My name is Sergio Georges, Jr., and  
6 I'm an Associate Justice at the Boston Municipal Court.

7 MS. FRIEDMAN: Good morning, folks. My name is Pamela  
8 Friedman. I'm the Chief of the Victim Witness Unit at the  
9 Norfolk District Attorney's Office representing the victim  
10 witness advocates throughout Massachusetts.

11 MR. MCMURRAY: Good morning. My name is Pat McMurray. I'm  
12 the Undersecretary for Homeland Security.

13 MS. SMITH: Good morning everyone. My name is Yolanda Smith.  
14 I am the Superintendent at the Suffolk County Sheriff's  
15 Department House of Correction.

16 MR. REDDEN: Good morning. I am John Redden. I am an  
17 attorney with the Committee for Public Counsel Services which,  
18 as some of you may know, is the public defender agency for the  
19 Commonwealth of Massachusetts.

20 MS. DOYLE: Good morning. I'm Mary Alice Doyle. I'm the  
21 Deputy First Assistant for District Attorney Jonathan Blodgett  
22 in Essex County.

23 MR. ETENBERG: Good morning. My name is Peter Etenberg. I'm  
24 a private criminal defense lawyer practicing in Worcester.

25 JUDGE FIANDACA: Good morning. My name is Kenneth Fiandaca.

1 I'm a Judge at Boston Municipal Court, and I sit in Roxbury.

2 JUDGE HEFFERNAN: Good morning. My name is Mary Beth  
3 Heffernan, and I'm a representative of the District Court. I'm  
4 a Judge that, I sit in Newton and Quincy.

5 MS. HEALY: Good morning. I'm Maura Healy, the Attorney  
6 General.

7 MR. MAZZONE: Dean Mazzone, Assistant Attorney General  
8 designee on the Sentencing Commission.

9 MR. ROSENTHAL: Martin Rosenthal, Defense Attorney with the  
10 Mass Association of Criminal Defense Lawyers on the  
11 Commission.

12 MR. GLENNY: I'm Brian Glenny, First Assistant District  
13 Attorney, Cape and Islands District Attorney's Office.

14 MR. CALLAHAN: Good morning. Michael Callahan. I'm the  
15 Executive Director of the Massachusetts Parole Board.

16 MS. O'BRIEN: Good morning. Carol Higgins O'Brien,  
17 Commissioner of the Department of Correction.

18 JUDGE LU: Okay. I can't quite see the ends of the table  
19 very well, but I believe that's everybody.

20 So the com, Sentencing Commission has been working hard for  
21 a year, slightly more than a year, along with various  
22 subcommittees of the Commission on looking very carefully at  
23 sentencing in Massachusetts. We've heard from nationally  
24 respected and internationally respected experts on data driven  
25 criminal justice policy and sentencing. We have appointed an



1 outside technical advisor, James Byrne, a professor at the  
2 University of Massachusetts at Lowell, an internationally  
3 recognized data expert on criminal justice.

4 We're looking forward to your comments today.

5 I want to now turn it over to Attorney General Maura Healy.

6 MS. HEALY: Thank you very much, Mr. Chairman, for that  
7 opportunity.

8 Good morning to all of you.

9 As I said, I'm Maura Healy, the Attorney General of the  
10 Commonwealth.

11 Once upon a time, I was a civil rights attorney and also a  
12 prosecutor, and I bring that lens to this experience.

13 I want to say at the outset that our office is very pleased  
14 to be able to participate on the Sentencing Commission and be  
15 part of this very important bylaw we are having in the state  
16 and indeed we are having across this country.

17 I want to welcome everyone in attendance today, members of  
18 the public, who have taken the time to come forward and offer  
19 their perspective. It's so important.

20 I want to thank Judge Lu for his tremendous leadership of  
21 this rejuvenated Sentencing Commission and certainly all of my  
22 colleagues represented up here today on the panel who have put  
23 in, completely committed to put in over the coming weeks and  
24 months considerable effort, time, and attention to this very  
25 important issue.

1 I'm delighted to be joined by my colleague, Assistant  
2 Attorney General Mazzone from my office, and there are other  
3 Members of my office in attendance this morning because we  
4 know how important this issue is to our Commonwealth, to the  
5 health and wellbeing of residences, and to communities and  
6 neighborhoods across this state.

7 This is an important day. It's an important event. This is  
8 a public hearing, the public's first opportunity to address  
9 together at one time the Members of this new rejuvenated  
10 Sentencing Commission.

11 The point here is to take testimony that will assist  
12 Members with the work that we are going to be doing and to  
13 make sure importantly that all voices are heard, that all  
14 perspectives and viewpoints are considered.

15 As I've stated in the past, I believe that Massachusetts is  
16 at an important crossroads when it comes to our criminal  
17 justice system, and I believe now is the time to make smart  
18 reforms to our criminal justice system that will improve  
19 public safety, improve outcomes, and make the system fairer  
20 for all.

21 The Sentencing Commission is essential to that goal, and I  
22 believe can be and will be a constructive force in making this  
23 happen.

24 For the past year, the Commission has been working hard,  
25 gathering facts, hearing from experts, inquiring of experts,

1 and studying sentencing machines across the country.

2 Grounded in evidence and driven by data, the Commission  
3 hopes to generate sensible criminal justice reforms that take  
4 into account the views and the values of all the system's  
5 stakeholders, including especially all of you here today,  
6 members of the general public. And we want to make sure we do  
7 so at all times in the way that is fair and that is  
8 transparent.

9 I appreciate, as I said, the fact that members of the  
10 public come forward and are willing to share their  
11 perspectives and their viewpoints.

12 In addition to studying the numbers and data, it is the  
13 stories and the real world stories that are so important,  
14 understanding the, the workings of our criminal justice system  
15 and the impact it is having and the effect it is having.

16 So thank you for taking that time today.

17 Today of course is not the end of the conversation, but  
18 only the beginning.

19 This first public hearing is simply another step in a much  
20 needed dialogue about any number of things, building trust,  
21 building greater trust between law enforcement and the  
22 community served, dialogue about the judicial system and what  
23 is working, what isn't working, and what impact it is having.

24 And I have to say that while this is a Sentencing  
25 Commission focused on a particular aspect and effort, this is

1 happening in the context of, of much large conversations about  
2 criminal justice reform including some of the systemic issues  
3 and some of the, the factors that are, are determinant in, in  
4 what actually evolves through our criminal justice system.

5 And I think, as I said at the outset, it's a really  
6 important conversation that we're having.

7 This Commission is looking closely at all aspects of the  
8 criminal justice system with recommendations to the  
9 legislature provided on an ongoing and continual basis as  
10 circumstances and inclination demand.

11 And while public safety will not be compromised, it is  
12 critical we look at what's fair, what works, importantly what  
13 doesn't work, and what is right.

14 So the work of the Commission proceeds today with this  
15 public hearing, and I know that Members will be listening  
16 closely to everyone's testimony and their thoughts, comments,  
17 and their concerns as we all work together, as I believe we  
18 must, towards improving our criminal justice system and making  
19 it a model for others to emulate.

20 Thank you again Mr. Chairman for the opportunity to  
21 participate on the Commission, but also the opportunity to, to  
22 be here this morning. I look forward to the testimony.

23 JUDGE LU: Thank you so much, Attorney General Maura Healy.

24 All right. So have a sign up list in front of me, so we're  
25 going to first call Darrin Howell from the Jobs Not Jail, I

1 hope I'll get this acronym correctly, Service Employees  
2 International Union. I hope it, I have that right, Local 1199.

3 So I don't know if Darrin Howell is here.

4 COURT OFFICER: The two others, he's not here yet. The two  
5 others.

6 JUDGE LU: Okay. I'm, you know, I'm misreading the list I  
7 think. So that's a group panel. So we're going to hold that  
8 panel because it appears they're not quite ready.

9 And so we're going to call Beverly Williams of GBIO. I'm  
10 afraid I don't know what that stands for, but I'm going to ask  
11 Ms. Williams to tell us what that stands for.

12 JUDGE HEFFERNAN: You're the Greater Boston Interfaith  
13 Organization, right?

14 MS. WILLIAMS: Yes.

15 JUDGE HEFFERNAN: Welcome.

16 MS. WILLIAMS: Thank you.

17 JUDGE LU: That's why Judge Heffernan is the Vice Chair --

18 JUDGE HEFFERNAN: Exactly.

19 JUDGE LU: -- of this Commission. (Inaudible at 08:48:07,  
20 low audio.)

21 JUDGE HEFFERNAN: Not true.

22 JUDGE LU: All right. So I'm going to ask you to please, or  
23 maybe also with Ms. Williams is Keaton Heckman, is that right?

24 MR. HECKMAN: Yes, sir.

25 JUDGE LU: All right. I'm going to ask you to please

1 introduce yourself. Basically, the, we have what amounts to a,  
2 a Court Reporter System. And they're going to, they'll  
3 transcribe your remarks based on your voice and your stating  
4 your name now.

5 Please introduce yourself.

6 MS. WILLIAMS: I'm Beverly Williams.

7 MR. HECKMAN: Keaton Heckman.

8 JUDGE LU: And I'm afraid I'm asked to do the kind of, maybe  
9 kind of boring thing of asking you to please spell your name  
10 as well.

11 MS. WILLIAMS: It's B like in boy, E-V like in victory, E-R-  
12 L-Y, W-I-L-L-I-A-M-S.

13 MR. HECKMAN: Keaton, K-E-A-T-O-N, Heckman, H-E-C-K-M-A-N.

14 JUDGE LU: All right. Thank you so much.

15 So why don't you talk to us --

16 MS. WILLIAMS: Okay.

17 JUDGE LU: -- and tell us what you think we need to know.

18 MS. WILLIAMS: Okay. Well, first off, I would like to thank  
19 the Commission for having this public hearing and for the work  
20 the Commission has done in providing sentences stated to the  
21 Commonwealth.

22 And I hope that this transparency on both our parts will  
23 help us come to really reforming some things around  
24 sentencing.

25 Again, my name is Beverly Cox Williams. I am a resident of

1 Boston. I am a recently retired Boston Public School teacher.  
2 I'm a member of Bethel African Methodist Episcopal Church in  
3 Jamaica Plain. And I'm a citywide grassroots organizer with  
4 the Greater Boston Interfaith Organization, better known as  
5 GBIO, so that's what GBIO stands for.

6 We are actually a faith based organization that is composed  
7 of fifty plus interfaith organizations, and our main purpose  
8 is to work towards equalizing justice across the Commonwealth.

9 Many people know GBIO for our successful advocacy and  
10 leadership work with getting affordable healthcare for  
11 uninsured Massachusetts residents back in 2005, and when in  
12 2002 GBIO successfully secured follow-up legislation that  
13 tackled rising cost of healthcare, making Massachusetts the  
14 first state to put a stake in the ground around healthcare  
15 cost containment.

16 But that is not what we are all about.

17 As a faith based organization, GBIO supports policies that  
18 add value to life and communities. So subsequently, our moral  
19 compass has pointed us in the direction of our criminal  
20 justice system.

21 In March of 2015, our delegation added criminal justice  
22 reform as one of our priorities for the next couple of years.

23 What motivated us to begin advocating for criminal justice  
24 reform was what motivated our founding Members back in 1960,  
25 1996, a common desire to transform the historic divisions that

1 exist, particularly around race and class issues, plus a  
2 growing concern over the counterproductive laws and policies  
3 that entangle people into a circle or pipeline to jails and  
4 prisons.

5 From arrest through reentry, people are getting stuck in  
6 our correctional system at a very high societal and tax cost.

7 This is why we are not, this, sorry.

8 This is why we are not only supporting repealing mandatory  
9 minimums, but also pretrial bail reform and eliminating  
10 collateral sanctions imposed by the Registry of Motor  
11 Vehicles.

12 The collective voices of our delegation was evident on May  
13 12<sup>th</sup> when over 1700 GBIO people gathered at Trinity Church for  
14 a social action agenda moving on our elected officials  
15 including the governor, the mayor, the attorney general, and  
16 the speaker of the house, Speaker Dileo.

17 We wanted them to do something about the ineffective  
18 sentencing policies.

19 This led to the speaker committing publically to doing a  
20 Pew Study of our criminal justice system.

21 The proposal was submitted and signed in June of 2015, and  
22 the study is underway.

23 Legislators need technical support to inform the system,  
24 and it is our hope that we together will all be a part of that  
25 support.



1           We know that a mandatory minimum for drug sentences is a  
2 contributor to the mass incarceration of people of color, the  
3 poor, and the disenfranchised.

4           A criminal justice system that targets certain populations  
5 of people are questionable and it undermines the faith and  
6 trust we should have in the institutions that are, that are  
7 supposed to impart fairness and sustain democracy.

8           We need to put the justice back in criminal justice.

9           We can move towards criminal justice when we allow our  
10 Judges to use discretion when sentencing an individual on a  
11 drug crime as opposed to the one size fits all.

12           Accepting that we want to see criminals punished for what  
13 they do, we want to repeal predetermined sentences that ignore  
14 a person's right to have their sentence determined on the  
15 particulars of their case.

16           Data driven evidence, as you mentioned earlier, should be a  
17 part of sentencing and our infrastructure should not  
18 inherently, should not inherently create racial and class  
19 bias.

20           Since May 12, more than 30 institutions of our, have  
21 mobilized and organized hundreds of call and even have done  
22 some State House visits to legislatures and our elected  
23 official, officials to support the elimination of mandatory  
24 minimum sentences of drug offenses.

25           We hope to see greater collaboration between the Mass

1 Sentence Commission, the legislature, and the people to make  
2 this happen.

3 Today, Keaton Heckman, an affiliate of GBIO came with me  
4 and will share with you his story and experience with  
5 mandatory minimum sentences around his drug case.

6 JUDGE LU: All right. Thank you, Ms. Williams.

7 Mr. Heckman, whenever you're ready.

8 MS. HECKMAN: Thank you.

9 Good morning, ladies and gentlemen.

10 My name is Keaton Heckman, and I'm a recovering heroin  
11 addict. I'm currently eight months clean and in a residential  
12 program in Charlestown Recovery.

13 I asked to be placed in treatment in 2011 when I was  
14 arrested and arraigned on a non, non-nonviolent drug case.

15 Instead of receiving help on my journey to recovery, I was  
16 sentenced to two years in jail.

17 During my hearing shortly after receiving these charges, a  
18 scare tactic was used by a District Attorney to have me plead  
19 guilty in District Court by threatening that if I did not take  
20 this plea, I would be indicted and face a mandatory minimum  
21 sentence of three years in State Prison.

22 For the short amount of time I was given to make the  
23 decision in the courthouse that day, I remember watching my  
24 family cry while it seemed the whole world was on standstill  
25 waiting for my decision.

1           Inside, I was lonely and afraid, thinking about going back  
2 to the correctional facility for those two years. I really  
3 thought I had a case, but I did not want to risk getting even  
4 more time in prison, so I stood up straight and pled guilty.

5           After serving this time, I was released with no shelter,  
6 job, food, or transportation, putting me in a situation that I  
7 felt I had to reoffend to get by.

8           A month after my release, I was sentenced to another six  
9 months and once again released to the same conditions,  
10 continuing this vicious cycle.

11           Please ask yourselves, if this was your son or daughter,  
12 would you want them to be given the opportunity to receive  
13 treatment or faced with a mandatory minimum sentence that  
14 could dramatically change the outcome of their future?

15           Thank you.

16           JUDGE LU: Thank you, Mr. Heckman.

17           Now, I'm going to, I wonder if Members of the Commission  
18 have questions for Ms. Williams or Mr. Heckman?

19           Go ahead, Mr. Rosenthal.

20           MR. ROSENTHAL: I'm actually not going to ask a question. I  
21 just want to really welcome the GBIO to this entire issue.  
22 Some of you know I've been involved in this stuff for almost  
23 four decades, and I went to the United Trinity Church, and it  
24 was quite exciting to me.

25           So I am very happy you're here.

1 MS. HEALY: Keaton, I just want to thank you for coming  
2 forward and telling your story. I've been, I've been down to  
3 the home in Charleston and sat with, you know, some of your  
4 colleagues, and I learned more in those conversations than  
5 just about anything else.

6 So again, thank you for your offer to come forward and talk  
7 about, talk about your perspective and what's happening here.

8 MR. HECKMAN: Thank you.

9 MS. HEALY: And keep up the great work.

10 MR. HECKMAN: I appreciate it.

11 MS. HEALY: I know how important housing is to you guys and  
12 providing support. We've got to do that if we want to see  
13 people succeed.

14 MR. HECKMAN: Thank you.

15 MS. WILLIAMS: Thank you.

16 JUDGE LU: All right. Thank you, Ms. Williams and Mr.  
17 Heckman.

18 Mr. Riley, thank you. Have a good day.

19 All right. So I'm going to call, I'm reading the  
20 handwriting here, I hope I'm doing it right, Marcy Valerio,  
21 Marcy Valerio. Is Marcy Valerio here?

22 MS. VALERIO: Mary.

23 JUDGE LU: Okay.

24 MS. VALERIO: Yeah.

25 JUDGE LU: Good morning.

1 MS. VALERIO: Good morning.

2 JUDGE LU: Please have a seat, make yourself comfortable,  
3 and please tell us your name and please spell your name  
4 basically for the Court Reporter.

5 MS. VALERIO: Yes. My name is Mary Valerio. That's M-A-R-Y,  
6 V-A-L-E-R-I-O.

7 JUDGE LU: I apologize for misstating your name.

8 MS. VALERIO: That's all right.

9 And I am here today to speak somewhat as a private citizen  
10 about my involvement with now being an advocate to promote  
11 criminal justice reform.

12 I'm here to speak today about not only lowering the  
13 mandatory minimums on drug sentences, but also to lower some  
14 of the maximum sentences.

15 As the young man had spoken earlier, I am a witness in a  
16 case that the defendant is not guilty, and we are five years  
17 into trying to resolve the situation.

18 I have done over one thousand visits in five years to MCI  
19 Concord and have met many, many, many family members of  
20 incarcerated individuals, and it's pretty obvious that the  
21 incarcerated population today weighs very heavily on the  
22 communities of color and the communities with fewer economic  
23 resources.

24 As one young woman said to me in one of my initial visits,  
25 my boyfriend was arrested. He's facing a charge. We don't have

1 the money for a private lawyer, a private investigator, all  
2 the things that we're going to need, and the District Attorney  
3 doesn't like him, so he's going to take a plea even though  
4 he's not guilty because once you're arrested and you're in the  
5 system, even if he gets convicted and files an appeal, it,  
6 he'll still serve three to four to five years in prison either  
7 way.

8 Now, I'm shocked as a taxpayer that someone's going to  
9 plead guilty and go to prison, but now that I'm five years  
10 into trying to resolve to get a defendant out who is not  
11 guilty, I can understand where she's coming from.

12 I really think that there should be more emphasis on  
13 lowering some of the extremely high maximum sentences that  
14 involve crimes that are not murders because clearly they are  
15 used as weapons, if you will, to pressure people to take a  
16 plea or to threaten people to plea bargain out and go to  
17 prison when in fact some of them are actually innocent.

18 In speaking to a lot of family members, most of them will  
19 admit that the person perhaps is guilty but there is a group  
20 of possibly four to ten percent of inmates who truly are  
21 innocent, and I really feel that some type of innocence  
22 commission or something should be set up to help them further.

23 I've written a written testimony that I would really like  
24 all of you to just take a minute to read as you will see  
25 clearly what I'm talking about about this particular situation

1 that I found myself in.

2 And I would just conclude to say that when you're setting a  
3 sentence for someone, you really need to consider that you're  
4 sending an entire family to prison, the wives, the husbands,  
5 the children, the cousins, the aunts, the uncles, the friends,  
6 the coworkers, and how this affects them emotionally,  
7 financially. And even to survive this for five years is bad  
8 enough. Ten years, you almost lose touch with the individuals.

9 But once you get up above 15 year sentences, you've almost  
10 buried someone who is going to have a very difficult time ever  
11 readjusting to any kind of normalcy.

12 So I would just say once again to please read the small  
13 written testimony that I had and to consider that these are  
14 human beings who are coming before the Court who have families  
15 and that they deserve to be treated as part of the human race  
16 that we all are a part of.

17 Thank you.

18 JUDGE LU: Thank you. Ms. Valerio.

19 Are there questions from Members of the Commission?

20 All right. Thank you so much.

21 MS. VALERIO: Thank you.

22 JUDGE LU: Have a good day, Ms. Valerio.

23 MS. VALERIO: Thank you.

24 JUDGE LU: Okay. At this time, I'm going to call District  
25 Attorneys Blodgett, Gulluni, and Capeless. I believe they're

1 ready now.

2 If this a bad time, we can hold off, but if this is a good  
3 time, we're ready for you.

4 Welcome. Please have a seat and make yourself comfortable.

5 MR. GULLUNI: Thank you.

6 JUDGE LU: I'm going to ask you, good morning.

7 MR. GULLUNI: Good morning.

8 JUDGE LU: I'm going to ask you to please introduce  
9 yourselves just so the Court Reporter can get it down because  
10 they're going to make a transcript of your remarks today.

11 We do appreciate your willingness to come before the  
12 Sentencing Commission and to give us your perspective.

13 MR. GULLUNI: Thank you. Good morning. My name is Anthony  
14 Gulluni.

15 JUDGE LU: Good morning.

16 MR. GULLUNI: My last name is spelled G-U-L-L-U-N-I.

17 MR. CAPELESS: I'm Berkshire District Attorney David  
18 Capeless.

19 MR. BLODGETT: I'm Essex County District Attorney Jonathan  
20 Blodgett.

21 JUDGE LU: Okay. All right. Thank you so much.

22 So we'll start with whoever wishes to go forward.

23 Probably if I mention who's the Senior DA, that wouldn't be  
24 a good thing --

25 MR. GULLUNI: No.



1 JUDGE LU: -- or they, we don't want that pointed out.

2 MR. GULLUNI: I would not be speaking, Judge.

3 Good morning again to the Members of the Commission and to  
4 you Justice Lu.

5 I'm pleased to be here and have a chance to address you and  
6 speak on behalf of the Massachusetts District Attorney's  
7 Association and myself as the Hampden County District  
8 Attorney.

9 I'm, I'm proud again to be here.

10 Several months ago, you might remember my colleague Suffolk  
11 District Attorney Dan Conley informally spoke to you about why  
12 he, he and other District Attorneys believe that eliminating  
13 mandatory minimum, sentences for drug traffickers is a  
14 mistake.

15 DA Conley has spoken publically before the legislature and  
16 in other forums on this issue. He's pointed out that the off  
17 repeated claims that Massachusetts has a problem with mass  
18 incarceration and that low level nonviolent drug offenders are  
19 overflowing our jails are both categorically false assertions.

20 He's discussed how modern prosecution effectively stakes  
21 out the ground where violence and narcotics intersect, using  
22 mandatory minimum sentences with precision, precision and  
23 circumspection.

24 He also showed how prosecutors use their discretion to  
25 reserve incarceration for the most violent, violent and

1 recidivist individuals.

2 Importantly, each of these points is supported by facts and  
3 by data and has become better and more widely understood.

4 So considering those comments, and the progression of the  
5 narrative, I wish to speak to you about those points that have  
6 been maybe not so well discussed and where the narrative seems  
7 to be presently.

8 First, I'd like to point out the notion that there will be  
9 a substantial savings and reinvestment from eliminating  
10 mandatory minimum sentences is an empty promise.

11 The rate of incarceration in Massachusetts has been falling  
12 for years, yet there was not been a corresponding savings or  
13 reinvestment.

14 Because those actually serving mandatory sentences are  
15 relatively small in number compared to the overall population,  
16 any changes to these laws indeed will not result in any  
17 appreciable savings or related reinvestment.

18 Second, and I think most important, is the real problem in  
19 Massachusetts we presently face is not in fact mass  
20 incarceration or harsh treatment of drug dealers, but  
21 recidivism and its driving forces.

22 The facts are clear. Incarceration is most often the result  
23 of violent behavior and substantial recidivation.

24 The practices in Massachusetts are and have long been to  
25 resort to incarceration in only few circumstances, most often

1 when violence, recidivism, or high level crime is at play.

2 My belief and the belief of many of my colleagues is that  
3 the releasing of violent and highly recidivistic offenders  
4 back into our communities or making it more difficult to send  
5 them there when public safety demands it does not solve  
6 criminal justice problems.

7 In fact, it allows for violence to persist in our  
8 neighborhoods and cities and serves to allow for drugs and  
9 those who profit from them to be more prevalent.

10 So I would respectfully urge this Committee when  
11 considering the idea of criminal justice reform to do so in  
12 the broadest possible context.

13 While the criminal justice system ex, is expansive and  
14 prosecutors, sheriffs, and prisons are just a few aspects of  
15 it, the system frequently becomes a repository and last resort  
16 for the failures of other systems.

17 Changing the outcomes of the criminal justice system as is  
18 being discussed does not equate to the solving of underlying  
19 and foundational problems which include disparities in  
20 educational attainment, employment, health and housing, and  
21 more that all lead to crime and incarceration.

22 Substantially reducing, reducing systemic crime and social  
23 problems will only come with core and fundamental change, and  
24 we understand that.

25 While always mindful of the need for larger change, law

1 makers and prosecutors alike must continue to place a premium  
2 on public safety through the smart fair enactment and  
3 enforcement of laws.

4 However, the good news is that there are steps we can take  
5 immediately to help people avoid crime and reduce recidivism,  
6 and this Commonwealth's District Attorneys are already  
7 committed and significant partners in this work.

8 Specifically I mean every District Attorney including  
9 myself and those here in Massachusetts support and employ  
10 diversion programs in one form or another.

11 Many of us support and participate in specialty or problem  
12 solving courts, including those aimed at drug addiction,  
13 veterans, the homeless, and those challenged with mental  
14 illnesses.

15 We work with sheriffs and nonprofit groups on programs  
16 aimed at the successful reentry of people exiting jails.

17 When warranted, we use our discretion to dismiss and  
18 civilly divert significant numbers of cases and also encourage  
19 and direct defendants into treatment when addiction or mental  
20 health issues are present.

21 We aim to give many defendants, those who are young, those  
22 who have limited criminal histories, and those dealing with  
23 substance abuse and mental health issues, among others,  
24 opportunities to rehabilitate and ultimately avoid  
25 recidivation and incarceration.

1 Most often, quite candidly, we oversee systems in which  
2 incarceration is not the goal. It is in fact the last resort.

3 District Attorneys here use their discretion to afford  
4 assistance and treatment judiciously as we do our discretion  
5 to seek incarceration.

6 In all cases, the common denominator is justice and public  
7 safety.

8 We think these approaches make sense.

9 Not every District Attorney operates exactly the same way,  
10 but each DA is dually elected responsive to the specific needs  
11 of the communities he or she serves and accountable to those  
12 who elected us.

13 Proof of this success and wisdom of the approach I've  
14 described resides in the simple fact that Massachusetts has  
15 enjoyed declining prison populations for many years along with  
16 declining crime rates.

17 It shows we are targeting the right people. This includes  
18 high level and incorrigible drug dealers, and frankly the link  
19 between drugs and violence cannot be ignored or wished away.

20 It is real. To attempt to dismiss or diminish, or diminish  
21 this reality or to reduce a drug trafficker's responsibility  
22 for the chaos, the crime, the addiction, and the violence he  
23 creates and profits from is dangerous and is a terrible  
24 disservice to the victims of violent crime and to the  
25 communities we're all elected to serve.

1           But still, we believe that there are other things that we  
2 can do to further enhance public safety by reducing  
3 recidivism.

4           Back in 2012, the Commonwealth's District Attorneys  
5 voluntary sat at the table with legislators and made  
6 significant concessions in an effort to reach compromise and  
7 set a forward thinking path.

8           These agreements made real changes to the mandatory minimum  
9 drug laws, including, including raising triggering drug  
10 weights and reducing the length of sentences as well as  
11 markedly reducing the distance for school zone penalties.

12           At this time, the DA's has also proposed adding on post-  
13 release supervision.

14           This important part of what my colleagues were proposing at  
15 the time did not go forward.

16           As we sit here today, the current debate around mandatory  
17 minimums has produced little agreement or consensus  
18 unfortunately.

19           But the idea of post-release supervision is an idea that  
20 now enjoys broad support.

21           Including the continuing support of the District Attorneys,  
22 Chief Justice Ralph Gants, and Laura Swats of the defense bar  
23 and academic community.

