



Massachusetts Sentencing Commission

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MASSACHUSETTS SENTENCING COMMISSION

WRITTEN TESTIMONY

**RECEIVED THROUGH NOVEMBER 24,
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**Massachusetts Sentencing Commission – Public Hearing
November 18, 2015**

**Testimony of Barbara J. Dougan
Families Against Mandatory Minimums**

Chairman Lu and members of the Commission, thank you for this opportunity to testify on critical sentencing issues facing the Commonwealth. Families Against Mandatory Minimums (FAMM) is a nonpartisan, nonprofit organization that works at the state and federal levels to repeal mandatory minimum sentencing laws. In Massachusetts, we focus exclusively on mandatory minimum sentences for drug offenses. We take no position on the decriminalization or legalization of drugs. Instead, FAMM believes that sentences for drug offenses should be individualized, proportionate and sufficient to impose fair punishment while also protecting public safety. Public safety is enhanced by getting users and addicts into treatment, which reduces the demand for drugs.

FAMM urges this Commission to recommend that the Legislature pass and the Governor sign into law two bills, H.1620/S.786, which would repeal mandatory minimum sentences for drug offenses. Massachusetts has had over 30 years to see that mandatory minimums fail to curb either drug abuse or the sale of drugs. In large part, this is because mandatory minimums prevent the criminal justice system from confronting the root problem – drug addiction. They have also failed to fulfill the basic purposes of criminal sentencing by using drug weights as a crude proxy for culpability, regardless of the defendant's role in the offense and regardless of whether a drug offender struggles with substance abuse. The rigid sentencing laws enacted in the 1980s clearly are not the disincentive that lawmakers thought they would be.

Mandatory minimums prevent drug treatment.

Massachusetts is in the midst of an opioid crisis. We are all aware of the tragic body count: More than 1,200 people are believed to have died of overdoses in 2014. As of June 2015, up to an estimated 700 more have died. We also know that opioid addiction is an "equal opportunity" disease, as it affects all ages, races, economic levels and geographic areas. Thus, bold action is needed for Massachusetts to effectively battle this tidal wave of addiction. There are many reasons why mandatory minimum sentences should be repealed, but surely the most urgent one is that they prevent judges from sending addicts and substance abusers to treatment or to evidence-based programs shown to reduce recidivism. In times of crisis, it is tempting to retreat to the familiar. But we can no longer justify failed policies that preclude drug treatment.

It is also tempting to imagine that drug dealers and drug addicts are two distinct groups, in order to justify keeping mandatory minimums for drug dealers. But in reality, some dealers are addicts; some addicts are dealers. For some drug offenders, selling drugs is their occupation. But there are

many low-level players in the drug trade who sell drugs, or help someone else sell drugs, to earn the money they need to support their addictions. Some addicts may be able to work a regular job, at least until their lives start to deteriorate. But then they start to steal or sell their bodies for money and drugs or, the most direct route of all, sell drugs themselves. Threats of long prison sentences rarely overcome an addict's physiological need for drugs. Instead, effective treatment and use of evidence-based programs that reduce relapse and recidivism are needed.

Mandatory minimum sentences prevent the courts from deciding who deserves punishment, who needs treatment, and who needs a combination of both. Instead, everyone goes to prison, which fails to address any underlying addiction. State corrections officials estimate that about 80% of all prisoners struggle with substance abuse. Undoubtedly, many of those sentenced to mandatory minimums are among that 80%. They go in as addicts, they come out as addicts – and the cycle continues.

Massachusetts offers a wide array of alternatives to incarceration that hold offenders accountable for their behavior through intensive treatment regimens, restrictions on their freedom, behavioral therapy and drug testing. In other words, a drug offender doesn't get off easy if ordered to one of these programs instead of being sent to prison. Indeed, it may be easier for an offender just to sit in a prison cell for several years rather than to take personal responsibility for his or her situation. Some programs are run by the state, such as the Office of Probation's 18 community corrections centers. Some are private programs that are funded by the Dept. of Public Health, insurance benefits or direct payments by participants. They generally coordinate their services with a drug court or Probation Officer, who can impose sanctions – including incarceration – for noncompliance.

Mandatory minimums fail to fulfill the legitimate goals of sentencing.

Under Massachusetts law, punishment in a criminal case is intended to promote deterrence, isolation and incapacitation, retribution and moral reinforcement, and reformation.¹ Reformation has been equated with rehabilitation.²

- Deterrence. If mandatory minimum sentences deterred drug offenses, we would have seen the payoff after more than 30 years. As previously stated, addicts rarely are deterred by the threat of prison. For other drug offenders, for every low level dealer who goes to prison, another steps up to take his place. Unlike crimes that target a person or entity, drug crimes are part of a global money-making enterprise. This is why our focus on the supply side of the drug trade has been a failure.
- Isolation and incapacitation. Prison sentences of any kind clearly isolate offenders from the rest of the community and, for the most part, sideline them from committing more crimes. But those two factors must be limited at the point when they become counter-productive and contrary to public safety. Drug offenders often serve disproportionately

¹ *Cepulonis v. Commonwealth*, 384 Mass. 495, 499 (1981).

² *Commonwealth v. O'Neal*, 369 Mass. 242, 251 n.11 (1975).

long sentences in relation to the seriousness of their crimes, even when compared to other mandatory minimums.³ Nonviolent offenders spend years with those convicted of violent crimes. Low level offenders become educated about more serious criminal activity, learning the tricks of the trade. This consequence was noted by MassINC and Community Resources for Justice in their 2013 report on the state's criminal justice policies. They cited studies finding that "imprisoning drug offenders actually increases the likelihood that they will engage in further criminal conduct."⁴

- Retribution and moral reinforcement. Prison sentences that are based on the weight of the drugs fail to exact retribution because there is no proportionality between the drug offender's misconduct and his or her punishment. When the kingpin, the low level dealer and the "mule" are all held equally culpable, the goal is merely expediency, which is not a legitimate goal of punishment. Expediency also trumps justice when mandatory minimums are used to force guilty pleas. Guilty pleas in those cases are merely escape hatches to avoid harsh sentences, not acknowledgments of responsibility.

Mandatory minimums also fail to deliver moral reinforcement. The lesson being taught is muddled at best when nonviolent drug offenders serve longer sentences, have less access to parole and work release, and have less incentive to earn "good time" credits than those who may have committed crimes of violence.

- Reformation/rehabilitation. An addict rarely will be rehabilitated without drug treatment. Sentencing policies that actually prevent treatment utterly fail at rehabilitation. For drug offenders who are not substance abusers or addicts, the longer they are in prison, the more difficult it will be to re-establish a normal life in the outside world. As technology advances, their legitimate job skills lag further behind. Given the length of their sentences, they are often at the end of long waiting lists for educational and vocational classes, which could help them succeed upon release. The employment prospects for most will be grim. In addition, spouses and family members often move on, leaving them without a support system when released.

We are familiar with the claim that most drug offenders serving mandatory minimums are violent or dangerous. Certainly there are those who fit that description, who deserve long sentences. But for the past 20 years, the state Sentencing Commission has reported that over half of all drug offenders serving mandatory minimums are in the two lowest (out of five) criminal history groups. No legitimate goal of sentencing is served by punishing some defendants for what other defendants may have done. Indeed, that goes against the very grain of our system of justice.

³ For example, the mandatory minimum sentence for selling 200 grams of cocaine is 12 years, while the mandatory minimum for rape with the use of a firearm is 10 years.

⁴ B. Foreman and J. Larivee, *Crime, Cost, and Consequences: Is It Time to Get Smart on Crime?* (2013), available at http://www.massinc.org/~media/Files/Mass%20Inc/Research/Full%20Report%20PDF%20files/Crime_Cost_Consequences_MassINC_Final.ashx.

We are also familiar with the argument that the District Attorneys are in the best position to decide which drug offenders should be targeted and prosecuted. We agree. But deciding who to prosecute is different from deciding what that person's sentence should be, which is what mandatory minimums essentially allow prosecutors to do – and to do so behind closed doors. If mandatory minimums were repealed, the courts will be able to distinguish between drug offenders who are a danger to their communities and those who are not. They will also be able to identify those who need drug treatment and participation in alternative programs.

Given the lengthy maximum sentences that are possible for drug offenses – 15 to 20 years for most; 30 years for heroin trafficking – tough sentences can still be imposed on those who deserve them. For those who don't, they can be directed to treatment and evidence-based community corrections. The public, in turn, benefits from greater public safety and more effective use of public funds.

Eligibility for parole, earned good time and work release for those currently serving mandatory minimum sentences.

The 2012 reforms made many drug offenders who were then serving mandatory minimum sentences eligible for parole at an earlier date. But this change did not carry over for those sentenced under the new law. Given the prevalence of “and a day” sentences (for example, 8 years to 8 years and a day) imposed to mitigate the impact of lengthy mandatory minimums, too many drug offenders once again are not eligible for parole. They will not have the incentive to use productively their time behind bars and will leave prison without a reentry plan or supervision.

H.1620/S.786 would allow drug offenders currently serving mandatory minimums to be eligible for parole after serving half of the mandatory minimum for their offense. This approach builds on the 2012 reforms, which allowed drug offenders to see the Parole Board at an earlier date.

For drug offenders who are sentenced to a mandatory minimum under the new law, access to work release is available only on a case-by-case basis. They cannot earn “good time” credits through jobs, classes and training programs until they have completed their full mandatory minimum. Such a restriction prevents them from acquiring skills and knowledge that may lead to more successful re-entry. Given the current rates of recidivism, excluding drug offenders from these opportunities is an unconscionable approach to public safety.

In conclusion, we urge the Sentencing Commission to recommend that the Legislature pass and the Governor sign into law H.1620/S.786. Those bills would allow Massachusetts to address more effectively addiction and recidivism, allow the courts to craft sentences that are appropriate to the individual and the crime, and provide to drug offenders currently serving mandatory minimum sentences better access to the programs that will lead to greater success upon re-entry.

MASSACHUSETTS SENTENCING COMMISSION**Public Hearing**

Gardner Auditorium

November 18, 2015

**Oral Testimony by Beverly Williams on behalf of GBIO
In favor of Eliminating Mandatory Minimum Sentencing Related to Drug Offenses**

First off, I would like to thank the commission for having this public hearing and for the work the Commission has done to provide sentencing data to the Commonwealth. I hope that this public transparency, on both our parts, will lead to sentencing reform particularly around mandatory minimum sentencing related to drug offenses.

My name is Beverly Clark Williams; I am a resident of Dorchester, a recently retired Boston Public School teacher, a member of Bethel African Methodist Episcopal Church in Jamaica Plain and a citywide grassroots organizer and leader with the Greater Boston Interfaith Organization, better known as GBIO and today I speak on behalf of our organization.

Many people know GBIO for our successful advocacy and leadership work with getting affordable healthcare for uninsured Massachusetts's residents back in 2005, and when in 2012, GBIO successfully secured follow-up legislation that tackled the rising cost of healthcare, making Massachusetts the first state to put a stake in the ground around healthcare cost containment.

As a faith-based organization, GBIO supports policies that add value to life and communities. Subsequently, our moral compass has pointed us in the direction of our criminal justice system. In March of 2015, our delegation added criminal justice reform as one of our priorities for the next couple of years. What motivated us to begin advocating for criminal justice reform was what motivated our founding members back in 1996, a common desire to transform the historic divisions that exist, particularly around race and class issues. plus a growing concern over the counter-productive laws and policies that entangle people into a circular pipeline to jails and prison. From arrest through re-entry into society, people are getting stuck in our correctional system at a very high societal and tax cost. This is why we not only support repealing mandatory minimums, but also pretrial bail reform and eliminating collateral sanctions imposed by the Registry of Motor Vehicles.

The collected voices of our delegation was evident on May 12th when over 1700 GBIO people gathered at Trinity Church for a social action agenda moving on our elected officials, including the governor, mayor, attorney general, and the Speaker of the House, Speaker DeLeo, to do something about our ineffective sentencing policies. This led to the speaker committing to do a PEW study of our criminal justice system. The proposal was submitted

Testimony of Keaton Heckman

Good morning, ladies and gentlemen. My name is Keaton Heckman and I'm a recovering heroine addict. I am currently 8 months clean and living in a residential recovery home in Charlestown. I asked to be placed in treatment in 2011 when I was arrested and arraigned on a nonviolent drug case.

Instead of receiving help on my journey to recovery, I was sentenced to two years in jail. During my hearing, shortly after receiving these charges, a scare tactic was used by a district attorney to have me plead guilty in district court by threatening that if I did not take this plea I would be indicted and face a mandatory minimum sentence of three years in state prison.

For the short amount of time I was given to make the decision in the court house that day, I remember watching my family cry while it seemed the whole world was on stand-still waiting for my decision. Inside I was lonely and afraid, thinking about going back to the correctional facility even for 2 years.

I really thought I had a case, but I did not want to risk getting even more time in prison, so I stood up straight and plead guilty.

After serving this time, I was released with no shelter, job, or food, putting me in a situation where I felt I had to re-offend to get by. A month after my release, I was sentenced to another 6 month sentence and once again released to the same conditions, continuing this vicious cycle.

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

Comments of Bob Marra to Sentencing Commission – November 18, 2015

Good morning Mr./Madam Chair and members of the Sentencing Commission,

My name is Bob Marra. I live in Hyde Park. I have worked full time in health care for the past forty plus years. Now I am working full time on criminal justice including for Cambridge Health Alliance, where I assist our doctors and the Everett police find jobs, housing and other social services for people returning to the Everett-area from jails and prisons.

I am here to speak in support of eliminating the current Life Without Parole sentence (LWOP), as the great majority of the countries of Europe have done, and substituting the sentence of Life With the Possibility of Parole after 25 years.

This past Saturday at St. Susanna's Catholic Church in Dedham, 75 Catholics from across Massachusetts, including [REDACTED] a Dorchester mother with two murdered sons, met with Sister Helen Prejean, the author of *Dead Man Walking*, to discuss how to eliminate the death penalty in the United States.

We reflected on Pope Francis' words at the 2014 meeting of the International Association of Criminal Law, where he said: "a life sentence is a hidden death penalty." Most of our 6 hours together was inspired by Sister Prejean's favorite quote (by Italian Cardinal Fernando Filoni and others): "what the eyes don't see, the heart can't feel."

One thing our eyes don't want to see, except very superficially, is murder: why it is committed, whom it hurts and how we can stop it. [REDACTED] we heard personal testimony [REDACTED] about the humanity of people on death row, the suffering and willingness to forgive of victims' family members and the collective harm of trying to prevent violence by being violent.

Other examples of seeing more clearly are now being provided daily by the Marshall Report – a non-profit news organization focused on criminal justice and led by Bill Keller, a former editor of the New York Times. One of the most powerful of these eyewitness accounts described the recent visit to European prisons by a 30 person group, including the Governor of Connecticut, judges, district attorneys, ex-offenders, legislators, corrections officials, church leaders and others.

While there, they saw and heard about the European focus on rehabilitation, rather than retribution. And, they asked such questions as: can we be safe without life sentences, and can we discipline without using solitary confinement. The resounding answer from Europe: YES! The resounding answer from the United States at present: NO!

Hearings like this one are much appreciated for the opportunity they provide the Massachusetts public to see what they don't want to see, but must, if our feeling hearts are to connect to those of victim families, perpetrators and their families, and the greater community who helped create our violent society and could help prevent the violence we are all suffering with.

Testimony of Bonnie DiToro

November 18, 2015

My name is Bonnie DiToro. I received a 15-year mandatory minimum sentence for being in the next room while a drug deal took place. I'm here today to tell you my story with the hope that this nightmare never happens to anyone else.

I had been living in Germany with my husband Joe, who was in the Army, and my two children. My children and I were back in Massachusetts during the summer of 1994 when Joe died unexpectedly. I was devastated. It took me years to overcome the guilt that I felt for not being with him when he needed me most.

My children and I moved back to my hometown of Lunenburg, where my family lived. I couldn't bear to sleep in my bed without my husband, so I stayed up at night and slept on the couch during the day, while my children were in school. I started to use cocaine, which made me feel better and helped me stay awake at my job in the evening.

I bought my cocaine from a low-level dealer who sold drugs to pay for his own cocaine addiction. I started to use it more often until I was using almost daily, although my family never knew. After a while, I started to date my dealer so I could get drugs more easily. I never sold any drugs myself.

We didn't know it at the time, but a couple that we knew had been arrested. The police had offered to reduce the charges against them in exchange for helping them make other arrests. So this couple started to ask my boyfriend to sell them more and more cocaine. Eventually, they asked him for a kilo, which is about the size of a brick.

I knew that he was trying to put together this deal, but I didn't want anything to do with it. On the day of the sale, I left town. But I had an accident on Route 495. Nobody else was available to pick me up, so I called my boyfriend. He told me that he had to do the drug deal before he could take me home. We went to the couple's house, where I waited in the living room while they were in the kitchen. Suddenly the police stormed the house and we were all arrested.

I was out on bail for 2½ years before my case went to trial. I stopped using cocaine, cold turkey, even though the cravings were intense. But I knew I had reached the point where I needed to get away from drugs.

The police kept pressuring me to "cooperate" by telling them who the big-time suppliers were. But I couldn't tell them anything. I was just a small-time customer who got my drugs from a small-time dealer. I was offered a 3-year sentence, but

my lawyer told me to turn it down. I had never been involved in anything like this, so I followed his advice. We went to trial and I was convicted.

Obviously, I had made some very bad choices when I got involved with drugs. But on the day I was sentenced, everyone in the courtroom knew that I didn't deserve 15 years – even the prosecutor. The judge said that he had no choice but to give me what the law required – 15 to 20 years – so he gave the lowest sentence possible, 15 years.

My kids were 12 and 14 when I was sentenced. They went to live with my parents. My mom was 65 at the time and my dad was 68. It was really hard on everybody. When my dad got Alzheimer's, it became even worse.

While I was in prison, I met a lot of women with serious drug problems. Yet they weren't able to get any treatment in prison. I also met other women who had committed violent crimes but had far shorter sentences than mine. I'm not saying they should have done *more* time. Instead I'm saying that it made no sense to lock me up for 15 years when I wasn't a threat to anybody.

While in prison, I took every possible course and class I could get my hands on, to keep myself occupied. I earned over 200 days of "good time" credits, even though I never thought I'd be able to use them to reduce my sentence. When the 2012 sentencing reforms were passed, I was in the 14th year of my 15-year sentence. Suddenly, I could finally use those "good time" credits, which brought my sentence down to the time I had served. I was released within days of the new law taking effect.

I am truly grateful to the Legislature for allowing me to come home early. You see, I was able to be at my father's side when he passed away a few months later. But I missed birthdays, graduations, weddings and the birth of my two grandchildren while I was in prison. My children lost their mother while they were growing up, and my parents lost their daughter while they grew old.

No one doubts that drug abuse is a serious problem. But I needed help, not a long prison sentence. I beg you to get rid of mandatory minimum sentences for drugs, so that people who don't deserve them won't get them.

MASSACHUSETTS SENTENCING COMMISSION

Gardner Auditorium
November 18, 2015

TESTIMONY OF JOHN E. BOWMAN, JR.

My name is John Bowman, and I am here to speak on behalf of my church, the United Parish in Brookline. I am also a volunteer lawyer working with the Jobs NOT Jails coalition through the Access to Justice Fellows Program for retired lawyers and judges created under the aegis of the Supreme Judicial Court.

The United Parish, located in Coolidge Corner, is an ecumenical church that has, since 1970, included three denominations: American Baptist, United Methodist, and the United Church of Christ. This past June the congregation unanimously adopted a resolution in opposition to mass incarceration,¹ and our educational and outreach efforts around this important issue are on-going. In June 2015 the statewide conference of the United Church of Christ also adopted a resolution opposing mass incarceration.² Many faith-based communities are seeking a new direction in our corrections policy.

Mass Incarceration in the United States

The United States, with only 5% of the world's population, now has 25% of the world's prisoners.³ This statistic may be widely known by now, but it should never cease to startle us.

¹ Available at <http://www.upbrookline.org/getinvolved/outreach&socialjustice/endmassincarceration>.

² Available at <http://www.macucc.org/news/216thannualmeeting/resolutionspassedbyannualmeeting>.

³ The Economist (June 20, 2015), p. 23. The state and federal prison population grew from 200,000 to 2.3 million. Id. See gen. Michelle Alexander, The New Jim Crow: Mass Incarceration in the Age of Colorblindness (rev. ed. 2011), and Bruce Western, et al., Punishment and Inequality in America (2006).

What should also startle us is that the rate of incarceration tilted sharply upward starting in the 1970s, after being level for half a century (see attached graph). The National Academy of Sciences calls this explosive growth in incarceration “historically unprecedented” and “internationally unique.”⁴ The length of prison sentences also sets the United States apart from other nations. For example, prison stays are nearly 5 times longer in the U.S. than in the United Kingdom, 9 times longer than in Germany (see attached graph).

Stark racial disparities also stand out in who is incarcerated. Blacks are incarcerated at six times the rate of Whites. For Hispanics, the rate is double Whites. Today one-third of young Black men can expect to be incarcerated.⁵

The Massachusetts Experience

The temptation is to distinguish Massachusetts because its rate of incarceration is lower than most other states. The reality, however, is that the growth in the Massachusetts incarceration rate mirrors the growth in the national rate, as depicted in the attached graph.

In 1973, for example, Massachusetts had 34 state prison inmates per 100,000 population. By 1997, the rate had peaked at 192 (more than a five-fold increase), with the steepest increase starting in 1984 when there were 77 state prison inmates per 100,000 population. Even though the incarceration rate declined somewhat to 163 in 2013, it was still nearly five times the starting point in 1973.⁶ Stated differently, if Massachusetts were a separate nation its rate of incarceration would rate eighth in the world (behind the United States, Russia, Cuba, El Salvador, Thailand, Azerbaijan and Rwanda).⁷

⁴ National Academy of Sciences, The Growth of Incarceration in the United States (Feb. 2015 (slides)). Available at http://www.nationalacademies.org/DBASSE/Growth_of_Incarceration/index.

⁵ The Economist (June 20, 2015), p. 23.

⁶ These figures do not include persons incarcerated in county jails and Houses of Correction.

⁷ Chief Justice Ralph D. Gants, State of the Judiciary Annual Address (Oct. 20, 2015), p. 9. Available at <http://www.mass.gov/courts/docs/sic/docs/speeches/sic-chief-justice-gants-state-of-judiciary-speech-2015.pdf>.

While the prison population was increasing, the crime rate decreased. Over a 25 year period ending in 2011-12, the violent crime rate in Massachusetts decreased 29% and the property crime rate decreased 40%.⁸

Moreover, the racial disparity evident at the national level also exists in Massachusetts. For example, Chief Justice Ralph D. Gants recently pointed to disparate impact as one reason that mandatory minimum drug sentences should be repealed: in 2013 racial and ethnic minorities represented 32% of all convictions, 55% of all non-mandatory drug distribution convictions, and 75% of mandatory minimum drug convictions.⁹ The attached graph paints a picture of the disparity that exists for all crimes.

The First Challenge: Reexamining the Existing Sentencing Guidelines

For the Sentencing Commission this backdrop presents both challenges and opportunities.

The Commission's first challenge is to reexamine the existing Sentencing Guidelines that the predecessor commission adopted in 1996. Will the Guidelines perpetuate mass incarceration due to either the data or the methodology that was used to formulate the sentencing ranges? There is reason to suspect that the answer is "yes." After all, in the decade prior to the Guidelines the state prison incarceration rate increased from 96 in 1986 to 190 in 1995. The incarceration rate had also increased in the decade before that (see attached graph). These increases in the incarceration rate were, almost surely, reflected in the Commission's work.¹⁰

⁸ Mass. Executive Office of Public Safety & Security, Violent Crime in Massachusetts: A 25-Year Retrospective (Annual Policy Brief, 1988-2012) (Feb. 2014); Property Crime in Massachusetts: A 25-Year Retrospective (Annual Policy Brief, 1987-2011) (Oct. 2014) (both measured in offenses per 100,000 population). Available at <http://www.mass.gov/eopss>.

⁹ R. Gants, Keynote Address, Second Annual Massachusetts Criminal Justice Reform Coalition Summit (UMass-Boston, Mar. 16, 2015), p. 7.

¹⁰ See G.L. c. 211E, sec. 3 (c), which directed the Commission to survey the "average sentences" imposed before it promulgated the Sentencing Guidelines and the prison terms "actually served," but specified that the Commission "shall not be bound by such average sentences" and that the "sentencing range" that the Commission developed should be "consistent with the purposed of sentencing described in section two."

Moreover, the Sentencing Commission itself was created in April 1994 by the Truth in Sentencing Act, which embodied the “get tough on crime” ethos that resulted in the mass incarceration that we know today.¹¹ As an illustration, former President Bill Clinton recently acknowledged that the 1994 federal crime bill and other policies in that era “overshot the mark.”¹²

Similarly, the methodology behind the Sentencing Guidelines should be reexamined. To take one illustration, the vertical axis on the sentencing grid measures the defendant’s criminal history. Is that the best measure of what the sentence ought to be in a particular case or might it unintentionally contribute to racial disparity? Chief Justice Ralph D. Gants pointed in a different direction earlier this year: “Too often, we use criminal history as a proxy for the risk of recidivism, but it is a poor proxy because it fails to take into account the age of the defendant and the pattern of past crimes.”¹³

The Second Challenge: Charting a New Course

The Commission’s second challenge is to shift from looking backward to looking forward. It should use its broad authority under G.L. c. 211E to chart a course to a sentencing system that produces an outcome different from today’s mass incarceration. In connection with its charge to “recommend sentencing policies and practices” the Commission’s goal should be to reduce the incarceration rate to sensible levels that prevailed before the upward tilt of recent decades.¹⁴

To achieve such a goal the Commission should, first, devote further attention to alternatives to incarceration by making a renewed commitment to “intermediate sanctions” and utilize its authority to develop a “wider array of

¹¹ See Mass. St. 1993, c. 432, sec. 1 (approved Jan. 12, 1994). G.L. c. 211E, which subsequently codified the Commission’s enabling act was enacted by Mass. St. 1996, c. 12.

¹² W.J. Clinton, Foreword in Solutions: American Leaders Speak Out On Criminal Justice (Brennan Center for Justice, 2015).

¹³ R. Gants, Keynote Address, Second Annual Massachusetts Criminal Justice Reform Coalition Summit (UMass-Boston, March 16, 2015), p. 2.

¹⁴ G.L. c. 211E, sec. 2.

criminal sanctions.”¹⁵ Indeed, chapter 211E itself seems to suggest a preference for intermediate sanctions over incarceration.¹⁶

The Commission should pay particular attention to the mounting evidence in Massachusetts that many people who are incarcerated today have an unmet need for mental health care or substance abuse treatment. Neither public safety, the prudent expenditure of taxpayer dollars, nor the humane treatment of the individuals, their families, or their communities is served by the current practice of jail and release without treatment.¹⁷ The Commission should lead the shift toward an inclusive public health and treatment paradigm and move away from a single-minded focus on punishment.