24           In this same view, we believe it is important to evaluate  
25 the effect, the effect and impact of those 2012 changes.

1           Despite the DA's good faith cooperation in this effort, we  
2           regretfully find ourselves operating in an environment in  
3           which the opiate epidemic is worse than ever.

4           Now, there are calls to eliminate mandatory minimums  
5           altogether.

6           According to the Department of Public Health, the number of  
7           opiate related overdose deaths have risen from 668 in 2012 to  
8           1,256 in 2014.

9           In the first six months of this year, there have already  
10          been 684 overdose deaths, putting us on pace to exceed last  
11          year's total and again more than double the 2012 figure.

12          I can tell you back in my county in the Springfield area  
13          just over the weekend, we had over 30 overdoses, including  
14          about eight deaths as a result of obviously some sort of  
15          infect, infected strain of heroin.

16          It, it's an awful situation I think everywhere in this  
17          Commonwealth.

18          So I ask you, how does eliminating, eliminating mandatory  
19          minimum sentences for drug, drug traffickers help to slow this  
20          epidemic?

21          How does it help to pretend and then treat drug dealers as  
22          anything less than what they are, people who profit from  
23          addiction and drive much of the violence that plagues our  
24          communities?

25          As prosecutors, we want to continue to work with this

1 Commission and with all policy makers to put in place laws,  
2 policies and programs that work.

3 We believe that post-release supervision is one of those  
4 policies that should be adopted and would represent a  
5 significant step forward.

6 We think doing this in conjunction with the proper  
7 investment of programs like reentry, drug treatment, and job  
8 training, those initiatives that give people the structure and  
9 the support they need when they leave prison and re-enter our  
10 communities, is what sets people up to effectively re-  
11 assimilate and succeed.

12 That is not a quick and easy fix, but in our view, with a  
13 continued focus on underlying issues like addiction,  
14 education, and economic opportunity, we can drive down  
15 recidivism and promote public safety.

16 Ultimately, this is how we can transform lives and  
17 transform communities.

18 Let me be clear. This is not to, to deny the high rates of  
19 incarceration that we see in states like Mississippi or  
20 Louisiana, states whose in, whose incarceration rates are  
21 triple and quadruple that of Massachusetts.

22 In fact, our rate of incarceration poignantly is half the  
23 U.S. average.

24 But with all due respect to members of this committee, we  
25 are not going to solve a problem in Louisiana or elsewhere by



1 eliminating a valuable sentencing and public safety tool here  
2 in Massachusetts.

3 What we can do here at home to make an immediate and  
4 noteworthy impact on recidivism, recidivism rates is to  
5 implement the kind of post relief supervision that gives  
6 recently released inmates an incentive to stay out of trouble  
7 and a chance to succeed after paying their debt to society.

8 On behalf of the Commonwealth's District Attorneys, I would  
9 ask that you add this valuable tool to the criminal justice  
10 system's toolbox, rather than take a very effective one away.

11 I am appreciative of the chance to speak before you and I  
12 am happy to be a point of contact for you and a resource going  
13 forward if so desired.

14 I am, I and other present District Attorneys are happy to  
15 take any questions that you now have.

16 Thank you very much.

17 JUDGE LU: Thank you, District Attorney Gulluni.

18 So we are happy to welcome District Attorney Michael  
19 O'Keefe.

20 So we have high tech Court Reporters today, and they're  
21 asking me to get a voice exemplar from each speaker, so  
22 District Attorney O'Keefe, if you could just tell us your  
23 name, please, or anything else you want to tell us.

24 MR. O'KEEFE: Testing one, two, three.

25 District Attorney Michael O'Keefe from the Cape and

1 Islands, Your Honor.

2 JUDGE LU: All right. Thank you so much. Thank you so much.

3 So unless there are other comments, they'll, I'll ask the  
4 Commission whether you have any questions for the speakers.

5 JUDGE HEFFERNAN: May I just make a comment and say thank  
6 you very much for the remarks, and also, in a previous life,  
7 before I was a Judge, I was involved in that 2012 effort  
8 around sentencing and am grateful for your leadership as a  
9 group around that and always am grateful for what you do  
10 around criminal justice and it, and your willingness to sit  
11 down and discuss things is, is appreciated very much.

12 So I know we look forward to further discussions as we try  
13 to craft what it is we're looking to do. And thank you very  
14 much for your remarks.

15 I've never met you but welcome.

16 MR. GULLUNI: Thank you, Judge.

17 JUDGE HEFFERNAN: Thank you.

18 JUDGE LU: Mr. Rosenthal?

19 MR. ROSENTHAL: Yes. Thank you.

20 I, I'm curious especially about, Mr. Gulluni, is that how  
21 you pronounce it? I'm sorry.

22 MR. GULLUNI: It's Gulluni.

23 MR. ROSENTHAL: Gulluni. Gulluni. Sorry. The comment that  
24 you made about incarceration is a last resort, and I was quite  
25 intrigued when Dan Conley for the MDAA responded to Judge

1 Gants and said we should be looking at the, Massachusetts  
2 being lower than other states and Texas and so forth.

3 And I'm curious what you think about the comparison between  
4 Massachusetts and the rest of the world and the United States  
5 and the rest of the world and that our incarceration rate is  
6 off the charts for the rest of the world, and how that is  
7 consistent or inconsistent with what you say about  
8 incarceration as a last resort.

9 Judge Gants in his testimony a few months ago presented the  
10 statistics from the '70s when we had 62 people per 100,000,  
11 and now we have 300, over 300 for 100,000 incarcerated.

12 So how does that square with incarceration as a last resort  
13 is my question.

14 MR. GULLUNI: Well, I, I can't speak to, to global  
15 comparisons, and quite frankly, I'm not concerned about them.

16 The situation here in the United States is unique in the  
17 fact that guns are ubiquitous. There are social problems that  
18 other countries don't face.

19 I think the comparisons are most aptly put between  
20 different states and what we do.

21 I'm proud to say as a new District Attorney and as a former  
22 Assistant District Attorney I think we are a leader here in  
23 Massachusetts on criminal justice policy and law enforcement.

24 I can speak to the, to the situation in my county having  
25 Sheriff Michael Ashe for forty plus years who's been a pioneer

1 in law enforcement, not only in incarceration, in reentry. I  
2 think we're uniquely situated there as well.

3 But I think the DAs, knowing them, knowing their policies,  
4 having worked in the system, in fact incarceration is, is  
5 often a last resort.

6 Our first priority is always public safety, protecting  
7 people, and, you know, justifying what, what victims of crime  
8 go through. But we often look to rehabilitate in most cases  
9 first, second, and third when people come into our Court  
10 System.

11 So I would, I am proud to say I think we're a leader  
12 nationally in criminal justice and how we conduct ourselves as  
13 District Attorney's.

14 MR. O'KEEFE: Could I, could I address that also, Mr.  
15 Rosenthal?

16 MR. ROSENTHAL: With leave of the Chair.

17 JUDGE LU: Absolutely.

18 MR. O'KEEFE: Thank you.

19 JUDGE LU: Mr. O'Keefe.

20 MR. O'KEEFE: With respect to the, to the global comparison  
21 that you suggested, you know, there are places in the world  
22 that certainly don't have the incarceration rates. Their  
23 penalties for certain activities are much more Draconian than  
24 incarceration.

25 For example, they kill people. They cut off the hands of

1 people who deal with drugs for example in certain parts of the  
2 world.

3 One of the things that I found very interesting as we began  
4 this debate several years ago, and we were listening to this  
5 myth, in our judgment, that we were warehousing these  
6 nonviolent drug offenders. We undertook, and I, I hope this  
7 hasn't already been put before you this morning, but an  
8 examination of the Board of Probation checks of every single  
9 individual who was incarcerated in the DOC and the year that  
10 that was undertaken was the end of '13, and at that time,  
11 there were 1,452 defendants incarcerated at the DOC out of a  
12 population of roughly 10,500 or so.

13 And having in mind we're 48<sup>th</sup> in the nation with respect to  
14 that.

15 But those 1,452 individuals represented 58,600  
16 arraignments.

17 So I would respectfully suggest that that was a very  
18 telling statistic that incarceration is in Massachusetts a  
19 last resort.

20 That's an average number of arraignments of more than 40  
21 for each of those 1,452 individuals.

22 And, again, I'd suggest we do it very responsibly here in  
23 Massachusetts.

24 That demonstrates, in my humble judgment, that it is indeed  
25 the last resort.

1 JUDGE LU: All right. Thank you, Mr. O'Keefe.

2 So we've been joined by District Attorney Timothy Cruz. If  
3 you could just say your name and anything else you want to  
4 say.

5 The Court Reporters are requiring me to have everyone say  
6 their name so that it's on the tape.

7 MR. CRUZ: My name is Timothy Cruz, C-R-U-Z, and I am the  
8 District Attorney from Plymouth County, and I rely on the  
9 testimony of my brothers who I believe have already testified  
10 before you.

11 I apologize for being late.

12 JUDGE LU: No problem. Thank you and welcome.

13 Other questions from the Sentencing Commission?

14 MR. REDDEN: Mr. Chair?

15 JUDGE LU: John Redden.

16 MR. REDDEN: Good morning.

17 MR. GULLUNI: Good morning.

18 MR. O'KEEFE: Good morning.

19 MR. REDDEN: I, I listened with some interest to your, your  
20 touching upon the issue of prosecutorial discretion in the  
21 application of the mandatory minimum sentences, and I think I  
22 can tell you not only as a defense attorney but as a former  
23 prosecutor in another jurisdiction, I, I think the exercise  
24 of, of discretion in these areas is one of the most important  
25 things that a prosecutor can do, and it's a very significant

1 obligation.

2 But in the area of mandatory minimums, there tends to be  
3 often a direct correlation between how that discretion is  
4 exercised and what a sentence is going to be.

5 And when you have a number of different District Attorneys  
6 exercising that discretion, human nature being what it is,  
7 you're going to have the discretion exercised differently  
8 depending upon what jurisdiction a defendant is being  
9 prosecuted in.

10 And you did touch a little bit on this in, in your comments  
11 when you noted that not every, every District Attorney --

12 JUDGE LU: So sorry,

13 MR. REDDEN: -- acts in the same --

14 JUDGE LU: -- Mr. Redden.

15 Mr. Riley, we need another chair for Mr. Early.

16 So sorry. Go ahead.

17 MR. REDDEN: Okay.

18 JUDGE LU: Sorry for the interruption.

19 MR. REDDEN: You touched a little bit about that --

20 JUDGE LU: And we need a chair for Mr. Conley as well.

21 MR. REDDEN: -- when, when you talked about the idea that  
22 not every District Attorney acts in the same way.

23 So that long sort of introduction leads me to this question  
24 to you, is that in there any concern either on, on your part  
25 or on the part of your fellow District Attorneys about

1       disparity and different treatment of different individuals in,  
2       in, in the imposition of mandatory minimums just because they  
3       happened to be prosecuted in a different county?

4           MR. GULLUNI: With all due respect, that's sort of a  
5       softball because the District Attorneys apply the laws as, as  
6       they're written, and often the discretion is used in the  
7       interest of an offender's background or some sort of, of  
8       compassion or something about the case.

9           But there are eleven District Attorneys in the  
10       Commonwealth.

11          There are hundreds of just Superior Court Judges in my  
12       understanding or hundreds of Judges in the District and  
13       Superior Courts who all would apply their unique experiences,  
14       their discretion as it were, to each case if there were no  
15       mandatory minimums.

16          You know, in, in the examples I use, I have a district in  
17       which there are some urban depressed environments and there  
18       are some more well to do environments.

19          I think with mandatory minimums as they're often applied,  
20       especially in, in regard to drug cases and trafficking cases  
21       where it's based on weight, if, if you're someone from Long  
22       Meadow or if you're someone from inner city Springfield, the  
23       laws are going to apply equally.

24          And in front of whichever Judge you find yourself, the laws  
25       are going to apply equally.



1           So the system is not perfect. Each District Attorney  
2 probably applies his or her experience and, and how the office  
3 runs is somewhat different, but there is consistency. And I  
4 think the consistency is far greater than it is with each  
5 Judge taking a different approach and rendering a different  
6 decision if there were no mandatory minimums to make things  
7 somewhat consistent.

8           MR. REDDEN: So I guess the, the, the bottom line is that  
9 that, that's not an issue of concern for you at this point?

10          MR. GULLUNI: Absolutely not.

11          MR. REDDEN: All right.

12          We've heard some people say here today, I don't, I don't  
13 know how long you've been here, but, and I've heard in other  
14 context of people expressing concern that mandatory minimums  
15 can be used to essentially coerce guilty pleas where a  
16 defendant for example in District Court is offered the  
17 opportunity to enter a guilty plea in District Court with the  
18 admonition that if they do not accept the plea offer in  
19 District Court, they will be prosecuted on the Superior Court  
20 level and we, will, will be subjected to a much greater  
21 mandatory minimum sentence.

22          And the suggestion was made that that, that can have an  
23 unduly coercive effect on somebody relinquishing all the  
24 rights associated with a criminal case before pleading guilty.

25          Is that something that, that's been on your radar screen or

1 your fellow District Attorneys as a concern?

2 JUDGE LU: So sorry.

3 But could I ask District Attorney Joseph Early and Daniel  
4 Conley just to say your names for the stenographer.

5 I'm be, taking my instructions from them to require every  
6 speaker to do that.

7 MR. EARLY: Yes, yes, Your Honor.

8 JUDGE LU: Get used to it.

9 MR. EARLY: Joseph Early, and I represent the middle  
10 district, also known as Worcester County.

11 MR. CONLEY: Daniel Conley, Suffolk County District  
12 Attorney.

13 JUDGE LU: Thank you. Good morning and welcome.

14 MR. CONLEY: Good morning.

15 JUDGE LU: So I think that, there was a question that --

16 MR. BLODGETT: I'd like to answer that question --

17 JUDGE LU: All right.

18 MR. BLODGETT: -- if I can.

19 In the first part is to your earlier inquiry about eleven  
20 different District Attorneys and the beauty of our system is  
21 that if a District Attorney is being heavy handed is being  
22 unfair, is being outrageous in his or her recommendations,  
23 then the public is going to know about that very quickly by a  
24 combination of Judges, defense bar, and the press, and you  
25 will have to stand in front of the public and be voted either

1 in or out.

2 So unlike other entities who are being asked to have that  
3 discretion, we have to answer to, to, to the public.

4 So if somebody is being unfair, that will get out very  
5 quickly.

6 And in terms of your second question, with respect to using  
7 mandatory minimums to bludgeon somebody into a, I think that's  
8 a bunch of nonsense frankly. And I would love to have a list  
9 of those cases that people love to talk to in the abstract,  
10 take a look at that because I've been doing this job for, for  
11 13 years, and if somebody thought that my office was being  
12 unfair or heavy handed or using mandatory minimums as a  
13 bludgeon, I would find out pretty quickly about it, and we  
14 would address it.

15 I don't think that's true.

16 Frankly, if it was, I'm sure we'd hear about specific cases  
17 and specific defendants, and that's yet to happen in my time  
18 as District Attorney.

19 And we do use discretion wisely.

20 I've had a Diversion Program since 2007 which I'm very  
21 proud about. It's robust. It's fair. It's given people second  
22 chances, often pre-complaint, pre-complaint before they go to  
23 the criminal justice system.

24 The system as it, it sits right now is working very well.

25 MR. GULLUNI: If --

1 MR. REDDEN: Well --

2 MR. GULLUNI: -- if I can make a further comment --

3 MR. REDDEN: Okay.

4 MR. CONLEY: Your Honor --

5 JUDGE LU: Surely.

6 MR. CONLEY: So I, I just reflect on my own experience as  
7 the Suffolk County District Attorney, I think about how many  
8 defendants, how many defendants in the last, well, when this  
9 debate really began in earnest in the beginning of 2014, we  
10 began to examine '13, 2013 and 2012.

11 So in Suffolk County if someone's charged with distribution  
12 of a class B substance, it is almost always within a school  
13 zone, certainly within a school zone of 1000 feet.

14 And in our office, we looked at those cases which could  
15 have, we could have enforced without, at our, at our own  
16 discretion, our own call, two year mandatory minimum sentence  
17 in the House of Correction.

18 And we looked at it, and I'm not sure if it was '12 or '13,  
19 2012 or 2013, there were fewer than 75 cases in the District  
20 Court where we enforced a two year mandatory minimum in a  
21 school zone.

22 Meaning that a defendant typically who came to us, Mr.  
23 Redden, we didn't put the squeeze on the defendant to plead  
24 guilty.

25 The defendant came to us and says I'd be willing to plead

1 guilty. Will you drop the school zone and give me probation or  
2 some sort of treatment?

3 And in the vast majority of cases, that's what happened.

4 So when, you know, prosecutors are characterized as leaning  
5 on people to plead guilty, in my experience both as a trial  
6 prosecutor and as District Attorney, when a defendant comes to  
7 us and offers to plead guilty, offers to make an admission to  
8 sufficient facts, I credit that. I like it when people accept  
9 ownership of what they did.

10 And the benefit that they get from that is a reduced  
11 sentence.

12 I never, in my personal practice, and I don't expect it  
13 from any of the Assistant DAs who work for me, pull out a  
14 sledgehammer and put it over someone's head and say if you  
15 don't plead guilty you're going to suffer much more severe  
16 consequences.

17 MR. REDDEN: I, I can only tell you that, that it hasn't  
18 happened to me a lot, but I, I have represented clients facing  
19 mandatory sentences, whether it's through the drug statutes or  
20 as an habitual criminal or the like when I've been approached  
21 and I've been told by a prosecutor that we will back off the  
22 habitual, we will back off the mandatory minimum if your  
23 client pleads guilty to X amount of time.

24 And I would think probably in my experience, most other  
25 defense attorneys have experienced that from time to time.

1           So --

2           MR. CONLEY: Well --

3           MR. REDDEN: -- we just have a dis, disagreement as to what  
4 happens on a daily basis.

5           MR. GULLUNI: Well, two things.

6           One, if, if that is going to have any effect, it's because  
7 there is the evidence and the facts in the case that would  
8 warrant a, a guilty plea in it.

9           But more importantly, the legislation sets the standard for  
10 sentencing.

11           If there is going to be discretion that is shown by any  
12 District Attorney, it's towards leniency.

13           So if there's a difference in discretion, it's a difference  
14 in the degree of leniency that's being shown by District  
15 Attorneys, not in heavy handedness.

16           MR. REDDEN: Okay.

17           JUDGE LU: Mr. Rosenthal?

18           MR. ROSENTHAL: Yes.

19           One very brief comment and one other question.

20           I've only once gotten to cross-examine a prosecutor in my  
21 40 years, and I'm not going to abuse it today.

22           But the, the comment is, is as to the net, the post release  
23 supervision.

24           I, I don't know anybody that's against that, but the issue  
25 for that is net marketing and whether it puts more people into

1 incarceration.

2 But let me move to my question which is on the, on the  
3 mandatory minimums, and we have the pleasure of having Mr.  
4 Conley come in as a guest, and we talked to him which we were  
5 quite pleased to do.

6 The question is whether any of you have looked at the  
7 '96 report by the Sentencing Commission, I'm happy to see  
8 Frank Carney in the audience, one of the Members, and the  
9 approach that they took to mandatory minimums in that  
10 instance, just for drug cases, an exceptional departure  
11 process to depart from the low mandatory minimums which I  
12 believe is consistent with Chapter 211E in our mandate, and  
13 whether or not any of you have thought about that as an  
14 alternative to mandatory minimums and are you open to it as a  
15 different approach that gives the Judge discretion but subject  
16 to checks and balances and appeals?

17 JUDGE LU: I'm going to, just from the body language of the  
18 audience, I'm going to ask folks to get right on top of those  
19 microphones.

20 MR. ROSENTHAL: Okay. Well --

21 JUDGE LU: All right.

22 MR. ROSENTHAL: -- that's the end, so next time.

23 JUDGE LU: All right. District Attorney O'Keefe.

24 MR. O'KEEFE: You know, over, over the years, we've looked  
25 at many different formulations of changes in sentencing

1 structure.

2 And, and that one strikes me as one which would very  
3 quickly have the exceptions follow the rule.

4 When we went to the legislature in '12 and offered the  
5 reduction in the triggering weight and the reduction in the  
6 sentencing in exchange for that, we expected, we expected that  
7 the other half of that which was post-release supervision  
8 would take place. It was part of the package.

9 It of course did not take place.

10 The only thing that happened was the weights were increased  
11 and the sentences were reduced.

12 In our judgment, that was not wise in terms of helping the  
13 recidivism issue.

14 We have people sentenced every day in the Commonwealth to  
15 three and a day or two and a day, and we, they do their time,  
16 they get out, they go right back into the same circumstances  
17 because there is no supervision, that got them incarcerated in  
18 the first place.

19 We think the most important tool in changing that dynamic  
20 is some real post-release supervision, that what we're all  
21 interested in is reducing recidivism.

22 You know, the criminal justice system gets blamed for a lot  
23 of things, but, you know, keep in mind it's an opt in system.  
24 It doesn't go out looking for people. People are brought to it  
25 because they commit a crime and they have to be dealt with.



1           And when we were negotiating with the senate back in '12  
2 over those reductions, they were our idea. We brought that to  
3 the senate.

4           And it's not so much the length of time, I don't know who  
5 sat around and decided way back when that it should be 20  
6 years for over 200, and to 100 to 150, I don't know who  
7 decided that.

8           The legislature passed that, and that's what we dealt with  
9 for a number of years, and we reduced those out of our  
10 exercise of discretion, discretion routinely.

11           What's more important to us is not so much the length of  
12 the sentencing, but the certainty of it so that there is a  
13 message delivered to those people who, bear in mind,  
14 introduced a poison which is now killing legions of people in  
15 the Commonwealth. Those are the folks that we're after.

16           And we need this tool in order to effectively deal with our  
17 little piece of this problem, and that is interdiction.

18           The rest of it, public health issue, education, treatment,  
19 and prevention, those things we have to begin to pay more  
20 attention to.

21           And if there's a silver lining in this cloud, it's that I  
22 think we are doing that. The legislature's doing it. Certainly  
23 the administration, our Attorney General, have both made it  
24 priorities to deal with that issue.

25           But I think we'll be taking respectfully a step back if we

1 eliminate the important tool of the certainty of sentencing  
2 for trafficking drugs.

3 JUDGE LU: Okay. I want to thank District Attorneys Joseph  
4 Early and Michael O'Keefe, David Capeless, Anthony Gulluni,  
5 John Blodgett, Timothy Cruz, and Daniel Conley.

6 Have a good day.

7 MR. GULLUNI: Thank you very much, Your Honor.

8 MR. CONLEY: Thank you.

9 MR. O'KEEFE: Thank you.

10 MR. CAPELESS: Thank you.

11 JUDGE LU: Thanks.

12 (Discussion off the record.)

13 JUDGE LU: Okay. Thank you, Attorney General Healy.

14 MS. HEALY: Thank you.

15 JUDGE LU: All right. So we're going to call now, it's  
16 actually the, the first people here this morning, but it's a  
17 multi-person panel and it's from Jobs Not Jail, Jails, and the  
18 spokespersons I believe will be Josh Beardsley, John Bowman,  
19 and Darrin Howell.

20 I think they're from Jobs Not Jails, Service Employees  
21 International Union, Local 1199.

22 If, if you're ready now.

23 If, if I'm incorrect and you're not ready, we can hold off.

24 MR. BOWMAN: I don't think Darrin's coming.

25 JUDGE LU: Okay. All right.

1           Come right up. Have, have a seat and make yourself  
2 comfortable, please.

3           Please speak right into the microphone nice and close, and  
4 I'm going to ask you to please say your names for the  
5 stenographer please.

6           MR. BEARDSLEY: My name is Josh, J-O-S-H, Beardsley B-E-A-R-  
7 D as in David-S-L-E-Y.

8           JUDGE LU: Thank you.

9           MR. BEARDSLEY: You're welcome.

10          MR. BOWMAN: And my name is John, J-O-H-N, Bowman, B-O-W-M-  
11 A-N.

12          JUDGE LU: Okay. Thank you for joining us. Thank you so  
13 much.

14          I will ask you now, whoever wants to go first, to tell us  
15 what you believe we need to know.

16          MR. BEARDSLEY: As I said, my name is Josh Beardsley, and  
17 I'm retired from McKinsey & Companies research arm.

18          And I'm a volunteer with the Jobs Not Jails coalition as  
19 their research coordinator.

20          And I appreciate the opportunity to be here this morning.  
21 And I will limit my remarks to two issues.

22          First, the savings that we think can be expected from two  
23 reforms in the Justice Reinvestment Act.

24          There are only two reforms that are on the table. There are  
25 others of course, but I'm just going to refer to the two that

1 are in the Justice Reinvestment Act, that's repealing  
2 mandatory minimum drug sentences and raising the felony  
3 threshold from 250 to 1300 dollars.

4 And the second issue, and I know it's not under the purview  
5 of the Sentencing Commission, but it's the critical importance  
6 of the Trust Fund which is part of the Justice Reinvestment  
7 Act.

8 And what would the savings be? Well, we estimated the  
9 savings using the concept of marginal cost that was developed  
10 by the Vera Institute last summer using data from Hampden  
11 County actually, one of two counties in the United States that  
12 actually provided the data to the very institute.

13 And regarding the threshold, only two states in the, in the  
14 country have lower thresholds, larceny thresholds, than  
15 Massachusetts. That's Virginia and New Jersey.

16 And in our testimony to the Judiciary Committee, we  
17 recommended raising that from the 250 dollars to 1300 dollars  
18 basically applying the Consumer Price Index to the 1945  
19 threshold which was 100 dollars. That brings us to 1300  
20 dollars today.

21 And repealing the drug mandatory minimums and implementing  
22 the recommendations in the bill we estimate would result in  
23 about 30 million dollars in gross annual savings over a five  
24 year period. And that figure does not include the thousands  
25 that we understand are sentence for drug offenses who are

1 converted, coerced to take a plea and result in a longer  
2 sentence than otherwise they would have.

3 And raising the larceny threshold could shrink the prison  
4 population further and result in some 6 million dollars in  
5 annual savings we estimate.

6 And that doesn't include a second threshold that we  
7 suggested to Senator Brownsburger who challenged us on the  
8 basis of why do you think they got it right in 1945.

9 And that evening we suggested another rationale which he  
10 seemed to like which raised the threshold to 3500 dollars  
11 which would put us first in the nation, above Wisconsin.

12 But why is the trust fund so important? And this is the  
13 context, I think.

14 Our prisons and House of Correction release some 16000  
15 individuals every year. Most without supervision and the great  
16 majority of whom do not have access to the resources that  
17 would allow them to reintegrate into their communities.

18 And these communities are among the poorest in the  
19 Commonwealth according to Harvard University research,  
20 Department of Corrections research, and the House of  
21 Correction's research in Hampden County which has done the  
22 most granular research of all.

23 And raising the, I'm sorry.

24 And not only that, but the individuals within these  
25 communities are among the most disadvantaged in our, in our

1 Commonwealth.

2 They're poor. They're undereducated. And they're  
3 unemployed.

4 75 percent of those who are at intake in the Hampden County  
5 House of Correction are unemployed.

6 Over 50 percent do not have a high school diploma, and most  
7 read at a 6<sup>th</sup> grade level.

8 These are not the drug traffickers of TV fame. These are  
9 poor, undereducated, and underemployed individuals.

10 And the current recidivism rate is 40 to 65 percent  
11 depending on the timeframe.

12 And according to our analysis, and we were pretty  
13 conservative, current reforms of any act could affect some  
14 5,000 individuals among the current populations.

15 So clearly the recidivism rate will only grow if  
16 reintegration and unemployment challenges are left for another  
17 day.

18 The investments that need to be made across all stages of  
19 the criminal justice system are, have been well understood for  
20 some time.

21 In 2012, the Department of Corrections convened a three day  
22 conference of all the stakeholders and produced a remarkably  
23 detailed and comprehensive road map to reduce recidivism.

24 And yet over the past three years, nothing but cuts have we  
25 experienced, according to the Governor's Commission on

1 Corrections Reform.

2 We ask the Commission to set the precedent, move to begin  
3 to dismantle this criminal justice that's broken --

4 JUDGE LU: I'm so sorry to interrupt you, I, I just want to  
5 welcome --

6 MR. BEARDSLEY: Sure.

7 JUDGE LU: -- Secretary of Public Safety Daniel Bennett.

8 You know, we actually, I think we have an extra seat right  
9 here so,

10 MR. BENNETT: Thank you very much. I didn't want to --

11 JUDGE LU: We'll move your nametag.

12 So sorry, Mr. Beardsley.

13 MR. BEARDSLEY: All right.

14 JUDGE LU: Go ahead.

15 MR. BEARDSLEY: Well, I'm almost done.

16 We urge you to recommend the reforms that are here and  
17 reduce the footprint of the criminal justice system and urge  
18 the legislatures to capture those savings to invest in  
19 education, training, community program that could someday make  
20 this criminal justice system obsolete.

21 And I've provided some written testimony along with some  
22 graphs and charts.

23 And we'd be more than happy to answer any questions.

24 Thank you.

25 JUDGE LU: Thank you, Mr. Beardsley.

1           As you probably know, the, everyone's testimony and written  
2 filings are going to be compiled very quickly, actually we  
3 expect within 24 hours, and provided to the Commission  
4 Members.

5           And I for one, and I'm sure all of the Commission Members  
6 will be studying it carefully.

7           I'm going to ask, welcome, and I'm going to ask you to  
8 please tell the, basically the stenographer your name, please.

9           And whoever wants to talk next can talk next.

10          MS. MILHANS: Sure. My name's Elizabeth Milhans, E-L-I-Z-A-  
11 B-E-T-H, M-I-L-H-A-N-S, and I'm here to testify on my story  
12 that I was sentenced to a mandatory minimum.

13          JUDGE LU: Okay.

14          MS. MILHANS: I was --

15          JUDGE LU: So why don't you go next.

16          MS. MILHANS: Sure.

17          JUDGE LU: Can you rotate that microphone --

18          MS. MILHANS: Yes, sir

19          JUDGE LU: -- so you're right on top of it, please?

20          MS. MILHANS: Okay.

21          JUDGE LU: Thank you.

22          MS. MILHANS: All right.

23          And --

24          JUDGE LU: And tell us your name one more time.

25          MS. MILHANS: Elizabeth Milhans.



1 JUDGE LU: Okay. Thank you.

2 MS. MILHANS: Thank you.

3 May I begin?

4 JUDGE LU: Yes, please do.

5 MS. MILHANS: Thank you.

6 I was living in California, I had moved there, and I was  
7 working. I had a really good job. I was renting a house. I had  
8 taken a loan out on a vehicle, and I was living from what I  
9 consider a quality life.

10 I was caught and charged with 3.5 grams of mushrooms, and I  
11 was sentenced to a mandatory minimum of sixteen months.

12 From there, I had been, I couldn't go to my job. I had lost  
13 my job, my house, my vehicle.

14 I was in a state prison where I was, I had no contact with  
15 anybody.

16 I was put through a lot there.

17 I don't feel that my punishment was fitting to my crime.

18 During that time when I was paroled, I was paroled to  
19 nothing, and it was hard enough to just keep my head afloat,  
20 never mind worry about all the things I lost, never mind the  
21 credit that I had damaged so bad.

22 You know, through that it has taken me numerous years to  
23 come through that depression, and five years, four years  
24 later, I'm sorry, I'm finally able to obtain employment  
25 through my hard work.

1           Having a felony on my record has really been damaging for  
2 me, not just for employment but also housing.

3           So I understand that now it is a low level felony that has  
4 been made a misdemeanor due to Prop 47 in California.

5           And I just, repealing a mandatory minimum would probably  
6 face somebody that's a low level drug offender, the hardships  
7 that I had to face coming out of prison.

8           Thank you.

9           JUDGE LU: Thank you very much.

10          All right. Mr. Bowman, did you want to speak at this time?

11          MR. BOWMAN: Yes, please.

12          Thank you, Judge Lu, Members of the Commission. Good  
13 morning.

14          I am here --

15          JUDGE LU: Good morning.

16          MR. BOWMAN: -- actually in a dual capacity, first on behalf  
17 of my church, the United Parish in Brookline, and also I am a  
18 volunteer with the Jobs Not Jails Coalition working under the  
19 egis of the Access to Justice Fellows Program established  
20 under the Supreme Judicial Court.

21          My church, like many others, has gotten very active with  
22 this area, both in educational and outreach purposes. We have  
23 actually gone so far as to adopt a formal resolution after  
24 study in opposition to mass incarceration.

25          We're one of many faith communities, synagogues and

1 churches, involved in this.

2 You've already heard from Greater Boston Interfaith  
3 Organization this morning.

4 And I suspect you're surprised to learn that you may now be  
5 the subject of sermons and many, many social justice committee  
6 meetings.

7 In the interest of time --

8 JUDGE LU: I've been the subject of editorials before, but  
9 we won't get into that.

10 JUDGE HEFFERNAN: As long as you pray for us --

11 MR. BOWMAN: Right.

12 JUDGE HEFFERNAN: -- if I, if you're doing that.

13 MR. BOWMAN: I, I have submitted written testimony that you  
14 have.

15 Let me try to condense it to keep our time short.

16 And I'd like to start with what it is that we already know.

17 What we already know at the national level is that over  
18 recent decades, the United States has become the major  
19 warehouser of people.

20 The salient statistic is that the United States, with only  
21 five percent of the world's population now has 25 percent of  
22 the world's prisoners.

23 We also see that comparing the United States to the rest of  
24 the world, especially Western Europe, the United Kingdom,  
25 Germany, we have much longer prison sentences when people go

1 to jail.

2 The other feature that we can see that stands out is that  
3 there's a major racial disparity in who gets incarcerated.

4 We have reached the point that today one out of three young  
5 black men can look forward to spending some time in prison.

6 In my estimation, that is not a good society or a moral  
7 society, and equally important, it doesn't have the earmarks  
8 of a stable society moving forward.

9 So what do we know about Massachusetts in comparison?

10 Well, one thing we do know is, is that, that Massachusetts  
11 does incarcerate at a lower rate than most other states, but  
12 Massachusetts nevertheless has experienced the same explosion  
13 in an increase in incarceration.

14 You look at the data, you look at the graphs, you see at  
15 the national level, you see at the state level this great leap  
16 upwards starting in 1973.

17 Our incarceration rate today is about five times what it  
18 was in 1973.

19 If United, if Massachusetts were a separate nation, we  
20 would now rank eighth in the world in incarceration.

21 In Massachusetts, we see in the same racial disparity. We  
22 know that African Americans and Hispanics are  
23 disproportionately among those who are in prison.

24 And this is, this racial disparity seems to be particularly  
25 true for people who are receiving mandatory minimum sentences,

1 especially under our drug laws.

2 And I want to pause and I want to applaud your predecessor  
3 Commission because it did speak out against mandatory minimums  
4 for drug cases, and I hope that this Commission will reaffirm  
5 and re-voice that.

6 The evidence has only accumulated that has, this has not  
7 been a good policy choice.

8 So against that backdrop, drop, we have the challenge that  
9 this Commission face.

10 I'm going to condense this from what I said in my written  
11 testimony, but if we look backwards, we now have about two  
12 decades of experiencing, experience under the sentencing  
13 guidelines.

14 I think the question is to figure out from that experience  
15 to what extent the guidelines themselves may contribute to  
16 maintaining this high rate of incarceration and look for  
17 possible changes.

18 I think the Commission should also be looking forward. I  
19 think it should be thinking about the rate of incarceration  
20 that we have reached in Massachusetts and in the nation and be  
21 considering whether it has a role and what that role should be  
22 in decreasing the rate of incarceration.

23 It's time to move past where we were and the political  
24 battles that got us to this point and, and turn a new page.

25 I mentioned in my written testimony a number of possible

1 items for you to consider in this forward look.

2 Right now, I will, in the interest of brevity, I will  
3 mention only three.

4 The first is to put more emphasis on what your statute,  
5 Chapter 211E refers to intermediate sanctions.

6 That is summon alternatives to incarceration or maybe in  
7 sometimes supplements to shorter incarceration.

8 The second is to take a really hard look at mental illness  
9 and at drug and alcohol abuse.

10 I've heard sheriffs from the state, around the state, say  
11 that this is a major problem of the people that they have  
12 incarcerated but that they don't feel that these people are in  
13 the proper place.

14 I actually agree with the testimony from the District  
15 Attorneys when he said we've allowed our jails, the last  
16 resort, to become the first resort.

17 We should change that. We should be looking at ways to  
18 shift from a prison and punishment regime to a public health  
19 and treatment regime in these areas.

20 It will cost less. It should turn out to be more effective  
21 if you're thinking about recidivist rates, and it's more  
22 humane.

23 And, finally, I suggest that we should start looking at  
24 shorter sentences.

25 I mean there is a real question of whether or not we really

1 think that a four year sentence to prison is twice as good as  
2 a two year sentence when we can well realize that it disrupts  
3 family con, ties, community ties, and it may in many cases  
4 lower the chances for success after release from prison.

5 So I urge you to do that.

6 And in closing, I simply say you've taken on quite a task.  
7 I thank you very much for doing this.

8 JUDGE LU: Thank you very much, Mr. Bowman.

9 So we've had two folks join us. I want to welcome them and  
10 ask you to please tell us your name --

11 MR. WADLOW: My name is --

12 JUDGE LU: And, and if you could spell your names for the,  
13 the stenographer as well.

14 MR. WADLOW: My name is Wilson Wadlow, W-I-L-S-O-N, W-A-D-L-  
15 O-W.

16 JUDGE LU: Good morning.

17 MR. WADLOW: Good morning.

18 MR. BAPTISTA: Good morning. My name's Valenti Baptista, V-  
19 A-L-E-N-T-I, B-A-P-T-I-S-T-A.

20 JUDGE LU: All right. Good morning to Mr. Wadlow and Mr.  
21 Baptista.

22 Did, you're welcome to give us some comment or anything  
23 information you think we might benefit by.

24 MR. WADLOW: Thank you, sir.

25 JUDGE LU: Okay.

1 MR. BAPTISTA: Thank you.

2 JUDGE LU: All right. Did you want to say something?

3 MR. BAPTISTA: First?

4 MR. WADLOW: Sure.

5 JUDGE LU: I'm going to ask you to pull that microphone  
6 right up to you please and talk right into the microphone,  
7 please.

8 MR. WADLOW: First off, good morning. My name's, again,  
9 it's Wilson Wadlow.

10 Today is November 18<sup>th</sup>, 2015.

11 I just want to start off by saying that I'm a drug addict  
12 in recovery.

13 I'm also a convicted felon of a non-violent drug related  
14 crime.

15 I'm also a Veteran of the United States Army.

16 I'm a loving son and a brother. Also an uncle.

17 A little, a little bit about my story, I served six years  
18 in the United States Army before medical discharge.

19 During that six years, I was injured and required multiple  
20 surgeries.

21 That's when I was first introduced to opiates, and that's  
22 when my, my battle with addiction began.

23 During this this time with my battle with this addiction,  
24 during my recovery, I was charged with three felony  
25 convictions. I was convicted on all three counts of larceny



1 over 250 dollars.

2 I was sent to jail.

3 I, I didn't have any opportunity to enter treatment. It was  
4 basically, it was, it was, it was jail for me. That's  
5 basically the, the option the Judge gave me.

6 So I did my, my jail sentence, and, and I got out and I  
7 entered treatment on my own terms.

8 I just want to say that, that, you know, honestly I feel  
9 that, that this, you know, the larceny over 250 dollars, that,  
10 you know, if, if, if I was, if I wasn't given a chance to, you  
11 know, if this was turned into a misdemeanor, and I wasn't  
12 convicted of these felonies, you know, my whole life could  
13 have gone different up to this point.

14 You know, up to this point, I've had trouble getting jobs.  
15 I feel like there's a stigma towards me because I'm a  
16 convicted felon now.

17 Even though I'm a, a Veteran of the United States Army, I  
18 feel like that doesn't even matter. I feel like jobs don't  
19 look at that. They, they look at your felony conviction even  
20 if it's something so simple as of, you know, larceny.

21 And which I know in some people's eyes, that's a, obviously  
22 a serious thing, and in other people's eyes, it's, it's not.

23 But, you know, this all stemmed from my drug addiction,  
24 and, you know, I just wish that things could have been  
25 different. I wish that I had a chance to maybe give treatment

1 a shot, and maybe if I completed treatment, then maybe they  
2 could have been lowered to misdemeanors or maybe the Courts  
3 could have worked with me in some, some way.

4 And I just hope that, you know, in the future, that maybe  
5 this law could get changed. Maybe raise the, the price that  
6 it, constitutes a, a felony conviction due to larceny that  
7 way, in the future, you know, drug addicts and other Veterans  
8 like me will, who have served their country, you know, and I  
9 am a good, I'm a very good person, you know. I have a, you  
10 know, I have good morals. I was raised correctly.

11 I don't feel like, that the stigma of being a felon, I  
12 don't feel like that, that's who I am today.

13 But I, I'd like to, that's why I'm here representing, you  
14 know, people who were in situations like me, that way it can,  
15 you know, maybe we can do something about it and give someone  
16 else a better life down the, down the line because it's going  
17 to be hard for me to find jobs for the rest of my life.

18 Whether I, maybe in ten years when I can possibly get that  
19 felony expunged, I don't know how that works, but if it can  
20 prevent them the first place, then I think that would be a, a  
21 really great thing.

22 And that's why I'm here.

23 So, once again, thank you very much for letting me speak.

24 JUDGE LU: Thank you, Mr. Wadlow.

25 Mr. Baptista? Please pull that microphone right up there,

1 please.

2 MR. BAPTISTA: Again, my name's Valenti Baptista.

3 I'm here to, to testify in strong support of the Social  
4 Justice Reinvestment Act.

5 I came from a dysfunctional family, middle class --

6 JUDGE LU: Tell, tell us, I want to make sure the  
7 stenographer, what's your first name, please?

8 MR. BAPTISTA: Valenti.

9 JUDGE LU: Okay.

10 MR. BAPTISTA: V-A-L-E-N-T-I.

11 JUDGE LU: Thank you.

12 MR. BAPTISTA: Baptista.

13 I came from a, a single family, poor, middle, lower middle  
14 class family, single mother, and she was a drug addict.

15 She did her best to raise me right.

16 You know, I went to school, got good grades, was a good  
17 kid, stayed out of trouble till about high school, and then I,  
18 I developed into a troubled teen following the wrong crowd,  
19 doing drugs, committing petty crimes.

20 I was charged with my, my first two felonies at 19 years  
21 old for larceny of alcohol and clothing, barely over 250, and  
22 I was given two years' probation.

23 I believe the Court should have mandated me to, to have  
24 drug treatment, and I had a, basically supervised, just  
25 supervised probation, no drug testing, no drug counseling,

1 nothing of that nature.

2 Just two years' probation.

3 And in order to pay my restitution and fees, I tried to  
4 get, I tried to get work to pay my restitution and fees, and I  
5 was released from two good jobs because of, because of my CORI  
6 check. One was a union job at Stop and Shop Deli, and the  
7 other one was a maintenance man in a nursing home.

8 Having to resort, you know, to doing construction labor  
9 under the table for, for lower than minimum wage, and, and do  
10 minimum wage jobs like fast food restaurants and stuff like  
11 that.

12 I resorted to selling drugs and back into my old behavior,  
13 and I racked up lists, a list of similar felonies.

14 And I had a drug problem, an alcohol problem.

15 So I, and my disease progressed, and I racked up a couple  
16 of sheets of similar charges.

17 Feeling like I had nothing to lose, you know, I was already  
18 far from the path I wanted to take and I was happy with, and  
19 you know, my disease just got horrible.

20 And like I said, I just kept racking up felony after felony  
21 for similar cases of larcenies, destruction, just destruction  
22 of my life, you know.

23 So I, I can, I continually violated my probation for the  
24 next six years with no drug treatment, just, just trying to  
25 pay my fines, you know, keep extending it, trying to pay my

1 fines.

2 And six years later, later, being on probation, I finally  
3 clocked out to six months in the House of Correction just so I  
4 could clear up my probation fees.

5 And it isn't until today that I finally like willingly  
6 went, and, went and I'm in a treatment facility now, you know,  
7 finally trying to get my life back together.

8 And I think addicts like myself who have, who have kind of  
9 blown their, their life at a young age will have a better  
10 opportunity to be reintegrated into society and rehabilitated  
11 if, if there was more programs for young adults and teenagers  
12 and, to get their lives together without just throwing them in  
13 jail for felonies or just ruining their record and their CORI  
14 check.

15 I believe, I believe I would have had a better chance to  
16 get back, my life back on track, you know, and if I had, if I  
17 got drug treatment and I was able to get back on track with  
18 work and, and get back into society, not resort to a more  
19 hardened criminal lifestyle, with, you know, no regards of how  
20 my life was going to turn out until now willingly, I'm trying  
21 to get my life back together because I was raised better than  
22 that. I know that's not the life my mother would have wanted  
23 me to have. And, you know, I'm just trying to live a life of  
24 morals and values like Wilson said.

25 And just try to, try to, I'm trying to redirect, you know,

1 redirect my life with my own will now.

2 You know, the drugs aren't, aren't directing my life.

3 And I'm just trying to be a normal citizen, you know, be  
4 productive in society, and be an example for other addicts,  
5 you know, to turn their life around.

6 You know, anything's possible.

7 And that's basically why I'm here. I just wanted to say  
8 that.

9 Thank you.

10 JUDGE LU: Thank you, Mr. Baptista.

11 All right. So do members of the Commission have questions  
12 for the representatives of Jobs Not Jails?

13 Mr. Rosenthal?

14 MR. ROSENTHAL: Yes. I --

15 JUDGE LU: Let's, let's give the floor to Judge George's,  
16 Mr. Rosenthal.

17 I think you'll --

18 JUDGE GEORGE: Thank you, Mr. Chairman. I appreciate that.

19 Elizabeth, I want to make sure I pronounce your last name.  
20 Is it Milhans?

21 MS. MILHANS: Milhans.

22 JUDGE GEORGE: Milhans?

23 Good morning.

24 MS. MILHANS: Good morning.

25 JUDGE GEORGE: One of the things that I ask of, of you and

1 of Mr. Wadlow and Mr. Baptista is to inform some of the  
2 earlier testimony.

3 Were you all incarcerated as a result of mandatory  
4 minimums?

5 And I know that you said that you were, but was that for a  
6 possessory crime or was it for a sale crime, a distribution  
7 crime?

8 MS. MILHANS: Possession, simple.

9 JUDGE GEORGE: It was a, it was a --

10 MS. MILHANS: -- for --

11 JUDGE GEORGE:, mandatory 18 months for possession?

12 MS. MILHANS: 16.

13 JUDGE GEORGE: 16 for possession? Okay.

14 And Mr. Wadlow, were, were you also, was it a mandatory  
15 sentence?

16 MR. WADLOW: Yes. It was a possession?

17 JUDGE GEORGE: And same with you, Mr. Baptista?

18 MR. BAPTISTA: I actually was never charged with any  
19 possessions. Mine was all addiction fed on larcenies, you  
20 know, trying to feed my addiction, larceny over 250.

21 JUDGE GEORGE: Okay. And were any of those dispositions as a  
22 result of plea negotiations and you were initially charged  
23 with more serious crimes?

24 MS. MILHANS: No.

25 JUDGE GEORGE: All possessory?

1 MR. BAPTISTA: Excuse me?

2 JUDGE GEORGE: Just one, were any of, were any of you  
3 charged with more serious crimes and it was a reduction in  
4 consideration for taking the plea on possessory crimes?

5 MS. MILHANS: No, sir.

6 JUDGE GEORGE: No?

7 MS. MILHANS: Mine was not.

8 JUDGE GEORGE: Okay.

9 Mr. Wadlow?

10 MR. WADLOW: I was a, first, I was charged with larceny over  
11 250. And then came the possession of a Class A, you know, a  
12 little bit down the line.

13 And that basically seemed like it was the, kind of the  
14 final straw for the Judge.

15 MR. BAPTISTA: Actually, when I finally copped out, the  
16 larcenies and, they, they lowered my, one of my pleadings to a  
17 larceny because I took a deal to do the six months. I was  
18 facing two and a half years.

19 JUDGE GEORGE: Okay. All right.

20 Thank you all very much.

21 And to Mr. Wadlow and Mr. Baptista, very good luck on your,  
22 your recovery, very much so.

23 MR. WADLOW: Thank you.

24 JUDGE GEORGE: Thank you --

25 JUDGE LU: Okay.



1 JUDGE GEORGE: -- Mr. Chairman.

2 JUDGE LU: Thank you. Thank you, Judge.

3 Mr. Rosenthal?

4 MR. ROSENTHAL: Yes. I just had a quick comment on, I think  
5 this is Mr. Beardsley, the doctor --

6 Any, anyway, on your comment about the felony threshold,  
7 and, and I was proud to be at CPCS in the '80s when we urged  
8 that they be raised from 100 to 250 was, was done, and that's  
9 quite a while ago.

10 But if I were to urge people to take a look at Chapter 211E  
11 which is our enabling law, and it's very broad, and I hope  
12 this Commission will be willing to look at the issue.

13 And we certainly have authority under the 211E Section 1C,  
14 among other things, the Commission shall make recommendations  
15 to the legislature concerning modifications of laws and  
16 relating to the crimes and sentencing.

17 So I don't see why that's not part of that issue and I'm  
18 hopeful this Commission at some point will be willing to look  
19 at it.

20 So, but again, I urge people to look at 211E, even non-  
21 lawyers.

22 JUDGE LU: All right. Thank you, Mr. Rosenthal.

23 I don't see any more questions from the Commission.

24 I thank you all very, very much--

25 MR. WADLOW: Thank you.

1 JUDGE LU: -- for talking to us and giving us your  
2 perspective.

3 Thank you.

4 MR. WADLOW: Thank you.

5 MS. A: Mr. Wadlow --

6 JUDGE LU: Sorry.

7 JUDGE HEFFERNAN: Mr. Wadlow, thank you for your service. I  
8 appreciate it.

9 MR. WADLOW: You're welcome.

10 JUDGE LU: All right. I'm going to call now on Anthony  
11 Benedetti, the Chief Counsel of the Committee for Public  
12 Counsel Services.

13 MR. BENEDETTI: Hi.

14 JUDGE LU: Good morning, Mr. Benedetti.

15 MR. BENEDETTI: Good morning.

16 JUDGE LU: Come up, have a seat, make yourself comfortable.  
17 Pull that microphone right up to you --

18 MR. BENEDETTI: Sure.

19 JUDGE LU: -- if you would be so kind.

20 I'm going to ask you to please state your name and spell it  
21 for the stenographer.

22 MR. BENEDETTI: Certainly.

23 Anthony Benedetti, B-E-N-E-D-E-T-T-I.

24 JUDGE LU: Okay.

25 Good morning, and welcome, and please give us your thoughts

1 on this subject.

2 MR. BENEDETTI: Sure.

3 Judge, good morning. Members of the Commission, good  
4 morning. Thank you for the opportunity to come before you and  
5 speak.

6 I'm trying to, I'm going to try and give a broad overview  
7 of my thoughts. I know this Commission has quite a broad scope  
8 in terms of the areas they're, that you can look at, and  
9 you've heard from a number of individuals who touched on some  
10 of the points that I wanted to make.

11 So I will, I will try and be brief and then answer some  
12 questions.

13 A couple, I'm going to touch upon a, a, three general  
14 areas.

15 Over criminalization, arrest, prosecution, and  
16 incarceration, and reentry and recidivism because I think all  
17 three of those general categories cover some of the many  
18 problems that I think exist in the system and that, and that  
19 we see representing the, fair to say the overwhelming majority  
20 of individuals who get caught up in the criminal justice  
21 system at CPCS.

22 First of all, it's our experience, and I think the numbers  
23 show, that far too much conduct has been criminalized in  
24 Massachusetts which has resulted in far too many people who  
25 are being swept up into the system.

1           Essentially, we have a criminal justice system that in many  
2 ways has criminalized poverty, has criminalized homelessness,  
3 individuals with drug and mental health illnesses being  
4 treated as criminals instead of being treated in more  
5 appropriate ways.

6           In a different, in addition, juveniles being treated as  
7 criminals instead of being treated or, or, or instead of an  
8 appropriate response to typical teen behavior.

9           And in some instances, we see teenagers are treated  
10 criminally for the same conduct that adults are treated  
11 civilly, and, and that we see happens in a lot of towns with  
12 local ordinances.

13           Generally, the overwhelming number of cases in the system  
14 are low level, as many as 60 percent of arrests in many places  
15 around the county are for misdemeanors, and Massachusetts  
16 historically has criminalized more conduct than other states.

17           Bob Spangenberg in the Spangenberg Group a few years back  
18 came in and looked at the misdemeanors in Massachusetts and  
19 found that a lot more conduct is treated criminally in  
20 Massachusetts than it is in many other states.

21           In fact, if you look at the CPCS budget, which for the last  
22 five years has hovered around 200 million, the over, 70  
23 percent of that, of, of that figure is criminal and the  
24 overwhelming portion of that is for services provided in  
25 District Court.

1           You, you might read in the Herald that the amount of money  
2 we pay attorneys to represent individuals in murder cases is a  
3 lot of money, but the bulk of our funding is for District  
4 Court misdemeanor cases.

5           CPCS over the last few years has been advocating that many  
6 of these offenses be reclassified as civil offenses.

7           I think in areas like automobile offenses, disorderly  
8 person disturbing the peace.

9           And the legislature has taken some steps in that direction.

10          The public took a step in that direction with possession of  
11 Class D, and we've seen, we've seen the result in our budget  
12 in terms of a reduction in costs in those areas.

13          There are millions spent on defending individuals charged  
14 with low level misdemeanors and there is undoubtedly,  
15 undoubtedly quite a lot of money spent in other areas of the  
16 system for these same offenses.

17          You decriminalize a lot of these low level misdemeanors,  
18 and you eliminate the collateral consequences associated with  
19 these guilty pleas and convictions as well as the potential  
20 for future sentence enhancements.

21          With respect to arrests, prosecution, and incarceration,  
22 again, far too many people are caught up in the system, most  
23 of whom are people of color.

24          Many of these individuals come from communities that are  
25 low income. They lack access to adequate education, adequate

1 job opportunities.

2 Mandatory minimums we see as a policy which has failed.

3 I know you've heard a lot of conversation about that and,  
4 and advocates of mandatory minimums will argue that it deters  
5 offenders, it reduces crimes, it aids those dependent on  
6 substance abuse, it provides uniform sentencing, it eliminates  
7 sentencing disparities, and it preserves appropriate sentence  
8 discretion.

9 Whether you examine each of those together or separately,  
10 the fact remains that mandatory minimums have not, do not, and  
11 will never fulfill any of these promises.

12 And in addition, they're extremely costly.

13 It's a failed policy.

14 With respect to deterrents, there have been numerous  
15 studies that show that mandatory minimums have little to no  
16 effect as a deterrent.

17 Over the last decade, and, and I don't think I have to tell  
18 many of you, who are experts in, in these, these areas, a  
19 number of states have engaged in sentencing and prison reform,  
20 many of which involved eliminating or reducing mandatory  
21 minimum sentences, and in each of those states, crime rates  
22 have fallen, which indicates that the rationale that mandatory  
23 minimums result in deterrents does not hold up.

24 Crime reduction, mandatory minimums promise to reduce  
25 crime. That does not happen.

1 I think the fact that we're seeing this crisis with opioids  
2 shows that mandatory minimums does not result in the reduction  
3 in, in crime. It's a public health problem.

4 With respect to uniform sentencing and sentencing  
5 disparities, attorney, anyone who practices in different  
6 counties, in different Courts across the state can tell you  
7 the mandatory drug sentences are enforced differently  
8 depending upon where you practice, and they're enforced  
9 differently depending whether you're in a, in an urban area or  
10 a suburban area.

11 I practiced, albeit it was a long time ago, but you talk to  
12 people who practice in Plymouth County, and, and John Redden  
13 who sits on the Commission practiced on Plymouth County.

14 When I practiced there, there was a policy that mandatory  
15 minimum sentences would not be reduced.

16 And so the luck of the draw, if you got caught in Plymouth  
17 County, you were going to face a much harsher sentence than  
18 you would if you were caught in one of the other counties.