The Commission should also devote attention to the collateral consequences of a criminal conviction. There is mounting evidence of the significance of collateral consequences, including adverse effects on the employment prospects of a criminal defendant.¹⁸ A prime example is the automatic suspension of drivers’ licenses for drug convictions for up to 5 years plus a reinstatement fee up to \$500, which poses a major barrier to an ex-prisoner who seeks to re-enter the community.¹⁹ Far too little attention has been paid to collateral consequences and their likely adverse effect on recidivism rates and the crafting of a fair and effective sentence.²⁰

¹⁵ G.L. c. 211E, sec. 2 (7) and (8). See also sec. 2 (9) (“make offenders accountable to the community for their criminal behavior, through community service, restitution, and a range of intermediate sanctions”).

¹⁶ See G.L. c. 211E, sec. 3 (a) (3) (B) (“Appropriate intermediate sanctions for offenders for whom imprisonment may not be necessary or appropriate” [listing illustrative alternatives]). Compare sec. 3 (a) (3) (C) (“A target sentence for offenders for whom an intermediate sanction may not be appropriate . . .”). See

¹⁷ See G.L. c. 211E, sec. 3 (a) (3) (B) (“including but not limited to . . . substance abuse treatment”). See also sec. 3 (d) (2) (11) and (12) (mental condition and drug dependence included in “aggravating and mitigating circumstances”).

¹⁸ The Supreme Judicial Court’s recent CORI decision observed that “gainful employment is crucial to preventing recidivism” and criminal records have a deleterious effect on access to employment.” Commonwealth v. Peter Pon, 469 Mass. 296, 307 (2014).

¹⁹ See G.L. c. 90, sec. 22 (f). The Massachusetts Senate recently voted unanimously to repeal this provision, which has been in effect for 26 years, but a House vote has not been scheduled yet (S. 2014). Repeal of the driver’s license suspension is also part of S. 64/H. 1429) pending before the Joint Committee on the Judiciary.

²⁰ See, e.g., William J. Meade, et al., Crime and Consequence: The Collateral Effects of Criminal Conduct (MCLE, 3rd ed. 2013); Michelle Alexander, The New Jim Crow (2010), ch. 4.

Where incarceration is nonetheless appropriate, the Commission should assure that judges retain “sufficient flexibility to permit individualized sentences warranted by mitigating or aggravating factors.”²¹ The goal is to ‘make the punishment fit the crime.’ Here again, the Commission should draw upon experience that has accumulated after the existing Sentencing Guidelines were adopted to review with care the “non-exclusive aggravating and mitigating circumstances” that the Legislature asked the Commission to adopt.²² It should assure, among other things, that aggravating factors, which increase incarceration, are evidence-based and do not contribute to racial disparities in sentencing.²³

There are also other matters that the Commission should consider. One is converting some felonies into misdemeanors (or even civil infractions). For example, only two states (Virginia and New Jersey) specify an amount lower than the \$250 threshold that is required to make larceny a felony in Massachusetts (see 2 attached charts).²⁴ The Commission should also ascertain if it has an opportunity to emulate the U.S. Sentencing Commission, which has initiated the early release of some federal prisoners under its revised sentencing policies.

The fees assessed against persons on probation should also concern the Commission, from both the perspective of simple fairness and the offender’s likelihood of success on probation. Chief Justice Gants recently raised this issue in his Annual State of the Judiciary Address, where he noted: “For an indigent defendant convicted of one felony and sentenced to one year of supervised probation, the fees total \$1,020, more if a GPS bracelet is a condition of probation because the defendant is required to pay for that too.”²⁵

Finally, and perhaps most importantly, the Commission should review the length of sentences imposed under the current Sentencing Guidelines. Under the

²¹ G.L. c. 211E, sec. 2 (4).

²² G.L. c. 211E, sec. 3 (d).

²³ G.L. c. 211E, sec. 2 (4) (“avoiding sentencing disparities”). See also sec. 3 (e) (par. 2) (“The Commission shall assure that the guidelines are neutral as to the race, sex, national origin, creed, religion and socio-economic status of offenders.”).

²⁴ G.L. c. 260, sec. 30. A bill to raise the amount to \$1,300 is pending before the Legislature. S. 64/H. 1429.

²⁵ R. Gants, Annual State of the Judiciary Address (Oct. 20, 2015), p. 9.

principle of parsimony, the length of a prison stay should not be any longer than necessary. Longer stays increase the prison population at great expense to the taxpayers but without commensurate benefit to the public safety. More importantly, long sentences disrupt the prisoner's life, and the life of his family, without any rehabilitative benefit.

Reaffirming Opposition to Mandatory Minimum Sentences in Drug Cases

I do, however, ask that the Commission reaffirm its opposition to mandatory minimum drug sentences.²⁶ The topic is addressed in the Questions and Answers to the Sentencing Guidelines that is posted on the Commission's website.²⁷ The Commission concluded that mandatory minimum drug sentences are not justifiable under current research, including a RAND study. It also noted that some mandatory minimum drug sentences are "very long" compared to other offenses. Mandatory minimum sentences for drug offenses, the Commission said, "disproportionately affect minorities." It illustrated the disparate impact by pointing to the fact that minorities were 80% of the defendants convicted of mandatory drug crimes compared to 34% convicted of all other crimes.²⁸

Other leaders have recently expressed their agreement with the Commission's conclusion. Chief Justice Gants explained why he opposes mandatory minimum sentences for drug offenses in his keynote address at a conference at UMass – Boston on March 16, 2015, and in his testimony before the Joint Committee on the Judiciary on June 9, 2015.²⁹ On November 18, 2014, the Special Commission to Study the Commonwealth's Criminal Justice System, which was created by the Legislature, voted in favor of repealing drug mandatory minimum sentences.³⁰ U.S. Supreme Court Justice Anthony Kennedy has said: "I

²⁶ Bills to repeal mandatory minimum drug sentences imposed under G.L. c. 94C are currently pending before the Legislature. See S. 64/H. 1429 and S. 86/H. 1620.

²⁷ See Questions & Answers, Nos. 13, 14 and 15. The Commission distinguished drug offenses from firearm offenses and OUI offenses, where it felt mandatory minimum sentences were justified. Q&A, No. 14.

²⁸ See G.L. c. 211E, sec. 3 (e) ("sentencing judge may depart from the range established by the sentencing guidelines and impose a sentence below any mandatory minimum term prescribed by statute, if the judge sets forth in writing reasons for departing").

²⁹ See footnotes 7 and 9, above.

³⁰ Special Commission, Interim Report (Dec. 31, 2014), p. 30 (available on the Executive Office of Public Safety & Security website). The Special Commission was created by Mass. St. 2011, c. 68, sec. 189.

can accept neither the necessity nor the wisdom of federal mandatory minimum sentences. In all too many cases, mandatory minimum sentences are unjust.”³¹

Closing

The Sentencing Commission is blessed with an opportunity to make a major contribution to a much-needed review and reform of the Massachusetts criminal sentencing system. I appreciate the opportunity to offer these comments on the Commission’s mission this morning. I would be pleased to offer additional feedback to the Commission or its staff as your work progresses.

³¹ Quoted in Michelle Alexander, The New Jim Crow, p. 91.



Christopher G. Hudson, PhD, DCSW
President

Carol J. Trust, LICSW
Executive Director

October 18, 2015

NASW-Massachusetts is a membership organization of 7,500 from across the Commonwealth. Offering leadership in the field of criminal justice is a committee of over 100 social workers with expertise and experience in the judicial system. Criminal Justice Shared Interest Group members work with families, youth, and individuals in the community that are impacted daily by the criminal justice system.

We seek several changes in sentencing rules and policy that we believe will help those impacted by the criminal justice system, save the Commonwealth money, and enable direction of funds to community-building efforts rather than devastating populations, neighborhoods, families and individuals. In addition to presenting to the Sentencing Commission these proposed changes, NASW-MA members are actively working to pass bills through the state legislature that will bring about better policies.

First, we ask you to take a major step and end the system of mass incarceration of non-violent offenders that plagues poor communities and people of color. Our members work daily with families and individuals, in and out of jail, who have been devastated by incarceration and the collateral damages inherent in being an ex-prisoner.

Other needed changes include:

- Reducing certain low-level felonies to misdemeanors
- Ending collateral sanctions imposed by the Registry of Motor Vehicles for charges unrelated to the operation of a motor vehicle
- Allowing judicial discretion to transfer a permanently incapacitated or terminally ill individual out of prison for treatment.
- Reform the bail system to eliminate the disparity for arrested individuals who are low-income and cannot afford the current bail levels, thus eliminating pretrial detention for non-violent arrests unless a judge deems otherwise.
- Community-based sentencing alternatives for primary caregivers who are non-violent offenders - those with children and elderly or disabled family members.

As social workers, we have seen the impact that incarceration has in communities, particularly in our poor communities and in communities of color. Prison sentences are devastating to individuals and families – individuals lose jobs, families lose a bread-earner, children lose a parent, children and families become homeless – and should only be used when necessary to protect the safety of the community and contain dangerous individuals. Too many individuals incarcerated in our prisons today are there because they are non-violent drug offenders, or they were unable to pay even very small amounts of bail, or they have violated even minor terms of probation. Too many ex-prisoners are facing unnecessary barriers to participation in our society – loss of license for non-motor vehicle offenses impacting their ability to obtain employment or visit with their children, inability to obtain employment due to low-level felony convictions such as shoplifting or low-level drug charges.

Thank you for your attention to these policies. We appreciate the opportunity to bring to your attention the voices of our members who have first-hand experience on the front lines of the criminal justice system in prisons and in the community.

Contact: Christine Poff, Political Director – poff@naswma.org / 617-227-9635 x 12

Testimony to the Massachusetts Sentencing Commissions

November 18, 2015

Massachusetts Sentencing Commission
John Adams Courthouse
One Pemberton Square
Boston, MA 02108

Dear members of the Sentencing Commission,

CfJJ is an independent, statewide non-profit organization that strives to improve the Commonwealth's juvenile justice system through advocacy, research and public education. CfJJ's board includes many leading professionals working in the juvenile justice system, including representatives from academia, child advocates, mental health clinicians, and service providers, and its membership includes more than 30 organizations working with and on behalf of at-risk children. We believe that both youth and public safety are best served by a juvenile justice system that is fair and effective.

Young adults comprise a disproportionately large number of arrests and prison admissions. They also are at higher risk of recidivism within three years. Incarcerated young adults are more likely to have significant barriers to transitioning to adulthood – an undiagnosed disability and lack of educational attainment. Incarceration has the effect of exacerbating these barriers and thus increasing their risk of recidivism.¹

It is with this understanding that CfJJ is actively advocating for developmentally appropriate criminal justice reforms to ensure young adults are diverted from further criminal activity as they age.

CfJJ is in support of legislation² currently pending that would allow courts to consider age as a rebuttable mitigating factor for young adults (age 18-25) and create more effective, developmentally programs for this population.

This bill would ensure that there are appropriate avenues for considering age as a mitigating factor at sentencing, and a mechanism to ensure more effective, developmentally appropriate

¹ Vincent Schiraldi, Bruce Western, and Kendra Bradner, "Community-Based Responses to Justice-Involved Young Adults", September 2015. Available at <https://www.ncjrs.gov/pdffiles1/nij/248900.pdf>

² Section 23 of "An Act to Promote Transparency, Best Practices, and Better Outcomes for Children and Communities" S.905/H.1436.

programming for young adults is developed in the correctional system. This provision would require courts to hear from both the prosecution and defense counsel regarding whether age should be a mitigating factor at sentencing in a case involving a young adult. There would be a presumption, rebuttable by the district attorney, that it should be considered. The Department of Corrections and the Houses of Corrections would also be required to create developmentally appropriate vocational and educational programming for this population.

Decades of scientific evidence on brain maturation reveal that the “neuroplasticity” of adolescent and young adult brains presents an opportunity to change brain development through experience^{3, 4}. However, it is also a period of great risk – exposure to toxic environments, such as prisons, entrenches young adults in problematic behaviors. An effective criminal justice system would promote healthy maturation and positive development to reduce the likelihood of committing new offenses. According to a national research organization, Justice Policy Institute: “The research also makes clear that we must do everything possible to reduce young people’s experiences of harm. The malleable young brain makes young people extremely vulnerable to the kinds of negative or traumatic experiences that can occur in confinement, and can have lifelong implications for both individuals and society.”⁵

A report was recently released by the Harvard Kennedy School and the National Institute of Justice that provides promising components of a developmentally appropriate young adult justice system⁶. The executive summary of the report is attached to this testimony and we can send complete copies of the report to the committee at a later date.

Most young people will not persist in criminal behavior as they age, even those who commit serious offenses. One study found that 52 to 57 percent of juvenile delinquents continue to offend up to age 25. This number dropped by two-thirds — to 16 to 19 percent — in the next five years.⁷ Thus policies should take care not to introduce negative influences that could interfere with the natural progression toward maturity and law-abiding behavior.

The wrong interventions with young adults are likely to extend their involvement in the criminal justice system and slow the process of desistance from crime.⁸ A developmentally-effective justice system instead would increase its reliance on community-based programs focused on developing skills and social connections and graduated sanctions where the severity of punishment would increase with age.

³ “Age of Opportunity: Lessons from the New Science of Adolescence,” Laurence Steinberg, 2104.

⁴ “Adulthood doesn’t happen overnight”, Jeffrey Butts and John Roman, Huffington Post 7/14/15. Available at <http://jeffreymbutts.net/2015/07/14/huffpo2015/>

⁵ “Young People’s Brain Development Gives Us Window for Change”, Marc Schindler, Justice Policy Institute, 12/18/14. Available at <http://www.justicepolicy.org/news/8509>

⁶ Schiraldi, et al.

⁷ Stouthamer-Loeber, Magda, “Persistence and Desistance in Offending” (unpublished report, Pittsburgh, Pa.: Life History Research Program, University of Pittsburgh, 2010).

⁸ “Turnaround Youth: Young Adults (18-24) in the Criminal Justice System. The Case for a Distinct Approach”, Irish Penal Reform Trust, May 2015. Available at <http://www.iprt.ie/files/IPRT-Turnaround-web-optimised.pdf>

Recognition that young adults are a group with heightened promise and vulnerability is an emerging national and international norm. "Youth Status" is available in federal cases, but not in state cases. The United Kingdom, Sweden, Germany and Austria currently have separate sentencing and institutions for young adults.

Please feel free to contact me at 617-338-1050 or sanafadel@cfjj.org if we can be of assistance. We thank you for your consideration of this important issue.

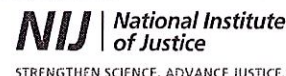
Respectfully,

A handwritten signature in black ink, appearing to read 'Sana Fadel', written over a faint horizontal line.

Sana Fadel
Deputy Director
Citizens for Juvenile Justice

New Thinking in Community Corrections

SEPTEMBER 2015 • NO. 1



Community-Based Responses to Justice-Involved Young Adults

Vincent Schiraldi, Bruce Western and Kendra Bradner

Executive Session on Community Corrections

This is one in a series of papers that will be published as a result of the Executive Session on Community Corrections.

The Executive Sessions at Harvard Kennedy School bring together individuals of independent standing who take joint responsibility for rethinking and improving society's responses to an issue. Members are selected based on their experiences, their reputation for thoughtfulness and their potential for helping to disseminate the work of the Session.

Members of the Executive Session on Community Corrections have come together with the aim of developing a new paradigm for correctional policy at a historic time for criminal justice reform. The Executive Session works to explore the role of community corrections and communities in the interest of justice and public safety.

Learn more about the Executive Session on Community Corrections at:

NIJ's website: www.nij.gov, keywords "Executive Session Community Corrections"

Harvard's website: <http://www.hks.harvard.edu/criminaljustice/communitycorrections>

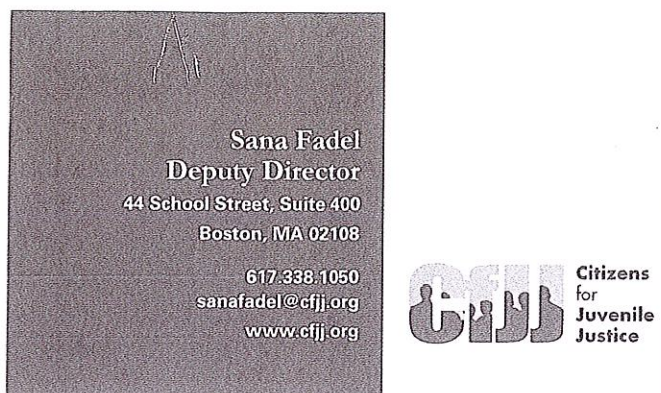
Foreword

This paper raises important questions about the criminal justice system's response to young adults. Recent advances in behavior and neuroscience research confirm that brain development continues well into a person's 20s, meaning that young adults have more psychosocial similarities to children than to older adults. This developmental distinction should help inform the justice system's response to criminal behavior among this age group.

Young adults comprise a disproportionately high percentage of arrests and prison admissions, and about half of all young adults return to prison within three years following release. At the Office of Justice Programs (OJP), we see the opportunity to reduce future criminal activity — and consequently the number of future victims — by having a justice system that appropriately responds to criminal behavior, helps young adults rebuild their lives, and is not overly reliant on incarceration.

The authors outline a number of thoughtful recommendations aimed at making our justice system more developmentally appropriate in its response to young adults. At OJP, we are committed to collaborating with our local, state and tribal partners on this important issue so that we can help all of our communities become safer, stronger and more stable.

Karol V. Mason
Assistant Attorney General
Office of Justice Programs
U.S. Department of Justice



Zimbra

drap.admin@jud.state.ma.us

LWVMA Testimony

From : LWV Mass <lwvma@lwvma.org>
Subject : LWVMA Testimony
To : drap admin <drap.admin@jud.state.ma.us>

Tue, Nov 17, 2015 01:10 PM


 1 attachment

Dear Members of the Sentencing Commission:

The League of Women Voters of Massachusetts appreciates that you are holding a public hearing on reforming sentencing guidelines. Since the Commission proposed sentencing guidelines in 1996, we have data from 20 additional years on how mandatory minimum sentencing impacts incarcerated individuals in Massachusetts. It is time to revisit this issue, and LWVMA has urged the legislature to act on the Commission's recommendations. The annual sentencing surveys the Commission publishes are of great importance. We will be interested to see analyses of this data to determine if sentencing length has increased as it has for the pretrial population.


LWVMA testified before the Joint Committee on the Judiciary in strong support of H.162/S.786, an Act to eliminate mandatory minimum sentences related to drug offenses, on June 9, 2015. A copy of that testimony is attached, for your information.

Sincerely,

Colleen Kirby
Legislative Specialist
Courts and Criminal Justice Reform
League of Women Voters of Massachusetts


--

League of Women Voters of Massachusetts
133 Portland St.
Boston, MA 02114
(617) 523-2999

 **H.1620-S.786.pdf**
94 KB



Testimony submitted to the Joint Committee on the Judiciary
In support of H.1620/S.786 - An Act to eliminate mandatory minimum sentences related to drug offenses

Carole Pelchat, LWVMA Legislative Director
June 9, 2015

The League of Women Voters at both national and state levels opposes mandatory minimum sentences, including for non-violent drug-related offenses. LWVUS believes alternatives to imprisonment should be explored and utilized, taking into consideration the circumstances and nature of the crime. LWVMA supports prison sentences for violent crimes against the person and habitual criminals and alternative punishments for offenders who commit nonviolent crimes, first offenders, and offenders where mitigating circumstances exist.

While much has been made of the fact that Massachusetts incarceration rates are well below the national average, our trends are disturbing. From the state's own prison data, we learn that as of January of this year, 95% of males incarcerated were serving a sentence longer than 3 years, yet only 69% had committed a violent offense. Further, the Department of Corrections projects a decrease of only 0.1 % annually in the prison population from 2015 to 2022.ⁱ

In spite of the fact that people of color (black and Latino combined) represent roughly only 16% of the total population, i.e. about 1:6 black and Latinos to whites, the incarceration ratio is 8.1:1 blacks to whites and 6.1:1 for Latinos to whites.ⁱⁱ In addition, people of color comprise on average 77% of drug offenders sentenced to mandatory minimums, despite the fact that all races use drugs at roughly equal levels.

Sentences for nonviolent drug crimes can be longer than sentences for violent crimes. As an organization predominantly made up of women, we are offended that the maximum sentence for an armed assault with intent to rape can be equal to that for a second conviction for the sale of 2 tablespoons of heroinⁱⁱⁱ.

In addition to incarceration, a minor drug offense can result in the denial of federal and state public housing, federal and state student loans, and mandatory revocation of a driver's license. A felony conviction can be found by any computer literate employer and be used as a reason not to hire, which also discourages offenders from investing in training programs.^{iv} All of these can significantly decrease an offender's ability to become a productive citizen.

A 2014 public opinion poll conducted in Massachusetts spanning all party, race and age demographics, found that support for mandatory minimum sentences for any crime has fallen to 11%. Nearly two-thirds see illegal drug use as a health issue, not a criminal issue. We concur, and believe that treatment is preferable, more just and more economical than incarceration.

We strongly encourage you to update our criminal justice laws to assure that non-violent crimes and the processes by which the accused are processed do not lead to lengthy sentences for non-violent crimes, do not annul an offender's individual rights as a citizen and do lead to appropriate incarceration for violent crimes.

Thank you for your consideration.

ⁱ <http://www.mass.gov/eopss/docs/doc/research-reports/pop-trends/prisonpoptrends-2014-05042015-final.pdf> ;

pg 22

ⁱⁱ <http://www.sentencingproject.org/map/map.cfm#map>

ⁱⁱⁱ <http://www.uumassaction.org/campaigns/prison-justice/>

^{iv} <http://www.mpp.org/assets/pdfs/library/The-Collateral-Sanctions-Associated-with-Marijuana-Offenses>

Bills Supported By The Committee For
Progressive Legislation (CPL)

2015-2016

The Committee for Progressive Legislation

*in a Sentencing
Commission
pages 8-13*

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Table of Contents

| | |
|--|-----------|
| Summary of Content | 4 |
| Chapter 1: In-State Tuition | 5 |
| Introduction | 5 |
| Opportunity | 5 |
| Chapter 2: Electronic Surveillance | 6 |
| Introduction | 6 |
| Opportunity | 6 |
| Chapter 3: Healthcare | 7 |
| Introduction | 7 |
| Section 1: An Act to Ensure Effective Health Care Cost Control | 7 |
| Section 2: An Act Establishing Medicare for all in Massachusetts | 7 |
| Section 3: Public Health Option | 7 |
| Chapter 4: Criminal Justice Reform | 8 |
| Introduction | 8 |
| Section 1—Reducing certain low level felonies to misdemeanors | 8 |
| Section 2—Removing mandatory minimums for certain drug offenses | 9 |
| Section 3—Removing \$500 driver's license reinstate fee | 10 |
| Section 4—Compassionate release | 10 |
| Section 5—Solitary Confinement | 11 |
| Section 6—Expungement | 12 |
| Section 7—Suicide | 12 |
| Section 8—Restorative justice | 13 |
| Section 9—Bail reform | 13 |
| Chapter 5: Safe Driving | 14 |
| Introduction | 14 |
| Opportunity | 14 |

Summary of Content

Chapter 1

This legislation covers about 600-700 students who are brought to this country undocumented by their parents. They have gone through the same education as their fellow students but cannot pay in-state tuition because they are not citizens. This is unfair and unjust. They should be allowed to pay in-state tuition. This is not free—they have to pay tuition.

Chapter 2

Today the government can read your private electronic communications without a warrant. That's not right. It's time to close this huge privacy loophole. The proposed bill will accomplish this.

Chapter 3

We need a single payer health care system for Massachusetts, which would function for residents under 65 much the way Medicare does for residents 65 or over, but without premiums or copays; It would be a universal, public insurance plan covering all medically necessary care. Single payer systems are proven to reduce inequalities, and improve access to care.

Chapter 4

Introduction: 20% of prison inmates in Massachusetts are serving time for drug offenses, and another 20% are serving time for property crimes committed to support their drug habits. Prison is not a place to get good substance abuse treatment. It is not a place to get good mental health treatment. It is not a place to get good employment and skill development. Locking people up will increase their criminality.

Diverting low-level drug abusers and mentally ill convicts into intensive community based treatment programs is the way to go. We need more halfway houses and treatment centers instead of prisons. Despite steeply declining violent crime rates, the percentage of Massachusetts's residents behind bars has triples since the 1980s. Crime is going down, while prison populations are going up. Other states have seen drops in incarceration in conjunction with falling crime rates. Massachusetts has seen the opposite.

Chapter 5

Immigration status should be removed as a barrier to applying for a license or learner's permit. The safe driving bill would allow all Massachusetts residents to become trained, licensed, and insured—making our roads safer for every driver.

Chapter 1: In-State Tuition

Introduction

This legislation covers about 600-700 students who are brought to this country undocumented by their parents. They have gone through the same education as their fellow students but cannot pay in-state tuition because they are not citizens. This is unfair and unjust. They should be allowed to pay in-state tuition. This is not free—they have to pay tuition.

Opportunity

Higher Education Equity

SD.599, Chang-Diaz; HD.1035, Provost

An Act regarding higher education opportunities for high school graduates in the Commonwealth; and SD.690, Forry, Relative to the eligibility of students for in-state tuition rates and fees at public higher educational institutions.

These Higher Education Equity Bills would allow all students, regardless of immigration status, who attended a Massachusetts high school for at least three years and graduated or earned equivalency degrees to pay the same in-state tuition rates at public colleges as their fellow classmates. Additionally, SD.599 (Chang-Diaz) and HD.1035 (Provost) would remove immigration status as a barrier to qualifying for state financial aid.

Chapter 2: Electronic Surveillance

Introduction

Today the government can read your private electronic communications without a warrant. That's not right. It's time to close this huge privacy loophole. The proposed bill will accomplish this.

Opportunity

The Electronic Privacy Act

SD.1028, Sen. Spilka; HD.1776, Rep. Peake

Would protect our personal electronic records held by phone and internet service providers--including emails and texts, documents stored online, GPS records, and data about our phone and internet use--from being accessed without a warrant.

Today, the government can read your private electronic communications without a warrant, including:

- Search queries
- Emails, chats and texts older the 6 months
- Emails you drafted but decided *not* to send
- Private Twitter and Facebook messages older than 6 months
- Digital address books and calendars
- Documents stored online
- Dropbox accounts
- Comments in e-books
- Private Facebook and Instagram photos
- Your location information tracked through your cell phone

That's not right. Private, personal information should still be private when it's held by a phone company or internet service provider

Chapter 3: Healthcare

Introduction

We need a single payer health care system for Massachusetts, which would function for residents under 65 much the way Medicare does for residents 65 or over, but without premiums or copays; It would be a universal, public insurance plan covering all medically necessary care. Single payer systems are proven to reduce inequalities, and improve access to care.

Section 1: An Act to Ensure Effective Health Care Cost Control

HD 1107, Rep. Jen Benson; SD 44, Sen. Wolf

Would require the state every year to compare our total health care spending with our projected health care spending if the commonwealth implemented a single payer health care system; if after several years the "Single Payer Benchmark" outperformed our actual health care spending, the state would be responsible for developing a single payer implementation plan and submitting it to the Legislature

Section 2: An Act Establishing Medicare for all in Massachusetts

HD 1151, Rep. Tom Sannicandro; SD 996; Sen. Eldridge

Would immediately begin implementation of a single payer health care system for Massachusetts.

Section 3: Public Health Option

For Legislation to Establish a Public Health Option (SD 473, Sen. Jason Lewis)
and

For Legislation to Create a Public Health Insurance Agency to Compete with Private Insurers (HD 1746, Rep. John Scibak)

Would allow the Commonwealth to establish a "public option" that would allow the state to compete directly with private health insurers.

Chapter 4: Criminal Justice Reform

Introduction

20% of prison inmates in Massachusetts are serving time for drug offenses, and another 20% are serving time for property crimes committed to support their drug habits. Prison is not a place to get good substance abuse treatment. It is not a place to get good mental health treatment. It is not a place to get good employment and skill development. Locking people up will increase their criminality.

Diverting low-level drug abusers and mentally ill convicts into intensive community based treatment programs is the way to go. We need more halfway houses and treatment centers instead of prisons. Despite steeply declining violent crime rates, the percentage of Massachusetts's residents behind bars has triples since the 1980s. Crime is going down, while prison populations are going up. Other states have seen drops in incarceration in conjunction with falling crime rates. Massachusetts has seen the opposite.

Section 1—Reducing certain low level felonies to misdemeanors

This section of the Act changes some low level crimes like drug possession and petty-theft from potential felonies to misdemeanors. Cost savings from the changes will be invested in grants for job-creation and programs to help young people stay in school.

Under this section of the Act, theft under \$950 would be a misdemeanor, including shoplifting or theft by check or credit card, and possession of a small amount of a drug for personal use would be a misdemeanor, rather than a felony.

- These provisions do not change penalty levels for felony charges or misdemeanors, only the threshold for triggering a much more serious penalty. Misdemeanors carry a sentence of up to 2 ½ years in jail, while felonies can carry much longer sentences.
- This focuses law enforcement resources on violent and serious crime, and stops wasting prison space on petty crimes.
- These provisions are modeled after California's Proposition 47, which was authored by George Gascon, San Francisco County District Attorney and William Landsdowne, Former Chief of Police of San Diego, Richmond and San Jose, and which voters passed overwhelmingly in November 2014.
- These provisions will save Massachusetts taxpayers millions of dollars that can be better used for schools and for job creation. In California, the Legislative Analyst's Office projects that these reforms will save taxpayers \$200 million per year.
- Massachusetts voters have consistently shown that they want policymakers to treat the underlying causes of addiction and desperation rather than wasting our precious resources on incarcerating people for low-level

offenses, which tends to exacerbate those underlying causes and leads to more serious crime down the road.

Section 2—Removing mandatory minimums for certain drug offenses

What are Mandatory Minimums?

Mandatory minimums for drug offenses are pre-determined prison sentences for drug crimes. The length of the sentence is often based solely on the weight of the drugs, regardless of other facts of the case. Drug treatment instead of prison is never an option.

How many people are affected by mandatory minimums in Massachusetts?

- Each year in Massachusetts, hundreds of men and women are sentenced to mandatory minimums for a drug offense.
- 70% of Dept. of Correction prisoners currently incarcerated for a drug offense were sentenced under mandatory minimum statutes.

Why do we need to get rid of Mandatory Minimums for drug offenses in Massachusetts?

- There is no evidence that long, mandatory sentences either deter crime or reduce the number of drug crimes or rate of addiction. In fact, they prevent access to treatment.
- They are incredibly costly. Reducing the number of prisoners serving time for drug offenses to 1985 levels would save \$90 million annually.
- Disproportionately long sentences: Sentences for nonviolent drug crimes can be longer than the sentences for violent crimes. For example, the penalty for the sale of 36 grams of heroin (about two tablespoons of powder) is 5 to 30 years while the penalty for armed assault with intent to rape is 5 to 20 years, and 0 to 20 years for manslaughter.
- Getting rid of mandatory minimums doesn't mean that those who break the law will not be punished. Instead, it would reduce recidivism by allowing for more effective sentencing that takes into consideration whether the person poses a threat to public safety, has a prior record or needs drug treatment.
- Mandatory minimums disproportionately impact communities of color. People of color make up roughly 20% of the state's population yet comprise on average 77% of drug offenders sentenced to mandatory minimums each year, despite the fact that all races use drugs at roughly equal levels.
- Over 20 states have reformed their mandatory minimum drug sentencing laws.

What do your Massachusetts residents want?

- A 2014 public opinion poll conducted in Massachusetts found that support for mandatory minimum sentences for any crime has fallen to 11%. Nearly two-thirds see illegal drug use as a health issue, not a criminal issue.
- Similarly, a 2005 study found that 88% of Massachusetts residents generally oppose mandatory minimum sentences -- regardless of political party, age or race. About three-fourths preferred mandatory drug treatment to mandatory prison time for drug offenders.???

Section 3—Removing \$500 driver's license reinstate fee

Under current law, a person convicted of any drug offense loses her or his driving privileges for up to 5 years, and must pay at least \$500 to reinstate the license. This also generates a "back-door CORI" that can never be sealed, which harms a person's chances of employment even decades after the fact.

- On average, 7,000 people a year lose their driving privileges due to this law, mostly for offenses that do not involve vehicles in any way.
- Only about 2,500 people a year are able to pay the fee and get their licenses back – often after years.
- Most employers today value applicants who have driver's licenses, even if the job rarely, if ever, involves driving.
- Contrary to popular belief, the small amount of money the state collects from those who pay the fee (\$1M annually) does not go directly toward drug treatment or safe driving classes. The revenue is also more than offset by the cost of administering this law (see next point).
- Approximately 700 people per year who lost their licenses because of this law are subsequently arrested for driving without a license. Not only does this keep the revolving door of prison swinging, but it creates a situation where thousands of people are driving without insurance.
- This legislation would repeal this driver's license suspension and clean up the driving records of people whose licenses were suspended in the past. A stand-alone bill with identical language nearly passed both chambers last session, and is championed again by Sen. Harriette Chandler and Rep. Liz Malia.
- Passage of this provision will not prevent a judge – or the RMV – from suspending a person's driver's license for a drug offense if s/he determines that to be an appropriate punishment. Also, driving under the influence of any substance would still carry the same punishment.
- Like having a CORI, the effects of the RMV suspension and fee only harm people who are trying to get a job and support themselves, and stay within the bounds of the law. And, like the overuse and misuse of CORI, the current law only makes that harder.

Section 4—Compassionate release

This bill enables state and county correctional authorities to seek community placement of prisoners with terminal, debilitating or incapacitating medical conditions, bringing the Commonwealth into line with other states.

The prison population is aging. DOC prisoners age 50 or older, who comprised 13 percent of the DOC population in 2002, now total over 20 percent of the population (almost 2,500 prisoners). As of 2011, nearly 600 DOC prisoners were over 60 years old. Older prisoners have higher rates of health problems and greater need for special medical services, housing, and daily assistance within the prison, along with repeated visits to hospitals outside the prison. The demands on medical and correctional resources are substantial. The National Institute of Corrections

estimated annual incarceration costs for the elderly at \$60,000 – 70,000, over twice the cost of incarcerating other general population prisoners.

The demands of this population are particularly taxing given the serious overcrowding at the county and state level. According to the Division of Capital Asset Management's Corrections Master Plan, by 2020 the Commonwealth will be short some 12,100 prison beds. (Creating the necessary additional bed space will require a capital outlay of at least 1.2 billion dollars, with additional annual operating costs of \$120 million per year.) Within this massive shortfall, DCAM anticipates the need for 600 "sub-acute" medical beds, specially tailored to the elderly, disabled, or chronically ill prisoners whose vulnerability and disproportionate consumption of staff resources necessitate housing apart from the general population.

Among the elderly and infirm are men and women who are terminally ill, or so debilitated or incapacitated that they do not pose a threat to public safety. Their continued incarceration is expensive and difficult to manage. In light of their condition, their criminal sanction may be equally served by a placement at home or in a long-term care facility, with continuing supervision by the correctional authority under terms it imposes.

This bill would allow correctional authorities to move out of their facilities some of their most resource-intensive prisoners, when such placement is consistent with public safety. The DOC Commissioner, or a court in the case of a county prisoner serving a mandatory minimum sentence, could issue a medical release, setting the terms for a community placement and maintaining supervision over him or her, as is already done for other prisoners (such as those on work release). A medical release would issue only after a licensed physician's review of the prisoner's condition, and after a placement in the community is secured. The placement could be at home with family, or in a hospital or long-term care setting, where medical needs can be met more efficiently than in a prison setting.

This bill offers a responsible approach to a problem that can no longer be ignored. In passing this bill, Massachusetts would join the majority of other states. A consultant to the DOC, recommending action on this issue in 2011, found that at least 30 states had legislation allowing for some form of medical release, and that all but five states have a vehicle for releasing dying prisoners.

Section 5—Solitary Confinement

An Act Relative to the Appropriate Use of Solitary Confinement
SD.1133, Sen. Eldridge

Solitary confinement can exacerbate mental illness, leading to prisoners in solitary to attempt suicide at significantly higher rates than those in the general prison population.

In addition, the cost of building solitary confinement units and housing prisoners in segregation is significantly higher than in the general population.

Prisoners deprived of normal human contact cannot properly integrate back into society, which will result in higher recidivism rates.

The vast majority of prisoners in solitary confinement are eventually released back into the community, therefore, it is critical that we take steps to reduce and regulate the use of solitary confinement in Massachusetts in order to provide for the successful reentry and reintegration of prisoners.

This bill will take those necessary steps by calling for appropriate standards prior to placing a prisoner in solitary, decreasing extreme isolation, encouraging individualized rehabilitation programming, and improving mental health monitoring for people in solitary confinement

Section 6—Expungement

An Act Relative to the Expungement of Records of Persons Falsely Accused and Juveniles

SD 725. Sen. Eldridge

This bill empowers the Commonwealth to expunge a criminal record where the defendant was falsely accused because of an error in identification, fraud on the court, or negligence on the part of the police.

The bill will allow records of youthful offenders to be sealed.

The bill language is fairly straight forward and mirrors the existing law that provides for the sealing of juvenile records, but increases (from 3 to 5 years) the timeline at which a record can be considered for sealing.

The bill also deals with the expungement of juvenile records. it incorporates some of the methods used in handling the expungement of juvenile records in California under CA Welfare & Institution Code 781 and allows any juvenile record sealed under existing Massachusetts law, section 100E of chapter 276, to be expunged (completely destroyed) 5 years from the date of sealing.

If a person does not apply to the commissioner by his or her 18th birthday to seal his or her record, the commissioner can determine whether a person is eligible to have his or her record expunged 10 years from the date of his or her 18th birthday.

Section 7—Suicide

An Act Establishing a Special Commission on Prisoner and Correctional Officer Suicides

SD 1134, Sen. Eldridge

Massachusetts has among the highest number of prisoner and correctional officer suicides of any state in the country. Last year suicides in Massachusetts state prisons occurred at a rate more than four times the national average. While the Department of Correction has already taken some steps to address this problem, more voices need to be brought into the discussion if the Commonwealth is to permanently reduce instances of prisoner and correctional officer suicides.

Section 8—Restorative justice

An Act Promoting Restorative Justice Practices
SD 52, Sen. Eldridge

This bill creates an option for law enforcement and courts to refer juvenile and low-level adult criminal offenders to a community-based restorative justice program.

The referral may be made pre-complaint, at the arrest, pre-arraignment, or sentencing phase and is contingent upon victim wishes.

Restorative justice practices may include voluntary meetings among victim, offender, supporters, and community members that provide an opportunity to meet victim needs, hold an offender accountable, explore the impact of the crime upon community, and agree upon a constructive plan of repair by consensus.

Section 9—Bail reform

The intention of the bail process is to ensure that those charged with a crime show up for their court. In current practice, money bail is set at somewhat arbitrary amounts based on charge. Money bail is a main driver in unnecessary detention of many low-risk pretrial defendants and inappropriate release of high-risk defendants who have financial means and therefore can afford their bail.

The Money-Bail System is:

- Costly (by detaining too many people who could otherwise safely remain in the community.)
- Endangers public safety (by releasing high-risk defendants who can afford the bail set)
- Significantly contributes to overcrowding.

What Sen. Donnelly & Rem Sannicandro's Pretrial/Bail Reform Bill does:

1. Moves from a wealth-based to a risk-based system by taking money out of bail and creating a uniform bail process.
2. Requires the consultation of a validated risk assessment tool to help judges make more informed release/detention decisions based on the risk of the defendant.
3. Creates a Pretrial Services Agency within the Department of Probation responsible for the initial risk assessment as well as overseeing the supervision of pretrial defendants.
4. Requires the collection and analysis of bail data consistent with best practices outlined by the National Institute of Corrections.

Expected outcomes:

- Decrease in overcrowding
- Decrease in cost
- Increase in public safety rates

- Decrease in failure to appear rates
- More effective criminal justice system

Chapter 5: Safe Driving

Introduction

Immigration status should be removed as a barrier to applying for a license or learner's permit. The safe driving bill would allow all Massachusetts residents to become trained, licensed, and insured—making our roads safer for every driver.

Opportunity

For many Massachusetts residents, there is currently no path to comply with our driving. In Massachusetts, many residents are ineligible for driver's licenses solely because of immigration status. An applicant for a driver's license or learner's permit in Massachusetts must provide a Social Security Number (SSN) or acceptable immigration visa code, which only some documented immigrants possess. All other Massachusetts residents who are immigrants are barred from becoming trained licensed and insured drivers. Yet, most families continue to need to drive—to take children to school or doctor's appointments, buy groceries or large items that cannot be transported on foot, and perform other tasks requiring transportation. Under the status quo, many families are driving without licenses, particularly in areas of the state with limited public transportation

The Safe Driving Bill Would:

- **Save Lives**—By increasing driver knowledge of Massachusetts traffic laws, the Safe Driving Bill would reduce fatal road accidents, and would also help our first responders identify those they assist.
- **Save Police Time and Resources**—By eliminating time-consuming inquiries into individuals' true identities in traffic stops, the Safe Driving Bill would free our police to focus on their top public safety priorities.
- **Address Fraud and Conserve Court Resources** - By helping to address the black market for false licenses, the Safe Driving Bill would reduce the time courts spend adjudicating cases based on fake identification.
- **Increase Compliance with Mandatory Insurance Requirements** — By providing a means for all drivers to obtain a prerequisite to insurance, the Safe Driving Bill would credibly require all motorists to share the responsibility of mandatory liability insurance. Reducing the rate of unlicensed, uninsured driving would more equitably distribute insurance costs. No one should have to be in an accident with an uninsured driver.
- **Increase RMV Resources**—By raising fees paid for driver's licenses and learner's permits, the Safe Driving Bill would increase the Commonwealth's resources. The RAW estimated in 2014 that a Safe Driving Bill would raise nearly \$15 million through fee payments.

- Support Our Economy By improving access to businesses less accessible by foot or public transportation, the Safe Driving Bill would remove a current barrier to commerce.

11/9/15

To whom it may concern:

I am currently an inmate at South Middlesex Correctional Center (minimum security/pre-release) and am writing today to plead with you to reduce/eliminate jail sentencing for first-time, non-violent offenders. I have been here since March for "larceny over \$250" charges and have left my partner at home with a 2½ year old child.

While I realize that there are repercussions to my actions, my family is also suffering. They not only struggle emotionally without me, they are struggling financially as well. I had to leave a good job to come here, and as is the case with most families these days, we are a two-income household to get our needs met.

Surely, there must be other alternatives than prison time - community "bracket" program, which would allow me to be at home with the baby, instead of him being in day care and this would allow my partner to work more as well. Perhaps mandatory counseling or longer probation time would be appropriate as well.

Me being here, instead of working, also delays my ability to make restitution; and at the age of 53, it really hinders my abilities to do so + reintegrate when I am released (the longer I am here).

It is heartbreaking for me and my family that I am not there to support them (emotionally + financially). The guilt I feel that my family is suffering due to my actions. It is so unfair to those we leave behind.

Please, please support legislation that would significantly reduce/eliminate prison sentences for first-time, non-violent offenders. I truly believe there is no risk of my re-offending and this is true of so many of us that are already here. Please allow us to go home to our families and become productive members of society again.

Thank you for your consideration,

Darlene Newfell


Dylan Hayre: Testimony Against Mandatory-Minimum Sentencing in Massachusetts
Delivered to the Massachusetts Sentencing Commission on Nov. 18, 2015

To the Members of the Sentencing Commission:

Today, I am respectfully submitting my testimony to register my opposition to the continued use of mandatory-minimum sentencing practices in our Commonwealth. These practices violate the core ethic of our prosecutorial system by bestowing upon prosecutors a level of command over criminal proceedings that stands in clear contrast to the values at the heart of our justice system. This contrast is drawn more starkly in situations in which the prosecutor is not prepared to wield that level of authority appropriately, or does not have the wealth of experience that would inform his decisions within that framework of power. Moreover, mandatory-minimum sentences wholly eradicate any individual distinctions between defendants and the backgrounds and situations that led to their being involved in our justice system.

This testimony draws from my time serving our Commonwealth as both a student prosecutor, and also as an Assistant District Attorney. This testimony is drawn from what I saw and what I learned on the front lines of our criminal justice system, and is informed by the countless conversations I have had with colleagues from all points within that system.

My first experience with mandatory-minimum sentences, or “man/mins,” was in law school, when I had the privilege of serving as “Rule 3:03 Certified Legal Intern” in the Suffolk County District Attorney’s office. I was authorized to perform the full duties of an Assistant District Attorney so long as my supervisor was in the courtroom with me. This certification, combined with my preparedness, and the extraordinary working relationship I had with my supervisor, allowed me to participate in a full range of experiences during my time in Suffolk County. After nearly seven months with this breadth of experience, I came away with three core findings.

First, I had, and will always have, deep and unwavering respect and gratitude for District Attorney Dan Conley and every single Assistant District Attorney with whom I worked. I cannot thank DA Conley enough for the opportunity he afforded me. He and I maintain a significant disagreement on the issue at the heart of this testimony, but that in no way lessens the tremendous gift he gave me through my time in his office. The same goes for the Assistant DA’s with whom I worked every single day. These are good, smart, hardworking people who are working for a few dollars an hour on the front lines of our criminal justice system. The Suffolk County ADA’s were some of the best, brightest, most thoughtful people I’ve ever met – a level of excellence within the staff that reflects DA Conley’s commitment to running a top-level office.

Dylan Hayre: Testimony Against Mandatory-Minimum Sentencing in Massachusetts
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The second thing I learned, or realized, was that prosecutors wield a vast majority of the power and influence through most stages of a criminal case. I know there are rules of evidence and procedure. However, in practice our criminal justice system is almost completely one-sided, especially for those at the lowest rungs of the system – those charged with crimes in district court who represent themselves or who are represented by an overworked, underpaid public defender.

That leads to my third finding: this system is broken, and the lack of a level playing field – a reality created and fortified by the continued use of mandatory-minimum sentencing – is the reason our system needs to be fixed. While I understand how and why prosecutors wield so much authority throughout the course of a criminal justice proceeding, man/mins give prosecutors a tool of leverage and a degree of power that redefine the justice system as one in which prosecutors play the role of judge and jury, while depriving the actual judge and jury of their constitutionally sacred roles in the court.

As nationally renowned legal scholar R. Michael Cassidy writes in *Prosecutorial Ethics*, “It is the prosecutor who determines what charges the defendant will ultimately face.”¹ This fact must be taken in conjunction with the American Bar Association’s “Model Rules of Professional Responsibility,” notably the ideal captured within Comment 1 on Rule 3.8: “a prosecutor has the responsibility of a minister of justice.”² This Comment, widely regarded as a central component of prosecutorial ethics, makes clear that prosecutors are obligated to present a case clearly, fully, and fairly, and to leave any determinations about the verdict and sentencing of that case to the judge and jury.

However, even when the prosecutor does play a role in the sentencing phase of a criminal proceeding, Standard 3-6.1 of the ABA’s “Standards for Criminal Justice: Prosecution Function,” reminds us: “The prosecutor should not make the severity of sentences the index of his or her effectiveness.”³ This wariness of a prosecutor’s role in sentencing is all the more important in cases resolved through plea-bargaining. A vast majority of cases are resolved in this way, and the potential corrosive influence of mandatory-minimum sentencing policies is at its peak in these cases. “There are several reasons why even an *innocent* [sic] defendant might accept a reduced sentence and plead guilty...for example...to avoid an unduly harsh mandatory sentence.”⁴

I had read and heard most of these values and ideals before and during my time as an intern and a prosecutor. I also saw, first hand, the myriad challenges within our

¹ Cassidy, R. Michael, *Prosecutorial Ethics*, Thomson West 2005, p.13

² Cassidy, p. 142

³ Cassidy, p. 169

⁴ Cassidy, p. 82

Dylan Hayre: Testimony Against Mandatory-Minimum Sentencing in Massachusetts
Delivered to the Massachusetts Sentencing Commission on Nov. 18, 2015

justice system that are created by man/mins. Most of the cases I handled were drug distribution cases, and most of those incidences occurred within what were then school zones. The law regarding the size of school zones has since changed, but the ideals underpinning the original, myopic, and harsh laws are still prevalent in our overall policy.

One morning, I was responsible for arraigning a young man, a couple years removed from high school, for distributing marijuana in a “school zone.” The “distribution” charge was one thing, but the “school zone” charge carried a mandatory-minimum sentence of 2.5 years. This was a well-known sentencing enhancement within much of the South Boston community. As I was walking into court that morning, the young man’s mother approached me in tears, and pleaded with me.

“Please do not lock my son up for two-and-a-half years. Please. He was only a few feet away from our home. He had no idea.”

Without a moment’s hesitation, I assured her that her son will have his own counsel to protect his rights, and she need not worry about the “school zone” penalty. I knew that I was going to drop the charge. I knew that I would only use the school zone charge as a potential penalty, to be wielded by me if the defendant did not accept the plea agreement terms I was offering at the time.

A few weeks later, during a plea bargain, I told the judge that we would be dropping the school zone charge due to the defendant’s willingness to accept my terms. This key decision – whether to push for a mandatory 2.5 year sentence, or use that as leverage to get a lesser sentence of my choosing – was made entirely by me. I had signed up to serve our Commonwealth as a student prosecutor. However, in that moment, I was not an intern. I was the judge. I was not a prosecutor. I was the jury. I was not, by any means, a minister of justice. I was the entire judicial system.

And yet, despite the clear contradiction between my actions and the values stated above, I did nothing wrong. I did as I was being taught and instructed to do. I did what I had learned to do by watching people I considered – and still consider – role models: my fellow prosecutors.

The fact that this young man was so undeserving of his potential, mandatory-minimum punishment was made even more clear a few days later, when a notorious local drug dealer was back in our court. His criminal record was lengthy, and he had built a small business out of distributing marijuana and other, harder substances to young adults living in the local housing projects. This time, he had been caught distributing in a school zone, just like the young man I’d sentenced a few days earlier. But he was different, in every conceivable way, from that young man.

Dylan Hayre: Testimony Against Mandatory-Minimum Sentencing in Massachusetts
Delivered to the Massachusetts Sentencing Commission on Nov. 18, 2015

However, the law saw these two individuals as the exact same person. There were no exculpatory circumstances or facts, no sense of individualistic determinations and backgrounds that differentiated these individuals. The law told me that both of them could and should be sentenced to 2.5 years in prison, unless I saw fit to prevent them from facing that punishment by wholly eliminating it as an option. The law forced me to view, as identical human beings, a young boy making a mistake and a grown man making a career.

The judge – the official who is constitutionally obligated to determine sentences and punishment based on the facts and circumstances presented to him – never played a role in my ability or willingness to discern, or ignore, the differences between these individuals. The judge, with his years of experience as an attorney and advocate, had no say in the sentencing determinations of an intern with just two years of law school under his belt.

Beyond school zone cases, the existence of mandatory minimum sentences on other charges should give us pause. I saw countless examples to demonstrate the complete imbalance of power in our courts that is made possible by the existence of mandatory minimum sentences.

Perhaps those who favor mandatory minimums would prefer that prosecutors *are* the central force in a courtroom. Perhaps these people would argue that the system is made fair by the constitutionally mandated presence of defense counsel. I can tell you, from my experience, that this is not true for one key reason: I, as prosecutor, had the evidence and the investigators on my side. I was obligated to share exculpatory evidence, and I often would share as much evidence as was possible within the confines of the office that I served. However, at the end of the day, I controlled the flow of evidence. I had better access to evidence, and I could urge the police to get more evidence, or clarify evidence that already existed. From the moment a defendant and their attorney walked into my courtroom, they knew that I would be the driving force on this case, whether I was an intern or an Assistant District Attorney.

This truth creates a chasm of mistrust between prosecutors – those on the front lines of our criminal justice system – and the people they are meant to serve. I swore an oath to serve the Commonwealth and all of its residents. In other words, I was supposed to serve, in any given case, both the victims and the defendants; both the community that was injured and the community that gave rise to the one that caused the injury. That dual representation becomes impossible when I am viewed solely as the adversary to the defendant.

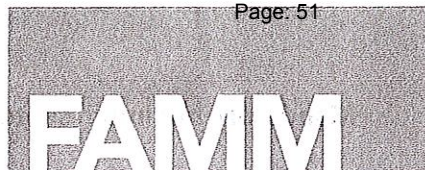
Moreover, mandatory-minimum sentences are entirely ineffective. In punishing the crime without considering, in any small way, the individual person, these sentences force people to spend years in prison without access to rehabilitative, mental health,

Dylan Hayre: Testimony Against Mandatory-Minimum Sentencing in Massachusetts
Delivered to the Massachusetts Sentencing Commission on Nov. 18, 2015

or reentry programming. Recidivism is at an astronomical level, and barriers to successful community reentry by former inmates are made much steeper and more permanent by nondiscretionary sentences that wholly ignore the causes that led to those individuals' criminal behavior in the first place.

Right now, the public appetite for change is real, the reasons for change are abundant, and the power for change is in your hands.

In closing, please consider this: in the same way that you hope to be viewed as individuals in your own life, so, too, do the men and women involved with our criminal justice system hope to be viewed as individuals when they step inside the courtroom and are brought to justice by the only two parties who, as the ideals of our justice system make clear, should be making decisions about their fate: the judge and the jury.