19 There were instances where sentences would not be reduced,  
20 and we were forced to go to trial.

21 And in, and in my opinion, and, and honestly it was my  
22 opinion that the jury felt the same way, that these cases  
23 should not have been brought to trial, and they were a  
24 complete waste of the Court's time, the jury's time, and  
25 everyone else involved in the system.

1           So the idea that these sentences have brought uniformity  
2 across the state and, and people are treated the same based on  
3 the charge is a complete fallacy, and I think many of you, you  
4 have seen that in, in your, in your jobs.

5           With respect to discretion, I would, I would argue what  
6 others before you, before me have argued, that it, they remove  
7 sentencing determination from Judges who are the ones who are  
8 in the best position to look at the individual's background,  
9 the individual's criminal history, the individual's actual  
10 involvement in the crime, and the circumstances of the crime,  
11 the severity of the offense, and all aggravating and  
12 mitigating evidence.

13           The District Attorneys have argued that only one percent of  
14 those convicted in Fiscal Year 2013 were subject to a drug  
15 mandatory minimum, and the problem with those numbers is it  
16 fails to accurately portray how these sentences work.

17           In 2013, I believe these are Sentencing Commission numbers.

18           In 2013, only 4.7 percent of those charged with a school  
19 zone offense were convicted of a school zone, but we haven't  
20 been able to get statistics that show how many people are  
21 originally charged with mandatory minimums because that's the  
22 accurate, that's the, those are the figures you want to look  
23 at, who is charged with mandatory minimums, not how many  
24 people are convicted of mandatory minimums. That gives you the  
25 true, that shows you the true effect of the mandatory minimum



1 sentences on the, on the system.

2 With respect to the, the treating of addiction, it is  
3 definitely a positive step that the conversation around the  
4 opioid problem has focused on it as a public health problem  
5 and not a criminal justice problem, and we're hopeful that  
6 that, that continues to be the direction that these  
7 conversations go in.

8 I've already talked about the cost.

9 So those are mandatory, mandatory minimums.

10 With respect to sentences over all, they generally are  
11 longer, and they're harsher.

12 The District Attorneys talk about the fact that  
13 Massachusetts is better than most of the country, and the  
14 problem with that is the incarceration rate since the 1970s  
15 has quadrupled, and if Massachusetts was a separate country,  
16 it would be third or fourth in the world in terms of the  
17 incarceration rate.

18 Massachusetts can do better.

19 I don't think it's good enough that we're one of the best  
20 in the country. We should still work to improve because  
21 something is not working.

22 There have been a number of studies that show length longer  
23 sentences do not improve public safety.

24 There was a study out of John Jay College in New York which  
25 tells us that increased rates and/or duration of incarceration

1 does not reduce recidivism.

2 There were, the Pathway to Desistance Studies by Ed Mulvey  
3 out of the Department of Justice showing incarceration  
4 dramatically is overused with kids aged 18 to 24.

5 Finally, with respect to reentry and recidivism, those who  
6 truly do need to be locked up need to be given the tools to  
7 succeed upon their release. There needs to be more money put  
8 into programs, job training, rehabilitation, public housing.

9 This, many come out. They're saddled with all of these  
10 obstacles. They're saddled with collateral consequences.  
11 They're saddled with their CORI record.

12 And there have been numerous examples where people who want  
13 to get a job talk about how they're not able to get a job  
14 because they have a criminal record.

15 For many offenses, there's a, there's no sense that you've  
16 served your time, and you've, or you've paid your, your  
17 penalty.

18 There's too many barriers, and the way the system is set up  
19 now, it's as if it's, it's set up to promote recidivism  
20 instead of help people improve their lives.

21 And the last point I'll touch on is there's been a lot of  
22 conversation for, for several years about mandatory post-  
23 release supervision. And I would, I would submit to you that  
24 we have post-release supervision, and it's called parole.

25 And that the majority of people should be paroled and given

1 the opportunity to reintegrate into society while on parole.

2 One of the biggest problems that we see with mandatory  
3 post-release supervision is, first of all, unless you  
4 eliminate mandatory minimums, you essentially will be  
5 lengthening the sentences of, of anyone who was sentenced  
6 under a mandatory minimum.

7 And the second point is there'd be a real concern that  
8 parole would parole at a lesser rate if they know an  
9 individual is going to receive the mandatory post-release  
10 supervision.

11 And so I think if this Commission was going to recommend  
12 some sort of mandatory post-release supervision, that it  
13 should make parole presumptive, and that only individuals who  
14 do not receive parole, who don't want parole, are, are  
15 subjected to some kind of mandatory post release supervision.

16 It would be more cost effective, and it would get at those,  
17 at the small group of individuals who really do need to serve  
18 out their entire sentence.

19 So I'll, I'll leave it at that and answer any questions  
20 that any Commission Members have.

21 JUDGE LU: Thank you, Mr. Benedetti.

22 All right. Mr. Mazzone?

23 MR. MAZZONE: Very quickly, Mr. Benedetti. Kind of a big  
24 picture question, and I don't know if CPCS has a position or  
25 if you personally have a position, and this is something that

1 the, that the Commission's been wrestling with.

2 Do you find any value in uniformity of sentencing when it  
3 comes to, when it comes to sentencing throughout the  
4 Commonwealth, meaning X, Y, and Z factors, you should be able  
5 to get a particular sentence in Suffolk County, and the same  
6 in, in Berkshire County, or, or should it just be left to the  
7 discretion of every individual Judge on a case by case basis?

8 MR. BENEDETTI: I think for the most part, it should, there  
9 always should be an opportunity for a Judge to examine  
10 individual characteristics of a defendant or of, of a crime,  
11 the facts of a crime.

12 I think Judges are in the best position to really, to know  
13 what an appropriate sentence is in a particular circumstance.

14 All of you who have worked in the system, whether you've,  
15 whether you've been a prosecutor or a defense attorney or a  
16 Judge, every case is different, every defendant is different,  
17 their background and what led them to commit the crime.

18 And so, and, and oftentimes, there are, there are facts  
19 which can help the Judge reach an appropriate disposition for  
20 one individual that may not be appropriate for another  
21 individual.

22 MR. MAZZONE: And one quick follow up, and this is --

23 MR. BENEDETTI: Sure.

24 MR. MAZZONE: So then you're, you're comfortable with the  
25 idea that the, the Judges are different, it sounds like

1 they'll be a measure of sub, subjectivity to it, but you're  
2 comfortable with that, like a Judge, you know, or even in the  
3 same courthouse the next day, having just years difference in  
4 the, in the penalty?

5 MR. BENEDETTI: I am. I think there was a lot of  
6 conversation around this point before the Judiciary Committee  
7 about well if Judges are allowed to sentence, will it be like  
8 the, the bad old days.

9 MR. MAZZONE: Yeah.

10 MR. BENEDETTI: I wasn't around back in those days.

11 And there seemed to be some, some consensus, and I would  
12 agree that it's, it's different now.

13 There's a lot more attention being paid to Judges and, and  
14 so I think that for the most part, there's a range, and I  
15 don't think Judges will, will sentence extremely beyond that  
16 range in either direction. I think it all evens out.

17 And so I, I would be comfortable with, with Judges having  
18 discretion.

19 MR. MAZZONE: Okay. Thank you. You've answered my question.

20 JUDGE LU: Okay. I think the Secretary of Public Safety, Dan  
21 Bennett, had a question.

22 MR. BENNETT: Let's say just for a second.

23 JUDGE HEFFERNAN: Can't hear you.

24 MR. BENNETT: I apologize.

25 JUDGE LU: Put that right up if you would.

1 MR. BENNETT: Thank you.

2 JUDGE LU: Thank you.

3 MR. BENNETT: Just say there was an agreement that mandatory  
4 minimums for drugs should be under strict scrutiny.

5 But are there other mandatory minimums that you agree with  
6 for first and second degree murder or OUI fourth or OUI  
7 causing death? Are those something you believe should stay in  
8 place as opposed to the mandatory minimums on drugs where  
9 someone's life has been lost? Should there be mandatory  
10 minimums there?

11 MR. BENEDETTI: I mean, philosophically, I think mandatory  
12 minimums are a bad idea, but I think my focus, our focus has  
13 been on drugs. And I do think one of the major factors for  
14 that is because of the incredible racial disparity that exists  
15 around mandatory minimums with drugs.

16 I mean I don't think, when you look at the statistics and  
17 look at how often whites use, use and sell drugs versus people  
18 of color, there is no way anyone can believe that the, it,  
19 the, there's a justification for the difference.

20 There's no way people of color use, should be imprisoned at  
21 the rate they are compared to whites when you look at the  
22 usage of, usage rates and the rate at which people sell.

23 I mean I think anyone could, could agree that if the Police  
24 policed college campuses in the same way that they do inner  
25 city, I think you'd see a big, a big outcry.

1           And so I think that's really the, the biggest issue that  
2 drives the, the need for reform around mandatory minimums.

3           MR. BENNETT: But philosophical, philosophically, you're  
4 against the minimum mandatory even for murders?

5           MR. BENEDETTI: First degree murder?

6           MR. BENNETT: Yes.

7           MR. BENEDETTI: Well, I mean the focus has always been no  
8 death penalty, and so we're happy that the Commonwealth  
9 doesn't have a death penalty.

10          And so I think until the death penalty is eliminated in the  
11 country, I think that conversation can wait.

12          MR. BENNETT: Right. Okay.

13          Even for us who absolutely agree with you a hundred percent  
14 there should be no death penalty, but those, okay. Thank you.

15          JUDGE HEFFERNAN: Can I ask a question?

16          JUDGE LU: Go ahead.

17          Can you pull that right up, please?

18          JUDGE HEFFERNAN: First of all, thank you very much for your  
19 thoughtful comments. Always appreciate to hear from, from you.

20          Can you tell me, we heard from, and we've heard as a  
21 Commission from the defense representatives around mandatory  
22 post-release supervision that it is net widening so called,  
23 that you know these so called technical probation violations  
24 and etcetera will extend someone's sentence.

25          Do you feel that?

1 Or, or I heard you say something a little differently which  
2 I thought, not, tell me what you, could you clarify about  
3 mandatory post-release supervision and how you think it would  
4 help if we eliminated mandatory minimum sentences for drugs  
5 for example?

6 MR. BENEDETTI: Well, the, the concern would be that if, if  
7 parole was not presumptive, that you could have a parole board  
8 and, and you, without, without a policy in place,  
9 administrations change, personnel change, and people can have  
10 the best of intentions, and then a new parole board comes in  
11 and decides we're not going to take a chance on these  
12 individuals, let them get mandatory post-release supervision.  
13 Then, then it's not something we have to worry about.

14 But if parole was presumptive and, and some form of  
15 mandatory post-release supervision was set up for individuals  
16 that clearly should not be paroled, that might be something we  
17 could, we could see working.

18 But the concern would be that essentially the parole rate  
19 would stay low and that too many people would end up on  
20 mandatory post release supervision.

21 I remember when it was first proposed, it was proposed to  
22 the District Court and the Superior Court. And the idea, first  
23 of all, I don't know how, how we'd get the money to pay for  
24 that.

25 And so that, that's the real concern, is that it would be a



1 substitute for parole, for, for too many people.

2 Does that --

3 JUDGE HEFFERNAN: Yeah. No, I --

4 MR. BENEDETTI: -- answer your question?

5 JUDGE HEFFERNAN: -- I, you know, again, in a former life,  
6 mandatory post-release supervision was, and the DA's talked  
7 about it today, that was supposed to be, or contemplated as a  
8 critical piece for re, recidivism, you know, reduction.

9 I'm, you know, I'm interested, you're right. It plays out  
10 differently in all sorts of mandatory minimums.

11 So I'm interested in your comments on it.

12 Thank you.

13 JUDGE LU: Okay. We'll, we'll, I think Mary Alice Doyle from  
14 the Deputy First Assistant DA in Essex County has a question.

15 MS. DOYLE: Good morning.

16 MR. BENEDETTI: Good morning.

17 MS. DOYLE: Thank you for your testimony.

18 I just have one question for you this morning.

19 JUDGE LU: Would you pull that microphone right up if you  
20 would? Thank you. Thank you.

21 MS. DOYLE: All right.

22 And you're aware defendants have a right to a sentencing  
23 appeal post-conviction in Superior Court.

24 Should the DAs have that same right perhaps on a outlier  
25 sentence that victims feel are, is too lenient?

1 MR. BENEDETTI: I, I guess, I would have to, I'm not trying  
2 to avoid your question.

3 I, I think the devil, to use that term that everyone uses,  
4 the devil is in the details.

5 I would have to see under what circumstances would the  
6 District Attorneys have the right to appeal, and how far  
7 outside the guidelines or how extreme would the sentence have  
8 to be before a DA could appeal.

9 So I wouldn't say necessarily no, but I'd want to see a  
10 little bit more as to how that would work and when it, when  
11 they would have the opportunity to do that.

12 MS. DOYLE: Thank you.

13 MR. ROSENTHAL: Mr. Chairman, I --

14 JUDGE LU: Mr. Rosenthal?

15 MR. ROSENTHAL: One very quick comment, and one very quick  
16 question.

17 Again, if folks looked at Chapter 211E, my reading of it,  
18 and I've looked at it about fifty times now, is that it  
19 basically mandates the Commission to incorporate mandatory  
20 minimum laws into your guidelines with the departure process,  
21 so, with the exception of murder.

22 So that's my comment.

23 My question is back to the civil infraction and misdemeanor  
24 issue which I agree with your comments, and we've worked  
25 together, so it won't be surprising to anybody in the room.

1           Could you, without naming names and without getting too  
2 specific, tell us what's been the efforts to expand that law,  
3 Chapter 277, Section 70C, to give a Judge the authorization to  
4 rule over the objection of a prosecutor possibly with an  
5 appeals process, which would get back to the possibility of  
6 the Brandano, Cheney line of, of cases, and that, I realize  
7 that's a somewhat complicated question.

8           But has that been --

9           JUDGE LU: Maybe you can spell Cheney for the --

10          MS. A: Yeah, exactly.

11          JUDGE LU:, for the stenographer?

12          MR. ROSENTHAL: I think Cheney has two, C-H-E-N I think  
13 there's a second N-E-Y, C-H-E-N-E-Y? Which overruled a process  
14 called Brandano which gave Judges from the case the authority  
15 to dismiss a case in the interest of justice upon affidavits  
16 and with an appeal process for the prosecutor if they were  
17 dissatisfied which could be scrutinized by higher Courts.

18          So it seems to me there's an analogous issue between that  
19 and 277, 70C and putting, but if the legislature enacted it,  
20 including the Brandano process, I think the SJC would have  
21 okayed it.

22          MR. BENEDETTI: I don't, I don't know what, what's, the  
23 result of that has been.

24          With respect, with respect to the civil infraction piece --

25          MR. ROSENTHAL: That's what I'm asking about basically.

1 MR. BENEDETTI: Well, okay. I know there are certain  
2 counties where proforma motions are filed to prevent those  
3 from being treated as civil.

4 It's, in our opinion, it's not used as frequently as it  
5 could be.

6 It's, it's complicated because on one hand we make the  
7 argument be we want to, we're always, like every agency,  
8 trying to figure out where we might be able to reduce costs.

9 And someone can be facing a, a criminal charge, and if it's  
10 treated as a civil infraction, then there's no collateral  
11 consequences.

12 That's, that's the ideal world.

13 But if it's treated from the beginning where the Judge and  
14 the DA recognize that there is no possibility of jail time so  
15 therefore no counsel, the concern there is that there are so  
16 many collateral consequences with so many of these low level  
17 offenses is that somebody's going to get, get, get hooked on  
18 some low level misdemeanor without the, the benefit of an  
19 attorney, and then they have a second offense, and they get  
20 brought back in, and maybe they wouldn't have pled to that low  
21 level misdemeanor if they had an attorney to say the, the  
22 elements of the crime aren't here, you don't need to plead,  
23 you should fight this.

24 So, so it's, it's, I'm not sure what the answer is other  
25 than decriminalizing a lot of these offenses.

1           There was a Civil Infraction Commission a number of years  
2 ago, and all, representatives from all stakeholders were on  
3 this Commission, and we spent a lot of time really looking at  
4 a number of offenses and looking at how other states treated a  
5 number of offenses, low level misdemeanors.

6           And obviously there's difference of opinion on what is low  
7 level.

8           And, and the Commission never really reached a final  
9 decision, but I, or a final report, but I do think that might  
10 be a starting point for this Commission to look at some of the  
11 materials that there produced as a result of, of that work.

12           We looked at the issue which I think came up earlier of  
13 raising, you know, larceny under and over, changing the, the  
14 threshold which hasn't been changed in a, in a number of  
15 years.

16           But there was a lot of work done, and a lot of, a lot of  
17 good discussions about consequences of, of decriminalizing  
18 some of these offenses.

19           So, and it certainly can, can, can try and produce some of  
20 those materials for this Commission if that's an, an area that  
21 you think you might want to take a look at.

22           MR. ROSENTHAL: I would love to see that report. It's one,  
23 one thing --

24           MR. BENEDETTI: But it was no report. The, a report was  
25 never produced, but we certainly have --

1 MR. ROSENTHAL: Some materials?

2 MR. BENEDETTI: -- we probably can provide materials that  
3 would at least inform the Commission.

4 MR. ROSENTHAL: Thank you.

5 JUDGE LU: Okay. Commissioner O'Brien, Commissioner Carol  
6 O'Brien?

7 MS. O'BRIEN: Yes. I just want, I want to go back to the  
8 post-release supervision issue for, for a moment.

9 And isn't both post-release supervision and parole  
10 basically are an aid to reentry? Aren't they one in the same  
11 and couldn't they not be one in the same?

12 The first part.

13 And then the second would be what would you pro, think  
14 about the possibility of presumptive release on parole or  
15 post-release supervision for some, you know, offenses  
16 depending upon how you categorize, if you think about the  
17 possibility of traditional release being applied to more  
18 serious offenses, and the presumptive release would be on what  
19 people would consider nonviolent or crimes, property crimes  
20 versus crimes against a person?

21 MR. BENEDETTI: So I'll, I'll start with the first question.

22 They could be one in the same in terms of envisioning how  
23 it would work.

24 The proposal that had been around for a number of years, my  
25 memory is that the way it worked is once you were released,

1 then you would be put on mandatory post-release supervision,  
2 and the length of time would depend on where you being  
3 released from District Court, were you being released from  
4 Superior Court, how long had you been sentenced to jail, and  
5 that would, that would define how long you'd be on mandatory  
6 post release supervision.

7 But I think in, in answering your question, I could see it  
8 being one in the same if individuals were paroled, provided  
9 services while in prison, and then were paroled and provided  
10 with the appropriate tools to try and help them integrate back  
11 into society.

12 So are you suggesting that you'd be released on parole and  
13 at the same time, you would be on, the, the level of  
14 supervision would be --

15 MS. O'BRIEN: I'm saying, I'm saying it could be, it's the  
16 same, it's really the same thing because one of the things  
17 that we see routinely is that a lot of these offenders, if  
18 they become, you know, or people that put, you know, get  
19 incarcerated, and then the, if the gradual reduction of  
20 custody isn't there and some, and the statistics show that  
21 being released from a walled facility, there's a lesser  
22 success rate than people who actually get released from  
23 minimum or pre-release, and that the supervision in the community  
24 doesn't, more so could be there as a guide to be helping  
25 people with, access the reentry services so that those

1 collateral issue that were discussed or maybe aren't, you know  
2 can be dealt with.

3 MR. BENEDETTI: No, I, I completely agree that, that it,  
4 reintegration and the effort at eliminating the possibility of  
5 recidivism should begin the first day they're behind bars,  
6 whether it's a House of Correction or a state prison.

7 A plan should be set up knowing that the individual is  
8 going to get out some day, and so doing exactly what you're  
9 suggesting, that not keeping somebody in the highest security  
10 but moving them through the system down to a lower level of  
11 security so that when they are reduced, whether, when they're  
12 released, whether it's on parole or mandatory, or some sort of  
13 post release, post incarceration supervision, they're better  
14 able to succeed.

15 MS. O'BRIEN: Right.

16 MR. BENEDETTI: So does that --

17 MS. O'BRIEN: Yeah.

18 MR. BENEDETTI: -- okay.

19 MS. O'BRIEN: Thank you.

20 MR. BENEDETTI: Thank you.

21 JUDGE LU: All right. Mr. Callahan from the Chairman of the  
22 Parole Board.

23 MR. CALLAHAN: Good morning.

24 MR. BENEDETTI: Good morning.

25 MR. CALLAHAN: And thank you for appearing and for your



1 testimony.

2 With regards to the presumptive parole, as it currently  
3 stands, parole is essentially evidenced based, based on  
4 looking --

5 JUDGE LU: Can you pull that towards you?

6 MR. CALLAHAN: Sorry.

7 JUDGE LU: Thank you so much.

8 MR. CALLAHAN: The, parole is currently essentially evidence  
9 base, based on looking at offender's incarceration record,  
10 whether he was doing program as the Commissioner just  
11 discussed.

12 Would you be concerned with presumptive parole that the  
13 incentive for the offender to do the programming while  
14 incarcerated would not be there and it would dis-incentivized  
15 from doing the program?

16 And on a, second part of that question is, would be that,  
17 you know, currently we have -- obviously have one day spreads.

18 Mostly I would guess would be with mandatory minimums, but  
19 there are one day spreads where the person is essentially not  
20 going to be parole eligible.

21 What are your thoughts on those sentences, and do you think  
22 that is a, currently an effective tool?

23 MR. BENEDETTI: Well, my experience and, and my own personal  
24 experience which was a while ago and experience in listening  
25 to people about that, the second issue that you raised, the

1 one day spread, is that they are given by Judges in mandatory  
2 minimum cases where the Judge feels that they have no other  
3 option.

4 They don't want to sentence them to the mandatory, the  
5 minimum, and so, but they have to, and so they don't want to  
6 sentence, sentence them to the minimum, and they'd rather  
7 sentence them to lesser time, then they have no other options  
8 but to do the, the, you know, the five to five and a day.

9 And so I don't think anybody thinks those are a good idea.

10 I think if you got rid of mandatory minimums, that I think  
11 most of those would go away.

12 MR. CALLAHAN: Well, we've heard, not necessarily today, but  
13 we've heard in the past from some defenses attorneys that  
14 they're, they actually, I'm not going to say that they're for  
15 them but at times the offender or the person pleading prefers  
16 the one day spread because there's certainty to the, the  
17 sentence.

18 Do you, do you have any thoughts on that?

19 MR. BENEDETTI: In non-mandatory minimum?

20 MR. CALLAHAN: Yes.

21 MR. BENEDETTI: I, I could see why a defendant would like  
22 that because they're not sure whether or not they're going to  
23 get paroled, and parole rates have been low, and, and haven't  
24 looked at the latest parole numbers.

25 But at least over the, the last few years, they've been

1 pretty low.

2 And so you can see why somebody would prefer not to take a  
3 chance in getting, in getting paroled.

4 And so I could see in certain cases where a defendant might  
5 be okay with the, with the one day spread.

6 But it certainly doesn't help with the, the reentry issue,  
7 no doubt.

8 MR. CALLAHAN: What about the, the first part of my question  
9 I guess got lost in the second.

10 But in terms of, what about the dis-incentivizing of doing  
11 programing while incarcerated if parole is presumptive?

12 MR. BENEDETTI: Well, I think part of some pre, a program  
13 where parole was presumptive would require people to  
14 participate, participate in programs.

15 I mean I think, and again, the, the devil is in the details  
16 on, on this kind of new idea of mandatory post-release  
17 supervision.

18 But I think you would, you would only be able to be paroled  
19 presumptively if you were participating in programs.

20 But that means there are enough programs for people to  
21 participate in.

22 I don't think it, it really helps any of us when, or the  
23 money isn't put into the prisons, so that there are enough  
24 programs that people can participated.

25 I mean if, if there's 20 spots in a program and you're the

1 21<sup>st</sup> person and then parole comes up and sorry, you're not  
2 getting paroled, you weren't in a program, that's, you know,  
3 that's, that's not fair.

4 So the systems need to be in place in the institutions  
5 before you can answer to some sort of presumptive parole.

6 MR. CALLAHAN: Thank you.

7 JUDGE LU: John Redden?

8 MR. REDDEN: Yes. I probably, I probably should that Mr.  
9 Benedetti --

10 JUDGE LU: Can you pull that microphone right up?

11 MR. REDDEN: -- Mr. Benedetti's one of my many bosses. In  
12 fact, he's, he's my top boss.

13 MR. BENEDETTI: You can ask me whatever you like.

14 MR. REDDEN: But I, I will also say this. We haven't talked  
15 about this, what I'm going to ask him about beforehand, so  
16 this is not a set up.

17 I, I'm actually following on I think Mr. Callahan's  
18 question about the one and one day spreads.

19 And I, I don't know if you found this to be the case now or  
20 when you were actually in the trenches so to speak in  
21 practicing.

22 But it's not unusual in, in, in many Superior Court cases  
23 at least that there will be multiple counts and a lot of times  
24 another count will be broken off as a from and after probation  
25 count.

1           And in general, I, I guess it, some type of post-release  
2 supervision sort of occurs on a practical level in many  
3 Superior Court cases because the from and after probation  
4 sentence is, is a quite frequent sentence.

5           I, I don't know if you'd agree with that.

6           MR. BENEDETTI: No. I, I mean I've heard that.

7           MR. REDDEN: Yeah.

8           MR. BENEDETTI: I've seen that where the Judge is, is  
9 essentially sentencing to set up for a, a mandatory post  
10 release supervision.

11          MR. REDDEN: And, and that of course then leads to the issue  
12 of what resources are available for probation to make that  
13 supervision meaningful and effective.

14          And also the other danger is sometimes it just sets  
15 somebody up to fail all over again, and now gets sentenced the  
16 second time on the same case for more time.

17          I mean that's, I don't know if you agree with that ==

18          MR. BENEDETTI: No, I --

19          MR. REDDEN: -- as a problem.

20          MR. BENEDETTI: -- I definitely have, have seen that.

21          And, and with respect to the resources, I know there's been  
22 conversations around what's more appropriate, should it be  
23 parole, should it be probation.

24          And I wouldn't, I wouldn't weigh in on that other than to  
25 say whoever it is, they need to have the resources and the

1 programs need to be in place.

2 Otherwise, we're just setting up people to fail.

3 JUDGE LU: All right. So this witness has been talking for  
4 30 minutes, and it's not his fault because he's been asked  
5 questions.

6 Mr. Rosenthal?

7 MR. ROSENTHAL: I've, I've heard the comment, on the one day  
8 spread and the net, and the net-widening post-supervision, and  
9 she, I was honored to be on the Harshbarger Commission of the  
10 DOC in 2003 and 4, and there's a lot of discussion about both  
11 those issues in that report, and that's when I first heard the  
12 term net "net-widening" which applies on page 45 of that  
13 report relative to a recommendation to use more post-release  
14 supervision.

15 So just for further thought on this Commission.

16 JUDGE LU: All right. Thank you so much, Mr. Benedetti. We  
17 appreciate it.

18 MR. BENEDETTI: Thank you. And thank you for your work.

19 JUDGE LU: Have a good day.

20 Thank you.

21 All right. So we're going to call now on, my plan is to go  
22 through without a break and anyone can step out, including me,  
23 and the Vice Chair will take over.

24 I'm going to call now, and I hope to have this order right,  
25 on Lloyd Fillion and Robert Marra of the Criminal Justice

1 Policy Coalition.

2 All right. Good morning. It's still morning.

3 So would you please, welcome.

4 Will you please introduce yourself, and please tell us, and  
5 spell your name for the stenographer, please.

6 MR. FILLION: My name is Lloyd Fillion, that's L-L-O-Y-D, F-  
7 I-L-L-I-O-N.

8 JUDGE LU: Good morning.

9 MR. MARRA: My, my name is Bob, Bob Marra, actually  
10 pronounced incorrectly all my life. It's really Bob Marra,  
11 it's very Italian. The Italian Christian, I mean Irish  
12 Christian brothers tried to make me O'Marra, but it's Marra.