Mandatory Minimums: By the numbers

Each year in Massachusetts, between about 700 and 900 men and women have been sentenced to mandatory minimum sentences for drug offenses. The numbers fell somewhat following the 2012 reforms, due in part to smaller school zones. As of January 1, 2015, one of every 10 state prisoners (982 out of 9,670) was serving a mandatory minimum sentence for drugs. Several hundred more are serving mandatory drug sentences at the county level.

Cost of mandatory minimum sentences. It costs an average of \$47,000 a year to house a state prisoner and an average of \$37,000 a year to house a county prisoner. By comparison, it costs an average of \$10,000 for a course of drug treatment. Long prison sentences lead to more elderly prisoners, whose care can cost two to three times that of younger prisoners.

Disproportionately long sentences. Massachusetts' mandatory minimum sentencing laws can (and do) result in prison sentences that are longer than those for crimes involving violence or even loss of life:

| | |
|---|-----------------------|
| Using a weapon to cause serious bodily injury | 0 to 15 years |
| <i>School zone violation</i> | <i>2 to 15 years</i> |
| Assault with intent to maim | 0 to 10 year |
| <i>Sale of 36 grams of heroin</i> | <i>5 to 30 years</i> |
| Attempted murder | 0 to 20 years |
| <i>Sale of 100 grams of oxycodone</i> | <i>8 to 20 years</i> |
| Manslaughter | 0 to 20 years |
| <i>Sale of 200 grams of cocaine</i> | <i>12 to 20 years</i> |

See the other side for a list of all mandatory minimum sentences for drug offenses.

Impact on women and children. According to the Dept. of Correction, by 2009, nearly one-third of female state prisoners were serving drug-related sentences. Over half of these women were serving mandatory minimum sentences, compared to only 12 percent in 2003. Noting that drug sentencing laws have contributed to longer sentences for female offenders, the Center for Women in Politics & Public Policy also found that almost 70% of Massachusetts' incarcerated women have children under 18.

Voters want change. In 2014, the nonpartisan MassINC Polling Group found that only 11% of voters surveyed supported mandatory minimums of any kind. A full 85% of those surveyed wanted judges to have at least some discretion when deciding what sentences should be.

Mandatory minimum sentences by offense.

| Chapter 94C Section number | OFFENSE | MANDATORY MINIMUM |
|---------------------------------------|---|------------------------------|
| 32(b) | Distribution of Class A, 2 nd offense | 3½ years |
| 32A(b) | Distribution of Class B, 2 nd offense | 2 years |
| 32A(c) | Distribution of cocaine, PCP or meth | 1 year |
| 32A(d) | Distr. of cocaine, PCP, meth, 2 nd offense | 3½ years |
| 32B(b) | Distribution of Class C, 2 nd offense | 18 months |
| 32C(b) | Distribution of Class D, 2 nd offense | 1 year |
| 32E(a)(1) | Trafficking marijuana, 50 - 100 lbs. | 1 year |
| 32E(a)(2) | Trafficking marijuana, 100 to 2,000 lbs. | 2 years |
| 32E(a)(3) | Trafficking marijuana, 2,000 to 10,000 lbs. | 3½ years |
| 32E(a)(4) | Trafficking marijuana, 10,000 lbs. or more | 8 years |
| 32E(b)(1) | Trafficking certain Class B, 18 to 36 grams | 2 years |
| 32E(b)(2) | Trafficking certain Class B, 36 to 100 grams | 3½ years |
| 32E(b)(3) | Trafficking certain Class B, 100 to 200 grams | 8 years |
| 32E(b)(4) | Trafficking certain Class B, 200+ grams | 12 years |
| 32E(c)(1) | Trafficking certain Class A, 18 to 36 grams | 3½ years |
| 32E(c)(2) | Trafficking certain Class A, 36 to 100 grams | 5 years |
| 32E(c)(3) | Trafficking certain Class A, 100 to 200 grams | 8 years |
| 32E(c)(4) | Trafficking certain Class A, 200+ grams | 12 years |
| 32F(a) | Distribution to minor, Class A | 5 years |
| 32F(b) | Distribution to minor, Class B | 3 years |
| 32F(c) | Distribution to minor, Class C | 2 years |
| 32F(d) | Distribution to minor, cocaine | 5 years |
| 32J | School zone offense | 2 years |

June 26, 2015



FAQ's: Mandatory minimum sentences for drugs

Q: If mandatory minimums sentences were repealed, does that mean that no one would go to prison for selling drugs?

A: NO. Instead, drug offenders would be sentenced like most other people who break the law. The judge would look at their role in the crime, their prior criminal record (if any), whether they present a threat to public safety and whether they need drug treatment. The judge could order a person to a community-based corrections program, drug treatment, a short prison sentence or, if needed, a lengthy sentence up to the maximum allowed by law.

Q: If mandatory minimum sentences were repealed, would that return Massachusetts to the urban crimes rates of the 1980s?

A: NO. The conservative group FreedomWorks aptly calls mandatory minimums a "20th century solution to a 21st century problem."¹ The choice isn't between past practices and current laws. It's between current policies and better ones, informed by what we've learned over the past 30 years. For those drug offenders who are addicted, we know far more about the nature of addiction and how to treat it. For all drug offenders, we know far more about risk assessment to determine who does or doesn't present a threat to public safety. We need to use that information to reduce recidivism, contain costs and enhance public safety.

Q: Is it true that mandatory minimums apply only to drug traffickers, not drug addicts?

A: NO. Mandatory minimums apply to distribution offenses, the sale of smaller quantities of drugs, usually for second convictions, as well as to possession offenses if the drugs are intended for resale. They also apply to most drug offenses that occur in a school zone (the area within 300 feet of a school or its property), even if jail time would not be required if the offense occurred someplace else. Mandatory minimums do also apply to all drug trafficking offenses, which include the sale of as little as 18 grams of hard drugs (about 2 to 3 tablespoons). It is not a crime to be an addict. However, drug offenders who are addicts are being imprisoned for crimes frequently related to their addiction.

Q: We're in the midst of an opiate crisis. Shouldn't we lock up the dealers and traffickers to protect the addicts?

A: NO. Drug sellers and drug users aren't two distinct groups; instead, they overlap. Many low level drug offenders sell some drugs, or help others to sell drugs, because it gives them access to the drugs they use or the money to buy them. They aren't the kingpins who are running the operation. Mandatory minimum sentencing laws actually prevent judges from sending to treatment those drug offenders who need it. Instead, judges must impose a pre-determined prison sentence that is generally based only on the weight of the drugs. While in prison, there is no guarantee that an addict will get treatment.

Some drug offenders deserve to be in prison. But others deserve alternatives such as treatment, shorter sentences or community-based correctional programs supervised by the Probation Office. These alternatives would hold drug offenders accountable for their crimes while also addressing their addiction.

Q: How many people are we actually talking about? How many prisoners are serving mandatory minimum sentences for drugs?

A: According to the Department of Correction, as of January 1, 2015, one out of every 10 prisoners sentenced to state prison (982 out of 9,670) was serving a mandatory minimum sentence for drugs.² Given the relatively lengthy sentences in question, at the cost of slightly over \$47,000/year,³ there is a real and cumulative burden on our prison system – as well as taxpayers.

Q: Only 450 of the roughly 40,000 Massachusetts defendants (about 1%) convicted in fiscal 2013 were subject to a minimum mandatory drug sentence.⁴ So what's the problem?

A: The vast majority of criminal defendants don't face a mandatory minimum sentence, regardless of the offense. Our state courts handle those cases according to our time-honored system of checks and balances, with prosecutors, defense attorneys and judges playing their assigned roles. Handling some cases more fairly doesn't justify treating some defendants unfairly as a result of laws passed at the height of the now-discredited "war on drugs."

Since 1994, when the state Sentencing Commission first began tracking convictions, about 15,000 men and women have been sent to prison to serve mandatory minimum sentences for drugs. Prosecutors essentially determine the sentence each person receives by the charges they bring, because the sentence is already set by law. Many drug defendants feel pressured to plead guilty to avoid the mandatory sentence, which may be greatly disproportionate to sentences imposed for other crimes.

Q: The Chief Justice estimates that about three-quarters of those convicted of drug offenses currently requiring mandatory minimums would probably be sent to prison anyway, even if mandatory minimums were repealed. So what's the point?

A: The judge would look at their role in the crime, their prior criminal record (if any), whether they present a threat to public safety. Unlike current law, drug treatment or another evidence-based rehabilitative program could be ordered as a component of their sentences. Drug offenders would return to their communities with a greater chance of success and less risk of recidivism.

Q: Do mandatory minimums provide consistency and predictability in sentencing?

A: NO. Prosecutors often use the threat of mandatory minimums to pressure defendants to enter into plea agreements where the drug offender pleads guilty in exchange for a shorter sentence. As a result, sentences are neither consistent nor based on decisions made in an open courtroom. Moreover, plea bargaining policies vary from county to county.

The racial disparities in mandatory minimum sentencing further reveal a lack of consistency. According to the state Sentencing Commission, people of color – who comprise only slightly more than 20% of the state's population – make up about one-third of those who are convicted of drug offenses. But on average they make up about 75% of drug offenders sentenced to mandatory minimums.⁵

Q: According to the District Attorneys, over 73% of state prisoners serving mandatory minimums for drugs had a history of crimes involving firearms or violence.⁶ Does that justify mandatory minimum sentences?

A: NO. By that estimate, nearly 30% of state prisoners serving mandatory drug sentences have no such criminal history. Yet the judge who sentenced them had no choice but to send them to prison without considering their role in the offense, whether they posed a threat to public safety or whether they needed drug treatment.

Q: What's a "governing" offense? And does sentencing data based on governing offenses minimize the dangerousness of drug offenders serving mandatory minimums?

A: For their reports, both the Massachusetts Sentencing Commission and the Department of Correction categorize prisoners by their offense. Prisoners convicted of more than one crime are categorized by their "governing" offense – the crime for which they received the longest

sentence. For those who were convicted of both a drug offense and possession of an unregistered gun, they are typically categorized as drug offenders because mandatory minimums for drugs are usually longer (up to 12 years) than the mandatory minimum for gun possession (18 months). However, Massachusetts requires very stiff mandatory minimum sentences for possession of a gun while committing a felony – up to 25 years.

The problem isn't with the terminology; drug offenders who commit violent crimes are counted as violent criminals. The problem is that a drug offense usually requires a longer mandatory minimum sentence – sometimes 5 or 6 times longer – than for illegal possession of a gun, whether or not a gun was involved in the offense.

Q: Aren't prosecutors simply being smart on crime by seeking to incarcerate the most violent offenders?

A: Prosecutors can and should decide where to focus their resources. But deciding who to prosecute is different from deciding what that person's sentence should be, which is what mandatory minimums essentially allow prosecutors to do – and to do so behind closed doors. An independent judiciary is one of the foundations of our democracy. We should expect prosecutors and judges to disagree, given the very different roles they play in our system of justice. That's why we must maintain the balance of power.

June 29, 2015

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¹ <http://www.freedomworks.org/content/mandatory-minimums-20th-century-solution-21st-century-problem-part-1>.

² <http://www.mass.gov/eopss/docs/doc/research-reports/pop-trends/prisonpoptrends-2014-05042015-final.pdf>

³ <http://www.mass.gov/eopss/docs/doc/research-reports/annualreport2013nov202014.pdf>.

⁴ <http://www.mass.gov/courts/docs/admin/sentcomm/fy2013-survey-sentencing-practices.pdf>.

⁵ <http://www.mass.gov/courts/docs/admin/sentcomm/fy2013-survey-sentencing-practices.pdf>.




⁶ <http://www.bostonglobe.com/opinion/editorials/2015/04/06/opponents-mandatory-minimum-sentencing-fail-account-for-reality-here-mass/bCyVPCE2ItQnYqTQxXztl/story.html>.


FAMM

Mandatory Minimums: Compare the sentences

Drug offenders are routinely sentenced to mandatory prison terms that are otherwise reserved for **violent crimes or repeat offenders**. This is true even if the person had little or no prior criminal record, played only a minor role in the offense or was an addict.

Many mandatory minimum sentences are based solely on the **weight of the drug** involved (including any substance it may be mixed with); no other factors can be considered.

| 12 years | |
|--|--|
| <p>Trafficking 200 grams or more of heroin or cocaine</p> <p>200 grams = 7 ounces = a can of baking powder</p>  | <p>No other offense requires a mandatory minimum sentence of 12 years. These crimes of violence require a <u>shorter</u> 10-year mandatory minimum:</p> <ul style="list-style-type: none"> • Rape with use of a firearm; • Indecent assault and battery on a child under 14, committed during another offense; • Assault with a firearm with intent to rob or murder, victim 60 or older; • Human trafficking for sexual servitude – 2nd offense. |
| 8 years | |
| <p>Trafficking 100 to 200 grams of heroin or cocaine</p> <p>100 grams = 3½ ounces = package of instant pudding mix</p>  | <p>No other offense requires a mandatory minimum sentence of 8 years. This crime requires a <u>shorter</u> 7-year mandatory minimum:</p> <ul style="list-style-type: none"> • Unlawful possession of machine gun or Firearm – 3rd offense. |
| 5 years | |
| <p>Trafficking 36 to 100 grams of heroin</p> <p>36 grams = 1.3 ounce = 1 packet seasoning mix</p>  | <ul style="list-style-type: none"> • Manslaughter while operating a motor vehicle; • Human trafficking for sexual servitude; • Assault with attempt to rape, use of a gun; • Lascivious acts with a child under 16 – 2nd offense; • Illegal firearms trafficking: 10 to 19 weapons within 12 months. |

| 3½ years | |
|--|---|
| <p>■ Distribution of heroin – 2nd offense</p> <p>“Distribution” is not limited to sales. It includes sharing drugs with another or possession with the intent to distribute.</p> <p>■ Trafficking 36 to 100 grams of cocaine</p> <p>■ Trafficking 18 to 36 grams of heroin</p> <p>18 grams = 0.6 ounce = 1 packet of dry salad dressing mix</p>  | <p>No other offense requires a mandatory minimum sentence of 3½ years. These crimes require a <u>shorter</u> 3-year mandatory minimum:</p> <ul style="list-style-type: none"> ● Assault and battery to coerce a child under 18 to participate in gang activity; ● Illegal firearms trafficking: 3 to 9 weapons within 12 months; ● Armed Career Criminal Act: certain unlawful gun possession crimes, if previous conviction for violent offense; ● Inducing a minor into prostitution. |
| 2 years | |
| <p>“School zone” violation – Sale of any amount of any drug within 300 feet of a school or its property, between the hours of 5 a.m. and midnight, even if:</p> <ul style="list-style-type: none"> ▪ no children were present; ▪ the offense occurred in a private home; ▪ the offense would not require any jail time if committed elsewhere. <p>School zone sentences are added onto the sentence for the drug offense itself. They cannot be served concurrently with the sentence for any other drug offense.</p> | <ul style="list-style-type: none"> ● Assault with dangerous weapon with intent to rob or murder, victim 60 or older – 2nd offense; ● Assault and battery with dangerous weapon on a person 60 or older – 2nd offense; ● Robbery of person 60 or older – 2nd offense; ● Stalking in violation of a court order – 2nd offense. |



Mandatory Minimums: The school zone law

The school zone law, enacted in 1989, created 1,000 foot drug-free zones around schools. Most drug offenses that occur within the zones – even those that would not require jail time if committed at a different location – are punished by a two-year mandatory minimum sentence, with a maximum of 15 years. The school zone sentence must be served after a drug offender has completed the sentence for the underlying drug offense. If the underlying drug offense requires a lengthy mandatory minimum, then a drug offender can face a total of nearly 15 years in prison *at a minimum* – even as a first-time offender, even for a nonviolent offense.

The 1,000 foot zones were created without any empirical evidence that they protect children. At the time, Massachusetts already had tough laws against selling drugs to minors or using them to sell drugs. By 2001, researchers at Boston University's School of Public Health found that children were rarely, if ever, involved in school zone offenses. Instead, the offense usually occurred near the drug offender's home, which was within the school zone. (*W. Brownsberger et al., "An Empirical Study of the School Zone Law in Three Cities in Massachusetts,"* available at http://willbrownsberger.com/wp-content/uploads/2011/02/school_zone%20jdi.pdf.)

Unintended consequences. The school zone law created a two-tiered system of justice: drug offenders living in urban areas, often blanketed by overlapping school zones, were punished more harshly than their suburban or rural counterparts. The resulting racial disparities were egregious. According to researchers at the Prison Policy Initiative, blacks were 26 times more likely to receive school zone sentences than whites, while Latinos were 30 times more likely. (*A. Kajstura et al., "Reaching Too Far, Coming Up Short: How Large Sentencing Enhancement Zones Miss the Mark" (2009),* available at <http://www.prisonpolicy.org/toofar/report.html>.)

2012 reforms. As part of the 2012 sentencing reforms, the size of school zones was reduced to 300 feet, although there was still no empirical evidence that zones of this size are effective. In addition, the school zone law no longer applies to drug offenses that are committed between midnight and 5 a.m., when children are not likely to be in the area (the offense itself can still be prosecuted but will not trigger the school zone mandatory minimum).

Continuing problems. The school zone law still requires "one size fits all" mandatory sentences, ignoring the drug offender's role in the offense, relative threat to public safety and possible need for treatment. A 2006 study found that one-third of drug offenders sentenced to prison in Massachusetts might have avoided incarceration altogether but for the school zone law. (*J. Greene et al., "Disparity by Design: How drug-free zone laws impact racial disparity – and fail to protect youth,"* available at <http://www.justicepolicy.org/research/1991/>.)



Mandatory Minimums: Bipartisan support for reform

The need to reform Massachusetts' drug sentencing laws isn't about liberals vs. conservatives. Instead, it's about what works – for public safety, for taxpayers, and for drug offenders and their families. Many conservatives in other states are calling for change.

Connecticut. Americans for Tax Reform's Grover Norquist supports Democratic governor Dannel Malloy's criminal justice bill, as do other fiscal conservatives and civil rights leaders. The bill, which is currently being debated, would repeal certain mandatory minimums for drugs. "Contrary to their original intent, mandatory minimum laws have done little to reduce crime. They have, however, been significant drivers of prison overcrowding and skyrocketing corrections budgets."

Pennsylvania. Republican chair of the Judiciary Committee, Sen. Stewart Greenleaf, is a former prosecutor who helped write his state's drug sentencing laws in the 1990s. He now opposes them "for one reason: they're not effective." Their main effect, he says, has been to fill up Pennsylvania's prisons, which costs taxpayers tens of millions of dollars per year.

New Mexico. Sen. Nancy Rodriguez, a Democratic member of the state's Senate Judiciary Committee, supports state funding for alternatives to incarceration. "We know that substance abuse is a big problem that manifests itself in crime. We are not providing enough rehab ... and [people] aren't getting the treatment in the jail."

Alabama. In May 2015, Republican governor, Robert Bentley, signed into law historic criminal justice reforms that were sponsored by two Republicans, Sen. Cam Ward and Rep. Mike Jones, who said, "There is great value in adding resources to supervision and strengthening alternatives to incarceration." The bill strengthens community-based supervision and prioritizes prison space for people convicted of violent and dangerous crimes. It is expected to reduce the number of people in prison 16% and avert more than \$380 million in costs over the next six years.

Oklahoma. Also in May 2015, Republican governor, Mary Fallin, signed into law legislation that "gives our judges the freedom they need to divert people who need treatment, rehabilitation and supervision to the appropriate facilities and programs." According to the bill's sponsor, Republican Rep. Pam Peterson, "The intent of the bill is to help ensure that lengthy sentences and prison space are reserved for the most dangerous criminals by allowing certain low-level offenders from serving these long, mandatory sentences while at the same time protecting the public safety."

Utah. Utah's 2015 drug sentencing reforms were supported by conservative lawmakers as well as the ACLU. According to Republican Rep. Eric Hutchings, who filed the bill, the "war on drugs" approach was not working. "We're keeping people in prison longer and we're paying more for it and we're actually getting worse results." The new law could save up to a half-billion dollars over 20 years.

Florida. Florida's 2014 mandatory minimum reforms were filed by Democrat Rep. Katie Holmes and Republican Sen. Rob Bradley, who called them "alternative approaches to simply just warehousing drug addicts". They were signed in to law by Republican governor Rick Scott and are expected to save up to \$47 million over five years.

Georgia. Republican governor Nathan Deal, on his state's 2013 criminal justice reforms: Public safety will be improved by "ensuring that prison resources are reserved for the 'kingpins' while the 'mules' are given a chance at reform."

Louisiana. Republican governor Bobby Jindal on Louisiana's 2013 reform package: "There are a number of low-risk, nonviolent drug offenders in our prisons who can still turn things around and become productive members of society instead of repeat offenders."

South Dakota. Republican governor Dennis Daugaard on 2013 reforms: "Prison shouldn't be a place for non-violent offenders that we're not afraid of, we're just angry at." Faced with the need to build two more prisons, South Dakota's legislature instead chose to steer nonviolent offenders to drug courts, treatment and supervision.

New Jersey. Republican governor, Chris Christie, on New Jersey's 2012 reforms that emphasize drug courts and treatment over prison: "This was not just a matter of dollars and cents, it was about reclaiming lives. No life is disposable. ... By putting people before partisanship, we are providing optimism and hope to individuals and families torn apart by addiction."

Missouri. Republican lawmaker Gary Fuhr, a former police officer and FBI agent, sponsored a 2012 bill to keep nonviolent offenders out of prison. It was bill passed with overwhelming bipartisan support (175 to 3) and was signed into law by Democratic governor Jay Nixon.

Ohio. Republican governor John Kasich, on signing a 2011 bill that diverts nonviolent, first-time offenders to community control, job training or treatment programs: "It's a matter of stripping out the politics, looking the problem square in the eye and coming up with innovative ways to fix it."

Texas. Republican governor Rick Perry: "No political party has a monopoly on good ideas, including my own. ... In 2007, with broad support from Republicans and Democrats alike, Texas fundamentally changed its course on criminal justice. We focused on diverting people with drug addiction issues from entering prison in the first place, and programs to keep them from returning."

June 4, 2015

Mandatory Minimums: Reforms in Other States

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|-----------------------|---|
| Connecticut | In July 2015, Connecticut repealed mandatory minimum sentences for possession offenses committed within a drug-free school zone. |
| Maryland | In May 2015, Maryland enacted a “safety valve” law that lets judges sentence below the mandatory minimum for drug offenses if the mandatory sentence would be excessive and public safety is not at risk. |
| Oklahoma | In May 2015, Oklahoma enacted legislation allowing judges to sentence below the mandatory minimum for a wide range of nonviolent offenses, including certain drug crimes, to allow for more drug treatment and mental health services in place of mandatory and expensive prison sentences. |
| Florida | In 2014, Florida eliminated mandatory minimum sentences for certain low level drug offenses, reduced the mandatory sentences for other drug offenses by up to 50%, and increased the drug weights needed to trigger some of those offenses. |
| Oregon | In 2013, Oregon repealed certain mandatory minimums for drug offenses, part of a criminal justice package expected to save \$326 million over the next 10 years. |
| Georgia | In 2013, Georgia enacted a drug “safety valve” law that allows judges to sentence below the mandatory minimum for certain nonviolent first-time felonies. In 2012, Georgia reduced mandatory minimums for certain possession offenses. |
| Ohio | In 2011, Ohio repealed mandatory minimum sentences for certain drug offenders and instead requires first-time nonviolent offenders to be sent to community corrections, job training or treatment programs instead of prison. Sentences for low level trafficking and possession offenses were also shortened. |
| Delaware | In 2011, a decade after its first reforms, Delaware eliminated mandatory minimum sentences for some first-time drug offenders, reduced minimum prison sentences for drug felonies, and reduced drug-free school zones from 1,000 feet to 300 feet. |
| South Carolina | In 2010, South Carolina removed the 10-year mandatory minimum sentence for school zone violations, allowed the possibility of probation for certain second and third drug possession convictions, and eliminated mandatory minimum sentences for first convictions of simple drug possession. |
| New Jersey | In 2010, New Jersey passed a law that gives judges discretion when sentencing defendants convicted of drug-free school zone violations. |
| Rhode Island | In 2009, Rhode Island repealed all mandatory minimum sentencing laws for drug offenses. Previously, drug offenders received 10 and 20-year sentences, even for possession offenses, along with \$10,000 and \$25,000 fines. |
| New York | In 2009, New York enacted comprehensive drug policy reforms that greatly expand treatment options while repealing most mandatory minimum sentences for drug offenses. Judges have far greater discretion to impose sentences that fit the circumstances of an individual’s case while still protecting public safety. |

| | |
|---------------------|--|
| Minnesota | In 2009, the Minnesota legislature changed its law so that courts could impose sentences for certain low level drug felonies without regard to the mandatory minimum that would otherwise be required. |
| Nevada | In 2007, the Nevada legislature repealed mandatory sentencing enhancements and expanded “good time” eligibility for certain offenses. |
| Michigan | Michigan passed sweeping reforms of its mandatory minimum drug penalties in 2003 and 1998. In 1998, lawmakers repealed mandatory life sentences without parole for certain drug offenses and made those serving such sentences eligible for parole. In 2003, the legislature repealed almost all drug mandatory minimums and implemented new sentencing guidelines. In 2010, the state passed additional reforms that provide earlier parole eligibility to most of the drug offenders who did not benefit from the earlier reforms. |
| Maine | In 2003, Maine legislators authorized courts to suspend mandatory prison sentences for crimes other than murder if they are found to create a “substantial injustice” and if doing so would not diminish the gravity of the offense nor endanger public safety. |
| New Mexico | In 2002, the New Mexico legislature repealed a mandatory sentence enhancement that required prosecutors to charge defendants with a prior drug conviction as habitual offenders. The sentence enhancement is now discretionary, allowing judges to determine whether it is appropriate on a case-by-case basis. |
| Connecticut | In 2001, Connecticut legislators gave courts some leeway to relax mandatory minimum sentencing laws for sale or possession of drugs if there is “good cause,” even if the offense occurred within a drug-free school zone. |
| Delaware | In 2001, Delaware legislators reduced the mandatory minimum prison terms for trafficking cocaine from three years to two years, and increased the quantity of drugs needed to trigger that penalty. |
| Indiana | In 2001, Indiana eliminated its mandatory 20-year prison sentence for drug offenders arrested with three grams or more of cocaine, giving courts authority to sentence drug offenders who sell drugs to support their drug dependency to treatment instead of prison. The state also modified the “three strikes” law, including an exception for habitual substance abusers. |
| Louisiana | In 2001, Louisiana repealed mandatory minimum sentences for simple drug possession and many other non-violent offenses, and cut in half minimum sentences for drug trafficking. The state also restored the possibility of parole, probation or suspension of sentence for a wide range of non-violent crimes. |
| Mississippi | In 2001, the Mississippi legislature amended its sweeping 1994 truth-in-sentencing law to allow nonviolent first-time offenders to regain parole eligibility after serving one-fourth of their prison sentences. As a result, more than 2,000 state prisoners became eligible for parole. By 2003, 900 had been released, saving the state \$12 million in prison costs. |
| North Dakota | In 2001, North Dakota lawmakers repealed a one-year mandatory minimum sentence for first-time drug offenders. |

7/10/15

Massachusetts Sentencing Commission Public Hearing on Sentencing

Written Testimony of Francis J. Carney, Jr., Ph.D.

Executive Director, MA Trial Court (Retired)

November 18, 2015

Chair Lu and Sentencing Commission members:

Thank you for allowing me to comment on the work of the MA Sentencing Commission. I believe that the Commission has a great opportunity to contribute in a very significant way to the emerging correctional reform movement. Recent public opinion surveys (Pew Foundation, MassINC) have revealed a shift away from a reliance on “tough on crime” policies, along with a new interest in correctional reform. And the political climate is in sync with changing public opinion. Here in MA, our governor, SJC chief justice, and legislative leaders have joined forces to work with the Pew Foundation to develop the data needed to identify and implement meaningful correctional reform initiatives.

At the heart of correctional reform is sentencing. The concept of “mass incarceration” has gained prominence of late, symbolically denoting the great cost, both in financial and human terms, of strict sentencing policies of the past few decades. I believe the MSC is in a unique position to address the phenomenon of “mass incarceration” by developing sentencing guidelines that will promote fair and proportional sentences and also serve as an effective tool for managing correctional populations.

A recent federal sentencing initiative illustrates the important role of sentencing guidelines in promoting fairness in sentencing and controlling prison populations. In 2014, the U.S. Sentencing Commission revised its sentencing guidelines, adjusting downward the penalties for certain drug offenses and applying the revised guidelines retroactively. To date (Oct. 2015), over 17,000 federal drug offenders have been granted reduced sentences under the retroactive provision (74% of those who applied). On average, their sentences were reduced by 23 months, which meant that the cost savings associated with this initiative would be substantial. The first group of these 17,000 federal inmates was released on November 1. (U.S. Sentencing Commission, *2014 Drug Guidelines Amendment Retroactivity Data Report* (October 2015))

To me, a remarkable aspect of this initiative is the absence of a backlash against it. If this initiative had occurred ten years ago, the public outcry would probably have been palpable. Yet, today, there is hardly a ripple, reflecting the emerging political climate that is favorable to sentencing reform. This augers well for the work of the MSC, which now has the opportunity to formulate sentencing guidelines that not only reduce unwarranted sentencing disparities, but also serve as an effective tool for managing correctional populations by identifying appropriate candidates for intermediate sanctions in lieu of incarceration and providing a sentencing framework that can be adjusted as appropriate to accommodate prison overcrowding.

It’s a great challenge and I wish you well in this very important work.

GEORGE LABADIE [REDACTED]
MCI PLYMOUTH
[REDACTED]

DEAR JUSTICE LU

I have recently read an article in the lawyers weekly regarding sentencing reform and the current proposals for change. As i am sure you know, currently state courts do not even follow the sentencing guidelines. It seems right now that all the talk for sentencing reform is directed towards non violent drug offenders "Only". Why not all NON VIOLENT OFFENDERS. Otherwise that would be a form of discrimination, and that would not be justice. As i am sure you know drug offenders drug offenders offend everyday as well as the drug dealer non violent or otherwise. A non violent offender may not have a drug or alcohah problem, but he is still a non violent offender. if this sentencing reform proposal is infact going to discriminate and just target drug offenders the sentencing commission should also pass into law the sentencing guidelines so it is fair for everyone and not just a select group this could be a very simple fix if at the very least if the state system followed the federal system and imposed the sentencing guidelines and made them law so it is fair for everyone. it appears the commonwealth has been more interested in warehousing people. What we need is a system that is fair for everyone. Currently that is not the way it is. That is not justice. If the commission was to just make the sentencing guidelines law that would not be a big undertaking and could be put into place forthwith

Justice Lu Thank you for your time

November 4, 2015
cc file/GWL


GEORGE LABADIE

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GEORGE LABADIE
MCT PLYMOUTH

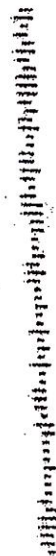
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BOSTON MA 02108

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GEORGE LABADIE
MCI PLYMOUTH

DEAR MR ROSENTHAL

I have recently read an article in the lawers weekly regarding the Massachusetts sentencing guidelines and the current proposals for changes. As i am sure you know,currently state courts do not even follow the guidelines. It seems that all the talk regarding sentencing reform is directed towards non violent drug offenders "Only". Why not all NON VIOLENT OFFENDERS. Otherwise that would be a form of discrimination and that would not be justice. As i am sure you know drug offenders offend everyday as dose drug dealers or otherwise. A non violent offender may not have a drug or alchohal problem but he is still a non violent offender. if this sentencing reform proposal is infact going to discriminate and just target drug offenders the sentencing commission should pass into law the sentencing guidelines so it is fair for everyone and not just a select grope. It could be a very simple fix if the state system just followed the federal system and imposed the guidelines and made it fair for everyone not just a select group. it has always appeared that the commonwealth has been more interested in warehouseing people. We just need a system that is fair for everyone. Currently thats not the way it is. to implament the guidelines would not be a big undertaking and could be put in place forthwith.

MR ROSENTHAL THANK YOU FOR YOUR TIME

NOVEMBER 4,2015
cc file/GWL


GEORGE LABADIE



November 18, 2015
Members of the Sentencing Commission
Boston, MA 02133
Re: Testimony in Support of S.64 & H.1429

My name is Josh Beardsley. I am retired from McKinsey & Company's research arm. I am a volunteer with the Jobs NOT Jails Coalition as its research coordinator.

I thank you for the opportunity to offer testimony in support of the Act to Increase Neighborhood Safety and Opportunity also known as the Justice Reinvestment Act. The Act, in a nutshell, proposes repeal of revocation of driver's license for people who commit drug offenses often unrelated to motor vehicle violation, strikes mandatory minimum drug laws, increases the threshold amount for larceny-related felonies, permits medical placement of terminally ill or incapacitated inmates and, very importantly, creates a neighborhood safety and opportunity fund that will be financed by savings from implementing these reforms [and others].

[Please note that the numbers in my testimony and the attached charts are provisional; but, we are confident they are directionally correct and look forward to working with legislatures to produce sets behind which we can all stand."]

In this testimony I will limit my remarks to two issues: first, the savings that can be expected by two reforms in the JRA, repealing mandatory minimum drug sentences and raising the felony threshold from \$250 to \$1,300; second, the critical importance of the trust fund.

What would savings be? To estimate potential savings we used the concept of "marginal costs" based on a very recent Vera Institute analysis of the Cost of Jails that used data from Hampden County. In 1945 the larceny threshold in Massachusetts was \$100; simply applying the Consumer Price Index brings that number to \$1,300 in 2015. In the October 14 hearing Senator Brownsberger challenged our logic: "how do you know they got it right in 1945," he asked. We did not. After some reflection we thought a more appropriate measure than CPI would be the percentage of median per capita income represented by \$100. In 1945 it was 8% (\$100/\$1223); in 2012 per capital income was \$42,693. So, the floor could be \$3,500. That would put Massachusetts #1: above Wisconsin at \$2500. Senator Brownsberger's response: "Very helpful rationale. I like that!" Please give it some thought in your deliberations.

Repealing drug mandatory minimums (and, implementing recommendations in the bill) we estimate ~~we could~~ result in annual gross savings of \$30 million. Furthermore, that figure does not include ‘thousands’ sentenced for drug offenses who are coerced to take a plea. According to a defense attorney who has practiced for over 35 years, "on drug cases, a mandatory minimum is on the table at least half the time; without mandatory minimums the eventual sentence could have very well been much less severe - whether it was a case of probation or incarceration." Raising the larceny threshold could shrink the prison footprint even further and result in another \$6 million in annual savings.

Why is the trust fund so important? Our prisons and Houses of Correction release some 16,000 persons annually – most without supervision and the great majority without access to resources that can help them re-integrate into their communities. These communities are in the poorest zip codes in the State, according to the DOC, Hampden County research and Harvard University. And, too many of the releases are poor, undereducated and underemployed! [75% of those in Hampden County are unemployed at intake; most do not have a high school diploma and read at the 6th grade level!] The current recidivism rates are between 40-65% [depending on the time frame].

According to our analysis [we were conservative and selective] current reforms within the Act and others could directly affect some 5,000 individuals among the current populations. Clearly, the recidivism numbers will only grow if the re-integration and employment challenges are left for another day.

The investments that need to be made across all stages of the criminal justice system have been well understood for some time. In 2012 the DOC convened a three-day conference and produced a remarkably comprehensive and detailed roadmap to reduce recidivism. And yet, over the past several years, according to the Governor’s Commission on Corrections Reform, there have been deep cuts in education, training and re-entry programs – both within and outside the criminal justice system.

We ask the Commission to set the precedent: move to begin to dismantle our broken criminal justice system by recommending reforms which can reduce the system’s footprint and urge our legislators to use the savings to fund education, training and community programs that will make it obsolete.

Thank you for your time and consideration. Josh Beardsley for the JobsNOTJails Coalition

Contact: josh.beardsley4@gmail.com



Notes

**The scale and scope of the challenges faced are sufficiently documented as are many of the “solutions.” Over the past several years there have been significant changes and developments in Massachusetts. And, across the political spectrum there appears to be broad recognition of how to address many of the fundamentals – based in large measure by studies and evidence-based solutions in Massachusetts and around the country. One result was Re-thinking Re-entry, an exceptionally remarkable document, produced after a three-day conference which involved most all key stakeholders, including returned citizens. In addition to identifying key steps along the entire criminal justice system necessary to shrink the prison/jail footprint and reduce recidivism, the document listed many of the key obstacles, not least of which are very limited financial resources and the willingness to spend them on a marginal population.*

We know that the knowledge does not exist to successfully overcome these obstacles: there are no or very little data on returning citizens; no sufficiently concrete analyses of the state of the current reentry ecosystem and no rigorous estimates of what it would truly cost to implement the visions and highlights articulated in the Rethinking Reentry proposals and the vision of the Jobs NOT Jails Coalition. But, as important as facts are, they are only a necessary condition not a sufficient one. What is also missing is a narrative sufficiently compelling to bring all the stakeholders together to work towards a common goal and in doing so motivate

- Legislators and investors: to provide funding*
- Faith-based organization: to provide volunteers*
- Service providers: to work together towards a common goal*
- Individuals: to offer time, skills and knowledge*
- Businesses: to provide training and employment*
- Academics: to provide conceptual insights*
- Community organizations: to seek funding and replicate evidence-based solutions*
- Returning citizens: to provide leadership and direction*

***Michelle Alexander supplies a powerful logic for this conclusion, and is of little comfort to advocates of piecemeal reforms, which she regards as “utterly insufficient.” She argues “Some people who might have spent more than a decade behind bars may spend only a few years. Children who might not otherwise have ever known their parents may have a shot at having relationships with their mother or father, and people may receive additional support—job training or education.” However, she added, “I’m deeply concerned that many people will mistake these reforms for the kind of cultural and institutional transformation that is necessary.”*



The current bipartisan ferment might improve a few lives, she conceded, but repairing criminal justice requires “a radical restructuring of our society,” potentially driven by “third parties and new political formations” rather than by Republicans or Democrats.”

****According to the Sentencing Commission Survey, while 450 persons were incarcerated in 2013 under those statutes, the total number of persons sentenced in 2013 for drug offenses was 4,583, of whom 2,373 were incarcerated. Since there does not seem to be any reported data on the number of sentences on drug offenders that were the result of pleas and the number of those pleas that were the result of prosecutors using the threat of mandatory minimums, we have been asking experienced professionals for their best estimates. The persons we have interviewed so far indicate that the threat of mandatory minimums is widely used by prosecutors.*

For example, a former Suffolk County Assistant District Attorney said that the mandatory minimums are “the trump card that is always used” by prosecutors to extract pleas and avoid trial, whether the outcome of the plea bargain is probation or incarceration. It all has to do with zip codes and school zones, we are told, and whether the prosecutors are willing to “break it down” (which we understand to mean not invoke the school zone MM). “In this state zip code defines race and whether you are within a school zone,” the former ADA said, “so they have a good deal of leverage...in the suburbs not so much because of obvious reasons: the school zones do not cover the entire zip codes.” According to a defense attorney who has practiced for over 35 years, “on drug cases, a mandatory minimum is on the table at least half the time; without mandatory minimums the eventual sentence could have very well been much less severe - whether it was a case of probation or incarceration.” To these testimonies we would add the powerful statement by U.S. Supreme Court Justice Anthony Kennedy: “Our [prison] resources are misspent, our punishments too severe, our sentences too loaded. I can accept neither the necessity nor the wisdom of federal mandatory minimum sentences. In all too many cases, mandatory minimum sentences are unjust.”

Commenting on the sentencing reform bill [introduced in the Senate on Thursday](#), the New York Times wrote “in addition, [the bill](#) would give federal judges more power to impose sentences below the mandatory minimum in certain cases, rather than being forced to apply a strict formula. This would shift some power away from prosecutors, who coax plea deals in [more than 97 percent](#) of cases, often [by threatening defendants](#) with outrageously long punishments.”

***** The estimates of the number of persons affected by reforms and potential savings include both reforms listed in the JRA as well as others, including parole eligibility and the bail reform initiative. The crucial provision is the establishment of a trust fund that will be funded from savings generated by all reforms that shrink the prison and HOC populations. Please see attached slides for calculations and assumptions.*

Selected Sources

Massachusetts data sources

- [Department of Correction Research Department](#)
- Sentencing Commission – [Survey of Sentencing Practices](#)
- Houses of Correction - [Hampden County research](#)
- [Office of the Commissioner of Probation](#)
- [Senator William Brownsberger statistics](#)
- [Special Legislative Commission, 2015](#)
- [Massachusetts Government](#)
- Vera Institute: [The Price of Jails](#)
- [Department of Corrections](#); [Sentencing Commission](#); [The Prison Policy Initiative](#)
- Glaze and Herberman 2013; Walmsley 2013;
- Uniform Crime Reports furnished by the [Massachusetts State Police Crime Reporting Unit](#). Reports of the [Massachusetts Department of Corrections online](#) (and from the State Library). The uniform crime reports include only aggravated assaults [defined](#) as follows: “Aggravated assault—An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. Simple assaults are excluded.”
- [Massachusetts Sentencing Commission](#);
- [The Sentencing Project](#)
- [Governor’s Commission on Corrections Reform Report \(](#)
- [DOC Research Department of Mental Health Forensic Services](#)
- Parents in Prisons, The Sentencing Project, 2012; MassINC: [Crime, Costs and Consequences](#)
- "Confronting Confinement," 2006; [MassINC](#)
- The Jobs NOT Jails Coalition: Towards Building a Roadmap to Help End Mass Incarceration and Ensure Greater Racial and Economic Justice in Massachusetts, slides 29-30



- **Recidivism – General**
 - Pew Charitable Trust – [The State of Recidivism](#)
 - Social Policy Research - [How Communities Can Reduce Recidivism](#)
 - Pell Center: [Incarceration and Recidivism: Lessons from Abroad](#)
- **Recidivism – Massachusetts**
 - [Reincarcerated: The Experiences of Men Returning to Massachusetts Prisons](#)
 - [Massachusetts Recidivism Study](#)
- **Re-entry and prison education – General**
 - Rand Corporation: [Evaluating Effectiveness of Correctional Education](#)
 - MDRC: [Prisoner Reentry](#)
 - Social Policy Research - [Evaluation of the Re-Integration of Ex-Offenders \(RExO\) Program: Interim Report](#)
 - Justice Center The Council of State Governments - : [Justice Reinvestment Initiatives](#)
 - Annie E. Casey Foundation – [Reentry Helping Former Prisoners Return to Communities](#)
 - [California Proposition 47](#)
 - Harvard Magazine - [The Urban Jobs Crisis](#)
 - Annie E Casey Foundation – [Reentry: Helping Former Prisoners Return to Communities](#)
 - [Home For Good: Furniture for Life](#)
 - RAND: [Serving Time or Wasting Time?: Correctional education programs improve job prospects, reduce recidivism, and save taxpayer dollars.](#)
- **Re-entry and prison education - Massachusetts**
 - Massachusetts DOC - [Rethinking Reentry](#)
 - Middlesex County - [Pretrial Analysis for Middlesex County, Massachusetts Technical Assistance Report and Addendum](#)
 - Boston - [Coming Home Directory](#)
 - Harvard University: [Boston Reentry Study](#)
 - Urban Institute - [Prisoner Reentry In Massachusetts](#)

The Jobs NOT Jails Coalition

**Towards Building a Roadmap to Help End Mass Incarceration and
Ensure Greater Racial and Economic Justice in Massachusetts:**

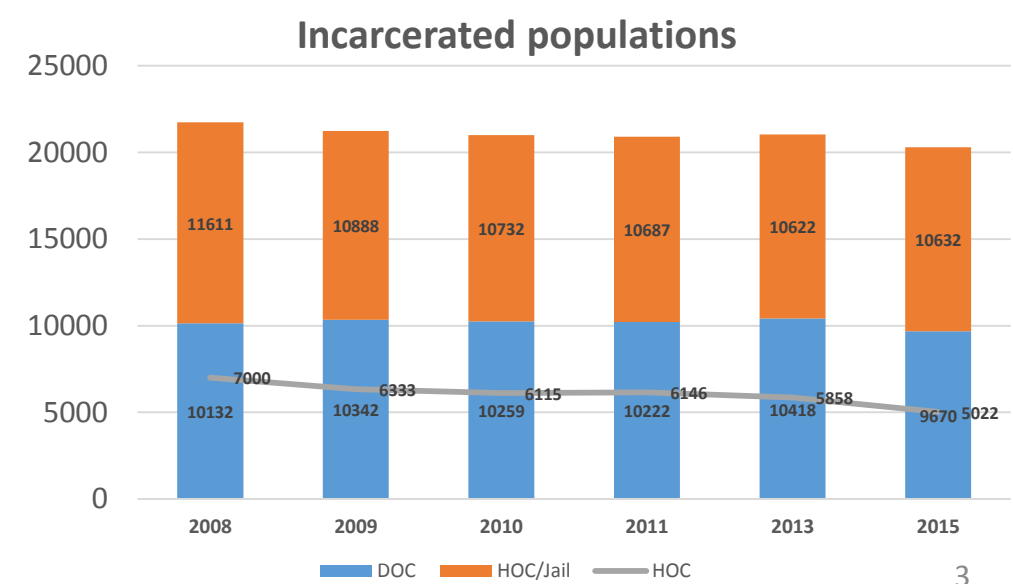
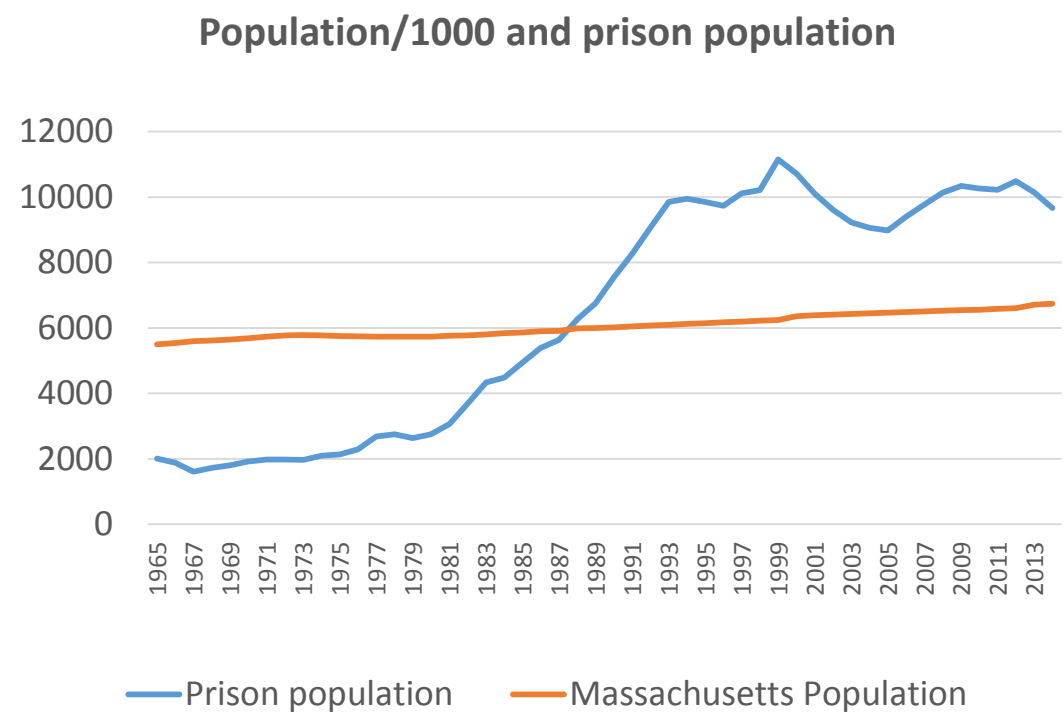
Selected slides



Slides

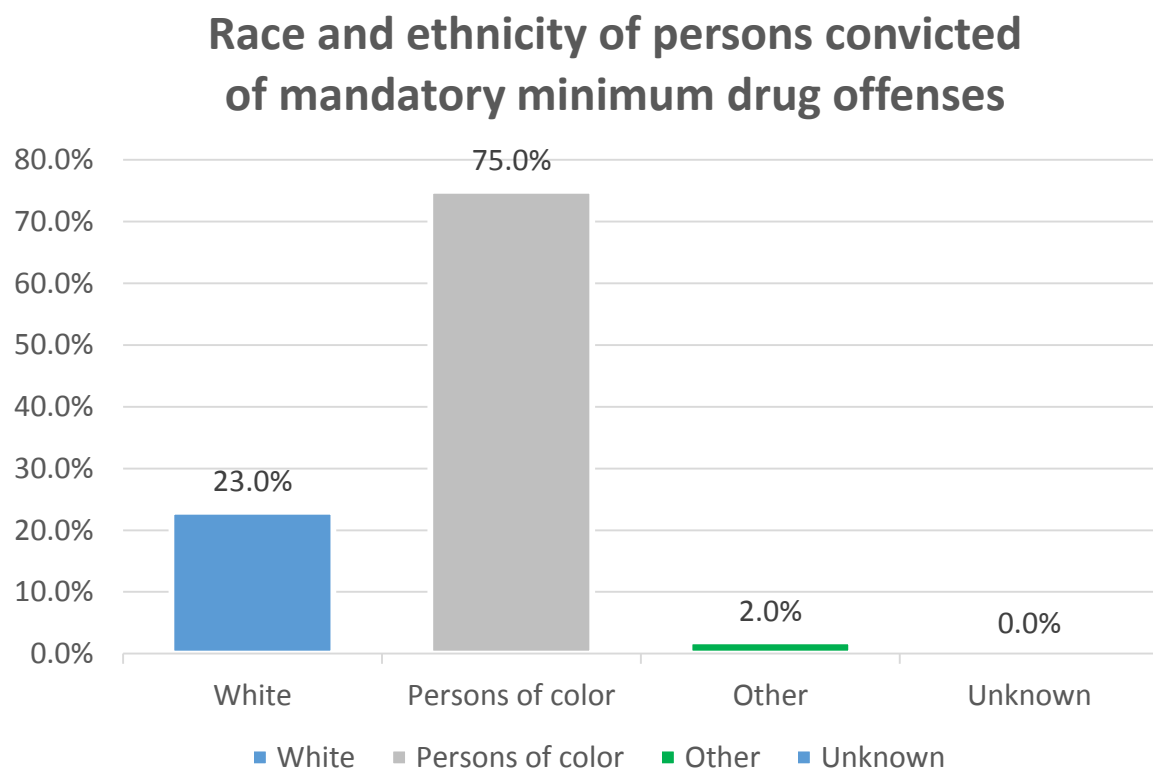
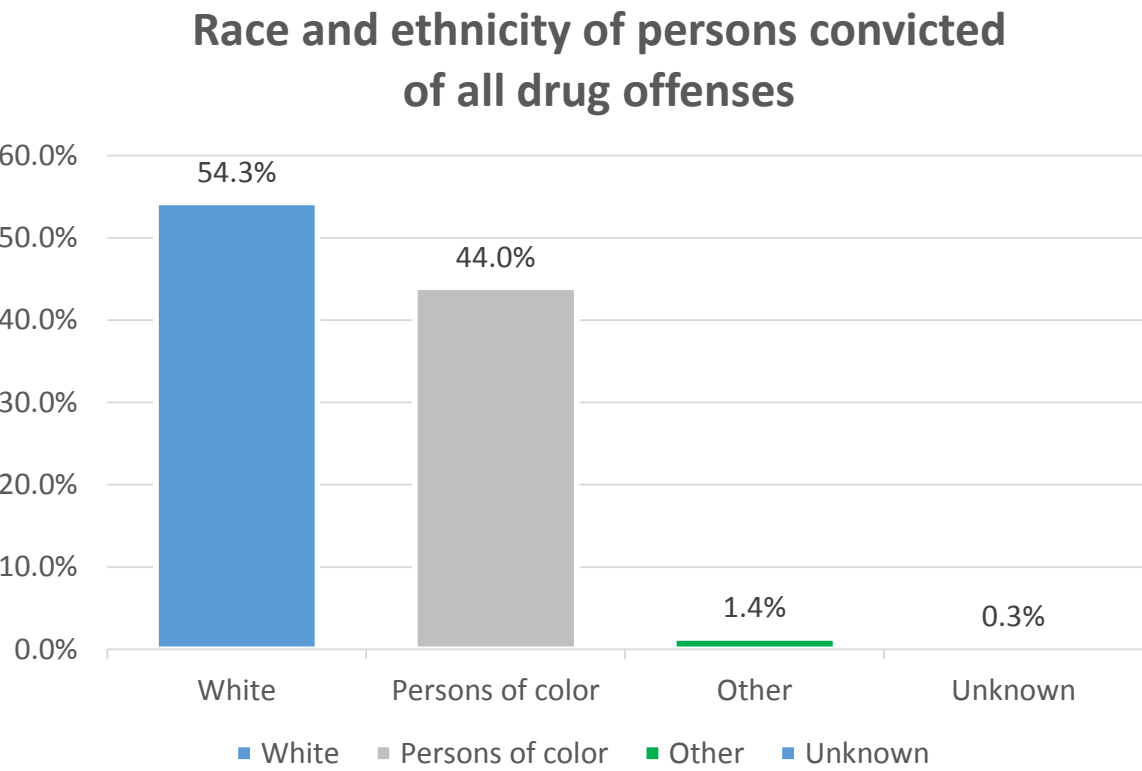
- Growth in incarceration rate since 1965; Slow rate of change over past 7 years
- Disproportionate impact of drug charges on minorities and risk of arbitrary application make repeal of Mandatory Minimums incontrovertible
- We incarcerate too many of the most marginal and vulnerable in our society and release too many 'to the street' with little or no support
- Recidivism is already a significant challenge for the criminal justice system
- Number of persons potentially affected by reforms in the JRA is significant
- We have reasonable information on potential gross annual savings from reducing the footprint
- However, reforms will add significantly to existing numbers released to the street
- It is well accepted that recidivism rates can only be expected to increase until significant investments are made across all stages of the system: **Rethinking Reentry provides one thoughtful and comprehensive analysis...**
- Education and training programs are known to reduce recidivism and save costs
- Yet, these depressing facts continue to persist
- Larceny Threshold by state: only two states have a lower threshold than Massachusetts
- Different bases for calculating larceny thresholds yield dramatically different results
- Assumptions and Calculations
- Jobs NOT Jails Coalition: participating members
- A part of the ecosystem – from The Coming Home Directory

Massachusetts criminally sentenced populations and incarceration rate have more than tripled since 1980



[Department of Corrections](#); [Sentencing Commission](#); Rate is per 100,000 persons;
Bottom numbers are prison populations and top numbers includes pretrial detainees held in jails

Disproportionate impact of drug charges on minorities and risk of arbitrary application make repeal of Mandatory Minimums [very] important.*



Source: [Sentencing Commission](#); * [Senator William Brownsberger](#); Chief Justice Gantz

We incarcerate too many of the most marginal and vulnerable in our society and release too many 'to the street' with little or no support

We have been incarcerating the poor; the unemployed, and underemployed; the undereducated and the afflicted and infirm. The statistics available from [Hampden County](#) and the DOC are shocking in their starkness:

- 31% of females and 51 % of males lacked a high school diploma or GED at intake; most are reading at a 6th grade level.
- 88% of women and 93% of men were identified as having a substance abuse problem
- 72% had personal/emotional issues
- 79% of females and 74% of males were unemployed at time of incarceration
- 63% of the female prisoners and 25% of the male prisoners have an open mental health case
- 45% of male and 37% of female prisoners upon admission have less than a 9th grade reading level
- 35% of male and 39% of female prisoners upon admission have less than a 6th grade math level.