13 MR. FILLION: Spell it.

14 MR. MARRA: Two Rs, M-A-R-R-A.

15 JUDGE LU: So which way do you want us to pronounce it?

16 MR. MARRA: I want you to call me Roberto.

17 THE COMMISSION: Roberto.

18 JUDGE LU: All right. I can't do the rolling of the R, but I  
19 will call you Roberto Marra, or --

20 MR. MARRA: Yes.

21 JUDGE LU: Okay.

22 MR. MARRA: Thank you.

23 JUDGE LU: And Mr. Lloyd Fillion, welcome.

24 And whoever wants to go first is welcome to do so.

25 MR. FILLION: All right. Thank you very much.

1           As you mentioned, we're appearing on behalf of the Criminal  
2 Justice Policy Coalition.

3           In 2008, the coalition, which is comprised of attorneys and  
4 lay activists, memorialized its opposition to the sentence of  
5 life without parole or LWOP, arguing instead for life with the  
6 possibility of parole after 25 years as the appropriate  
7 sentence for first degree murder and all other crimes  
8 currently calling for LWOP.

9           The coalition is updating and republishing our 2010 paper  
10 detailing the reasons for our position, and in the near  
11 future, we will provide you with copies for your use.

12           Much of what I wrote has been mentioned by people before  
13 me. The increase in crime up until 1992, and then the drastic  
14 decrease which hasn't been paralleled by incarceration rates,  
15 and certainly hasn't been paralleled by, by sentences, by LWOP  
16 sentences.

17           In 1977, there were 170 prisoners in Massachusetts with  
18 LWOP sentences. There's been a 600 percent increase to 136  
19 prisoners with LWOP sentences today.

20           Straight through --

21           1,036 if I made the mistake.

22           Straight through the decrease which started in the 1990s.

23           Today, one of the supposed safety valves for LWOP is  
24 commutation, but commutations haven't happen in this state  
25 since 1997. That's almost a 20 year period.



1           The felony murder and joint venture laws sometimes produce  
2           disproportionality as the shooter can plead out and has on  
3           occasion pleaded out to a lesser sentence while accomplices  
4           are still in prison serving life.

5           We all know that fortunately sentencing for juveniles  
6           aren't under 18 convicted of murder has been voided, that is  
7           life without parole, but there are still individuals, youth,  
8           older youth, whom, while their brains are still in  
9           development.

10          As science suggested that development of that, the crucial  
11          part of her brain doesn't occur until the mid, the early 20s,  
12          and that they should suffer for their lack of development is,  
13          from my perspective and from the organization's perspective,  
14          disproportionate.

15          Though I respect my colleague, Anthony Benedetti, his  
16          opinion clearly we disagree with on terms of life without  
17          parole as a minimum sentences.

18          And in fact, I believe that this country is moving towards  
19          voiding the death penalty.

20          There are now some 20 states, that's 40 percent of the  
21          states, which have no death penalty.

22          And I don't believe Massachusetts any longer needs to  
23          consider life without payroll as a bull work against the  
24          return of the death penalty in Massachusetts.

25          I don't see, personally, I don't see that happening.

1           In addition, there are probably, statistically, there's  
2           some 40 individuals who are serving life without parole who  
3           are innocent of the crime of which they were convicted.

4           Those people should certainly have an opportunity for  
5           parole.

6           We don't argue for an automatic parole after 25 years.  
7           There certainly are some individuals who don't grow, who don't  
8           change in prison, and as the 40 who never committed the crime,  
9           their, their change is not, for them, change is not an option.

10          But some do grow and some do heal.

11          Life without parole shouldn't stop those who can  
12          demonstrate that growth from rejoining our community in a  
13          manner which is productive.

14          Recognizing that prisoners, even those who have taken a  
15          life, are part of our community will increase the growth of  
16          the community as we serve to meet our obligation to all.

17          Thank you.

18          JUDGE LU: Okay. Thank you, Mr. Fillion.

19          Mr. Marra?

20          MR. MARRA: I live in Hyde Park. I've worked in healthcare  
21          for the last 40 plus years.

22          Now I'm working full time in criminal justice including for  
23          Cambridge Health Alliance where I work closely with our  
24          doctors and the Everett Police in helping people coming back  
25          with jobs and housing.

1 I made this switch mostly because I think our criminal  
2 justice system is overly harsh, and unfair, incredibly so  
3 compared to Europe especially.

4 And I'm here to speak in support of eliminating the current  
5 life without, with, without parole sentence as the great  
6 majority countries of Europe have already done, and  
7 substituting the sentence of life with the possibility of  
8 parole after 25 years.

9 My perspective comes from a few places.

10 I grew up in a town, Coxsackie, New York, funny name, on  
11 the Hudson River, but gorgeous town but a prison town, 100  
12 miles north of New York City.

13 Never paid any attention to that prison stuff until I went,  
14 I was a third year medical student at Michigan State, went to  
15 work for three months in the prison out there.

16 We had a project that changed the security guard training  
17 program, got to, was intentionally asked to meet with lifers,  
18 get to know them, get to know correction officials.

19 Then I got to, a good friend of mine, a rugby teammate got,  
20 killed somebody. And then visiting him for 18 years, just went  
21 to his parole hearing for the second time around.

22 Another young friend, I know a soccer mom up there, he was  
23 our best soccer referee at 13.

24 I've been visiting him for eight years.

25 He ends up being convicted of killing four people in a

1       Dorchester basement a while ago, eight years ago.

2           Go to a life without, with, the lifer hearings that are  
3       publically accessible, partly trying to understand all this  
4       stuff, meet with a few victims when I can. I've met with a  
5       very powerful woman in Baltimore whose family member was  
6       killed, her husband.

7           Went to Rome, met the woman over here, but she's the first  
8       Italian woman elected to the Italian Parliament.

9           Her husband was killed. He was the finance minister, Mr.  
10       Tarentelli. He was assassinated by the Red Brigade 30 some  
11       years ago.

12          She started visiting him with her 9 year old son in prison,  
13       and has been doing that ever since. Thinks the killer should  
14       be released.

15          Like, again, a lot of people in Europe do.

16          This, that's part of my perspective.

17          Another part was this past Saturday I went out to, to Saint  
18       Susanna's Church in Dedham where 75 Catholics from around  
19       Massachusetts, include Mrs. Isaura Mendes, a Dorchester mother  
20       with two murdered sons.

21          Met with Sister Helen, Helen Prejean, the author of Dead  
22       Man Walking to discuss how to eliminate the death penalty in  
23       the United States.

24          And one of the reflections we had was Pope Francis's words  
25       at last year's International Association of Criminal Law,

1 where he said a life sentence is a hidden death penalty.

2 That was my only question, if you will, or comment to  
3 Sister Prejean when she talked about how bad it was in the  
4 south with the death penalty, 20 states put all these people  
5 to death.

6 And then Lloyd's given us this information, 1300 people,  
7 700 percent increase or whatever it is, 600 percent increase  
8 in 40 years in this state of Massachusetts with this  
9 particular sentence.

10 Again, according to the Pope and a few of us, another death  
11 penalty.

12 And I said, Sister, you're being too easy on those  
13 northerners, including the Massachusetts folks to only  
14 question, you know, she's amazing. You wouldn't want to  
15 question her too much more than that.

16 But it's like, yeah, too easy us on northerners.

17 The other thing we did for another six hours with, you  
18 know, her favorite quote, let's, let's, what the eyes don't  
19 see the heart can't feel.

20 And one thing our eyes don't want to see, except very  
21 superficially, TV, shows, you know, Tsarnaev trial, and then  
22 we're interested in a piece of it, but we don't want to know  
23 why it's committed, we don't want to know whom it hurts  
24 really, totally, including the victims.

25 We can't stand that either, partly because we may think

1 we're even a little guilty for part of that victim's feeling,  
2 and we are.

3 And we don't want to talk too much, I don't think  
4 seriously, about how to stop it.

5 Anyway, assisted by Sister Prejean, we heard personal  
6 testimony including from Mrs. Mendes about the humanity of  
7 people on death row, the suffering and the willingness to  
8 forgive of victim's family members including Mrs. Mendes and  
9 the collective harm of trying to prevent violence by being  
10 violent, by killing people.

11 That's violence.

12 And other examples are seen more clearly, and I only throw  
13 this one in, I know we've got a lot of people want to speak  
14 here today.

15 Being provided, as most of you know, every day by the  
16 Marshall Report, nonprofit news agency focused on criminal  
17 justice, run by Bill Keller, former executive editor of the  
18 New York Times.

19 One of the most powerful accounts in the past that I've  
20 read on here, and many of you may have read it too, is when  
21 people like you went, sponsored by the Bureau Institute,  
22 sponsored by the John Jay folks.

23 They went to Europe.

24 There have been two trips in the past two years, but the  
25 last trip took the Governor of Connecticut, took Judges, took

1 DAs, intentionally took conservatives and liberals, took an  
2 ex-offender, took church people.

3 And what did they see? What did they talk about?

4 They talked about a lot, but just two things that hit me  
5 when I read this. You can read this online like I did.

6 They asked such questions flat out, can we be safe without  
7 life sentences?

8 And can we discipline without using solitary confinement?

9 And the resounding answer from Europe was yes, and the  
10 resounding answer from this country right now is equally no.

11 I'm so glad you're doing this hearing, I haven't been here  
12 before, but I think going with Sister Prejean, I want to stick  
13 with that lady pretty close, hearings like this one are much  
14 appreciated for the opportunity they provide the Massachusetts  
15 public to see what they don't want to see, but they must.

16 If our feeling hearts are connected to those of victim  
17 families, perpetrators and their families, and the greater  
18 community, all of us who helped create our violent society and  
19 could help prevent the violence we're suffering with.

20 And just one, I'm a public health guy. I've heard this  
21 quote forever, right?

22 Didn't hear it, I wasn't a public health guy originally. I  
23 worked for the Boston City as an administrator.

24 But, you know, it takes a village to raise a child, African  
25 proverb, takes a village.

1           And we all, public health folks, we like to take credit for  
2 all those success stories, you know, the person didn't do it  
3 on their own, we helped.

4           But I have yet to hear the public health folks, not, well,  
5 not everybody, there's a bunch of doctors that I'm working  
6 with right now who think differently, who think very  
7 expansively, but like it takes, it also takes a village to put  
8 one in jail.

9           And we, in this country, seem to want to say no, it's all  
10 on you, and especially if you kill somebody. We don't want to  
11 hear, we don't want to talk, we don't want to know anything,  
12 it's all on you.

13           But it isn't all on you. It's on, it's on us, and it  
14 effects all of us.

15           That's what I want to, sorry. That's all I want to say  
16 today. Sorry.

17           Thank you.

18           JUDGE LU: All right. Thank you, Mr. Marra.

19           So questions for Mr. Marra or Mr. Fillion?

20           Okay.

21           Thank you so much, Mr. Marra and Mr. Fillion. Have a great  
22 day.

23           Thank you so much.

24           All right. I'm going to call now on Colleen Kirby of the  
25 League of Women Voters, Colleen Kirby.



1 Good morning.

2 MS. KIRBY: Good morning.

3 JUDGE LU: have a seat and make yourself comfortable.

4 And pull that microphone right up close to you if you  
5 would, please.

6 Would you please tell the stenographer your name and spell  
7 your name for us.

8 MS. KIRBY: Yes. My name is Colleen Kirby, it's C-O-L-L-E-E-  
9 N, K-I-R-B-Y.

10 And I've been to several hearings this year for the League  
11 of Women Voters for the, at the Judiciary Committee. This  
12 isn't the first time that I've actually gotten to give oral  
13 testimony.

14 Over 30 years ago, the League of Women Voters of  
15 Massachusetts developed positions concerning sentencing  
16 guidelines, and they are still relevant today, which is very  
17 sad.

18 We support the work of the Sentencing Commission and thank  
19 you for holding this public hearing.

20 We are glad that you provide sentencing guidelines and are  
21 trying to educate the system about sentencing.

22 We also support the use of more alternative sentences and  
23 that prison should be used as a last resort for violent crimes  
24 or habitual offenders.

25 This is not currently the case, but we do think we need to

1 move more towards prison being considered a last resort.

2 As our incarcerated population has increased dramatically,  
3 as you have heard, since the 1970s, and it is very high  
4 relative to the incarcerations rates across the world.

5 Since 90 percent of the individuals in our system do leave  
6 incarceration and return to society, the League thinks that it  
7 is, that purely punitive or overlong sentences can jeopardize  
8 rehabilitation and reintegration, and these long sentences are  
9 not a deterrent to crime.

10 We also take a stand that child abuse perpetrators should  
11 include therapy as an integral part of their sentence.

12 We oppose all mandatory minimum sentencing proposals as  
13 they leave the Judge no room for discretion, which is why we  
14 are specifically supporting H162S786 which is an act to  
15 eliminate mandatory minimum sentences relating to drug  
16 offenses.

17 And we have included that testimony in our written  
18 testimony for your information.

19 We're concerned that as of January this year, 95 percent of  
20 males are serving a sentence longer than three years, yet only  
21 69 percent had committed a violent offense.

22 And the Department of Corrections projects a decrease of  
23 only 0.1 percent per year in the prison population starting  
24 from this year out to 2022.

25 We're also concerned that the prison population is

1 disproportionately people of color, especially those serving  
2 mandatory minimum drug sentences which in that case it's 77  
3 percent.

4 We are also concerned that sentences for nonviolent drug  
5 crimes can be longer than those for violent crimes.

6 We are offended that the maximum sentence for armed assault  
7 with intent to rape can be equal to the second conviction for  
8 the sale of two tablespoons of heroin.

9 We are also concerned that our Court system is treating  
10 illegal drug use as a criminal issue rather than as a health  
11 issue, and we need this to change.

12 We need to update our sentencing guidelines and processes  
13 so that we don't end up with lengthy sentences for nonviolent  
14 crimes, with sentences that decrease an offender's ability to  
15 become a productive citizen and do lead to appropriate  
16 incarceration for violent crimes.

17 And we support several of the other things that have been  
18 brought up today, but I didn't bring that testimony with me,  
19 such as increasing the amount of the felony and decreasing the  
20 use of solitary confinement.

21 Thank you.

22 JUDGE LU: Thank you, Ms. Kirby.

23 Are there questions from the Commission?

24 MR. ROSENTHAL: Just --

25 JUDGE LU: Mr. Rosenthal.

1 MR. ROSENTHAL: -- a very quick comment.

2 I'm happy to see the League here. I worked with the League  
3 people back in the '80s in these issues, so I know you have a  
4 long interest.

5 In terms of the comment you made about prison as a last  
6 resort, at some point I suggested to this Commission that we  
7 add partly, as one of the purposes, things to, criteria for  
8 punishments as per the federal law 3553.

9 Judge Gants's testimony was parsimony.

10 So I think that's basically the same principle.

11 So it's just a comment.

12 JUDGE LU: Okay. Thank you, Ms. Kirby, and thank you to the  
13 League of Women Voters for giving us your perspective.

14 Have a good day.

15 MS. KIRBY: Thank you.

16 JUDGE LU: All right. We're going to call now on Leslie  
17 Walker of Mass Prisoner's Legal Services.

18 MS. WALKER: Thank you and good afternoon.

19 JUDGE LU: Good afternoon, Ms. Walker.

20 MS. WALKER: Leslie Walker, L-E-S-L-I-E, W-A-L-K-E-R.

21 JUDGE LU: If you can pull that microphone even closer --

22 MS. WALKER: Even closer?

23 JUDGE LU: -- if you would.

24 MS. WALKER: Sure.

25 Thank you.

1 JUDGE LU: Thank you. Go ahead.

2 MS. WALKER: Hello everyone. I know many of you, but I don't  
3 know some of you.

4 Just a brief introduction, Prisoner's Legal Services is a  
5 43 year old prisoner, indigent prisoner's civil practice.

6 We do not do criminal work. We represent prisoners in their  
7 civil leaves in the state jails, Houses of Correction, and  
8 state prison.

9 We have an, we are eight attorneys for nearly 22,000  
10 prisoners, and we focus on health and mental health,  
11 segregation, solitary confinement, and extreme conditions of  
12 confine, confinement including overcrowding and issues as they  
13 arise.

14 So thank you to Judge Lu for inviting me to testify today.

15 You've heard from many people, many of whom I agree with.

16 I wanted to echo a few things from Mr. Benedetti that I  
17 thought were particularly helpful and add a few other points  
18 of my own.

19 I imagine you've heard from Commissioner Higgins O'Brien  
20 during your meetings, your nonpublic meetings. Sorry. I don't  
21 mean to say that they're, they're closed door, but you've had  
22 meetings which I'm sure have been posted and did comply with.

23 But there's an objective point based classification system  
24 in the state Department of Corrections.

25 It's, I have a copy, easily obtainable.

1           And the first page of the objective point based  
2           classification system, it determines when, when prisoners  
3           initially enter prison, what security level they need to be  
4           housed, maximum, medium, minimum.

5           There's a, then there's an annual reclassification hearing.

6           The perhaps unintended consequence of mandatory minimum  
7           sentences is the objective point based system is not objective  
8           for those serving mandatory minimum sentences.

9           There are restrictions on stepping down as a result of  
10          mandatory minimum sentences.

11          Some of those are statutory, some of those are policy.

12          This was the, inaugurated under Governor Romney. There have  
13          been changes since it was first inaugurated, this system.

14          However, there's a, what's called a non-discretionary  
15          minimum custody restriction that's corrections speak for and  
16          you can't go there.

17          You can't go to minimum security if Code A, if you're  
18          length of time is five years or greater.

19          So people serving sentences, mandatory minimum sentences,  
20          five, ten, fifteen years cannot go to a minimum security  
21          prison until they are within five years of their release date.

22          Which means you have people, some of whom are violent, I am  
23          not one to say that drug traffickers are not violent people. I  
24          was a public defender for 16 years, and that was certainly not  
25          my experience.

1 But some of those people, once clean and sober, and some  
2 who are nonviolent to begin with, they're just horrible  
3 addicts who sell to support their habit, are sitting in mod,  
4 medium security prisons and a maximum security prison without  
5 the benefit of step down, without the benefit of the freedom,  
6 the normalization that comes as a part of step down, step down  
7 being from maximum to medium to minimum to pre-release.

8 Furthermore, those serving mandatory minimum sentences,  
9 again some of it is statutory, some of it is policy in the  
10 Department of Corrections, are barred from prereleases.

11 There, the data is quite clear that a prerelease is the  
12 best place for a person to get a job, to get their, on their  
13 feet, to save the money they're earning, to be able to live  
14 and work in the community that they're going home to, and that  
15 is not a privilege that mandatory minimum drug offenders are  
16 able to access.

17 And I, again, I hope it's an unintended consequence of  
18 those laws, because I don't believe the legislatures meant to  
19 thwart the rehabilitation available in the Department of  
20 Corrections and the county facilities.

21 By the block, that is in fact happening.

22 My second comment is the lack of programming, as Mr.  
23 Benedetti said, in the Department of Corrections through, I  
24 don't believe any fault of the Department of Correction.

25 80 percent of drug, 80 percent of people entering prison

1 nationally, but certainly in Massachusetts, report being  
2 substance abusers.

3 The Department has, I believe, and I stand corrected if I'm  
4 wrong, less than six percent of its beds in the prison are for  
5 intensive drug treatment.

6 It's called the Correctional Recovery Academy. It works  
7 pretty well. The research is pretty good. My clients like it.  
8 They say they benefit from it.

9 It's like family therapy. You live in a block, and it's  
10 therapy all day groups, individual, mostly groups.

11 But that is not available to anyone in a maximum security  
12 prison which releases over 300 people a year.

13 There's a tiny bit of drug treatment there, but it has not  
14 been measured for its effectiveness, and it's only eligible to  
15 a, a few people.

16 But the Correctional Recovery Academy is only offered in  
17 four prisons, and some of it in the, the minimums now I  
18 believe which is relatively new and I believe under this  
19 administration.

20 It was not the case under the Patrick Administration.

21 So drug, if 80 percent of people report being drug  
22 offenders when they go in, I don't know what the number is for  
23 people going in on drug sentences, but I would imagine it is  
24 at least that high.

25 I have known drug traffickers who were not addicts. They



1 were businessmen.

2 But the majority of my practice as a public defender were  
3 people who were addicts, and they were serious addicts, and  
4 they were horrible addicts that could not function.

5 The research on heroin addiction has been startling to me.

6 People who are heroin addicts, their brains rewire so they  
7 feel that they, if they don't get heroin, they are going to  
8 die which is the larceny overs that you've heard about, which  
9 are the B and E's that you've heard about, which is the drug  
10 trafficking that we've heard about it.

11 So if you go in an addict, assuming some percentage of  
12 these mandatory minimum folks are, and you don't get treatment  
13 because you're in a high security facility and you don't step  
14 down to prerelease, they're being set up for failure.

15 I don't expect anyone to feel sympathy for someone serving  
16 a sentence, especially a violent drug trafficking case.

17 But it is demoralizing and is derailing in the prison  
18 system to have people sitting there based on weight, based  
19 solely on weight.

20 I see people that come in on rape cases, get parole, and go  
21 home.

22 People who come in on manslaughter cases get parole and go  
23 home.

24 And you sit there unable to access some programming and you  
25 know you're not going to get parole because you're barred from

1 getting parole.

2 The sadness that perpetuates this problem is really a  
3 serious problem.

4 People have nothing to lose that are this despondent, and  
5 many of them wish they could take programming, but it's not  
6 available to them.

7 The numbers may have changed, but the last time I saw the  
8 numbers in the Department, there are over 9000 names on  
9 waiting lists to access education, treatment, training, and  
10 job skills and reentry.

11 That's unconscionable.

12 You certainly can put your name on more than one list.

13 But at Susan Baronowski, the maximum security prison where  
14 I spend the majority of my liaison time, you can't even put  
15 your name on a list for programming until you have 18 months  
16 of your release.

17 So you come in a drug addict. You've got a ten year  
18 sentence. At eight and a half years, you can finally get on  
19 one of these lists that already has 9000 names on it.

20 We need to do more for people in custody to have them not  
21 be set up for failure.

22 Excuse me.

23 You've heard about the opportunities for parole.

24 And I just urge you not to just completely jump on the  
25 bandwagon.

1           There is decent research that shows parole, mandatory post  
2 release supervision is not beneficial to all people.

3           Low level offenders, I don't like that word, low level  
4 people being released sometimes become worse.

5           If they had a family to go to, if they had a home to go to,  
6 if they have a job to go to, then they had to go to see their  
7 parole officer all the time, or the parole officer showing up  
8 on their job.

9           It actually impedes their ability to do their job.

10          So please not a huge broad brush.

11          And if I were the decider, which I am not, I would prefer  
12 probationary supervision rather than parole, with no offense  
13 to the parole board, for the sole purpose of the due process  
14 rights that are awarded to people on probation.

15          If you're on parole and your parole officer sees you doing  
16 something wrong, you're in the back of the car, and you're at  
17 Walpole. No due process.

18          There is some after you're in, but you've already lost your  
19 job and perhaps your house, your housing. And it takes a long  
20 time to clear some of those things up.

21          On probation, you're entitled to public counsel if you're  
22 indigent. You're entitled to a hearing before a Judge. You're  
23 entitled to be heard on why you may have violated that  
24 probation.

25          So, again, with no offense to parole, I think they do a

1       terrific job, and by the way, those numbers are coming up,  
2       they were in terrible shape in 2011, but they're coming up  
3       slowly.

4       The tone of the board is terrific. People are feeling  
5       respected.

6       But, again, I would rather see probation I think unless the  
7       parole board built in some more due process requirements for  
8       violations.

9       A couple of quick points and I'll close.

10       I heard the average 40 arraignments that the DA has  
11       mentioned before people get to DOC custody on drug cases.

12       I would just ask you to look at those as 40 missed  
13       opportunities.

14       You heard from one former prisoner who said he wished  
15       someone up there made him go to drug treatment in one of his  
16       first arraignments.

17       I think imposed drug treatment doesn't work as well as not  
18       imposed drug treatment, but we all know that people are going  
19       to fail and relapse, and fail and relapse, and fail.

20       So the earlier on people get drug treatment along the way,  
21       the better off they'll be. And then they hopefully won't have  
22       any more arraignments.

23       And that's it.

24       JUDGE LU: All right.

25       MS. WALKER: I'll be happy to take any questions.

1 JUDGE LU: Thank you, Ms. Walker.

2 Questions for Leslie Walker?

3 Secretary Bennett?

4 MR. BENNETT: Good afternoon.

5 MS. WALKER: Hello.

6 MR. BENNETT: Do you think it, at a minimum facility --

7 JUDGE LU: Mr. Secretary --

8 MR. BENNETT: I, I apologize.

9 JUDGE LU: -- can you just pull that towards you?

10 MR. BENNETT: I apologize.

11 JUDGE LU: Thank you.

12 MR. BENNETT: Do you think at a minimum facility, someone  
13 who's on, got a long term minimum mandatory, if you put a  
14 bracelet on them, that would be enough security so that they  
15 wouldn't take off on you?

16 MS. WALKER: Yes.

17 MR. BENNETT: Okay.

18 MS. WALKER: Yes. I think the bracelets are greatly  
19 underutilized.

20 It's, it's a, although they are not without fault.

21 I had one client who was released who was working in a  
22 warehouse at night unloading boxes.

23 Even though the system knew exactly where he was, he was at  
24 his job, his bracelet kept going off.

25 He ended up getting fired because they found out that he

1 was a parolee.

2 So they are not without problem.

3 And they are expensive. People have to pay to be on those  
4 bracelets.

5 But certainly, sitting, sitting anywhere when you could be  
6 working or trying to get a job and support your family, I  
7 would definitely agree.

8 MR. BENNETT: That was my question. Thank you.

9 JUDGE LU: All right.

10 Mr. Rosenthal?

11 MR. ROSENTHAL: Yes, thank you.

12 Leslie, one thing you said, and I've probably asked some  
13 dumb questions this morning, and this may be right up there,  
14 but about people who have both post release parole and post  
15 release probation, do you know, is it invariable that parole  
16 takes precedence if there's an alleged violence? Is that  
17 always the case?

18 MS. WALKER: It would depend on the violation.

19 MR. ROSENTHAL: Okay.

20 MS. WALKER: If it's a failure to pay, I think probation  
21 would be more inclined to try and work that out with someone.

22 I don't, I don't recall any parole officers violating  
23 someone for failure to pay a fee of any kind.

24 It tends to be for more, you know, community based actions,  
25 sometimes dirty urines, but that is also getting better under

1 the current administration.

2 I think, I hate to be --

3 MR. ROSENTHAL: That's okay.

4 MS. WALKER: -- closing, but.

5 MR. ROSENTHAL: One, one other related question.

6 Do you have any sense of how many people have had that,  
7 both probation and parole upon being released to --

8 MS. WALKER: I was afraid someone was going to ask me that.  
9 And I don't re, know.

10 But my memory is, and please don't quote me on this, that  
11 it's, it's pretty high, so that's, 30s or even 40 percent, but  
12 I'm not positive about that fact.

13 MR. ROSENTHAL: And, and you just deal with DOC. That, that  
14 would be a DOC experience, or are you talking about --

15 MS. WALKER: House of Correction as well.

16 MR. ROSENTHAL: I'm sorry?

17 MS. WALKER: House of Correction as well.

18 MR. ROSENTHAL: Okay. Yeah.

19 MS. WALKER: As far as I know.

20 Again, it's not my area of expertise.

21 MR. ROSENTHAL: Okay

22 MS. WALKER: Can I just close by saying one thing?

23 With we, we will talk about the bad old days, Dan Conley  
24 and I started the 1985 of the Boston Municipal Court, and it  
25 wasn't so bad.

1           We would talk about cases, we would form relationships. I  
2 would, could convince him that yes, in fact, the drugs weighed  
3 X but the person was Y, the person had a football scholarship  
4 to go to BC and didn't really need to do that time, and the  
5 person didn't do any time at all.

6           It was supervised probation, and the person got their  
7 college degree and succeeded.

8           So yes, it was, Judges were different. DAs were different.

9           But I would rather have my fate and that of my client's in  
10 the hands of a non-elected official, meaning a member of the  
11 judiciary, than an elected official who answers to the voters.