- The DOC releases to the street approximately 3000 persons annually from our prisons, over half with no supervision.
- The HOCs release approximately 13,000, with only 15% under parole supervision
- The jails release approximately 18,000 on bail, to court and to time served.
- And, there are 86,000 persons on probation - a large number (though we do not know exactly how many) is poor and/or unemployed yet still required to pay fines of \$65/month.

Recidivism is already a significant challenge for the criminal justice system

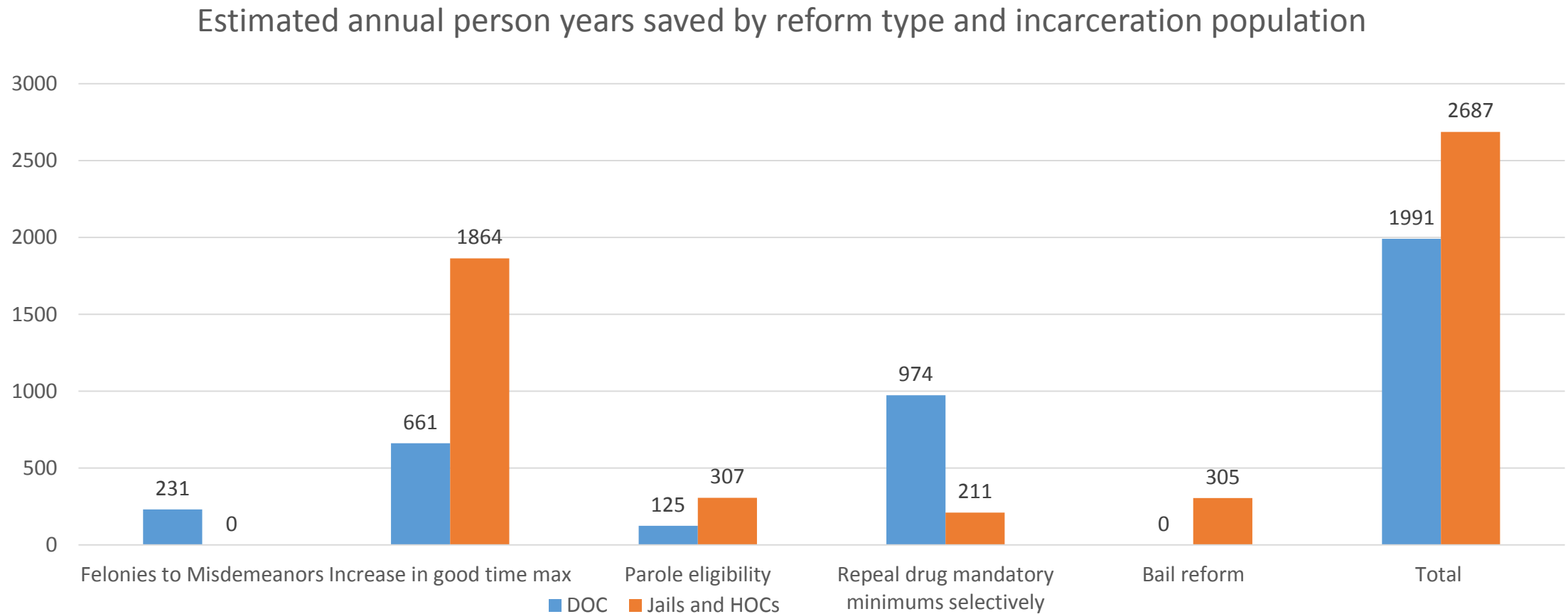
Recidivism rate speaks for itself: **40-65%**

- DOC:
 - The six year recidivism rate (based on re-arrest) for those released from the DOC is 61% (EOPSS/Pew Center for the States Results First MA data)
 - The recidivism rate (based on re-incarceration) of those released from a maximum security prison is 62%; the overall DOC rate is 42%
- HOCs - Hampden County:
 - Three years post release, 59.7% (1136) of offenders had been arraigned, 42.8% (814) had been convicted and 31.8% (605) had been incarcerated for a new crime. Another 8.9% (169) had been incarcerated for a technical violation of probation or parole (most in the first year).
 - The total three -year re-incarceration rate for 2010 releases is 40.7%.



JRA and other reforms should have significant impact on incarcerated populations*

Page 80



*Assumptions: there is capacity within the 'good time' programs and inmates increase average good time from 4.5 days per month to 9 days per month; and, sentence reduction recommendations are applied as written in repeal of drug mandatory minimums; the felonies to misdemeanors figure only includes savings from new commitments starting in year 2. See slides 64-66 for all assumptions and calculations.

Potential gross annual savings from reducing the footprint

\$118,056,768*



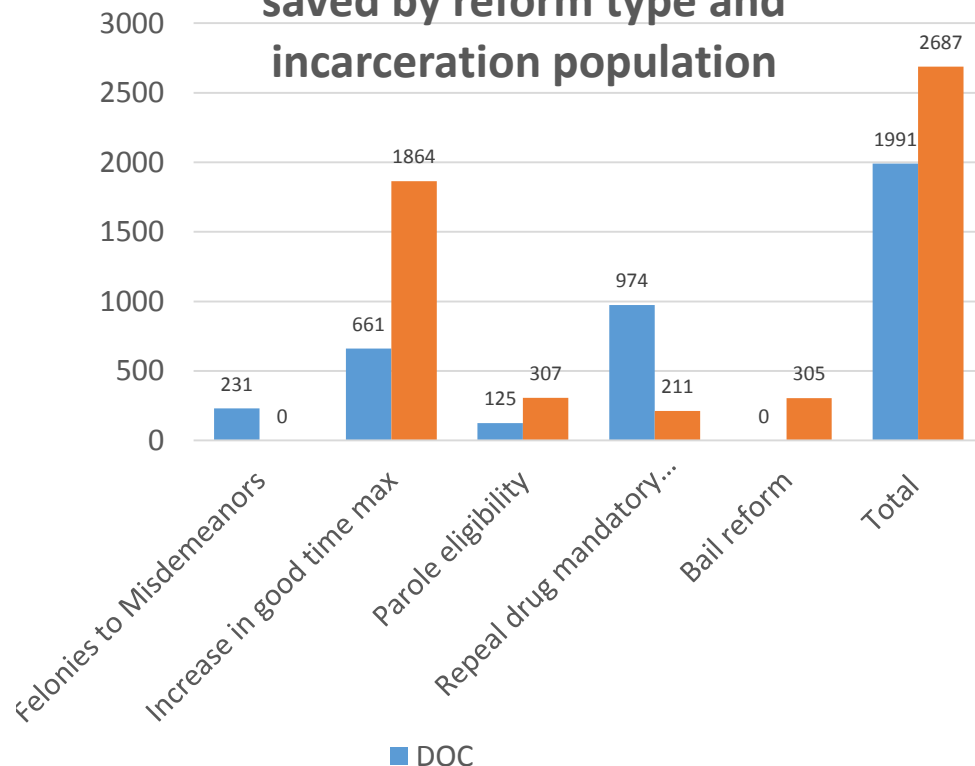
Vera Institute argues that jail or prison savings should be made using marginal costs. The marginal cost comprises two types of costs that are inherently more changeable: First, it includes “variable costs,” costs such as food and laundry services that are directly linked to the number of incarcerated people and change immediately as this number goes up or down. Second, marginal cost includes “step-fixed costs,” such as personnel costs, that change in stepwise increments. And, the Commonwealth of Massachusetts saves an additional 30 cents in fringe benefits costs for each dollar of salary

Person year savings: \$25,236.59

Breakdown of \$118 million

- *Larceny: DOC: 231 person years: \$5.8 million*
- *Repeal drug MMs: DOC: 974 person years: \$24.6 million; HOC: 211 person years: \$5.3 million*
- *Parole eligibility: DOC: 125 person years: \$3.2 million; HOC: 307 person years: \$7.8 million*
- *Bail reform: HOC: 305 person years: \$7.7 million*
- *Good time increase 2 fold: DOC: 661 person years: \$16.7 million; HOC: 1864 person years: \$47.1 million*

Estimated annual person years saved by reform type and incarceration population



However, reforms will add significantly to existing numbers released to the street

The numbers already seem overwhelming

- The DOC releases to the street approximately **3,000** persons annually from our prisons, over half with no supervision;
- HOCs release approximately **13,000**, with only 15% paroled; and, the jails release approximately **18,000** on bail, to court and to time served;
- And, finally there are approximately **12,000** added to the probation rolls annually. There are **86,000** persons on probation - a large number (though we do not know exactly how many) is poor and/or unemployed yet still required to pay fines of \$65/month.



It is well accepted that recidivism rates can only be expected to increase until significant investments are made across all stages of the system:
Rethinking Reentry provides one thoughtful and comprehensive analysis...

Highlighted elements

- **Pre-trial**
 - Better diversion initiatives reduces incarceration rate; Increased diversion for drug addicts and mentally ill populations
 - No mandatory minimum terms
 - Standardized assessment tools used by all agencies including the courts
- **Incarceration**
 - Lower security/pre-release facilities become the majority of where inmates are housed and released from; looking more like cottages than warehouses
 - Able to reduce prison spending with decreased incarceration rates and use savings to provide reentry resources post-release
 - Every correctional facility will have GED and college programs for those in jail/prison; programs bring “outside classes” in; college programs are made available for returning citizens
 - Employers go into institutions to recruit/prepare inmates;
- **Released**
 - Recidivism rate reduced to 15%: Significant decreases in recidivism rates, primarily attributed to improvements in housing, jobs, education, mentoring, healthcare insurance and treatments for substance abuse, and mental health
 - Mandatory post-release supervision
 - Incentive supervision
 - Subsidized employment outside of prison to access; jobs are subsidized at transition from prison
 - Liability protection for employers
 - County run halfway housing
 - Returning citizens involved with volunteers providing peer support
 - One common ID; statewide offender management system based in biometrics
 - Restorative justice
 - Way in which data/information is coordinated and shared is centralized across systems from point of assessment at the “front



Education and training programs known to reduce recidivism and save costs



Name
Knott, James
Date of birth
[REDACTED] 982
Enrollment Status
None

Application Denied

Knott wasn't able to enroll in correctional education of any kind. Had he enrolled in any such program (vocational, special, or academic), **his odds of obtaining employment would have increased by 13%.**



Name
Keen, Lisa
Date of birth
[REDACTED] 1978
Enrollment Status
GED Program

You're Hired

Like other ex-offenders who participated specifically in vocational training programs, Keen **increased her odds of getting a job by 28%.**

What about the money?

The cost of correctional education programs per participant is \$1,400–\$1,744. Nearly a third of participants still recidivate. But the average savings per participant from reduced reincarceration rates is \$8,700–\$9,700 over three years. Even assuming the highest average cost (\$1,744) and the lowest average savings (\$8,700), the three-year return on investment for taxpayers is nearly 400%, or \$5 saved for every \$1 spent



Yet, these depressing facts continue to persist

- In 2011, the Department of Correction (DOC) devoted 2.09% of its budget to prison programming, including **education** (this figure is **down from a 2.2% expenditure in 2010**)
- In September 2012, there were for academic programming, including job **4,561 prisoners on the DOC's wait list** training.
- In September 2012, there were 4,405 prisoners on the DOC's wait list for program and re-entry services, including critical substance abuse treatment
- Approximately 80% of prisoners report substance abuse, but 473 of the approximately 1,300 prisoners at the state maximum security prison are on the DOC's wait list for substance abuse treatment
- There have been **deep cuts to state funding of prison programming and treatment**. In 1990, the state allocated nearly \$7 million (in today's dollars) to prison education. By 2004, the figure had fallen by 25 per cent to \$5 million. At present, **the prison education line item is eliminated entirely from the DOC budget**.

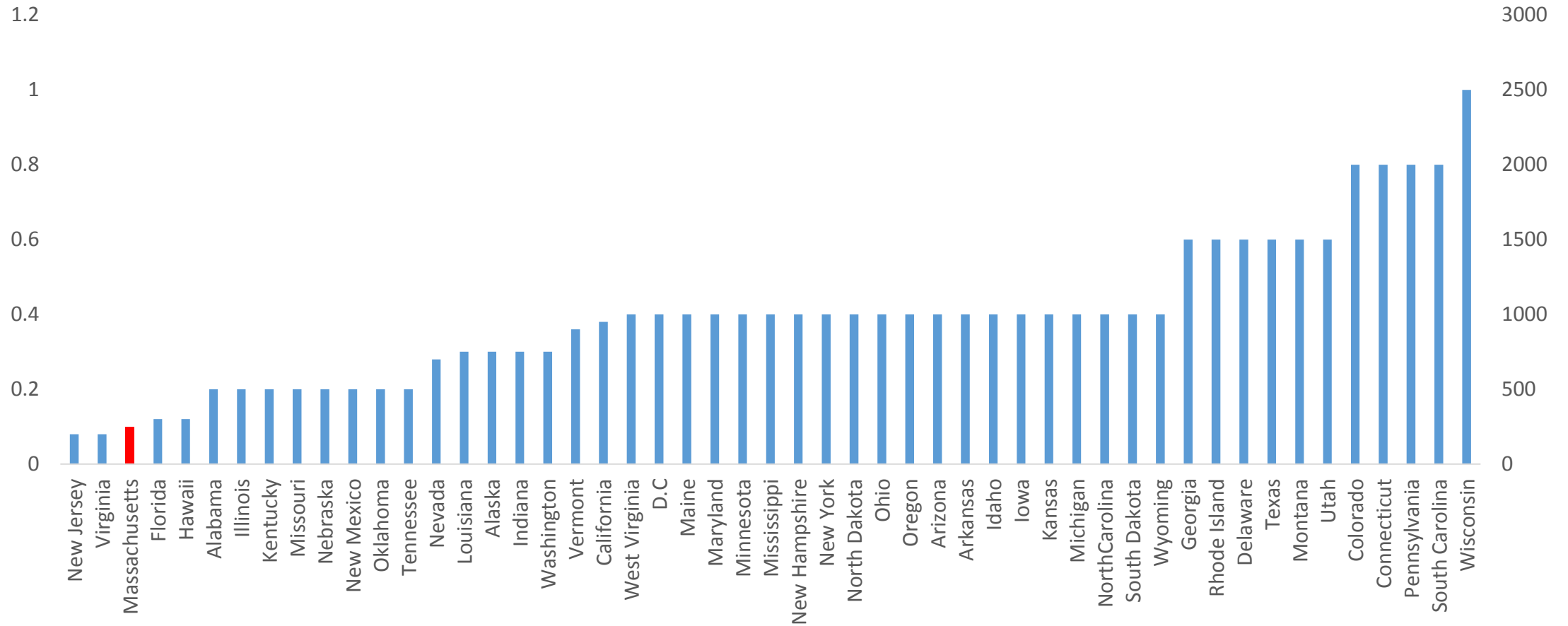
Budget Cut for Reentry Programs

| HISTORICAL BUDGET LEVELS (\$000)column definitions | | | | | |
|---|---------------|---------------|---------------|---------------------|---------------|
| ACCOUNT | FY2013 GAA | FY2014 GAA | FY2015 GAA | FY2015 Projected | FY2016 GAA |
| 8900-0001 Department of Correction Facility Operations | 541,217 | 547,114 | 561,700 | 568,820 | 570,152 |
| 8900-0002 Massachusetts Alcohol and Substance Abuse Center | 5,000 | 5,000 | 5,000 | 5,000 | 5,000 |
| 8900-0010 Prison Industries and Farm Services Program | 3,011 | 3,011 | 3,091 | 3,091 | 3,524 |
| 8900-0011 Prison Industries Retained Revenue | 3,600 | 3,600 | 3,600 | 3,600 | 3,600 |
| 8900-0045 Reimbursement from Housing Federal Inmates Retained Revenue | 1,000 | 1,000 | 1,000 | 914 | 0 |
| 8900-0050 DOC Fees RR | 5,000 | 5,000 | 8,600 | 8,600 | 8,600 |
| 8900-1100 Re-Entry Programs | 550 | 250 | 250 | 246 | 250 |
| TOTAL | 559,378 | 564,975 | 583,241 | 590,271 | 591,126 |

Source: [Special Legislative Commission, 2015](#)

Source: [Massachusetts Government](#)

Larceny Threshold by state: only two states have a lower threshold than Massachusetts



Different bases for calculating larceny thresholds yield dramatically different results

- In testimony to the Judiciary Committee we proposed that the larceny threshold be raised to \$1300. We reached that figure using the Bureau of Labor Statistics inflation calculator, multiplying the threshold established in 1945 (\$100) by the consumer price index between 1945 and 2015.
- Senator Brownsberger challenged us at the October 14 hearing, asking whether we thought “they got it right in 1945.” Since we had no answer, we discussed different options. One we suggested to the Senator was estimating the percentage of the median per capita personal income represented by \$100 in 1945. Though it does not address the issue raised about whether \$100 was the right floor in 1945, we thought a more appropriate measure than CPI could be the percentage of median per capita personal income represented by \$100. In 1945 it was 8% (\$100/\$1223); in 2012 per capital income was \$42,693. So, the threshold could be \$3,500. The Senator’s response: “Very helpful rationale. I like that”

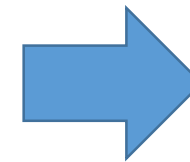
Consumer price index inflation calculator

\$100 in 1945 has the same buying power as
\$1,321.92 in 2015

Per capita personal income

1945: \$1,223

2012: \$42,693



$100/1223 = 8\%$

$.08 * 42,693 = \mathbf{\$3,415}$

Sources: [BLS CPI Inflation Calculator](#) [U.S. Department of Commerce, Bureau of Economic Analysis, Survey of Current Business](#)

Assumptions and Calculations

Repealing MMs The DOC numbers are based on the 2015 files from the DOC. The HOC current population totals are derived from Hampden County numbers; Hampden represents approximately 14% of total HOC population. For HOC "new commitments" estimates I have used the Sentencing Commission data. To estimate the distribution of DOC data by offense level and offender group I have used a combination of the DOC data and the Sentencing Commission data.

- **Mandatory minimum drug offenders – new commitments: DOC:** DOC new commitments mandatory minimum drug offenders who will not be serving a current sentence for a violent offense AND do not fall within the following cells of the Sentencing Commission matrix (Groups D and E).
 - total population sentenced with mandatory minimums: 278
 - total population sentenced without a violent concurrent offense: 261
 - total population outside high levels and groups: 207
 - total number of person years without reform: 1306
 - percentage of time affected by reforms (50% means that sentence will be cut in half): 50%
 - total savings in person years over five years: 790
- **Mandatory minimum drug offenders – current population: DOC:** DOC current population mandatory minimum drug offenders who are not serving a current sentence for a violent offense AND do not fall within the following cells of the Sentencing Commission matrix (Groups D and E). I assume that these offenders will have their sentences cut in half retroactively. Since we do not have sentenced served data from the DOC, we have to make an assumption regarding how the current offenders are distributed across the length of their sentences. I am assuming that they are equally distributed. And, we have to assume that the persons who have already served the required months will be given credit and will be released.
 - total population sentenced with mandatory minimum: 981
 - total population sentenced without a violent concurrent offense: 896
 - total population outside groups D and E: 711
 - total population in level 4: 304
 - total population in level 5: 172
 - total population in level 6: 181
 - total population in level 7: 49
 - total annual savings in person years in level 4 over 5 years: 223
 - total annual savings in person years in level 5 over 5 years: 197
 - total annual savings in person years in level 6 over 5 years: 343
 - total annual savings in person years in level 7 over 5 years: 53

- **Mandatory minimum drug offenders – new commitments: HOC**
 - total population: 180
 - total number of months on mandatory sentences (mean sentence length*number in offense and group level cell): 1849
 - total number of person years saved by reforms: 77
- **Mandatory minimum drug offenders - current population: HOC**
 - total population: 193
 - average number of days on mandatory sentences: 676
 - total number of person years saved by reforms over 1.5 years: 134

Increasing maximum good time earned per month to 20 days: While we wait for data from the DOC on actual numbers of good time days earned and wait times by institution, my calculations assume that the very most that can be expected is a doubling of the current 4.5 days per month by the non-violent, criminally sentenced. These assumptions are based on the following from the Special Commission to Study the Criminal Justice System report and the DOC

- on average non-violent criminally sentenced are released at 85% of their maximum sentences including jail credit.
- there have been deep cuts to state funding of prison programming and treatment. In 1990, the state allocated nearly \$7 million (in today's dollars) to prison education. By 2004, the figure had fallen by 25 per cent to \$5 million. At present, the prison education line item is eliminated entirely from the DOC budget.

Bail reform: Due to the absence of data on the pretrial population at the county level the calculation is based on three assumptions: the distribution of days in custody in Hampden county is reflective of the total Massachusetts jail population, only the those categorized as 'bailed' will be affected and all possible days will be credited.

- total number of persons affected: 5680
- distribution by length of stay
 - 60% - 10 days or less
 - 15% - within 20 days
 - 25% - within 40 days

Assumptions and Calculations

Changing felony level to misdemeanor level for some property offenses: There is a good deal of information we do not have,: the number of property offenders who would fall between the current floor (\$250) and the suggested one (\$1000+); which categories may be affected (i.e., do we include only the “larceny O250” or do we include all property categories]; the LOS data and the status of the current DOC population. So, I have had to make many assumptions, please see below.

- **New commitments:** There is a total of 423 new commitments in the property category who are not serving a concurrent sentence for a violent offense. Based on data from the Sentencing Commission we can estimate that 50% of this total (or 211) fall within the levels 3,4, and 5 and in history groups A,B,C. Of this number we have to estimate what percentage falls under the “new” felony floor. My not particularly informed guess: 50%. So the total eligible would be 106. The mean sentence length from the Sentencing Commission for offenders in the property category at levels 3, 4, 5 and in groups A, B and C incarcerated at the DOC is approximately 50 months. For those sentenced to the HOCs for similar levels the mean sentence is 11 months.
 - average annual savings [over 4.2 years starting in year two]: 159 person years.
- **Current population:** There is a total of 710 property offenders in the current DOC population who are not serving a concurrent sentence for a violent offense. Based on data from the Sentencing Commission we can estimate that 50% of this total (or 211) fall within the levels 3,4, and 5 and in history groups A,B,C. Of this number we have to estimate what percentage falls under the “new” felony floor. My not particularly informed guess: 50%. So the total eligible would be 178. The mean sentence length from the Sentencing Commission for offenders in the property category at levels 3, 4, 5 and in groups A, B and C incarcerated at the DOC is approximately 50 months. For those sentenced to the HOCs at similar levels and groups the mean sentence is 11 months. Since we do not have sentenced served data from the DOC, we have to make an assumption regarding how the 178 are distributed across the length of their sentences. I am assuming that they are equally distributed along all 50 months. And, we have to assume that the persons who have already served 11 months, will be given credit and released.
 - average annual savings for the 40 persons who are immediately released (i.e., 1-11 months left on sentence): 16 person years
 - average annual savings for the 98 persons who have 12-39 months left on their sentences: 29 person years
 - average annual savings for the 40 persons who have 40-50 months left on their sentences: 27 person years

Parole eligibility from completing one half of sentence to one third of sentence : Total number of person years saved: good time difference times .17 (percentage released on parole) divided by 50% minus same total divided by 33%/365. Assumption: all parolees take maximum number of good time days and they represent only 17% of the offender total population.

Jobs NOT Jails Coalition: participating members

- Action for Regional Equity
- ACT UP Boston
- AIDS Project Worcester
- American Civil Liberties Union of Massachusetts
- American Friends Service Committee
- Arise for Social Justice, Springfield
- Arlington Street Church (Boston)- Social Action Committee
- 10-Point Coalition
- Bangladesh Workers Solidarity Network
- Black and Pink
- Blackstonian.com
- Boston Feminist Liberation
- Boston Living Center
- Boston Coalition for Palestinian Rights
- Boston New Sanctuary Movement
- Boston Public Health Commission
- Boston Street Medics
- Boston Taxi Drivers Association
- Boston Workers' Alliance
- Brockton Interfaith Community
- Carpenters Local 107
- Carpenters Local 108
- Catholic Campaign for Human Development
- Children's League of Massachusetts
- Cleghorn Neighborhood Center, Fitchburg
- Coalition for Effective Public Safety
- Coalition for Social Justice, Fall River and New Bedford
- Coalition to Fund our Communities
- Committee of Friends and Relatives of Prisoners
- Committee for Public Counsel Services
- Community Labor United
- Congregation Dorshei Tzedek
- Cooperative Metropolitan Ministries
- Criminal Justice Policy Coalition
- Dismas House
- Dorchester People for Peace
- Elevate Boston Foundation, Inc
- Ending Mass Incarceration Together
- EPOCA (Ex-prisoners and Prisoners Organizing for Community Advancement)
- Essex County Community Organization (ECCO)
- Everett Community Health Partnership
- The Fact She3t
- Families for Justice as Healing
- Families Against Mandatory Minimums
- First Church in Cambridge, Missions and Social Justice Committee
- First Parish in Bedford Unitarian Universalist
- First Parish, Brookline
- First Parish Unitarian Universalist Church of Northborough
- Fitchburg Minority Coalition
- [Freedom Road Socialist Organization](#) (FRSO)
- Fresh Pond Friends Meeting
- Friends Meeting at Cambridge
- Gay and Lesbian Advocates and Defenders (GLAD)
- Green Rainbow Party
- Grove Hall Neighborhood Development Corporation
- Hampshire Franklin Central Labor Council
- Harvard Divinity School Prison Education Project
- Harvard Law – Prison Assistance Legal Project
- Hispanic Black Gay Coalition
- Lesley College – PAWS
- Lucy Stone Cooperative
- Lynn Youth Street Outreach Advocacy (LYSOA)
- Massachusetts Communities Action Network
- Massachusetts CURE
- Mass Incarceration Working Group of the First Parish Unitarian Universalist of Arlington
- MassOccupy/Brookline
- Massachusetts Jobs With Justice
- Massachusetts Law Reform Institute
- Massachusetts Organization for Addiction Recovery (MOAR)
- Massachusetts Women's Justice Network
- Melrose Unitarian Universalist Church
- Men of Color Health Awareness (MOCHA), Springfield
- Mission and Social Justice Committee of First Church in Cambridge, UCC
- Moishe Kavod House
- Mothers for Justice and Equality

- Multicultural Wellness Center
- NAACP Boston Chapter
- NAACP Youth Council, Boston Chapter
- National Association of Social Workers, Massachusetts Chapter
- National Lawyers’ Guild
- Neighbor to Neighbor
- New England Regional Council of Carpenters
- Occupy Middlesex County
- Occupy Quincy
- Occupy Winchester
- Old Cambridge Baptist Church
- Partakers
- Pioneer Valley Project
- Prison Book Program
- Prison Policy Initiative
- Progressive Massachusetts
- Prisoners’ Legal Services of Massachusetts (PLSMA)
- Real Cost of Prisons Project
- Roxbury Defenders
- Roxbury Youth Works
- SEIU Local 509
- SEIU Local 888
- SEIU Local 1199
- St. John Missionary Baptist Church
- St. Vincent de Paul Society Re-Entry Project
- Social Action Ministry of First Parish Lexington
- SPAN, Inc.
- Spontaneous Celebrations – Beantown Society
- Straight Ahead Ministries
- Survivors, Inc.
- System Change Not Climate Change
- Teen Empowerment
- Teens Leading the Way
- Temple Hillel B’nai Torah, West Roxbury
- The People’s Cafe, Brookline
- Theodore Parker Church Social Action Committee, West Roxbury
- Three Pyramids, Inc./The Minority Coalition
- Timothy Baptist Church
- Toastmasters Prison Volunteers
- Unitarian Universalist Mass Action
- Unitarian Universalist Urban Ministry
- Unitarian Universalist Church of Wakefield Transformative Justice and Violence Prevention Ministry
- UNITE HERE Local 26
- United Church of Christ, Innocence Commission Task Force
- United First Parish Church Outreach Committee, Quincy
- United for a Fair Economy
- United for Justice and Peace
- USW Local 8751
- United Teen Empowerment Center (UTEC)
- Veterans for Peace
- Women’s International League for Peace & Freedom
- Worcester Branch, NAACP
- Worcester Community Labor Coalition
- Worcester Homeless Action Committee
- Worcester Interfaith
- Worcester Unemployment Action Group
- Worcester Youth Center
- Youth Against Mass Incarceration
- Youth Jobs Coalition

A part of the ecosystem – from The Coming Home Directory

- **Employment**

- [ABCD \(Action for Boston Community Development\), Boston](#)
- [Asian-American Civic Association, Boston](#)
- [Boston Career Link, Boston](#)
- [Boston Center for Independent Living, Inc., Boston](#)
- [Boston Workers Alliance, Dorchester](#)
- [Cambridge Multi-Service Center, Cambridge](#)
- [Career Source, Cambridge](#)
- [Community Work Services, \(CWS\), Boston](#)
- [Dorchester Bay Economic Development Corporation, Dorchester](#)
- [Haley House Bakery Training Program, Roxbury](#)
- [JobNet, Boston](#)
- [Just-A-Start Corporation, Cambridge](#)
- [La Alianza Hispana, Roxbury](#)
- [Massachusetts Department of Transitional Assistance \(DTA\), Boston](#)
- [Massachusetts Rehabilitation Commission, \(MRC\), Boston](#)
- [One Stop Career Centers](#)
- [Pine Street Inn, Boston](#)
- [Project Place: Employment, Job Training, & Resource Services, Boston](#)
- [Solutions at Work, Cambridge](#)
- [Span, Inc., Boston](#)
- [Straight Ahead Ministries, Lynn](#)
- [STRIVE – Boston Employment Services, Inc., Dorchester](#)
- [The Work Place, Boston](#)
- [Urban League of Eastern Massachusetts, Roxbury](#)
- [Work Opportunity Tax Credit, U.S. Department of Labor, Boston](#)

- **Substance Abuse**

- [Adcare, Boston](#)
- [Alcoholics Anonymous](#)
- [Bay Cove Human Services, Boston](#)
- [Bay State Community Services, Quincy](#)
- [Boston Public Health Commission: Father Friendly Initiative, Boston](#)
- [Boston Public Health Commission: Men's Health and Recovery Program, Boston](#)
- [Boston Public Health Commission: Mom's Project, Boston](#)
- [Boston Rescue Mission, Boston](#)
- [Casa Esperanza, Inc., Roxbury](#)
- [CASPAR, Inc. Emergency Service Center, Cambridge](#)
- [Catholic Charities Archdiocese of Boston, Boston](#)
- [Entre Familia, Mattapan](#)
- [Future Hope Apprenticeship Program, Dorchester](#)
- [Helpline, MA Substance Abuse Information & Education](#)
- [Hope House, Boston](#)
- [Long Island Shelter, Boston](#)
- [Neponset Health Center, Harbor Health Services, Inc., Dorchester](#)
- [New England Center for Homeless Veterans, Boston](#)
- [New England Forensic Associates, Arlington](#)
- [Rosie's Place, Boston](#)
- [Salvation Army, Boston](#)
- **Education**
- [ABCD \(Action for Boston Community Development\), Boston](#)
- [ASA College Planning Center, Boston](#)
- [Asian-American Civic Association, Boston](#)

- [Boston Center for Independent Living, Inc., Boston](#)
- [Boston Centers for Youth & Families, Boston](#)
- [Boston Public Schools Adult Diploma Program, Roxbury](#)
- [Boston Public Schools Adult Learning Center, Roxbury](#)
- [Bunker Hill Community College, Charlestown](#)
- [Cambridge Center for Adult Education, Cambridge](#)
- [Catholic Charities Archdiocese of Boston, Boston](#)
- [Catholic Charities Archdiocese of Boston: El Centro del Cardenal, Jamaica Plain](#)
- [Catholic Charities Archdiocese of Boston: Haitian Multi-Service Center, Dorchester](#)
- [Centro Latino de Chelsea, Inc., Chelsea](#)
- [Charlestown Adult Education Program, Charlestown](#)
- [College Bound Dorchester, Dorchester](#)
- [Community Learning Center, Cambridge](#)
- [East Boston Adult Education Center, East Boston](#)
- [Jackson-Mann Community Center, Allston](#)
- [Jamaica Plain Community Center, Adult Learning Program, Boston](#)
- [Just-A-Start Corporation, Cambridge](#)
- [Literacy Volunteers of Massachusetts - Boston, Boston](#)
- [Prisoner Reentry Institute at John Jay College of Criminal Justice, New York](#)
- [Project Hope, Roxbury](#)
- [Roxbury Community College, Roxbury](#)
- [Roxbury Multi-Service Center, Boston](#)
- [Salvation Army: Boston Central Corps, Roxbury](#)
- [Somerville Center for Adult Learning Experiences \(SCALE\), Somerville](#)
- [Straight Ahead Ministries, Lynn](#)
- [The Dimock Center, Roxbury](#)
- [The John W. Perry Scholarships Fund, Washington](#)
- [United South End Settlements, Boston](#)
- [Urban College of Boston, Boston](#)
- [WAITT House, Inc., Roxbury](#)
- [X-CEL, Inc., Jamaica Plain](#)

Criminal Justice Policy Coalition

549 Columbus Ave., Boston, MA (617)807-0111; www.cjpc.org

RE: Opposition to Life Without Parole

Good morning Judge Lu and members of the Sentencing Commission,

I am appearing on behalf of the Criminal Justice Policy Coalition. In 2008, the Coalition, comprised of attorneys and lay activists, memorialized its opposition to the sentence of Life Without Parole, or LWOP, arguing instead for Life with the possibility of parole after 25 years as the appropriate sentence for first degree murder and all other crimes currently calling for LWOP. The Coalition is updating and republishing our 2010 paper detailing the reasons for our position; in the near future we will provide copies for your use.

The extravagant use of LWOP is a creature of the 1970s, both nationally and in Massachusetts. There were a number of motivations for this, among them perhaps the difficulty with the administration of the death penalty, though MA had not carried out an execution since 1947, and the increase of violent crime of the 1980s into the early 1990s.

Since 1992, the national homicide rate has dropped by over 50%, yet nationally LWOP sentences have continued to increase, as they have in Massachusetts as well. In 1977 there were 170 prisoners in MA serving a life without parole sentence; by 2009 there were 938, an increase of 552%. And since then there has been a 13% increase, to 1,036 persons destined to die in prison.

We have a broken commutation system, with no commutations granted since 1997.

The felony murder/joint venture laws often produce sentences which lack proportionality, as the shooter is released after a finite sentence while his accomplices continue with life sentences.

Life sentences for those who committed murder while under the age of 18 have been voided. However, there are older youths serving LWOP whose brains were still developing neurologically when they murdered.

Life without parole has been supported as a bulwark against the return to Massachusetts of actual executions. The last effort to restore the death penalty came in the late 1990s; since then no legislative time has been spent on this. LWOP no longer serves that political function in

Massachusetts. Indeed, it has come to be seen as an alternative Death Penalty: execution only taking longer.

Statistically, there are some 40 individuals serving an LWOP sentence who are factually innocent of the crime for which they were convicted.

The Coalition does not argue for automatic parole after 25 years for everyone so sentenced. There are certainly some individuals who do not grow, who do not heal. This should not stop others, who can demonstrate such growth, from rejoining our community in a manner which is productive. Recognizing that prisoners, even those who have taken a life, are a part of us will certainly increase the growth of our entire community as we strive to meet our obligation to care for all.

Thank you for this opportunity to speak to you.

Lloyd Fillion

Zimbra

drap.admin@jud.state.ma.us

written testimony for the MA Sentencing Commission

From : Lori Kenschaft [REDACTED]

Tue, Nov 17, 2015 03:54 PM

Subject : written testimony for the MA Sentencing Commission 1 attachment**To :** drap admin <drap.admin@jud.state.ma.us>

Dear Massachusetts Sentencing Commission,


I would like to submit the attached written testimony regarding tomorrow's hearing. I will not be able to make it to the hearing, so I hope you will distribute this written testimony to members of the Commission.

Thank you very much for your assistance!

Sincerely,

Lori Kenschaft

Coordinator, Mass Incarceration Working Group of the First Parish Unitarian Universalist of Arlington

 **Kenschaft to MA Sentencing Commission.pdf**
43 KB



November 17, 2015

Dear Members of the Massachusetts Sentencing Commission,

I am the coordinator of one of the dozens (hundreds?) of faith-based groups in Massachusetts that have become concerned about mass incarceration in recent years. Different religious traditions use different language to articulate these concerns, but all of us emphasize three things: the principle of honoring the reflection of the divine in every individual, the importance of justice and compassion in human relations, and the recognition that what affects one person affects us all.

As nearly all parents teach their children, two wrongs rarely make a right. Over-punishment and injustice in the police, court, and prison systems damage not just the individuals involved, but also their families and communities. History shows that power alone cannot create social order and personal safety. Only a widespread trust in the basic fairness of social institutions makes people turn to those institutions to protect themselves and their families. As we have seen time and again, that trust has eroded in many communities – including predominantly white suburban communities like mine.

I would therefore ask you to consider four principles in formulating sentencing guidelines:

- (1) Incarceration should be used to protect society, not to inflict punishment or retribution. Inflicting pain for the sake of pain is never right. In the long run it is also counter-productive. As you know, the large majority of people behind bars eventually return to the community. When they return damaged, that affects us all.
- (2) High-quality treatment for mental illness and/or substance abuse should be available to everyone who needs it. People should not be incarcerated so that they can receive treatment, and they should not be incarcerated because of a lack of treatment alternatives or appropriate housing.
- (3) Restorative justice and other community-based practices should be widely used. Restorative justice aims to heal harms done and to prevent future harms. Most victims and police who experience restorative justice prefer it to court-based processes, as it encourages true accountability and healing for individuals and communities that have been hurt. Other forms of community-based sentencing can help prevent the damaging ripple effects of incarceration. They are particularly appropriate not just for juveniles, but also for young adults and parents who are actively taking care of their children.
- (4) We should not incarcerate people who are innocent of the charges against them. Mandatory minimums create too many coerced guilty pleas and should be repealed. We should hold people pre-trial – when they are constitutionally presumed innocent – only if we have evidence-based reasons to believe they are a danger to the community or pose a serious flight risk for a serious crime.

You are doing important work. Good sentencing guidelines – not mandatory rules – maximize justice by increasing consistency between different judges while allowing sentences to reflect the realities of a situation. I thank you for taking on these challenging issues of fairness, trust, and healing.

Sincerely,

Lori Kenschaft

Coordinator, Mass Incarceration Working Group of the First Parish Unitarian Universalist of Arlington

Learn to Cope

<http://www.learn2cope.org/>

Testimony offered in support of S.786/H.1620:

"An Act eliminating mandatory minimum sentences for drug offenses"

My name is Marcia B. Julian. I am the Western Massachusetts Regional Manager of Learn to Cope, which is a support network for families affected by addiction. Prior to my taking this position in November 2014, I was an Assistant District Attorney with the Hampden County District Attorney's Office in Springfield. During my long career with the DA's Office, I primarily was an appellate attorney, and, as such, have extensive familiarity with the many legal and practical issues associated with minimum mandatory sentences imposed on persons convicted of certain drug offenses. However, my prosecutorial career is not the only source for my relevant experience. My family and I have been dealing with a loved one's addiction to opioids for many years. I hope that I can speak for the many parents who know all too well the serious and often life-threatening consequences associated with the disease of addiction.

One such consequence is conviction and incarceration related to the commission of criminal drug offenses. Often, the addicted person engages in criminal behavior as a means to obtain drugs. He or she may act in a supporting role as a go-between, a lookout or a courier in exchange for a small sum of money, the promise of drugs, or some other consideration given by the drug dealer, who exploits and uses the vulnerability of the addicted person to insulate him or herself from criminal liability. Too many times, I saw a young person, with no prior convictions or a very minor prior criminal record, act in such a capacity in a drug deal only to be charged as part of the joint criminal enterprise, or, individually, and to receive a lengthy state prison sentence. The addicted person's resort to such behavior is wrong, but it illustrates the level of desperation the addicted person experiences. I am not excusing his or her behavior or blaming it only on addiction. He or she should be held accountable for wrongdoing, but incarceration for long periods of time is not the solution. Rather, treatment that is supervised and enforced by the trial court and its specialty courts is the best use of resources. Treatment, standing alone or during incarceration, has been proven to be the more successful course of action in addressing the disease of addiction.

The alternative to minimum mandatory drug sentences is to allow the sentencing judge to take all the mitigating and aggravating circumstances into consideration and to exercise his or her sound discretion in arriving at the appropriate resolution, on a case-by-case basis. There is a wide range of culpability that is best addressed by a judge; ranging from the non-addicted drug dealer who exploits the desperation of sick people to earn a living to those who struggle daily with a disease more horrible than most of us can begin to imagine, who, sadly, strike deals with the dealer to sustain his or her addiction and source of drugs. Clearly, such differing circumstances call for different responses. A judge can take the unique circumstances into consideration and weigh them against the threat to public safety.

I have complete faith in the men and women who serve in our judiciary to apply appropriate considerations in meting out just and fair sentences. Removing that discretion and forcing judges to abide by minimum mandatory, one size fits all sentences is a failed strategy that should be discontinued. Families, and, in particular, parents of addicted persons, are on the front lines and know better than most the power that is addiction. Please give consideration to our perspective and abolish minimum mandatory sentences for drug offenses.

Respectfully submitted,

Marcia B. Julian
June 9, 2015


Nov. 13, 2015

To Whom It May Concern:

My name is Mary Valerio and I am here today to support changes in the current sentencing laws in Massachusetts. Mandatory minimums are not always fair in some cases. Some defendants have circumstances which would cause them to deserve a more thoughtful sentence tailored by the judge to their needs, not merely a mandatory minimum. However, I also believe there should be a ceiling on sentences that is realistic to avoid judges being prompted by the district attorney to over-sentence a defendant. This is what happened in a case that I was a witness for in the Worcester Superior Court. An allegation was made against the defendant that was not true which went back to 1987. A trial began in 1990 but during the trial, the defendant, who was an alien with a green card, was ordered deported by U.S. Immigration for a prior unrelated matter. The jury was not made aware of this and so they convicted the defendant in absentia because they did not know why he was no longer there. What was not known at the time was that the false allegation was made so that the defendant would go to prison and not be able to access the \$250,000.00 that the alleged victim was planning to receive from another matter and that the defendant could have put a demand on, therefore the false allegation was created. All of this new information has become available in 2012 with the help of new witnesses who have come forward from the alleged victim's family who know how & why this was done .

Meanwhile, the defendant had been living outside the United States for over twenty years because he had been removed. Then for some reason in 2010 he was brought back to Worcester to be sentenced for this old case. U.S. Immigration has said that he is now in the country illegally because he is removed and deported since 1990. In 2010 when he was brought to Worcester Superior Court to be sentenced, he had only been in the country a few weeks. The judge, Peter Agnes, was told that no transcripts or records were available from the original trial. The court appointed lawyer wanted to be taken off the case because he had told the defendant it was too complicated and he did not understand immigration law well enough to bring all of this up. The judge instead, refused to allow a continuance for a change to a private attorney who could better represent the defendant. What the judge did not know at the time was that a transcript of part of the trial did exist and has been made up in 2015 by the retired court reporter and shows that the defendant was convicted in absentia and the judge at the time did discuss the defendant being deported . The trial judge was also upset that the alleged victim who had testified had left the state before the trial was over which he scolded the district attorney about. He then suggested that if the defendant had not been deported he would consider a sentence of approx. 5 years to serve or less. Not knowing any of this, in 2010 Judge Peter Agnes sentenced the defendant to forty years in prison.

The sentence was extreme he said because the district attorney had told him at sentencing that the alleged victim had been in hiding these past twenty years. What he did not know was a simple search on line revealed that the alleged victim had a very public presence on line in the porn industry. Using her own name she was promoting her movies, pictures, fan club and several other projects even being on national television on the show ARE YOU HOT in 2003. As if this were not strange enough, further actions by the Worcester Office became clear in 2012 when the defendant appealed the sentence to the sentence appeal panel and it was then that the Worcester District Attorney's office was represented by D.A. Joseph Reilly. He had not been allowed on this case prior because he had been reported to the Bar Council in the past for calling the defendant a "spic" in court in the 1980's and was censured by the Bar

Council. At the sentence appeal he proceeds to tell the panel things that were not true, saying that the defendant had been convicted of distribution of drugs which is not true. Reilly was then reported to the Bar Council again and after seeing the paperwork, they put him on report and suggested it be taken further. I then wrote to the Worcester D.A.'s Office with my concerns and was told my letter would be put on file. Apparently one can keep their job in spite of their actions in that office.

In conclusion, I would again suggest that limits be set on sentences so that judges can not over sentence someone. This defendant was 54 years old when sentenced and could be 94 when released. This makes no sense. Also, because he is previously deported Immigration has said that he is being held in this country illegally. This is an unconstitutional conviction. Even when the case is overturned as it is back in court, he will still be re-deported. Sentences should make sense, be fair, and not waste tax dollars, no matter what race or ethnic group you come from everyone deserves justice and respect from the courts.

Mary Valerio



c/o Boston ASAP – 2rd floor, 29 Winter Street,
Boston, MA 02108
November 17, 2015

To
Honorable Jack T. Lu (Commission Chairman)
*Essex County Superior Court
and Massachusetts Sentencing Commission*

MOAR is a statewide recovery community association activating its mission to organize recovering individuals, families, and friends into a collective voice educating the public about the value of recovery from alcohol and other addictions.

MOAR envisions a society where addiction is treated as a significant public health issue and
"Recovery is recognized as valuable to our communities."

MOAR collaborates with allied organizations to improve prevention, treatment, and recovery support services.

**We support Families Against Mandated Minimum proposals
put forth by Representative Swan and Senator Cynthia Creem**

H1620, S786 An Act to Repeal Mandatory Minimum Sentencing Laws for Drug Offenses

This bill would repeal all mandatory minimums for drug offenses and instead let courts impose a sentence that fits the crime. It would also make all drug offenders serving mandatory minimums eligible for parole, work release and earned good time.

Drug addiction is behind much of the crime that harms our communities and fills up our prisons. Yet after three decades of mandatory and often lengthy sentences for
drug offenders, we are no better off. In fact, the situation is worse. New drugs have come on the scene, such as crack cocaine and prescription drugs like OxyContin, which is highly addictive and when unavailable is often replaced with heroin. Between 2000 and 2014, there have been close to 9000 fatal overdoses.

We have been losing this battle on the home front. Yet our laws have only created a revolving door for drug offenders that is paid for with taxpayers' money. The chemical imbalance caused by addiction makes a person risk all without moral or value. Under the influence of drugs, a person will steal to get

money, sell drugs to others and even sell their own bodies. Without an intervention, a person who only knows life under addiction, is going to leave in the same mind set. They return to their same behavior.

Some prisoners are able to get into good programs, but getting access without support is very challenging. Currently there is minimal post-release recovery support available that allows ex-offenders to take the next steps in living drug free — that support needs to grow.

Instead, we are mainly spending our money to warehouse these men and women. Or worse, we put them in an environment where they learn even more anti-social behavior from hardened criminals. There is also enormous wear and tear on the families of these prisoners. They worry about their loved ones' well-being in terms of their addiction, what might happen to them while in prison and how prison may make a bad situation even worse. There is also great turmoil and stress over the lack of justice, given the disproportionately harsh sentences for drug offenders. We should use prisons for those who actually threaten our public safety. For those who don't, drug courts or other alternative sentencing with recovery support should be used more often. There can be great results when everyone is working together, using sanctions and rewards in constructive ways.

A real example of alternative sentencing is Reflections Court Alternative Program, the only one in Massachusetts. It provides 90 days of residential treatment AND 9 months of community based case management. As of the end of the end of second quarter FY2015, the completion rate of the residential portion of the program was 61.45% and of the yearlong program the completion rate was 61.3%. Clients who do not complete the full year are in violation of probation, It is determined by probation whether or not they are returned to incarceration or allowed to pursue further treatment. There have been very few clients who have reoffended and picked up new charges. All clients have received an education and gained knowledge and coping skills that assist in maintaining a life void of criminal behavior and substance abuse.


Physical recovery must come first. Helping a person build a life in recovery requires long term treatment with recovery support services.

Then the person can build in the capacity for a job, housing, and education. We must break our own cycle of dependency on incarceration and build in rehabilitation to prevent recidivism.

We are heartened by the fact that more than 65 legislators signed on to these legislative proposals, and there seems to be movement to put an emphasis on rehabilitation to avoid recidivism. We hope that the Massachusetts Sentencing Commission will strongly consider the value of ending mandatory minimum drug sentencing.

Thank you for all considerations.

Sincerely yours,



Maryanne Frangules
MOAR Executive Director
617-423-6627

Christopher G. Hudson, PhD, DCSW
President

Carol J. Trust, LICSW
Executive Director

**TESTIMONY SUBMITTED TO THE SENTENCING COMMISSION IN SUPPORT OF
Eliminating Mandatory Minimum Sentences Related to Drug Offenses**

NOVEMBER 18, 2015

The Massachusetts Chapter of the National Association of Social Workers would like to express its strong support for repeal of mandatory minimum sentences.

The National Association of Social Workers (NASW) is the largest organization of professional social workers in the world, with over 132,000 members. The Massachusetts Chapter of NASW is the major professional social work organization in the state, and is committed to the mission of advancing professional social work practice, promoting human rights, social and economic justice, and unimpeded access to services for everyone. Its 7,500 members in the Commonwealth work in a broad range of settings including hospitals, community agencies, government, academia, business, nursing homes, schools, and private practice. It is significant to note that a plurality of the organization's public policy agenda for this legislative session focuses on criminal justice reform.

NASW's support of multiple criminal justice bills and sentencing changes underscores the interdependence of its legislative and policy priorities. As social workers, we see the issues of incarceration, mental health, substance abuse, economic growth, and community investment as inextricably intertwined. Our society needlessly incarcerates those struggling with addiction or unable to post bail, which saddles individuals with lifetimes of poverty and inescapable cycles of injustice.

The Criminal Justice Shared Interest Group of NASW-MA is composed of over a hundred members who have particular interests and expertise in the area of criminal justice and the several areas of this broad field that are in great need of reform. Many of our members work in varied ways in the judicial system or with families and individuals in the community that are affected daily by the criminal justice system.

Mandatory minimums are one of the main factors in over-incarceration in Massachusetts. According to the Massachusetts Budget and Policy Center, the total amount Massachusetts spent on prisons, probation and parole increased from \$907.8 million in 2003 to \$1.21 billion in 2012. That's an increase of 33 percent. Spending on higher education decreased in that period by 1%. Today we spend tens of millions less on college education than on our prisons. We support reducing low level property and drug possession offenses from felonies to misdemeanors, to concentrate our prison resources on more serious offenders, not on those who pose no real danger and will clearly only be harmed and hardened by prison.

Our members work daily in communities and with individuals and families who have been devastated by mandatory minimum sentences imposed on those convicted of non-violent drug offenses. We urge you to repeal mandatory minimum sentences for drug offenses and allow the judicial system to respond to individuals thoughtfully, with sentences that are crafted to fit each individual and his or her offense.

We all know that addiction is a serious problem that has profound impacts on our communities and state. As social workers, we believe that our current crisis can be eradicated only with a response that includes treatment as at least one component of that response. The current law prohibits judges from being able to order drug offenders who face mandatory minimum sentences to treatment programs, drug court or probation, even if the need for treatment is clear and the individual is not a threat to public safety. Our current legal requirements have not reduced the problem of addiction or the crime resulting from it. A more measured, individualized response is needed if real change is to occur.