12          Thank you.

13          JUDGE LU: All right. Thank you, Ms. Walker, and thank you  
14 to Prisoners Legal Services.

15          Have a good day.

16          All right. So, I'm sorry. Did I skip over somebody?

17          So sorry, my view was, must have been blocked. Do --

18          MR. ETTENBERG: Another question?

19          MR. BENNETT: You sure?

20          Dan Bennett.

21          It was Attorney --

22          JUDGE LU: Can I ask, hail you back. Sorry.

23          MS. WALKER: Certainly.

24          MR. BENNETT: Attorney Ettenberg and I were pointing at each  
25 other because that's how we --



1 MS. WALKER: That's not polite.

2 MR. BENNETT: -- work together out in Worcester every day.  
3 We would have a discussion, and we would try to work things  
4 out, and it wasn't because Mr. Early wasn't elected. It's just  
5 because we had a good relationship, we could trust each other,  
6 and we, out in Worcester, everybody trusts everybody. That's  
7 the way it is.

8 So that was all.

9 MS. WALKER: Okay.

10 MR. BENNETT: So --

11 MS. WALKER: Well, I'm glad I came back.

12 JUDGE LU: Okay. All right. I guess there is no question  
13 then.

14 I think we have the Commissioner of Probation, Ed Dolan,  
15 here. We must have a seat for him.

16 JUDGE HEFFERNAN: It's right here.

17 JUDGE LU: Okay.

18 All right.

19 JUDGE HEFFERNAN: Step on up.

20 JUDGE LU: Good afternoon, Mr., Mr. Dolan.

21 Okay. So we'll hear now from Susan Williams.

22 All right. Good, good afternoon, Ms. Williams.

23 MS. WILLIAMS: Good morning, afternoon, yeah.

24 JUDGE LU: All right. I'm going to ask you to please spell  
25 your name for the stenographer, please,

1 MS. WILLIAMS: Sure.

2 JUDGE LU:, and, and I have an acronym for your  
3 organization, if you could tell us what that is.

4 MS. WILLIAMS: Okay. It's Susan, normal spelling, Williams,  
5 W-I-L-L-I-A-M-S.

6 So I'm here by accident.

7 I cofounded a group called EMIT, End Mass Incarceration  
8 Together, and it's state wide, ecumenical, grass roots, all  
9 volunteer, based in Unitarian Universalism.

10 So I'm a volunteer.

11 And I started, before I started EMIT, I was, I still am a  
12 prison volunteer.

13 I go in with a non-religious program, 70 percent of all  
14 programs are religious, mine is not.

15 And last night, I sat in a circle at a minimum security  
16 prison with people who are incarcerated, and the Correctional  
17 Officer actually did something they do in Norway, he talked to  
18 them with respect like a human being in a minimum security  
19 prison.

20 All the prisons aren't like that. I've been in to about  
21 three or four regularly, and I've heard a lot of sad stories.

22 For example, and I look at the prison and the judicial  
23 system as a hungry monster who just wants to prey on poor  
24 people who don't have a lot of defenses or aren't able to find  
25 the resources to defend themselves, and they get swallowed up

1 in the job security of this huge system we've created.

2 And prisons don't want me to be here. I worry for my  
3 volunteer status that I'm here telling you what goes beyond,  
4 what goes on behind the closed doors.

5 So one guy told the story that he was on his second  
6 conviction, and he had served twice, and he was out on the  
7 streets.

8 He said I had a normal life, I had a bank account, I was  
9 getting married. And he was outside a strip club in Worcester  
10 waiting for a friend, the friend showed up, he was trying to  
11 convince his friend to do something, the friend said he  
12 wouldn't, and so this man took a gun, that he shouldn't have  
13 had, and he fired it into the air.

14 At that time, three off duty Worcester cops came out,  
15 arrested him, charged him, third strike. He served ten more  
16 years.

17 And when I hear stories and when I know the people behind  
18 the statistics, it just, it breaks my heart.

19 I don't know he maintains hope through the ten years and to  
20 start over again.

21 I've met people who said I didn't know nothing existed  
22 outside the ghetto. Prison is a set up for him. The programs  
23 help him.

24 And let me tell you, as someone who provides programs and  
25 goes in and offers programs, the prisons are not exactly

1 giving us a welcome mat. They make it difficult. They put up a  
2 lot of barriers for volunteers.

3 I'm giving them a free program. And there are a lot of  
4 barriers.

5 There's a guy who has been in for about 30 years. He  
6 committed a violent crime, and I think Mr. Benedetti said  
7 people can change in prison.

8 So we brought our program in after I waited for two years,  
9 asking the Director of Treatment, can we bring this program  
10 in, can we bring it in.

11 Finally, we get allowed in. I meet this man. He  
12 participated in our program in other prisons.

13 Within three weeks he was telling me what to do which is  
14 okay because he's taken responsibility in motivating other  
15 people.

16 He has a stack of certificates two inches thick. He  
17 changed. He changed, and he goes before the parole board and  
18 still gets a five year set back because he committed a violent  
19 crime because of Dominic Cinelli and the make of the parole  
20 board, like Leslie said hopefully there's a chance.

21 But what do we achieve by sending people to prison for so  
22 long when 92 percent are going to come out?

23 And some of them right from, right to the street, right  
24 from Souza right to the street.

25 And like Mary said, if we bury somebody for 15 years, they

1 can't even operate a cell phone or a computer.

2 How do we expect them not to reoffend? How do we expect  
3 them to have the resources?

4 So I have some, some more questions for you.

5 Well, I did go into Souza for about two years regularly,  
6 and one of the people there said it's where most of the world  
7 has given up on us, and most of us have given up on ourselves.

8 So I have some questions for you.

9 Why have we criminalized so much conduct in Massachusetts?

10 Why do we treat possession of a small amount of drugs and  
11 make it a mandatory minimum, treat that equal to murder?

12 I can see mandatory minimum for murder, but for a  
13 tablespoon or two or three of drugs?

14 Why are we criminalizing that? Why are we making that a  
15 mandatory, why are drugs so special?

16 So I'm not sure if any of you have read the book, the New  
17 Jim Crow by Michelle Alexander, and she makes a whole history  
18 of the failed war on drugs.

19 That's why I'm sitting here today. As somebody in my  
20 Unitarian Church said, I had to read it, and that's what  
21 motivates a lot of us here who are, who have come to testify  
22 and given up our day.

23 So why are DAs the only ones who testified today in favor  
24 of mandatory minimums?

25 I think it's for job security. I think they need it as a

1 tool. It, it, it gives them the discretion, not the Judges.

2 Have mandatory minimums resulted in more or less overdoses?

3 Have mandatory minimums reduced drug trafficking in  
4 Massachusetts?

5 Has the threat of punishment prevented the drug trade? Has  
6 it been a deterrent?

7 I wish the answer to that one was yes.

8 Why do we have the opiate crisis even though we also have  
9 mandatory minimums?

10 What do longer, harsher sentences achieve?

11 Why can't we trust the Judges to use their discretion?

12 The DA said they used their discretion, but I don't know if  
13 I was the only one who noticed all the DAs were white guys,  
14 and the majority, disproportionate, in prison are blacks and  
15 Latinos who suffer, and they're often poor, or as Leslie said,  
16 drug addicted.

17 So also ask the question why are churches and faith  
18 community, communities represented here?

19 And for me, on page three of your handout, it says you're  
20 charged to punish the offender justly, so we're here to ask  
21 for justice on the 22,000 people who can't be here, and that  
22 you can bring justice by making the sentences shorter. Give  
23 people a chance. Give people a chance that they can leave  
24 prison and, and start a life over.

25 So I urge you to follow your charge to ensure that justice,

1 especially for the mothers, especially for the women who, just  
2 even serving a small amount of time, disrupts their whole  
3 lives, it disrupts their children's lives, it makes them have  
4 a higher likelihood they'll go to prison and end up in the  
5 system, they lose their housing.

6 So I urge you to end this crazy law of mandatory minimums.

7 And also, the threshold of a felony? It's from 1986. I mean  
8 that's crazy.

9 So I urge you to recommend this to the House of  
10 Representatives and the Senate that we eliminate those two,  
11 increase the felony to a reasonable amount, and that we  
12 eliminate mandatory minimums for this crazy special crime of  
13 drugs.

14 And I ask you to punish the offenders justly.

15 That's it.

16 JUDGE LU: Thank you, Ms. Williams.

17 Questions for Ms. Williams from the Commission?

18 Okay. Thank you so much, and, and, and thank you to End  
19 Mass Incarceration Together for your comments.

20 Thank you.

21 All right. I think I'm going to, I think we should probably  
22 take the 30 minute lunch break at this time.

23 So the, the people remaining, the next person up is Ben  
24 Forman of Mass Inc. just to, kind of give you an idea of where  
25 we're at.

1 So we're going to take a 30 minute break --

2 JUDGE HEFFERNAN: Yes.

3 JUDGE LU: -- I guess.

4 JUDGE HEFFERNAN: Sounds good.

5 JUDGE LU: Thank you everybody.

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24 (Commission Recessed at 1:11 p.m.)

25 JUDGE LU: Okay. We're going to start up again. This is the



1 afternoon session of a public hearing on November 18<sup>th</sup>.

2 We're joined now by Judges Paul McManus and Judge Catherine  
3 Byrne.

4 Judge McManus is from, well, both from, I believe, the  
5 Boston Municipal Court. I should know that.

6 But the, so we welcome them.

7 And we had most of the other folks, we, I think they may be  
8 someone in the hall on an urgent phone call that will be  
9 joining us.

10 So I'm going to call at this time Ben Forman from Mass Inc.

11 MR. FORMAN: Good afternoon, Judge Lu, and Members of the  
12 Commission.

13 I thank you for this opportunity to testify.

14 JUDGE LU: Good afternoon.

15 Can you spell your name for the stenographer, please?

16 MR. FORMAN: Yes. Ben, B-E-N, Forman, F-O-R-M-A-N.

17 And I am the research director at Mass Inc., and I'm  
18 testifying this morning on behalf of Mass Inc., as well as the  
19 Massachusetts Criminal Justice Reform Coalition which is  
20 chaired by Wayne Budd, Kevin Burke, and Max Stern, and it's  
21 staffed by Mass Inc.

22 And as you may know, the coalition has viewed the re-  
23 establishment of the Sentencing Commission as a crucial first  
24 step towards comprehensive criminal justice reform.

25 We see the Commission as uniquely positioned to examine the

1 data and draw attention to opportunities to improve our  
2 justice system.

3 So we allocate resources more cost effectively and increase  
4 public safety.

5 We also see this Sentencing Commission as an important bone  
6 work to ensure that our system administers justice fairly and  
7 free from racial and ethnic bias.

8 And I just want to underscore that particular point.

9 Particularly if the Kelso State Governments does not have  
10 it in its mandate here to look at racial and ethnic  
11 disparities as it's had in other states where it's operating,  
12 including where, Rhode Island where it has just started to  
13 work.

14 If racial and ethnic disparities aren't part of its charge  
15 here, the Commission really is the last man standing in that  
16 sense to look at our data and really figure out if our, our  
17 justice system has, has issues that we should make it a  
18 priority to address.

19 And we certainly see some concerning things in our varying  
20 incarceration rates as well as some of the patterns in bail  
21 that we've looked at most recently.

22 The Sentencing Commission's excellent data has been a real  
23 resource to us over the years.

24 In our, in our report in 2013, we saw that nearly two  
25 thirds of drug offenders and, and 60 percent of non-drug

1 offenders were ineligible for parole essentially or had very  
2 little incentive to obtain it.

3 In your most recent numbers, we've seen it's actually gone  
4 up from 2011, it was two thirds of drug offenders. It's not  
5 three quarters of drug offenders in the, in the most recent  
6 data, and still about 60 percent of non-drug offenders have no  
7 ability or limited incentive to obtain parole.

8 And I, I recognize that's been an issue that's been raised  
9 this morning, and it's always an issue the Commission has  
10 drawn attention to as problematic.

11 It's our hope that the, the guidelines and recommendations  
12 the Commission issues will finally resolve this problem and  
13 move Massachusetts so it's no longer among the lowest  
14 performing states in terms of letting people out on supervised  
15 release.

16 In addition to unsupervised release, we, at Mass Inc. draw  
17 attention to the increasing time served in Massachusetts, and  
18 the --

19 JUDGE HEFFERNAN: What was the last thing you said? The  
20 increasing?

21 MR. FORMAN: Length of time served.

22 JUDGE HEFFERNAN: Time served.

23 MR. FORMAN: Another issue that's come up this morning.

24 JUDGE LU: The, the microphones are, aren't that sensitive,  
25 so I know he can hear it, but the members of the audience

1 might not be able to unless you pull it up.

2 JUDGE HEFFERNAN: Okay. I'm sorry.

3 JUDGE LU: Yeah.

4 JUDGE HEFFERNAN: Okay.

5 MR. FORMAN: So, and we think time served as increased by  
6 about a third since the '90s, and, and we all know that's then  
7 diverting resources away from rehabilitative programs,  
8 treatment, and reentry.

9 And recidivism has arised to the point where the majority  
10 of people we release will reoffend, creating new victims and  
11 requiring more resources for us.

12 So we're hopeful that the Commission will be able to create  
13 a road map for better understanding how time served has  
14 increased where we can bring down the prison populations and  
15 reinvest our resources in those things.

16 So lastly, I just want to call attention to the role we  
17 hope the Commission can play in improving our state's criminal  
18 justice data infrastructure.

19 It's now almost 2016, and we're still looking at sentencing  
20 data from 2013.

21 That, that kind of lag is really problematic, especially  
22 with today's database technologies where we should really have  
23 data for researchers and policy makers that are basically real  
24 time.

25 And, and in terms of understanding the time served, that's

1       been a real problem for us and I'm sure it's a problem for the  
2       Commission.

3             If you don't know how people, long people are ultimately  
4       staying, it's really hard to judge whether the sentences are,  
5       are fair and efficient.

6             And, and just one, one last things in terms of our data  
7       needs, more data on race and ethnicity, on female offenders,  
8       and particularly on young adults in our corrections systems,  
9       special populations that researchers have really called  
10      attention to is not being served particularly well, but, but  
11      yet we really lack fundamental data to understand their  
12      trajectories in our system and how we're serving them.

13            So I want to be brief. Those are just my thoughts and I'll  
14      submit some written testimony as well.

15            We, we appreciate that all of the above presents some  
16      formidable challenges.

17            Mass Inc. is more than willing to do anything we can to be  
18      of assistance to the Commission.

19            We certainly appreciate that your deliberations needs to be  
20      done privately, but if there's any indication of problems that  
21      you're facing, that you can help us understand, we'll do all  
22      that we can to help provide you with analysis of information.

23            So thank you again for the opportunity to testify today.  
24      And for your service to the Commonwealth.

25            JUDGE LU: All right. Thank you, Mr. Forman.

1 Do we have questions for Ben Forman from the, from Mass  
2 Inc. and the from the Mass Criminal Justice Reform Coalition?

3 JUDGE HEFFERNAN: Thank you very much.

4 JUDGE LU: Okay.

5 MR. FORMAN: Thank you.

6 JUDGE LU: Thank you, Mr. Forman. Have a good day.

7 Thank you.

8 JUDGE LU: Okay. So next is Christine Pratt.

9 MS. POFF: Poff.

10 JUDGE LU: I'm sorry.

11 MS. POFF: Don't worry.

12 JUDGE LU: Put? How,

13 MS. POFF: It's P-O-F-F, Poff.

14 JUDGE LU: Okay.

15 MS. POFF: Yeah. It's a funny name.

16 JUDGE LU: Sorry about that. It's spelled wrong on this  
17 sheet --

18 MS. POFF: No, no, I'm used to it.

19 JUDGE LU: -- in front of me.

20 MS. POFF: Yeah.

21 JUDGE LU: All right. Good afternoon, Ms. Poff.

22 MS. POFF: Okay.

23 JUDGE LU: And would you please even spell your name again  
24 for --

25 MS. POFF: Sure.

1 JUDGE LU: -- the stenographer, please?

2 MS. POFF: Yeah. It's Christine spelled the traditional way,  
3 C-H-R and Poff, P as in Peter-O, two Fs as in Frank.

4 JUDGE LU: Okay. All right. Good morning, and welcome.

5 MS. POFF: Thank you so much for this opportunity.

6 My name is Christine Poff. And I'm a social worker, and I'm  
7 here representing the Massachusetts Chapter of the National  
8 Association of Social Workers which has 7500 members across  
9 the Commonwealth, many of whom work in the criminal justice  
10 system on the front lines of, in communities and in prisons,  
11 working with individuals who are involved in the judicial  
12 system.

13 We also have a very active criminal justice shared interest  
14 group we call it our 100 members who work very hard on  
15 criminal justice policies that will improve lives for their  
16 clients as well as improve our communities and benefit them.

17 I, I want to thank you so much for, for being here. This is  
18 new to us.

19 We've been used to advocating for bills at the State House,  
20 you know, in the, in the legislature, and this is an exciting  
21 opportunity to work on sentencing changes also or to advocate  
22 for them.

23 So we really appreciate, I understand that it's a fairly  
24 newly convened Commission in the last few years, and that  
25 there hasn't been a hearing for a long time.

1           So thank you so much for being here and giving us this  
2 opportunity.

3           I, as, social workers, I don't have data like the men from  
4 Mass Inc., but we have hundreds of stories that we hear all of  
5 the time from our members who are working with individuals.

6           And I'm here primarily to push very hard for no mandatory  
7 minimums.

8           It's clear that that has disrupted families, disrupted  
9 communities, really kept people in jail for way too long and  
10 very unable to rebuild their lives when they come out of  
11 prison with the extent of sentences for very low risk,  
12 especially drug offenses obviously.

13           We support, and we also have been very involved in the last  
14 year working with a group of parents of caretakers, of family  
15 members, who are at, who were in jail and not violent  
16 offenders, who are advocating for community based sentencing  
17 alternatives for nonviolent caretakers, whether that's  
18 parents, mothers who are separated from their children, or  
19 people taking care of elderly or disabled family members.

20           And really trying to look at the situations and giving  
21 Judges the discretion to do that and lawyers to advocate that  
22 for their, for their clients.

23           In addition to our, in addition to our sentencing things,  
24 and I'm not quite, this is why this is new for us. I'm not  
25 sure how much involvement you, you, or power you have over



1 this.

2 But we have wanted to reduce low level felonies and make  
3 them mis, misdemeanors, especially for young people.

4 We are interested in ending collateral sanctions imposed by  
5 the Registry of Motor Vehicles for charges unrelation,  
6 unrelated to the operation of a motor vehicle.

7 We'd like jurors, judicial discretion to transfer  
8 permanently incapacitated or terminally ill patients, get them  
9 out of prison for treatment, and to be reunited with families.

10 And to reform the bail system to eliminate the large  
11 financial disparities for individuals who are low income and  
12 can't afford bail for very, for nonviolent arrests, pretrial  
13 detention, you know, eliminating pretrial detention for those  
14 individuals.

15 And then the last thing, I just would like to share my, why  
16 I got very involved in this issue, in these issues, is that  
17 many years ago, I lived in New York City, and I worked at  
18 Riker's Island as a social worker.

19 And I worked with, with men and women who were incarcerated  
20 and in prerelease programs, waiting to be reunited with their  
21 families.

22 And I did a lot of work on family dynamics and how to  
23 reconnect with your children and how to reconnect with family  
24 members who would be supportive when you got out of jail.

25 And hands down, the incarcerated men and women that I

1 worked with, some of them have been in jail for a very long  
2 time, some for maybe only a year, they were petrified.

3 They were so worried and anxious about this, and wanted it  
4 to go so well.

5 And they were, it was just, they were so human, and it was  
6 a really important experience for me because I'd never worked  
7 with people who were incarcerated and been in that kind of  
8 situation, and I had social work training and had training in  
9 family systems, and was a compassionate individual and really  
10 worked with them to help learn some skills to reunite and be  
11 supportive and not let some of the, the stress, posttraumatic  
12 stress that they were going to take with them back into the  
13 community interfere.

14 And we did a little bit of work with them when they got out  
15 of prison, and it was, it was so difficult, and the longer  
16 they'd been in prison, the more difficult it was and the more  
17 likely they were to be recidivists and the less likely they  
18 were to have successful reunions with family members who could  
19 be supportive and really provide them with some of the  
20 strength that they needed to do well outside.

21 So it was so clear to me that the long sentences didn't  
22 work.

23 And any kind of helping people rehabilitate, get back into  
24 the community, support their families, be involved with their  
25 families, be good parents, good, good wives, good husbands,

1 good children to older parents.

2 So I just urge you to eliminate those mandatory minimums  
3 and work to reduce sentences because it's not the way to help  
4 build our communities.

5 Thank you so much.

6 JUDGE LU: Thank you, Ms. Poff.

7 One, just one second.

8 MS. POFF: Sure.

9 JUDGE LU: So sorry.

10 Are there questions for Ms. Poff from the National  
11 Association of Social Workers Massachusetts Chapter?

12 Okay. Thank you.

13 MS. POFF: We've been here a long time.

14 Thank you.

15 JUDGE LU: Thank you --

16 JUDGE HEFFERNAN: Thank you.

17 JUDGE LU: Okay. I'm going to ask Kimeshia Brown, please,  
18 from EPOCA to come forward.

19 MS. BROWN: I'm sorry.

20 JUDGE LU: All right. Good afternoon, Ms. Brown.

21 MS. BROWN: Good afternoon.

22 JUDGE LU: Please spell your name for the stenographer,  
23 please.

24 MS. BROWN: My name is Kimeshia Brown, K-I-M-E-S-H-I-A.

25 I'm here representing EPOCA, Ex-Prisoners Organizing for

1 Community Action.

2 Well, I'd like to speak about the mandatory minimum bill.

3 The testimony I'm about to provide is not about, well, I  
4 have testimony for myself too, but the most important one that  
5 I've faced was my aunt being deported as her boyfriend was  
6 having, doing all type of stuff, and they, he got caught in a  
7 drug string, and her home was one of the homes that they went  
8 to. And even though they found no drugs in her home, she got  
9 caught along with a, a few other gentlemen and she, she was  
10 charged with the same charges that they received, and because  
11 she didn't have, she was working, she worked for 15 years in  
12 the hotel, she didn't have any street knowledge, any legal  
13 knowledge, she was just arrested. She never saw soil in  
14 America again.

15 She got ten years. She didn't have anyone to snitch on,  
16 anything to say, so she just had to take the time.

17 She got ten years and then deported.

18 She had four kids that left the family to take care of  
19 these four children.

20 They, they didn't see their mother again outside of a  
21 prison cell until four years later, I mean ten years later  
22 when they went to visit her in Jamaica.

23 This person had no criminal background, no criminal intent  
24 whatsoever. And it's, it's just one that touched me because  
25 her kids have to suffer now without a mother. They have family

1 but no love is like your mother's love just because of, she  
2 was involved with someone else.

3 And, you know, there's, the stories are endless. Like what  
4 I've known and what I've been through and with the fair  
5 sentencing being unfair.

6 I was actually, I'm not sure if I'm jumping off topic.

7 But I was, my first arrest that I, I received was me trying  
8 to obtain a Social Security card, and I was actually charged.

9 I was charged wrongfully, and when the, when, when I took  
10 it to trial and it, it came out that the charges were  
11 dismissed because I wasn't guilty, the Judge got mad and I  
12 received a 30 day plus a year's probation sentencing for a  
13 disorderly conduct.

14 I mean the stories are endless, but I just think that I, I  
15 just thought that I should come and let the panel know that  
16 this, this is real.

17 Like I went back to school to become a paralegal. I am a  
18 paralegal now. But I have to wait to clear charges on my  
19 record. I had, I, that's why I'm working, doing this work that  
20 I'm doing with EPOCA because I have to, I have to bust my  
21 butt.

22 Not only do I have three children to provide for, but I  
23 have to show society that I can do it, I can become a lawyer.  
24 That's my long life dream.

25 And because of the stigmas that have been placed on my life

1 because of maybe prejudice, I don't know what it is, I'm just  
2 like stuck in an area right now that I'm trying to get out of.

3 So I just wanted to ask if you guys could just, you know,  
4 just make this happen for a lot of family.

5 I think America will be better if we set up a reform system  
6 and not just lock, throw people away basically because it  
7 weighs a lot on your self-esteem.

8 You get depressed. You can't, it's hard to come out of  
9 depression. It's just a very hard thing to do.

10 I just wanted you guys to know that.

11 JUDGE LU: Okay. Thank you. Ms. Brown.

12 Questions for Ms. Brown?

13 MS. BROWN: Okay.

14 JUDGE LU: All right.

15 MS. BROWN: Thank you.

16 JUDGE LU: Thank you, Ms. Brown, and thank you to the Ex-  
17 Prisoners Organizing for Community Action.

18 All right. So I'm going to call now on Barb Dougan or, and  
19 Robert Harnais and Rahsaan Hall and, I'm reading somebody  
20 else's handwriting here. I apologize. Maryanne Frangules.

21 MS. FRANGULES: That's good.

22 JUDGE LU: All right. I'm using my ESP to thank Kevin that  
23 that has folders for everybody, because it looks like it has a  
24 whole bunch of folders. Maybe you want to pass them up?

25 Or maybe they don't want the interruption of our attention.

1 I don't know.

2 All right. So welcome everybody. Good afternoon.

3 MR. HALL: Good afternoon.

4 JUDGE LU: All right. So I'm going to ask, probably most of  
5 the people here, I, I have some familiarity with most of you.

6 We're going to ask you to state your name and then spell  
7 your name for the stenographer.

8 We have a high tech, well, fairly high tech stenographer  
9 system here.

10 So I guess we'll just start at my right, at, and your left.

11 MS. DOUGAN: Great. Thank you. Barbara, B-A-R-B-A-R-A,  
12 Dougan. I spell that the Scotch Presbyterian way. D-O-U-G-A-N.

13 JUDGE LU: Thank you. Good morning, good afternoon.

14 MS. DOUGAN: Do you want to have everybody do their names  
15 first?

16 JUDGE LU: Yes, please. Yes, please.

17 MR. HARNAIS: Good afternoon. Bob Harnais, H-A-R-N-A-I-S.

18 JUDGE LU: Good afternoon.

19 MR. HALL: Good afternoon. Rahsaan Hall, R-A-H-S-A-A-N,  
20 Hall, H-A-L-L.

21 JUDGE LU: All right. Good afternoon.

22 MS. FRANGULES: Maryanne Frangules, and that's M-A-R-Y A-N-  
23 N-E, last name is F-R-A-N-G-U-L-E-S.

24 JUDGE LU: All right. So good afternoon, Ms. Dougan, and Mr.  
25 Harnais, and Mr. Hall, and Ms. Frangules.

1 All right. So, and what, you folks are welcome to talk in  
2 some order.

3 MS. DOUGAN: Great. Thank you.

4 JUDGE LU: Go ahead.

5 MS. DOUGAN: Good afternoon. We are absolutely delighted to  
6 be here, and would only suggest that let's do this more often  
7 than every 20 years.

8 We're delighted to see the full Commission here.

9 My name is Barb Dougan, and I run the Massachusetts office  
10 of a group called Families Against Mandatory Minimums or FAMM,  
11 as we're known.

12 We are, work on Massachusetts drug sentencing laws and have  
13 a membership of over 2500 families of prisoners, prisoners,  
14 and other interested folks.

15 I'd like to start out with a disclaimer.

16 We are not a drug policy organization per say. We do not  
17 weigh in on either decriminalization of drugs, or legalization  
18 of drugs. We don't take a position.

19 Instead, our position is I think both modest and common  
20 sense, which is that if certain conduct is prohibited by law,  
21 then the sentence should fit the crime.

22 As you see, we have a, several things for you in terms of  
23 our written materials, but I just wanted to cover in my brief  
24 time two points.

25 FAMM has been active in Massachusetts since about 2007. I'm



1 not even going to try and compete with Marty Rosenthal.

2 But every legislative session, we come before the Judiciary  
3 Committee of the legislature to testify in support of  
4 repealing mandatory minimum sentences for drugs.

5 Each time we ask for repeal and each time certain things  
6 are the same.

7 For instance, these laws have been in place now for, now  
8 over 30 years with very little to show for them except  
9 extraordinary cost to tax payers.

10 Another thing's the same is that nonviolent drug offenders  
11 are still spending disproportionately long time in prison  
12 compared to other crimes.

13 And one of our handouts for you compares some of the  
14 sentences for other offenses.

15 Reentry continues to be difficult, and perhaps increasingly  
16 so with the job market, and recidivism rates not only remain  
17 high but continue to climb.

18 There is one major difference in the last year or so which  
19 others have referenced, and that is the full blown opiate  
20 crisis that we're in the midst of.

21 Some would argue that that's a reason to maintain mandatory  
22 minimums. I would argue that it's exactly the reason why we  
23 need to get rid of them.

24 We can no longer ignore the fact that mandatory minimums  
25 prevent the Courts from sending a drug offender to prison if

1 they're facing a mandatory minimum.

2 When lives are at stake it's an unconscionable policy, and  
3 it certainly should not be maintained.

4 There's many other alternatives to incarceration that would  
5 hold people accountable for their offenses but also allow them  
6 to get the services they need if they have a drug, a substance  
7 abuse problem.

8 And even if they don't, to perhaps have shorter sentences  
9 that is more commensurate to what their role was in the  
10 offense.

11 We also have to, to recognize who we're talking about.

12 You know, the old narrative was false. The old narrative  
13 was drug addict, drug addicts are bad people and we need to  
14 put them away.

15 And, you know, for the most part, we have moved beyond that  
16 and we recognize that it's simply not true.

17 But the new narrative is, is also false, the new narrative  
18 is you've got the drug addicts on this side of the room, and  
19 they need help, let's get them help.

20 But on this side of the room are the people who are the  
21 distributors or the traffickers, and none of them have a drug  
22 problem and let's lock them up for a long time.

23 And, and there's other people in this room who are much  
24 better in terms of their front line work their doing like  
25 Maryanne Frangules, but that's simply not true.

1 We hear it from our members all the time.

2 In our folder, I, we've included testimony from the group  
3 Learn to Cope which many of you may be familiar with who are  
4 on side on this issue, and their testimony is terrific and was  
5 written by a former prosecutor that I think is really, really  
6 gets to the heart of the issue.

7 So we're not going to be able to reduce the demand for  
8 drugs which fuels an entire industry if we refuse to offer  
9 drug offenders the chance to overcome their addiction.

10 We're not saying everybody who's serving a mandatory  
11 minimum is a drug addict, but many people, it's an overlap  
12 between those two groups, between the addicts and the folks  
13 who sell to support their addictions, and to the extent that  
14 we keep ignoring that overlap, we are not going to make much  
15 progress on this.

16 The second issue is, and this is obviously the perfect  
17 forum to raise it in, which is how mandatory minimums are  
18 actually used, and whether there's any legitimate sentencing  
19 goal when we use them.

20 And what I'm referring to here is how prosecutors use the  
21 threat of either a, of a long mandatory minimum or a longer  
22 mandatory minimum to induce guilty pleas.

23 I would suggest that anyone here who works in a, a criminal  
24 justice setting in Massachusetts knows that this happens and  
25 the, across the Commonwealth. And we have, Rahsaan Hall can

1 talk more about that.

2 You know, our sentencing policies are supposed to kick in  
3 after a defendant has been convicted, but with mandatory  
4 minimums, we have them being used in order to help prosecutors  
5 get their convictions.

6 And we'd suggest that that is simply not a legitimate use  
7 of our sentencing policies in Massachusetts.

8 Chapter 211E also talks about what sentencing policies  
9 should be attempting to, to achieve.

10 One is re, promote respect for the law.

11 When you look at the egregious racial disparities and who  
12 gets mandatory minimums, that is undermining respect for the  
13 law in many communities.

14 Mandatory minimums are, are, sentencing policy in general  
15 are supposed to promote just punishment for an offense, but  
16 when we have laws that are based literally on the weight of  
17 the evidence and not the defendant's conduct, then it's  
18 inevitable that we will have unjust results.

19 Sentencing policy is supposed to protect the public from  
20 further crimes of the defendant.

21 And as we just stated, when people are not allowed to get  
22 drug treatment if that's an issue for them, then we are  
23 utterly failing in that aspect.

24 Another, one of the things it also says in that statute is  
25 that it's supposed to, our sentencing policies are supposed to

1 ration correctional capacity.

2 Among your materials, we have the testimony of a woman who  
3 could not join us here today, but her name is Bonnie DiToro, a  
4 mother of two, who was sentenced to a 15 year mandatory  
5 minimum sentence for being in the next room when a drug deal  
6 went down.

7 I doubt that anyone in this room would suggest that that is  
8 a rational use of our correctional resources to put someone  
9 like that away for 15 years.

10 Finally, one of the policies that's supposed to be achieved  
11 is to provide certainty in sentencing.

12 And ironically, this is often held up by the District  
13 Attorneys as a justification for mandatory minimums.

14 But when most cases are settled, these are deals that are  
15 cut behind closed doors.

16 The District Attorneys say that, well, if there's a  
17 problem, we're going to hear about it from the public, and  
18 then every six years they can throw us out of office.

19 These are, the public has no idea who's getting a break and  
20 who isn't, so these are not actions that are being taken in  
21 public, like that happens in a courtroom.

22 These are happening behind closed doors, and they're in  
23 fact, by the mere, by the virtue of there being plea bargains,  
24 that has already gotten rid of your consistency, and we don't  
25 know who gets a deal and who doesn't.

1           So just in closing when you issue your recommendations, we  
2           urge you to include the repeal for mandatory minimums.

3           The time is long overdue for Massachusetts to join the  
4           nationwide movement for more effective and fiscally  
5           responsible drug sentencing laws, a goal that is now  
6           increasingly supported across the political spectrum.

7           Thank you very much.

8           JUDGE LU: Thank you, Ms. Dougan.

9           Attorney Harnais who I believe is also the President of the  
10          Massachusetts Bar Association.

11          MR. HARNAIS: Yes. Good afternoon.

12          JUDGE LU: Okay.

13          MR. HARNAIS: Mr. Chairman and through you, Members of the  
14          board.

15          My name is Bob Harnais. I'm the President of the  
16          Massachusetts Bar Association.

17          Apart from that role of being president of the  
18          Massachusetts Bar Association, I will tell the, the committee  
19          here that I, I'm a practicing attorney, been practicing for 26  
20          years.

21          I worked in the District Courts, both in the Clerk's Office  
22          and as a Probation Officer, and I'm also the General Counsel  
23          to a Sheriff's Department as we speak right now.

24          So I'm kind of familiar with the, the sentencing both as an  
25          attorney, both as working the sheriff's department.

1           But going back to the purpose I'm here, the Massachusetts  
2 Bar Association is a long standing commitment to ensuring that  
3 the most fair and effective criminal justice system possible  
4 that we have in this state.

5           The MBA supports an elimination of mandatory minimum  
6 sentences for drug related crimes.

7           You know, especially today when we're talking about the  
8 opiate issues out there, I'm going to deviate from this script  
9 because I think you have, you, everybody here has this script,  
10 so I'm going to talk from what I really know here.

11           We have a system out there right now that puts mandatory  
12 sentence, mandatory sentencing in effect.

13           What you're actually doing, and I know there's, there's a  
14 cry out that the MBA doesn't want people put in jail, or  
15 agency doesn't want people in jail.

16           That's not valid.

17           The problem you have with mandatory sentences is at the  
18 very end.

19           What happens to a person that gets sentenced to two years  
20 in the House of Correction, ten years in, in state prison?  
21 What happens on their last day? They walk out the door.

22           If the committee and the legislature is concerned for the  
23 safety of the communities, walking someone out the door the  
24 last day of their sentence is not the right thing to do.

25           It's not the right thing to for the community. It's not the

1 right thing to do to, for them.

2 I myself have toured a lot of state prisons being the  
3 general counsel of a jail.

4 I've also toured state prisons in other, in other states.

5 The problem you have is you have someone serving ten years.  
6 You have someone that's served ten years in, say, let's just  
7 say Walpole, let's just say Concord.

8 They live in that atmosphere, they live in that world  
9 because they got their ten year mandatory.

10 Ten year comes and a day, what are they doing? They're  
11 walking out the door.

12 Now, ask yourselves this. Do you feel comfortable with  
13 that, for that person to walk out that door on that day? Do  
14 you feel comfortable that person didn't assimilate back into  
15 the public or the community as they should have?

16 And that's what you have to ask yourself.

17 If you're concerned with regards to the community safety,  
18 what are we doing about people that serve mandatory sentences  
19 and walking out of the door?

20 Is it fair to them? Is it fair to the community?

21 I suggest after reviewing the facts and looking at all the  
22 numbers, you're going to see there isn't a, a process for them  
23 to earn their way to the street.

24 Sheriff's Department says, we all know, have changed their  
25 focus on reentry. Why did they do that? Because history has



1 shown us that the system we have now with the mandatory  
2 sentence, other than the idea of just putting people in jail  
3 because they committed a crime, other than doing that, it  
4 doesn't do anything to rehabilitate the person back into  
5 society.

6 Sheriffs are aware of that, so that's why they changed  
7 their focus.

8 All I ask people to do and the MBA ask, if you're thinking  
9 of mandatory sentences, think of what goes on at the very end  
10 of those sentences, think what you're doing, think what you're  
11 doing for the communities, think what you're doing for the  
12 individual.

13 Punishment is an aspect of this system, but rehabilitation  
14 has to be better, a better, a better way.

15 And I'll tell you one thing. You think about the number of  
16 people that actually serve time for life, very limited.

17 So that means the day they walk into jail is the first day  
18 of them getting, process of getting out, whether it's a  
19 mandatory sentence or not.

20 And if you have a mandatory sentence, they get out that one  
21 day.

22 And they didn't have to earn their way out. They didn't  
23 have to earn a possibility of gaining good time and getting  
24 out early. They got out that day.

25 Now, when you apply, also the numbers will show the,

1 there's, it's very, it doesn't seem to be fair to certain  
2 communities.

3 You may not know it, but I'm, I used to be the President of  
4 the Hispanic Bar Association, and I also was President of the  
5 National Northeast, and I see a high proportionate of  
6 Hispanics being sentenced to mandatory sentences.

7 Why it's happening, I don't know. But there's seems to be  
8 an extraordinary, extraordinarily high number.

9 So other than, you have my speech in front of you, so I  
10 don't have to read it.

11 I think everybody can read what, what my submission is.

12 I ask you to look at mandatory sentences, and look at what  
13 it's really about.

14 It was about punishment.

15 Everything in life has its time. Everything in life, at a  
16 certain point when it's developed, it has a reason.

17 We have right now a society that's suffering from opiates.  
18 We have an, and personally I can tell this committee myself I  
19 know from personal point of view.

20 We have a society suffering from opiates, so we have to  
21 start looking and thinking out of the box.

22 Putting people in jail, although it's a great theory, and  
23 I'm going to tell you right now there's going to be many  
24 people out there that say that's right, people should go to  
25 jail, they don't deal with what you deal with every day. They

1 don't see.

2 They just see every, newspaper articles.

3 Public policy cannot set, I'm sorry. Public policy cannot  
4 be set by the fact that people out there want certain things.

5 You are the professionals. You're the ones to decide. You  
6 give the recommendations.

7 Look at what you have here. Look how it hasn't worked.

8 If mandatory sentences worked, people have the ability to  
9 do something. It hasn't worked. The numbers out there show it.

10 The one thing that troubles me a great deal as an attorney,  
11 as an advocate of the Constitution, when it's used as a  
12 prosecutorial tool.

13 I sat before a committee just like this recently, where a  
14 District Attorney did state that they decided when a mandatory  
15 sentence should be imposed, and they use intel they get from  
16 the street.

17 Now, if you think about that, they're deciding what punish  
18 should go, not by what they can prove, but by the intel that  
19 they hear from their people on the street.

20 There's a slight little problem with that. It's  
21 unconstitutional.

22 So when you have someone admit to a committee that we use  
23 the intel on the street to decide whether we're going to  
24 waive, we're going to drop the charges to lesser mandatory  
25 sentences, that is unconstitutional.

1           And I question why it's being used because it's a tool for  
2 prosecution reasons, not to help society, not to help the  
3 communities, not to help the individual.

4           It's because, you know what, the public out there likes me  
5 for what I do.

6           And that's not the reason why we punish people or that's  
7 not what we should do for society.

8           So as the MBA, President of the MBA, I will say we're  
9 against mandatory sentences because I, my kids go to school to  
10 learn history.

11           And if anything should tell you something, and it's in his  
12 history, they don't work. We wouldn't be in this situation.  
13 You wouldn't be sitting here as a committee questioning  
14 mandatory, what mandatory sent, if they're working, nobody  
15 would touch it.

16           Obviously it's not working. It's time to think out of the  
17 box, and it's time to think about what's happening and who's  
18 getting hurt by it.

19           So on behalf of the MBA, we'd ask that you recommend that  
20 there be no mandatory sentences.

21           JUDGE LU: Okay. Thank you, Mr. Harnais.

22           Mr. Hall, whenever you're ready.

23           MR. HALL: Thank you, Mr. Chairman and to the Members of the  
24 Commission.

25           Again, I'm Rahsaan Hall. I'm the Director of the Racial

1 Justice Program for the American Civil Liberties Union of  
2 Massachusetts.

3 I served as a prosecutor here in the Commonwealth in  
4 Suffolk County in the DA's office, and my tenure began in 2000  
5 under then District Attorney Ralph Martin, and continued until  
6 2008 under the current District Attorney for Suffolk County,  
7 Daniel Conley.

8 I began as an Assistant District Attorney in the Dorchester  
9 District Courts where I served there for three years, and then  
10 was promoted to the Safe Neighborhood Initiative Unit where I  
11 was responsible for prosecuting matters out of the Uphams  
12 Corner section of Dorchester and then onto the senior trial  
13 team where I handled gang and homicide matters.

14 In my role as a prosecutor for the Uphams Corner Safe  
15 Neighborhood Initiative, I handled a wide variety of cases,  
16 but I was also responsible for helping to set a coordinated  
17 public safety agenda for the members and stakeholders of the  
18 Uphams Corner community.

19 And in that work, I have been to several community meetings  
20 and community gatherings and different organizational meetings  
21 to discuss what the public safety concerns were for each of  
22 those organizations.

23 And I heard a broad array of concerns ranging from people  
24 speeding to illegally dumping trash to the violence in their  
25 streets and prostitution, and, yes, even drug distribution.

1 But what I also heard was people raising concerns about the  
2 one size fits all nature of mandatory minimum drug sentences.

3 Rarely did I encounter individuals that heralded that  
4 approach, and said this is the right way to go to address the  
5 issues and concerns that we have here in our community.

6 As a prosecutor, I always charged the mandatory minimum  
7 sentence if it was available. Always.

8 I did that because it gave me the leverage.

9 I had a very powerful bargaining chip.

10 Defendants were more likely to plead guilty to a lesser  
11 sentence that I as the prosecutor recommended if I was willing  
12 to dismiss the minimum mandatory charge.

13 And as Mr. Harnais said, I received information from my  
14 partners in the Police Department and intelligence that had  
15 been gathered through investigations that we had conducted  
16 into other matters as to who was really deserving of a  
17 mandatory minimum sentence and who was really deserving for a  
18 reduction in that sentence by dismissing the minimum mandatory  
19 charge, not necessarily for the crime that was before me, but  
20 for the intel that I had on those individuals.

21 And so in this context of discussing mandatory minimum  
22 sentences, I know there have been several District Attorneys  
23 who have talked about and lauded this notion of prosecutorial  
24 discretion.

25 But I have to say that in this context, prosecutorial

1 discretion is a misnomer because it suggests that the use of  
2 discretion prevents the rigid implementation of harsh  
3 sentences for low level drug offenders and nonviolent  
4 offenders.

5 A perfect example comes from here in Massachusetts with the  
6 recent efforts to, or excuse me, associated with the Annie  
7 Dookhan drug lab scandal.

8 There was an effort by prosecutors here in Massachusetts to  
9 try to prevent individuals who were the victims of that drug  
10 scandal to receive due process.

11 Most of the thousands of victims of her scandal had already  
12 served their sentences.

13 But for years, several of the prosecutors argued that  
14 these, if these defendants tried to challenge their  
15 convictions, then the prosecution would bring back any number  
16 of the harsher penalties including the mandatory minimum  
17 sentences.

18 Fortunately, the SJC unanimously rejected that argument  
19 this May in the Bridgeman vs. the District Attorney for  
20 Suffolk County which the ACLU, along with the law firm of  
21 Foley Hoag and CPCS litigated.

22 And the Court wrote in using mandatory minimums to threaten  
23 harsher outcomes than were obtained before Dookhan's  
24 misconduct went public, prosecutors were arguing that they  
25 could benefit from Dookhan's misconduct.

1           The power of the prosecutors to prosecute and impose  
2 sentences shifts the balance of power in the judicial system  
3 by taking it away from jurists who have been charged to  
4 faithfully and impartially discharge and perform all their  
5 duties according to the best of their abilities and  
6 understandings agreeably to the rule and regulation of the  
7 constitution and the laws of this Commonwealth.

8           And this shift in the balance has resulted in an increased  
9 prison population with little to no impact on recidivism for  
10 drug offenders, gross racial in, disparities in drug  
11 sentencing.

12           And so for the eight years that I served as a prosecutor, I  
13 worked in overwhelmingly, communities that were overwhelming  
14 concentrated with people of color.

15           And in all of the drug offenses that I prosecuted, black  
16 and Latinos made up a majority of the cases of people who were  
17 ensnared within the criminal justice system.

18           And for the years that I served as a prosecutor, 90 percent  
19 of the drug cases that I prosecuted, 90 percent or more, were  
20 all of people of color.

21           And despite the fact that I was working in the city of  
22 Boston and prosecuting cases out of the city of Boston where  
23 people of color only make up 53 percent of the city's  
24 population, 90 percent of the drug cases that were prosecuted,  
25 at least in my experience, were people of color.



1           That is a disparity that defies a reasonable explanation,  
2 especially when there's no reliable empirical data that  
3 suggests blacks and Latinos use drugs any more frequently than  
4 whites.

5           And so despite the spirit behind these mandatory minimum  
6 drug laws, there's nothing in my work as a prosecutor that  
7 suggests these laws had a deterrent effect.

8           For every individual that I prosecuted, there was someone  
9 else to be prosecuted.

10          For every drug sweep that I prosecuted, there was another  
11 sweep to be performed.

12          Yet the criminal conduct that led to these sweeps in the  
13 first place never changed.

14          And as a result, the people that I worked with in the  
15 community raised concerns about the nature of these drug  
16 sweeps and the nature of the sentences that some of the people  
17 who were caught up in those drug sweep, sweeps received.

18          And so now it's time for a smarter sentencing policy, one  
19 that deals with this issue as a public health issue as opposed  
20 to a criminal justice issue.

21          It's time for a smarter sentencing policy that looks at  
22 this scorched earth approach and says it doesn't work because  
23 it further exacerbates racial and economic disparities.

24          It's time for a sentencing disparity that entrusts the  
25 judiciary to faithfully administer not only punishment but

1 justice in the truest and fullest sense of the word.

2 It's time to eliminate mandatory minimum sentences related  
3 to drug offenses.

4 Thank you.

5 JUDGE LU: Thank you, Mr. Hall.

6 Ms. Frangules, whenever you're ready.

7 MS. FRANGULES: Yes, please.

8 My name is Maryanne Frangules.

9 As you know, I am the Executive Director of MOAR which is a  
10 statewide association of people in recovery, families and  
11 friends who are educating the public about the value of living  
12 in recovery.

13 I too am in long term recovery, which means that I haven't  
14 had a drink or a drug since 1981, and that gives me the energy  
15 to do my job, so that's a good thing.

16 But for today, we really want to emphasize that we'd like  
17 to see the mandatory minimums as is repealed.

18 You've heard the testimony from everyone here, and I would  
19 like to add to that that I see people who have been  
20 institutionalized through the prison system because they  
21 vegetate there, and they, you come out, you don't know another  
22 way to live.

23 What we do see that has hope and promise is Drug Courts  
24 which have accountability connected to it, which, and the  
25 other piece is rehab, recovery coaching.

1           And an example of an alternative sentencing program that is  
2 supported by this state is the Reflections Court Alternative  
3 Program that's down in the, New Bedford.

4           It provides 90 days of residential treatment, and 90, nine  
5 months of community based case management, and at the end of  
6 the second quarter of 2015, the completion rate of the  
7 resident, residential portion was 61.45 percent, and of the  
8 year long program, the completion rate was 61.3 percent.

9           Clients who didn't complete the full year who are in  
10 violation of probation, it's next determined by probation  
11 whether or not they are returned to incarceration or allowed  
12 to pursue further treatment.

13           There have been very few clients who have reoffended and  
14 picked up new charges.

15           All clients received education and gained knowledge and  
16 coping skills, and this is assistance to lead a life void of  
17 criminal behavior, criminal behavior.

18           And that's through high point treatment, and it is  
19 supported by the Bureau of Substance Abuse Services.

20           So that's an example of a way to cope without dope, and it  
21 gives you hope.

22           Thank you.

23           JUDGE LU: All right. Thank you, Ms. Frangules.

24           Do we have questions for Ms. Dougan or Mr. Harnais or Mr.  
25 Hall or Ms. Frangules?

1 Dean Mazzone from the Attorney General's Office.

2 MR. MAZZONE: Thank you, Mr. Chair.

3 Mr. Harnais, two if I may.

4 MR. HARNAIS: Sure.

5 MR. MAZZONE: And I don't want to monopolize you.

6 Number one, and Mr., Mr. Hall kind of talked about it as  
7 well, so maybe one or both of you can help, is the issue about  
8 intelligence of the mandatory minimums and un, what the DA's,  
9 doing, are unconstitutional.

10 MR. HARNAIS: Okay.

11 I was just unclear as to what exactly you were just saying.

12 MR. HARNAIS: They're, they're seeking a punishment not  
13 based on necessarily, they see someone that, two different  
14 people same charge, okay.

15 They're going to seek mandatory minimum on one and not the  
16 other.

17 Why --

18 MR. MAZZONE: Because intelligence they know has tagged on.

19 MR. HARNAIS: Because of things they can't prove --

20 MR. MAZZONE: I see.

21 MR. HARNAIS: -- so they won't dismiss that or they won't  
22 reduce it because we can't prove what we have here, but we've  
23 got him on this, so let's, let's go after him.

24 MR. MAZZONE: Right. We believe he's, we believe he's been  
25 involved --

1 MR. HARNAIS: Yes.

2 MR. MAZZONE: -- in X, Y, and Z, we don't know --

3 MR. HARNAIS: Yes.

4 MR. MAZZONE: -- just believe, and okay, we'll, we'll stick  
5 with the --

6 MR. HARNAIS: Exactly.

7 MR. MAZZONE: -- and that's what, and that's what you're  
8 saying is unconstitutional?

9 MR. HARNAIS: I believe it's unconstitutional --

10 MR. MAZZONE: Okay.

11 MR. HARNAIS: -- because they don't need to prove it, but  
12 they're going to punish him for it.

13 MR. MAZZONE: Punishment meaning the --

14 MR. HARNAIS: That they're not willing --

15 MR. MAZZONE: -- they're not going to break down --

16 MR. HARNAIS: Exactly.

17 MR. MAZZONE: -- which they would if they had no other  
18 knowledge --

19 MR. HARNAIS: Intel, yeah.

20 MR. MAZZONE: Okay. That's fine. Thank you.

21 MR. HARNAIS: Thank you.

22 MR. MAZZONE: For clearing that up.

23 MR. HARNAIS: Thank you.

24 MR. MAZZONE: And the second question I have and, and is  
25 you're, you know, you have a very important role as president

1 of the MBA --

2 MR. HARNAIS: Yes, thanks. I'm checking up on everybody,  
3 just want to know.

4 MR. MAZZONE: What, yeah.

5 What, what is, what is, I don't know if the MBA has a  
6 position.

7 Is, is the MBA comfortable or are you comfortable with the  
8 idea of a Judge having a non-reviewable discretion when it  
9 comes to, when it comes to delivering a sentence, like there's  
10 no issue of uniformity or, you know what --

11 MR. HARNAIS: Yeah.

12 MR. MAZZONE: -- I mean is that, you know --

13 MR. HARNAIS: I --

14 MR. MAZZONE: -- except for the statutory maximum is --

15 MR. HARNAIS: Yeah.

16 MR. MAZZONE: -- but put that aside, but other than that,  
17 are you comfortable every case is different so a Judge can  
18 issue a different sentence however he or she wants?

19 MR. HARNAIS: Well, I think there should be a combination of  
20 two. And I know Justice Gants brought up an opportunity that  
21 the Commonwealth would maybe be able to appeal a Judge's  
22 sentence or have it reviewed.

23 I, is the MBA accountable?

24 The MBA I guess my, my, the stance, the MBA stance would be  
25 that we want the Judges to do the right thing, and if the,

1 it's not be done, anything, then there has to be some  
2 accountability on, on Judges as well, in other words if, if  
3 the reason why we're here is because the mandatory sentence  
4 came into effect years ago because --

5 MR. MAZZONE: I know. That's why,

6 MR. HARNAIS: -- maybe things weren't being accountable.

7 MR. MAZZONE: I know. And you're, and you're, I appreciate  
8 your --

9 MR. HARNAIS: Yeah.

10 MR. MAZZONE: -- your, your keeping your eye on history.

11 MR. HARNAIS: Yeah.

12 MR. MAZZONE: Because that's why we have minimum --

13 MR. HARNAIS: That's why we have mandatory sentences.

14 MR. MAZZONE: Yeah. Yeah.

15 MR. HARNAIS: But, but I think society has to change and I  
16 think judiciaries change.

17 They see, I, they see what's going on out there. It's not a  
18 black and white, it's not a, Judges I think aren't in the  
19 position of anymore of we'll just call them balls and strikes.  
20 They have to deal with what's all around them. They have to  
21 deal what's going on in society.

22 If a Judge doesn't give the appropriate sentence, you know,  
23 they should, probably should be some appellate review, and I  
24 know Justice Gants --

25 MR. MAZZONE: Okay.

1 MR. HARNAIS: -- had indicated that.

2 And I don't, the MBA wouldn't be opposed to that.

3 What, we're just opposed to the fact that if you just bring  
4 down the basic what are you doing, you're having the  
5 legislature, with all due respect to legislatures here, you're  
6 applying a blanket law without knowing the slightest fact that  
7 occurred in that case.

8 Now, and I understand what the legislature has to do. It  
9 has to protect society.

10 But if that's the goal, look at what you're doing at the  
11 end. You're opening the door, and, and I, because I have a  
12 limited vocabulary, I tell very blunt stories.

13 Picture a gentleman serving 15 years mandatory, picture him  
14 fifteen years and one day, he gets out.

15 Picture what he had to live through 15 years, the whole  
16 rules and rules that are, happen in prison.

17 You don't want to bump into him on a bus, do you?

18 Because you know what, he lives in a whole different world,  
19 and now he's back out in the real world, and he doesn't, may  
20 not have the ability to educate himself as to how it's out  
21 there.

22 And that's what you do with the mandatory sentences.

23 There's, there's, as people like to say, you know, people  
24 don't want people to go to jail, it's, no. It's not the jail  
25 issue that concerns me.



1           It's the end result because there is no way to earn your,  
2 everybody has to earn their way some places. You're not  
3 letting them earn their way out the door.

4           In fact, you're not even checking if they got any sort of  
5 help while they were in jail. You're just saying at the end of  
6 15 years, they're out the door.

7           So where's the responsibility of people that care and say,  
8 you know what, we not only have to protect, protect the  
9 community, the community, we have to make sure that they're  
10 able to earn their way out the door by actions they do in, and  
11 programs they were involved in while they were in prisons.

12           You take that incentive out of them. You take it completely  
13 out of them because they, it doesn't matter what they do.

14           I get myself better, I go through treatment, or I sit in my  
15 cell and deal with the other inmate and we talk about how we  
16 can score down the road.

17           It doesn't matter. I'm going to get out in ten years, I'm  
18 going to get out in five years, I'm getting out in two years.

19           You need to give people incentives, number one.

20           And number two, you need to be worried about what happens  
21 when they get out.

22           It's very easy to put people in jail. I can tell you 15  
23 years ago I would have told you, yeah, drug addicts, put them  
24 in jail.

25           It's not like that. It's really not.

1           Think about what you're doing. Think about the end result.  
2           And that's the most important thing because the end result  
3           affects them and us. So.

4           JUDGE LU: thank you, Attorney Harnais.

5           I, I, I do want to welcome Charles Anderson from the  
6           Department of Correction, and Edward Lynch from the Cape and  
7           Islands District Attorney's Office.

8           Other questions of our panelists?

9           Peter Ettenberg from Worcester.

10          MR. ETTENBERG: Thank you.

11          This is I think directed towards Mr. Hall because you  
12          probably weren't here this morning.

13          We had I think seven District Attorneys, who together in, I  
14          think in force I think is the way they, they sat here, who  
15          said to us that they don't use mandatory minimums for  
16          leverage, and you came forward here and said when I was a  
17          District Attorney, I did it because I knew I had the leverage.

18          What do we say to them when they say they don't?

19          MR. HALL: I mean I think reasonable people can disagree.

20          But the reality is if you were to ask them about the number  
21          of plea bargains that happened, specifically on cases where a  
22          mandatory minimum case, offense was charged, what is the  
23          explanation for charging it in the first place if there is  
24          this discretion that exists throughout the prosecutorial  
25          process?

1           Because if it's not being used for leverage, why charge it,  
2 if it's ultimately going to be dismissed in exchange for a  
3 plea?

4           I'd be curious to hear what their answer is to that  
5 question.

6           MR. ETTENBERG: So would I.

7           Thank you.

8           MR. HARNAIS: If I could just address that, I think there  
9 was a prior testimony that I believe what, what you said was  
10 said in this one may conflict with what was said at the prior  
11 testimony in front of the, I believe in front of the Judiciary  
12 Committee, that it was mentioned that it was used as a tool.

13           The example I said with regards to intel was the exactly  
14 said at the prior committee meeting.

15           So I will, will tell you I think there might be discrepancy  
16 there.

17           JUDGE LU: Okay. Other questions for the panelists?

18           Mr. Rosenthal?

19           MR. ROSENTHAL: Yes, thank you.

20           I have, I don't know if, if, especially Barb knows an  
21 answer to this, and we have a wonderful staff, and I happened  
22 to ask them this question.

23           But some reforms were made, and I think it's 2010, on the  
24 House of Correction mandatories for drugs, and some, I, I,  
25 some people were released on parole at halftime that would not

1 otherwise have been released.

2 Am I correct on that?

3 And the --

4 MS. DOUGAN: The 2010 reforms --

5 MR. ROSENTHAL: The first --

6 MS. DOUGAN: -- yes.

7 MR. ROSENTHAL: -- the first time there was any kind of  
8 reform on sentencing --

9 MS. DOUGAN: Yes.

10 MR. ROSENTHAL: -- in my lifetime.

11 MS. DOUGAN: Those who were sentenced to a county House of  
12 Correction became eligible for parole the same as other  
13 country prisoners except with certain aggravating factors.

14 MR. ROSENTHAL: So the real question I'm trying to get at is  
15 whether you have any idea whether there's any data on their  
16 recidivism rates subsequent to being paroled?

17 I know that's been studied in other jurisdictions, New  
18 York, California, and the data shows that these early releases  
19 do not lead to extra recidivism.

20 But do you know of anything that's been studied in  
21 Massachusetts about the people who were paroled at that time  
22 about recidivism rates?

23 MS. DOUGAN: No. I think though the more significant reforms  
24 were certainly in 2012 where we did see --

25 MR. ROSENTHAL: Right.

1 MS. DOUGAN: -- folks in state prison being, becoming  
2 eligible either for the first time ever or at an earlier date.

3 I don't think we've had time to see what the data --

4 MR. ROSENTHAL: Right.

5 MS. DOUGAN: -- is on that.

6 MR. ROSENTHAL: That's why I went back --

7 MS. DOUGAN: But I would also do the same shout out for the,  
8 the, the reports from the research staff of the Sentencing  
9 Commission.

10 I can't tell you how excited I get when a new one comes  
11 out. I mean they're actually stellar.

12 And I think they actually, let me run with Marty's comment,  
13 provide a really strong rebuttal to what the District  
14 Attorneys said this morning which was that, oh, you know, it's  
15 only the bad guys that we put away, the, the violent gang  
16 bangers.

17 Your excellent studies have consistently shown for over 20  
18 years that over half of those who are sentenced to mandatory  
19 minimums for drugs fall into the two lowest criminal history  
20 categories out of five.

21 And I mean I always say to folks, don't take it from me,  
22 take it from the Sentencing Commission reports, that that is  
23 very much inconsistent with the claim of the District  
24 Attorneys that only the, the worst of the worst get mandatory  
25 minimums.

1           The data, your data, shows that many of the folks, over  
2 half, are in the two lowest level categories.

3           MR. ROSENTHAL: Mr. Chair, one other question if I could,  
4 hopefully to Rashaan.

5           You made some reference to the deterrence issue, and we  
6 heard from the DAs earlier at least one of them that they  
7 thought the mandatories provided certainty which would, would,  
8 be a deterrent.

9           And I have always felt the mandatories provide no certainty  
10 and that it's only certainty of arrests that would deter  
11 people anyway.

12           And so my question is, what do you think about the  
13 certainty of mandatories as far as potential criminals and so  
14 forth goes?

15           Do, do you think they provide any certainty that, that  
16 helps prevent crime?

17           MR. HALL: It, I can't get into the mind of, of individuals  
18 who are involved with any level of drug usage or distribution.

19           But I know that given the prominence of mandatory minimum  
20 sentences and how well, the ubiquity of mandatory minimum  
21 sentences, and how well known they are, for there to be this  
22 many people in the criminal justice system charged with drug  
23 offenses that carry a mandatory minimum sentence, I say that  
24 the deterrent effect has failed.

25           MR. ROSENTHAL: Okay.

1 MS. FRANGULES: And, Marty, if I can just add in, I mean  
2 what our clients, our, I'm not going to say I, get into the  
3 mind of most drug dealers, but I know a lot of them, the ones  
4 who have been caught obviously, but not a single person has  
5 ever said to us, you know, I was perusing Mass General Laws  
6 Chapter 260 or 94C, and I looked at what the mandatory minimum  
7 is for this offense and compared that to the odds that I would  
8 be incarcerated in such and such a county, what my stance  
9 would be.

10 People aren't thinking like that.

11 And the folks who are struggling with, you know, substance  
12 abuse or addiction, what they tell us is I never even heard of  
13 a mandatory minimum sentence. I just wanted to know where I  
14 could get my Percocet, where I could get my Oxy, where I  
15 could, you know, get my heroin.

16 So in terms of deterrent effects, I think, I mean we  
17 wouldn't be here today, as Bob said, if, if it worked.

18 But we, I've never talked to anybody, which doesn't mean  
19 they're not out there, but who has taken that sort of rational  
20 approach, a cost benefit analysis to what their actions are  
21 going to be and what the possible punishment is.

22 Most, most people had never even heard of mandatory  
23 minimums until they went to Court.

24 MR. ROSENTHAL: Thank you.

25 JUDGE LU: Okay.

1 All right. So I want to thank Barbara Dougan from Families  
2 Against Mandatory Minimums, Robert Harnais, President of the  
3 Massachusetts Bar Association, Rahsaan Hall of the Racial  
4 Justice Program at the ACLU of Massachusetts, and Maryanne  
5 Frangules of the Mass Organization for Addiction Recovery.

6 Thank you so much.

7 MS. DOUGAN: Thank you.

8 JUDGE LU: Have a good day.

9 MR. HALL: Thank you, your Honor.

10 JUDGE LU: All right. We're going to call on Pamela,  
11 Attorney Pamela Hunt.

12 Please have a seat and make yourself comfortable, Ms. Hunt.  
13 And --

14 MS. HUNT: Thank you, your Honor.

15 JUDGE LU: -- if you pull that microphone up --

16 MS. HUNT: I know, I'm short.

17 JUDGE LU: -- and talk right into it, please.

18 And please spell your name for the stenographer if you  
19 would.

20 MS. HUNT: Okay.

21 P-A-M-E-L-A, H-U-N-T.

22 Not, not hard.

23 JUDGE LU: And Ms., Ms. Hunt is a former member of the  
24 Massachusetts Sentencing Commission.

25 MS. HUNT: I can't believe it's been 20 years.



1 But everyone seems to think so.

2 Yes, and I'm proud of the fruitful and rewarding work we  
3 did, and I see you're facing many of the same issues that we,  
4 we faced.

5 In the limited time I think since it's, it's hard to sit  
6 through these hearings, I, I know, we, we had several.

7 I want to focus just on a couple of points that I, I think  
8 are important and critical to a comprehensive, effective and  
9 fair sentencing system.

10 One thing that we now know that we did not know in the past  
11 when we, we spent a huge amount of time trying to rank crimes,  
12 which crimes were the most serious, take a look at the  
13 different criminal history, and we never agreed on the numbers  
14 in those grid boxes. We agreed to send the whole package to  
15 the legislature, but we never agreed on all the specifics, and  
16 it's hard to do that.

17 But now we have learned that if the legislature enacts  
18 guidelines, saying here is a grid, here are guidelines, here  
19 are ranges, then according to what the Supreme Court has ruled  
20 in the Washington Case, Blakely and I think Cunningham case  
21 out of California, and certainly Booker on the federal side,  
22 that the, whatever number is in that grid box becomes the new  
23 statutory maximum.

24 So if it's a 20 year felony and the grid says seven to ten  
25 years, ten is the new maximum for that crime.

1           And to exceed that maximum, the defendant is entitled to  
2 have the aggravating factor found by a jury beyond a  
3 reasonable doubt. That's part of his Sixth Amendment Right.

4           We didn't know that at the time, and I don't think anyone  
5 knew that at the time.

6           So it was probably really good that the legislature did not  
7 enact what we, what we proposed.

8           The, the other difficulty I think with enacting and in, in  
9 dealing with, with a grid that is basically going to require a  
10 jury trial to exceed, I mean it's only upward departures that  
11 matter because that's where the constitutional right is, but  
12 we're a common law state. We have common law crimes.

13           Most other states that have guideline systems have very,  
14 have, are code states, and they have, they have very, very  
15 restrictive and narrow definitions of a, I mean they may have  
16 20 levels of burglary, or they may have a lot of levels, and  
17 it's easier for them to, you know, have, have an, a particular  
18 range of crimes, and then if they want to exceed that for grid  
19 box, then offer the, the jury trial option.

20           But we're wide open because our crimes can be committed in  
21 a variety of ways.

22           So it, it's just really different.

23           The other problem is what do you, if you have an enacted,  
24 legislative enacted system, then you have room for exceeding  
25 or going under whatever is in the grid box.

1           We came up with six which we called nonexclusive factors  
2 for departures both ways.

3           Well, the, the difficulty then becomes how are you going  
4 to, what are going to be the appropriate departure factors for  
5 this, for the Commission to come up with?

6           It, six are certainly not going to, would never be enough.

7           And then constitutionally, it may be a question of whether  
8 that aggravating factor that would have to go to a jury would  
9 have to be pled in the indictment or complaint which creates a  
10 whole other problem and I think for prosecutors who may not  
11 know the existence of some of these aggravating factors at the  
12 time.

13           So the, the point is you can create a guideline system that  
14 is comprehensive, that is, that is thorough, that is  
15 thoughtful, but in a, but don't submit it to the legislature.

16           Make, make it be voluntary, make judicial sentencing  
17 discretionary with guidance, and that I, I believe is the  
18 purpose of the Commission.

19           So, and I think it also gives Judges the option to  
20 experiment in appropriate cases.

21           And to the degree you may want to require them to put their  
22 reasons in writing for departure, fine.

23           I mean there's a lot of things that you can do without  
24 submitting a grid to the legislature.

25           And I think it doesn't mean that you shouldn't take a look

1 at all of the other parts of our criminal justice system  
2 including not just the drug mandatories, all the mandatories,  
3 except in my view murder should stay mandatory.

4 But you know, they're, we as a Commission didn't, we  
5 recommended some changes to the drug mandatories, but we did  
6 not take on the gun cases, the multiple offense OUIS, and  
7 since then, there's been a prolific, proliferation of more and  
8 more and more mandatory sentences for other kinds of crimes.

9 So I think that's within your purview to think about. And I  
10 think you, you, it's a hard job because you don't get a very  
11 good reception at the legislature if you want to deal with  
12 some of those issues, although there have been some changes  
13 recently that have been helpful.

14 I chaired the Intermediate Sanctions Committee of, of the  
15 Commission in its last iteration. And we initially proposed, I  
16 think probably for the first time in, probably first in the  
17 nation, proposed putting within each grid box an intermediate  
18 sanction option, and that was great, but it wasn't, clearly we  
19 now know it wasn't enough.

20 We envisioned much more than what has happened mostly  
21 because of resources, and, and it isn't, certainly wasn't  
22 probation's fault or community correction's fault or anybody's  
23 fault.

24 It's just there wasn't enough there.

25 And there wasn't a good enough mentality about thinking

1 about all different kinds of sentencing options that you can  
2 bring to the floor, outline them, you know, make sure the  
3 Judges and prosecutors and defense attorneys and the public  
4 and victims understand all the different things that can be  
5 done, and why they might be good for a particular individual.

6 We also, since the last failed attempt at, at guidelines in  
7 the legislature, Mike Traft, who was on the Commission with  
8 me, a defense attorney, and I and probation and parole and  
9 through the Mass Bar Association, we were invited to try to  
10 come up with a system of post-incarceration supervision.

11 We've heard today and we've heard for years that mandatory  
12 post-incarceration supervision is essential.

13 We also know unfortunately that most Judges say they do it  
14 when they give a from and after probation sentence after a  
15 prison sentence.

16 And that takes care of the problem with X to X and a day,  
17 or the concern with some Judges who I've heard tell me is that  
18 they would rather keep control because they don't trust the  
19 Parole Board.

20 Well, we're one of the few jurisdictions that parole and  
21 probation are in different branches of government.

22 And in most states, all of this is handled in a single  
23 entity.

24 Now, that is a political question that is not easy to deal  
25 with, but that, it's a reality.

1           So we have to, I think, or you, I suggest you have to come  
2 up with a system that offers enough options at the front end  
3 and offers some required mandatory in some way supervision at  
4 the back end.

5           And the, the system that we sort of came up with, it was  
6 not ideal, would basically encourage inmates to earn parole,  
7 and of course that means they have to have programs available  
8 to them in, in the jails, the Houses of Correction and, and  
9 the prisons.

10           But if they earn parole and then succeed on parole, the so-  
11 called mandatory post-supervision piece would be dismissed. It  
12 would, they would be rewarded.

13           You, you give them the carrot as well as the stick of  
14 supervision.

15           And so that was really the critical piece, and also that  
16 these periods of post-incarceration supervision not be  
17 unbearably long, get rid of the homegrin kind of issue where  
18 if you're surrendered on a suspended sentence, you go for the  
19 whole time.

20           That's something that I think the Commission can certainly  
21 address.

22           But I think we find that whatever, as long as the, the risk  
23 needs are assessed at the time of release, that's when you  
24 have to impose this, the conditions that a person needs.

25           The difficulty with a Judge who wants to do from and after,

1 a prison sentence and from and after probation, is the fact  
2 that you have no idea who that individual is going to be when  
3 he or she gets out and what needs they're going to have or  
4 what they may have done while they are incarcerated to address  
5 some of the concerns that, that put them in the system in the  
6 first place.

7 So the other question is what do you do with violations?

8 Some people say we don't want parole to do it because  
9 there's less due process than a probation surrender in Court.

10 Well, part of the effectiveness of a, of a, of a system is  
11 the ability to act swiftly and promptly but not severely.

12 You know, the violation can go quickly and you're in for a  
13 short period of time because you're still going to have to get  
14 out and you're going to still have these same issues when  
15 you're on the street.

16 But these kinds of, these kinds of issues, you know, it's  
17 hard.

18 Everyone thinks post incarceration supervision is a good  
19 thing.

20 But how's it going to be done? Who's going to do it? How  
21 are you going to assess what's really needed so we're not  
22 wasting our resources, so we're not having somebody on  
23 probation and parole at the same time and paying fees to both?

24 And the other thing that I think is, is sort of important  
25 to a system that I, I urge you to consider is that if people

1       succeed in reintegration and reentry into the community, maybe  
2       there's a way to ameliorate or, or discharge some of the  
3       financial and collateral consequence obligations that we put  
4       on corrected offenders which are, convicted offenders that,  
5       that really, really make reentry difficult.

6           I would never suggest that we offer restitution relief or  
7       the victim witness fee relief, because those are, those are  
8       important parts of, of our system, but everything else and all  
9       the other collateral consequences I think you can take a look  
10      at to see what else is out there that might be, if it's  
11      necessary for someone to successfully re-enter, to get a job,  
12      get housing, get mental and, and mental health and, and  
13      medical care and a, and a job, see what the CORI law has to  
14      say.

15           I mean there are so many pieces to a comprehensive scheme  
16      that we never got a chance to look at, and I think the time is  
17      really, really there for you to look at.

18           And I urge you to, to really look at all the parts, pre,  
19      post, and obviously in Court sentencing.

20           And, and take a look at the other, at the other  
21      mandatories.

22           You might, you might consider if you use a grid system even  
23      as an advisory system, you might want to say in calculating  
24      someone's criminal history, you might want to say if a crime  
25      is more than ten years old, it counts less.



1 Or if the crime was committed when someone was under what  
2 we now know was some serious adolescent brain development  
3 issues, that might count less.

4 Those are the kinds of things that, that you can be  
5 creative about.

6 But I think examining the impact and extent of the economic  
7 and other we know are civil, but heavily burdensome sanctions  
8 that go along with a lot of convictions.

9 So I've probably taken too long, and I am sorry, but I have  
10 been living this this many years.

11 So thank you very much.

12 JUDGE LU: Thank you, Ms. Hunt.

13 So do we have questions for Pam Hunt, former member of the  
14 Massachusetts Sentencing Commission?

15 JUDGE HEFFERNAN: I don't have a question, but I have a  
16 thank you because I lived through that with you as well and  
17 you were fabulous.

18 So you're, it's so interesting to hear you talk now and  
19 hear what we're doing now and kind of, it's really, I've been  
20 taking a lot of notes so thank you very much --

21 MS. HUNT: Well, I would think any, I appreciate the, the  
22 deliberations of the Commission are, must be not open to the  
23 public, but to the degree either I or any of my, of my  
24 colleagues from the previous Commission would be more than  
25 willing to answer any questions or, or assist you in whatever

1 way we could.

2 JUDGE HEFFERNAN: Thank you.

3 JUDGE LU: Mr. Rosenthal?

4 MS. HUNT: All right.

5 MR. ROSENTHAL: Yes.

6 I'm very happy to hear you're, you're closing comments  
7 about looking at all parts of the system --

8 MS. HUNT: Right.

9 MR. ROSENTHAL: -- including pre-sentencing and so forth.

10 But the question I want to ask is getting back to the issue  
11 of voluntary guidelines, and to what extent. I'm quite  
12 troubled by that idea because I don't think voluntary  
13 guidelines will make a dent in the smart on crime issue and of  
14 the mass incarceration issues that I'm concerned about.

15 And the question is, aren't there states that have  
16 presumptive or binding guidelines with departure processes  
17 since Blakely?

18 MS. HUNT: Yes. But I, I think --

19 MR. ROSENTHAL: And I guess I wasn't sure --

20 MS. HUNT: Yeah. I think my point --

21 MR. ROSENTHAL: -- if you were tying that to Blake --

22 MS. HUNT: -- is that they're, the way they categorize their  
23 crimes is so very different, and their grids are like felony  
24 A, felony B, felony C, felony D. And it's just very different  
25 from our common law crimes which are wide open.

1           And I, and I frankly would never suggest that you recommend  
2 changing that.

3           MR. ROSENTHAL: I agree with that.

4           MS. HUNT: And I, I think what they might other, might also  
5 say in other jurisdictions is that, you know, these second  
6 trials or the, the jury having to decide the existence of  
7 aggravating factors is not a problem because most cases are  
8 resolved by plea, and so it's really not that burdensome on  
9 the system.

10           But they have in the elements of all their crimes  
11 aggravating factors. That's sort of the way they, it's just a  
12 completely different system in most places than we have.

13           MR. ROSENTHAL: Okay. Well, thank you.

14           MS. HUNT: Okay.

15           JUDGE LU: All right. Thank you, Ms. Hunt.

16           MS. HUNT: Sure.

17           JUDGE LU: Thank you so much for joining us and giving us  
18 the benefit of your perspective.

19           MS. HUNT: Okay.

20           JUDGE LU: All right. So I'm going to call on Dorothy  
21 Weitzman.

22           All right Good afternoon.

23           MS. WEITZMAN: Good afternoon.

24           JUDGE LU: Have a seat and make yourself comfortable.

25           MS. WEITZMAN: Thank you.

1 JUDGE LU: Please tell us your name and spell your name for  
2 the stenographer, please.

3 MS. WEITZMAN: Dorothy Weitzman, it's W-E-I-T-Z-M-A-N.

4 JUDGE LU: And your sign in here says that you represent  
5 various groups. Maybe you want to tell us about some of that  
6 so that --

7 MS. WEITZMAN: All right.

8 JUDGE LU: -- we get an idea.

9 MS. WEITZMAN: I will.

10 Okay. Thank you.

11 I live in Newton, Massachusetts, and I have been a member  
12 of something called the Middlesex County Prison Coordinating  
13 Committee.

14 JUDGE LU: I'm sorry. What's the name of it?

15 MS. WEITZMAN: It was the Middlesex County Prison  
16 Coordinating Committee, concerned itself with Billerica House  
17 of Correction mainly.

18 It's now part of the Concord Prison Outreach, and I'm  
19 involved in it still, offering volunteer services as much as I  
20 can to the jail and to the HOC in Billerica.

21 And I'm also a social worker, and I'm active in the  
22 criminal justice part of the National Association of Social  
23 Workers.

24 And I'm also a member, and have been, of the Criminal  
25 Justice Policy Coalition.

1           And I'm not speaking on any of their behalf but I, I think  
2           that I've, I am in consonance with their positions what I've  
3           heard from them today, and the first group didn't testify and  
4           isn't as active.

5           I've been active for 20 years really.

6           The first time I testified on this was when the Sentencing  
7           Commission's proposals were here, and we had the idea that the  
8           Speaker of the House Flaherty would want to do away with  
9           mandatory minimums as I remember it.

10          And I saw then the erratic, what I considered irrational  
11          aspects, and I still do, of many, of any of the mandatory  
12          minimums.

13          Like I remember learning that if somebody, and it might  
14          have been a real case down on the Cape, someone had a, a gun  
15          in their car that they didn't know was in their car.

16          Okay. So these things then devolved to the Police. What are  
17          they, are they going to charge, all the different problems.

18          And with women being brought, brought into the criminal  
19          justice system and being tried and convicted on drug charges  
20          and getting worse, worse convictions than somebody else that  
21          was really doing the dealing or selling in their house.

22          These kinds of things have seemed unjust, irrational, and  
23          not right to me and I felt that we really should not have  
24          these mandatory minimums in place here in our state.

25          And I hope we will be considering them, and you will be

1 recommending their, their repeal and particularly in the area  
2 of drugs.

3 I wanted to say a few things about the general context and,  
4 and to urge you, I've been sitting here hearing people  
5 bringing up a lot of the issues that are out there in criminal  
6 justice now.

7 And many of us, and you may yourselves feel that the system  
8 really is out of hand in a serious way, that we've had an  
9 escalation in incarceration that shouldn't be maintained, that  
10 shouldn't have gotten as high as it is, and that there's many  
11 things that, that need to be changed.

12 And so you're being asked to consider things that you may  
13 not have thought you would be considering, and I hoped you  
14 might hear me out a little bit on some of the things I see.

15 I think right now we have a wake up period. A lot of us  
16 have been learning, I've been learning for 20 years, but this  
17 is a wake up period now.

18 I've been learning things I did not know before that are  
19 out there in the system, and I hope you are all learning them  
20 and you're learning them today and many, if you will learn and  
21 come to grips with them on your work on this.

22 I feel like what we've got now, we've got some of the  
23 things we've learned.

24 For example. We've got prisoners and ex-prisoners active in  
25 a way they never were before.

1 I would never have known, it wouldn't have been on the  
2 agenda, to repeal the, the motor vehicle collateral damage  
3 issue if it weren't for EPOCA and groups of ex-prisoners  
4 that, that have worked.

5 And we've been hearing and learning things that, by the,  
6 from the people who were affected.

7 Social workers I know brought to my attention and others  
8 and we created a Massachusetts Bail Fund. We did not know, I  
9 did not know the numbers of people who are being held in jail,  
10 the jail population's been going up. We have too many people  
11 who are poor, who are, aren't able to meet bail, and people  
12 who can meet bail on the same charges are getting out.

13 There's an inequity, income inequity problem that's extreme  
14 that we have that we should face up to.

15 I wasn't facing up to it. You may not be as aware as, as  
16 you might become on it. I hope you will consider and, and deal  
17 with this.

18 On the national front, we, we started to learn things from  
19 Ferguson. I didn't know about the fees. There are too many  
20 fees apparently, like bail, that low income people are faced  
21 with because they got caught up in the criminal justice  
22 system, they did something wrong.

23 They, they however are getting out of prison, getting out  
24 of jail, being served supposedly by our criminal justice  
25 system but facing fees for their parole, for their probation,

1 and that's putting barriers in their, their recovery as  
2 someone just now said.

3 And I don't know whether Sentencing Commission guidelines  
4 and whatever you work on can make recommendations in that  
5 area.

6 But we don't know much about it. We don't have the facts  
7 out there in the public right now.

8 I have hope that we could start learning how many fees are  
9 they, how much are they costing, who's paying them, who's  
10 getting the funds?

11 These are things that are very distressing to learn in  
12 Massachusetts that this is the case.

13 On another national area, we, we started to face up to  
14 solitary confinement, that again it's taken off in a way  
15 that's not helpful.

16 People, prisoners, inmates, Correctional Officers are  
17 suffering from having to do, implement this solitary  
18 confinement policy.

19 They should reverse that.

20 So there's too many things that are wrong with the system.

21 So then we ask what about all the good people that are in  
22 the system that are implementing it? The District Attorneys,  
23 the Police, the Correctional Officers, the people who are  
24 Judges?

25 How many of them are, are kind of caught up in the system,



1 used to what's going on, thinking it's okay?

2 I hope you are all, start to think, we'll try to think  
3 differently, we'll take another look at what we've been doing,  
4 we'll start to try to reverse the patterns that have gotten in  
5 place that we've gotten used to and we didn't realize that  
6 they were as unjust, having as many bad consequences as they  
7 did have.

8 And I think that's hard, and it's hard for me to see good,  
9 good hard working people who say they think they've done well  
10 with the mandatory minimums.

11 But plea bargaining, I didn't know how much plea bargaining  
12 was playing a role, how many cases don't go to Court.

13 There's a whole lot of dysfunctional things out there.

14 And I hope you will really be part of changing, of making  
15 the criminal justice reform that many of us have been working  
16 on bills, there's many bills we want changed.

17 We also think you can play a role, and that's why I came  
18 today and why I'm saying what I'm saying now.

19 Thank you.

20 JUDGE LU: Thank you, Ms. Weitzman.

21 Any questions for Ms. Weitzman?

22 MS. WEITZMAN: Thank you very much.

23 JUDGE HEFFERNAN: Thank you.

24 JUDGE LU: Thank you so much. Have a great day.

25 MS. WEITZMAN: Thanks.

1 JUDGE LU: So is there anyone we've missed or that wants to  
2 say anything as the, as we finish up the Commission Hearing?

3 Okay. Nobody is answering.

4 You know what, I am going to express an opinion here, and  
5 that is that the Sentencing Commission's staff is truly the  
6 best that government has to offer.

7 MR. ROSENTHAL: It's true.

8 JUDGE HEFFERNAN: And the Trial Court Transcription Office  
9 as well.

10 Thank you so much.

11 Folks outside of state government do not know all that the  
12 Sentencing Commission staff does. It has a lot more to do, it  
13 has a lot, it has to do with a lot more than just sentencing  
14 data, and we're very grateful to them for all of their  
15 incredibly hard work.

16 Is there any further, anything else that any member of the  
17 Commission wishes to say?

18 MR. ROSENTHAL: I may have some more questions.

19 No, just kidding.

20 JUDGE LU: Is there a motion to adjourn the public hearing?

21 MR. ROSENTHAL: So moved.

22 Motion to adjourn.

23 JUDGE LU: Seconded?

24 JUDGE HEFFERNAN: Second.

25 JUDGE LU: All in favor say aye?

1 THE COMMISSION: Aye.

2 JUDGE LU: Opposed?

3 The public hearing is adjourned.

4 Thank you everybody.

5 JUDGE HEFFERNAN: Thank you very much.

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25 (2:38 p.m.)

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