If mandatory minimums for all drug offenses are repealed, judges would still be able to sentence a drug offender to a lengthy sentence if they deem it warranted, but they would also have the ability to impose a more individualized sentence that addresses the root of the problem and better serves the individual and society. With the proposed changes in the law, our judicial system would have the opportunity to truly help individuals struggling with addiction to move beyond their addiction into treatment and recovery; we urge you to give the system the tools to allow this to happen.

Our members have seen the impact that mandatory minimum sentences have had on children, families and communities. Children are without a mother or a father (and sometimes both) for years as a result of their parents' incarceration for non-violent drug offenses. Individuals have lost jobs and homes and have been further isolated from their communities. NASW also supports allowing those already serving mandatory minimums to be eligible for earned "good time" credits as well as work release programs, and to be eligible for parole after serving half of their sentences. These changes would provide new and significant incentives for prisoners currently serving mandatory minimum sentences to take advantage of educational and vocational programs in prison, enhancing the likelihood that they will have improved chances of adjusting to the worlds of work, family and community when they are released.

To quote Harvard Law School professor Charles Ogletree, "The criminal justice system is devouring our resources; putting people who have committed low-level offenses, who are perfectly capable of being rehabilitated, away for lengthy sentences and turning them into hardened criminals; destroying families and communities; and callously throwing away lives. We cannot afford to continue to invest in such a system."

Thank you for the opportunity to submit testimony in this matter and for your consideration. We believe that it is possible to ensure the safety of the community while providing a measured and thoughtful response to drug offenses. We appreciate your consideration of this important legislation.

This testimony was authored by NASW-MA Criminal Justice Shared Interest Group Members:
Cheryl Azza, Hope Haff, Marguerite Rosenthal, Normal Wassel, and Dorothy Weitzman.

Contact: Christine Poff, NASW-MA Political Director 617-227-9635 x 12 / poff@naswma.org.



①

John Blodgett

Mr. Beardsley
Mr. Bowman
MS.

Massachusetts Sentencing Commission
Oral and Written Comments Registration Sheet
November 18, 2015

Name

Agency / Organization

Are you presenting oral comments? (✓)

Are you providing written comments? (✓)

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|----|------------------------|----------|-------------------------------------|-----|-------------|
| 1 | Darrin Howell | 10:00 AM | Jobs Not Jails / SEIU 1199 | ✓ | |
| 2 | Josh Beardsley | | Jobs Not Jails SEIU 1199 | ✓ | |
| 3 | John Bowman | | Jobs Not Jails Coalition | ✓ | |
| 4 | John Bowman | | | | |
| 5 | Wash Beardsley | | Jobs Not Jails (12) | ✓ | |
| 6 | John Bowman | | Jobs Not Jails (13) | ✓ | |
| 7 | Beverly Williams | | GB10 | ✓ | ✓ |
| 8 | Keaton Heckmah | | GB10 | ✓ | |
| 9 | MARY VALERIO | | Private Citizen | Yes | Yes |
| 10 | Lloyd Fillion | | Criminal Justice Policy Coalition | Yes | Yes |
| 11 | Robert Marra | | Criminal Justice Policy Coalition | Yes | Yes |
| 12 | Colleen Kirby | | League of Women Voters | Yes | Yes |
| 13 | Colleen Kirby | | | | |
| 14 | Anthony Benedetto | 1:08 | | | (14) Wallow |
| 15 | John Blodgett | | | | (15) Bait |
| 16 | Michael R. Kooze | | | | |
| 17 | Timothy Cruz | | | | |
| 18 | Joseph Early | | | | |
| 19 | Dan. Conley | | | | |



Massachusetts Sentencing Commission
Oral and Written Comments Registration Sheet
November 18, 2015

| Name | Agency / Organization | Are you presenting oral comments ? (✓) | Are you providing written comments ? (✓) |
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| 1 Barb Dougan | Families Against Mand. Minimums | | yes / yes |
| 2 Robert Harris* | President, Mass. Bar Assn | yes | |
| 3 Rahsaan Hall | Racial Justice Program ACLU of Mass. | yes | yes |
| 4 Maryanne Frangoules | Mass. Org. for Addictin Recovery | | yes / yes |
| 5 * | Not available until 1 p.m. | | |
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Page 1



Massachusetts Sentencing Commission
Oral and Written Comments Registration Sheet
November 18, 2015

| | Name | Agency / Organization | Are you presenting oral comments ? (✓) | Are you providing written comments ? (✓) |
|------|----------------------------|--------------------------|---|---|
| * 1 | Leslie Walker | Prisoners Legal Services | ✓ | |
| 2 | Christine Pratt | EMIT | | |
| * 3 | Susan Williams | EMIT | ✓ | |
| 4 | Christine Pratt | EMIT | | |
| 5 | Christine Pratt | NEW-MA | ✓ | no sooner than 11:30 |
| * 6 | Ben Forman | Mass INC | ✓ | |
| 7 | Christine Pratt | EMIT | | |
| 8 | Christine Pratt | EMIT | | |
| 9 | Christine Pratt | EMIT | | |
| 10 | Wilson Walker | EMIT | ✓ | |
| 11 | Katrina Caputo | EMIT | ✓ | |
| * 12 | CHRISTINE PRATT | POFF | ✓ | 11:30 (11:30) |
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Massachusetts Sentencing Commission
Oral and Written Comments Registration Sheet
November 18, 2015

| | Name | Agency / Organization | Are you presenting oral comments ? (✓) | Are you providing written comments ? (✓) |
|----|----------------|-----------------------|--|--|
| 1 | Kimeshia Brown | EPOCA | yes | |
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Massachusetts Sentencing Commission Oral and Written Comments Registration Sheet November 18, 2015

LAST
LIST

| Name | Agency / Organization | Are you presenting oral comments ? (✓) | Are you providing written comments ? (✓) |
|-----------------------------------|-----------------------|---|---|
| 1 PAM HUNT | Sentencing Commission | ✓ | |
| 2 | | | |
| 3 DOROTHY WEIGMAN | VARIOUS groups | ✓ | |
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| 5 | | | |
| 6 [ASK if anyone that was missed] | | | |
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The Resolve to Stop the Violence Project: reducing violence in the community through a jail-based initiative

James Gilligan and Bandy Lee

Abstract

Background The usual modes of incarceration have not been found to curb violent crimes significantly. A jail-based programme called the Resolve to Stop the Violence Project (RSVP) was created with the hypothesis that exposing men with a history of serious, recent and often multiple violent crimes to a certain specifiable set of social, cultural and psychological conditions would reduce the frequency and severity of their violent behaviour.

Methods Court and criminal records for 1 year following release were reviewed for 101 inmates who had spent 8 weeks or more in the programme and for the same number of those who had spent 8 weeks or more in regular custody.

Results Inmates who participated in RSVP had lower re-arrest rates for violent crimes (–46.3 per cent, $p < 0.05$) and spent less time in custody (–42.6 per cent, $p < 0.05$). The decline in violent re-arrests increased with greater lengths of stay (–53.1 per cent, $p < 0.05$ for 12 weeks or more; –82.6 per cent, $p < 0.05$ for 16 weeks or more).

Conclusions Multilevel, comprehensive prevention approaches that: emphasize making available to violent individuals the kinds of tools they need in order to develop non-violent skills and reality-based sources of self-esteem; increase their capacity to experience feelings of empathy and remorse; and provide opportunities to take responsibility and amend the injuries they have inflicted on others and on the whole community, may play an important role in reducing the cycle of violent crime.

Keywords: violence, violence prevention, violent offenders, restorative justice

Introduction

The United States has the highest homicide rate of any industrialized nation, averaging, in most years, five times the rates of other English-speaking democracies (Canada, Australia, and New Zealand) and 10 times the rates experienced in the United Kingdom, the rest of western Europe and Japan. The homicide incidence, almost 11 per 100 000 citizens at its peak, has prompted many United States governmental and non-governmental officials to declare it a public health emergency. Nevertheless, even though deaths from violent injuries cause more years of life lost before the ages of 65–70 than heart disease

and cancer combined, a National Academy of Sciences report showed that we spend 14–25 times as much money for heart disease or cancer research alone as we do for research on violence, per year of life lost.¹ While United States' rates of violent crime, including murder and manslaughter, forcible rape, robbery and aggravated assault, fell slightly during the last few years of the twentieth century, they are still a massive social problem.

A growing number of programmes are implemented in an attempt to curb the epidemic, although few have been comprehensive in scope or well evaluated.^{2–4} One method that has become more widespread than any other without much empirical backing is the incarceration-oriented, punitive approach. This simplistic solution has resulted in an escalation of prisons and police, as well as of capital punishment, in accordance with the current socio-political climate. For the first three-quarters of the twentieth century, the United States' incarceration rate in jails and prisons averaged about 100 (± 20) per 100 000 population, during which time the murder rate fluctuated from 4 to 10. The murder rate peaked during the years of Prohibition and the Depression of the 1930s, when it reached levels of 8–10; it then reached record lows of 4.5–6 from 1940 to 1969, following which it increased once again to epidemic levels of 8–11, until it fell to as low as 6 by the last few years of the twentieth century, only to begin rising again after 2000. During the last quarter of the century, however, the incarceration rate underwent a continued and unprecedented escalation, from an average of 100 to almost 700 per 100 000 population (the highest in the world, and the highest in the United States' history) – with no observable effect on the murder rate. By 1998, the murder rate finally reached its lowest level in 30 years, not when the incarceration rate reached the highest level in the United States' history – it

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had already broken that record many times – but only when the unemployment rate reached the lowest level in 30 years, and the percentage of relative poverty among the minority groups most vulnerable to homicidal behaviour reached their lowest levels. Once unemployment and relative poverty began increasing again, after 2000, the murder rate stopped declining notwithstanding the unprecedented and constantly increasing incarceration rate.

The shocking finding is that some of the approaches intended for deterrence may actually stimulate violence, rather than assist in controlling it.⁵ Courses of action that increase punishment and hinder reintegration of the individual into the community have been carried out without knowledge or regard of their effects on the individuals involved, as well as on the community and society at large. Both the National Academy of Sciences' expert committee¹ and other investigators, such as Zimring and Hawkins,⁶ state that, based on the policy's key assumptions, the dramatic increase in incarceration should have virtually eliminated crime in the United States many years ago. Instead, bulging prisons have not correlated with any demonstrable dampening of crime.⁷ Linsky and Strauss⁸ found that states with the highest incarceration rates had the highest crime rates – a pattern that still continues, as persons who experience incarceration exhibit greater criminality once released into the community.^{9,10} Apart from the negative effects of incarceration on prospects of job employment and social readjustment, one can postulate that concentrated exposure to the mores and attitudes that condone violence will promote recidivism.

If the goal is to reduce the incidence of violence, what if time spent in jail is used for rehabilitative and restorative, rather than retributive but counterproductive, purposes? Decreasing recidivism by supporting prevention contributes to the safety of the public and also reduces the financial burden that crime places on the community, which in direct costs alone has been estimated at US\$17.6 billion nationally.¹¹ In San Francisco, over 46 000 crimes were committed in the city between January and October 1996, and direct costs to local victims were estimated at \$24.4 million. The costs of incarceration of San Francisco county's 2000+ inmates, on the other hand, was nearly \$51 million annually, with the incarceration costs for violent offenders exceeding \$19 million yearly.¹² This did not include the astronomical costs of prosecuting violent offenders and other criminal justice expenditures. A programme aimed at reducing recidivism seemed crucial, and this paper illustrates the implementation of a project called the Resolve to Stop the Violence Project (RSVP), which focuses on restoration and prevention of further violence, rather than retribution for the past.

The Resolve to Stop the Violence Project

The San Francisco County Sheriff's Department established the Resolve to Stop the Violence Project in September 1997. The programme is designed to use the jail system as a setting for working with a vast spectrum of violent offenders, from first-time or early offenders to career criminals of heinous crimes. Inmates can be mandated to the programme by the San Francisco

Sheriff's Department, the courts, or the Adult Probation Department at the time of booking, during incarceration, or after sentencing. Most sentences entail completing a probationary period following release from jail. Due to a long waiting list, not all those who are sentenced or referred get into the programme (which created a 'control group' for the purposes of evaluation).

The three main components that make up RSVP include: offender accountability, victim restoration and community involvement. Goals of the programme are to reduce recidivism and to promote offender accountability by: (1) taking responsibility for one's actions and accepting the possibility for change; (2) identifying and analyzing the social, cultural and personal belief systems that promote one's violent behaviour; (3) recognizing that one has a choice at the critical time of violent response; (4) increasing awareness of the effects of one's behaviour and empathy for victims; and (5) preparing to take on a restorative role when back in the community. Offender accountability is considered to be one of the core concepts of the programme, for it is felt that punishment does not work on criminal offenders who lack the capacity for guilt feelings or remorse, or even the sense of self. As long as violent offenders see no alternatives to their own behaviour but see themselves as a victim of the correctional system, punishment will only serve as a hindrance to reform.

The Offender Accountability component begins with an in-house jail programme, which typically serves 56 inmates at any given time. The duration of any inmate's participation in the programme depends on the length of time he resides in an all-male, 62-bed direct supervision dormitory, where the programme is located. A treatment milieu is created through an intensive, 12-hours-a-day, 6-days-a-week programme consisting of workshops, academic classes, theatrical enactments, counselling sessions and communications with victims of violence.

The Victim Restoration component aids the victims of RSVP offender participants by working collaboratively with a wide range of social organizations, including domestic violence-related criminal justice and social service agencies, and through case management, advocacy and referrals. These survivors are given opportunities to restore themselves through group and individual counselling, community theatre – sometimes with the offenders – and public speaking. Weekly presentations within the jail by victims of violence who describe the suffering they have endured are an essential part of supporting victims through their healing process, as well as implementing victim-driven violence prevention by helping perpetrators build empathy for victims.

The Community Restoration component of RSVP consists of continued weekly workshops, forums for public education, community theatre, visual arts and public awareness campaigns. This component also works with public and private agencies to facilitate community meetings, public speaking in schools, law enforcement training and involvement of criminal justice agencies. While the components were chosen after a restorative justice model involving all parties affected by an individual's violence, the characteristic of the programme is

that it attempts to be comprehensive, recognizing that the causes of violence are multi-factorial and cannot be solved through uni-dimensional solutions.

The programme exhibited an almost instantaneous, dramatic decrease of violent episodes in-house,¹³ and this study evaluates its effectiveness in terms of violent recidivism once participants are released into the community.

(A more detailed description of RSVP or consultation on how to initiate a similar program is available through the authors.)

Methods

Sample

Data for this analysis were drawn retrospectively from the following: (1) information extrapolated from the programme paper files; and (2) information from the City and County of San Francisco and State of California Criminal Justice Information Systems (i.e. Police, Court and Department of Justice automated records). They formed the basis of a pilot project to a 3-year longitudinal assessment of RSVP. Using the Sheriff's Department RSVP paper files, inmates who went through at least 8 weeks of RSVP between September 1997 and September 1999 were selected for investigation. A control group of inmates were selected among violent offenders who would have been eligible for RSVP but served their time in an ordinary jail due to lack of space in the programme, using the same inclusion and exclusion criteria. Information obtained from both court and criminal records for the county and state were combined and cross-referenced to form a profile of re-arrest data for each subject, including types of charges and dates. As the primary goal of the study was to determine RSVP's effectiveness in reducing re-arrests for violence, inmates who were sent directly to prison following their jail term were excluded from recidivism study. Retention rates did not apply, since enrolment in RSVP is mandatory for qualifying inmates (as far as there is room), and dropping out was not possible unless they were released from jail.

Statistical analyses

Initial calculations involved descriptive analyses of demographic factors in the computer system, including age, race and age at first arrest. Independent *t*-tests, and χ^2 test for race, were performed to confirm comparability of the two groups. Independent *t*-tests were also performed to assess the comparability in prior arrest history for these groups. Outcomes for these groups were measured similarly, through the comparisons of: (1) violent re-arrest rates in the first post-release year; (2) overall re-arrest rates in the first post-release year; (3) time interval between release and first violent re-arrest; (4) time interval between release and first re-arrest; and (5) days spent in custody during the first post-release year. To assess lengths of stay and their influence on recidivism, *t*-tests were used for the following: (1) violent re-arrest rates in the first year for those who

have been in RSVP or in the regular jail system for 12 weeks or more, and (2) violent re-arrest rates in the first year for those who have been in RSVP or in the regular jail system for 16 weeks or more. Independent *t*-tests were deemed appropriate in each of the above cases, as the samples compared were independent but of similar sizes, relatively large with roughly normal distributions, and with similar variances (except for divergences in the group of 16 weeks or more, in which cases equal variances were not assumed). Log rank tests were used for days to first violent or any arrest after release. All statistical analyses were performed with SPSS/PC version 10.0.

Results

A total of 101 programme subjects were selected based on the above criteria, and the same number of control subjects were randomly chosen to match. Descriptive data for the subject groups appear in Table 1. Inmates in either group generally had a significant criminal history over the past year, with a mean of 1.36 (SD=1.77) overall arrests and 0.56 (SD=0.88) violent arrests. The analysis results, given in Table 2, showed that inmates who participated in RSVP were significantly less likely to be re-arrested on violent charges, remained longer in the community before being re-arrested, and spent less time in custody during follow-up in comparison to inmates who did not undergo the programme. For a more accurate comparison, recidivism rates for RSVP subjects were adjusted for days in the community.

All subjects experienced a lower level of recidivism after incarceration. The reduction in violent recidivism was much greater among RSVP participants at 66.7 per cent ($t=4.74$; $p < 5 \times 10^{-6}$) as opposed to 41.0 per cent among control subjects ($t=2.39$; $p < 0.01$). The reduction in overall recidivism was also greater among RSVP participants at 48.3 per cent ($t=4.30$; $p < 5 \times 10^{-5}$) as opposed to 34.7 per cent among control subjects ($t=2.57$; $p < 0.01$). Reductions in violent recidivism was related to greater lengths of participation. Control subjects who spent 8 weeks or more in regular jail ($n=101$) as opposed to the equivalent time in RSVP ($n=101$) were one and three-quarters more likely to be re-arrested for violent charges during the first post-release year ($p < 0.05$). Those who spent 12 weeks or more in regular jail ($n=71$) rather than equivalent RSVP participation ($n=66$) were over twice as likely to be re-arrested for violence ($p < 0.05$). Those who spent 16 weeks or more ($n=61$) were re-arrested five times as often compared with the equivalent RSVP group ($n=30$) ($p < 0.05$). Although the results for those incarcerated for 16 weeks or longer are dramatic, the weaker statistical strength due to the smaller sample sizes and greater variances should be taken into consideration.

Discussion

Do the results demonstrate effectiveness of RSVP's approach as a means of curbing violence? It would have been best to establish

Table 1 Demographic and criminal characteristics of programme and control groups

| Variable | Programme (n = 101) | | Control (n = 101) | | Significance |
|--|---------------------|------|-------------------|-------|--------------|
| | Mean | SD | Mean | SD | |
| Age (years) | 32.0 | 9.20 | 33.4 | 10.2 | NS* |
| Race | Percentage | | Percentage | | |
| Caucasian† | 26.7% | | 31.7% | | NS |
| Black | 42.6% | | 49.5% | | NS |
| Hispanic | 13.9% | | 5.9% | | NS |
| Asian or other | 14.9% | | 12.9% | | NS |
| Length of stay (days) | Mean | SD | Mean | SD | |
| | 159.1 | 82.0 | 158.6 | 100.4 | NS |
| Length of stay in RSVP (days) | 110.9 | 58.3 | NA‡ | NA | NA |
| Age of first arrest (years) | 23.0 | 6.67 | 24.7 | 9.22 | NS |
| Number of arrests in past year | 1.32 | 1.41 | 1.41 | 2.08 | NS |
| Number of violent arrests in past year | 0.56 | 0.78 | 0.55 | 0.96 | NS |

*t- or χ^2 test not significant.

†It is possible that Hispanic inmates are included here, due to their previous categorization as 'White'.

‡Not applicable for comparison purposes.

Table 2 Comparison of recidivism indicators after release from jail

| Recidivism indicators | RSVP group | | Control group | | Difference | Significance |
|---|------------|------|---------------|------|------------|-------------------|
| | Mean | SD | Mean | SD | | |
| ≥8 weeks in custody | (n=101) | | (n=101) | | | <i>T</i> <i>p</i> |
| No. of violent re-arrests (adjusted) | 0.18 | 0.36 | 0.33 | 0.67 | -46.3% | -1.99 0.03* |
| No. of re-arrests (adjusted) | 0.64 | 0.90 | 0.92 | 1.26 | -30.7% | -1.82 0.05* |
| No. of incarcerations | 0.42 | 0.62 | 0.51 | 0.89 | -17.6% | -0.92 0.18 |
| No. of days in custody | 29.8 | 68.5 | 51.9 | 90.9 | -42.6% | -1.84 0.03* |
| | | | | | | <i>F</i> <i>p</i> |
| No. of days until first violent re-arrest | 333 | 90.0 | 286 | 124 | 16.4% | 6.66 0.01* |
| No. of days until first re-arrest | 306 | 119 | 248 | 145 | 23.4% | 4.14 0.04* |
| ≥12 weeks in custody | (n=66) | | (n=71) | | | <i>T</i> <i>p</i> |
| No. of violent re-arrests (adjusted) | 0.16 | 0.38 | 0.34 | 0.79 | -53.1% | -1.72 0.04* |
| No. of re-arrests (adjusted) | 0.63 | 0.92 | 0.87 | 1.27 | -27.0% | -0.87 0.11 |
| No. of incarcerations | 0.41 | 0.60 | 0.46 | 0.86 | 10.9% | -0.42 0.34 |
| No. of days in custody | 30.2 | 68.5 | 46.2 | 90.2 | -28.4% | -1.10 0.14 |
| | | | | | | <i>F</i> <i>p</i> |
| No. of days until first violent re-arrest | 339 | 86.2 | 287 | 125 | 18.1% | 7.96 0.00* |
| No. of days until first re-arrest | 301 | 127 | 247 | 150 | 21.9% | 2.82 0.09 |
| ≥16 weeks in custody | (n=30) | | (n=61) | | | <i>T</i> <i>p</i> |
| No. of violent re-arrests (adjusted) | 0.06 | 0.22 | 0.33 | 0.72 | -82.6% | -2.02 0.02* |
| No. of re-arrests (adjusted) | 0.61 | 1.00 | 0.87 | 1.21 | -30.0% | -1.01 0.16 |
| No. of incarcerations | 0.35 | 0.54 | 0.52 | 0.91 | -32.7% | -0.83 0.20 |
| No. of days in custody | 16.8 | 33.5 | 53.1 | 95.1 | -65.8% | -1.91 0.03* |
| | | | | | | <i>F</i> <i>p</i> |
| No. of days until first violent re-arrest | 353 | 59.5 | 312 | 108 | 13.1% | 12.28 0.00* |
| No. of days until first re-arrest | 300 | 123 | 247 | 152 | 21.5% | 6.84 0.01* |

*Significant.

the answer using an experimental design, but this is difficult to do in a field setting, especially within a correctional system, and hence a retrospective study was the alternative. The initial hypothesis was that inmates who participated in RSVP would have fewer violent re-arrests and spend less time in jail in the year after re-entering society than those who did not experience RSVP. This turned out to be the case. It is noteworthy that a programme of 2 months' or more duration would produce such a dramatic alteration of lifetime trends: under the RAND Corporation's determination that any action that effects a change of 10 per cent or more in recidivism is very significant, a 46.3 (after 8 weeks) to 82.6 (after 16 weeks) per cent difference is substantial. As a whole, although the assignment of subjects for the study was not through controlled randomization, all factors were stacked against RSVP: its subjects were of a lower age group, of a greater racial minority constitution, longer in lengths of incarceration, lower in age of first arrest, and higher in rate of arrests for violent charges. This also applies to postulated reasons for improvements in both groups: while the decrease in violent recidivism in RSVP participants is considerable, it is interesting to note that the control group also compiled significantly fewer arrests, unlike the trend in most jails. This may be attributable to the highly rehabilitative conditions of the San Francisco County Jail System, which employs, outside of RSVP, many substantial programmes in the areas of substance abuse, education, life-skills training, etc. Andrews and colleagues documented that in other cities and states¹⁴ incarceration in and of itself increases recidivism by 7 per cent, but if needed treatment and services are offered, it reduces it by 15 per cent, and if training of cognitive skills is given, the reduction is 29 per cent. Given the results in San Francisco, where it is difficult to go through the County Jail System without participation in some kind of programme, it may be predicted that the outcome of RSVP would compare even more favourably to the absence of any programme.

Although far from being a panacea for the complex problems of violent offenders, the programme intended to be a comprehensive, major intervention, addressing violence as a matter not only of individual actions but as a public health matter involving community-wide cognitive, behavioural, affective and socio-cultural conditioning. The results suggest the possible effectiveness of jail-based programmes, that include multidimensional, creative and empathy-building prevention approaches emphasizing restoration over the conventional but unsustainable 'lock them up' approach. The model can be an important springboard for generating hypotheses regarding the causes of violence and for shaping more thoughtful avenues for reducing violent offences and re-offences. Nevertheless, longitudinal multi-site studies are necessary to determine the precise effect of RSVP on violent recidivism. Although not done in this study, due to the precipitous drop in sample size with length of stay (not to mention the unevenness of size between the two groups), it would be valuable to determine the optimal length of participation, at which time improvements in recidivism rates would be highest before the benefits of the programme decline or plateau.

The lack of significant reduction in overall arrest rates is disappointing. Repeat offenders, who were re-arrested despite having refrained from violent offences, were found to return most commonly with drug charges or for old vehicular charges. Informal interviews with programme facilitators suggested possible reasons for the former as being the inability to find a job and looking for a quick way to 'earn a few nickels', and for the latter as not showing up in court to clear up allegations regarding the use of motor vehicles. While this points to the need for more job and coping skills training, in the instances of drug use, the greater number of re-arrests may suggest RSVP's irrelevance in cases of substance addiction and the need for the criminal justice system to address the problem more as a medical rather than a criminal one. The study signals the need perhaps for a wider and greater emphasis on community supervision and court-ordered follow-up after release from jail. A sizeable proportion, perhaps the majority, of RSVP participants have been released without continuing court sanctions or mandatory follow-up in the community during the very early stages of the programme, when all components were yet to be in place. These findings indicate the need for programme staff to work closely with the court and require that all inmates be placed on probation upon release and include as a condition of probation that they participate in programmes. Also, the significant number of pre-trial inmates sentenced to prison following participation in RSVP (excluded from the study) also reflects the need for communication with the court regarding the objectives of the programme. Limitations of the study include the inability to implement an experimental design, as discussed above, which makes it impossible to eliminate the possibility of compounding variables or selection bias. Also, the paucity of demographic data, due to the limited information in the records and to the retrospective design, makes it difficult to determine predictors for success in the programme, although the currently available data can serve as proxies for other information. The method can be improved through more extensive, controlled studies to examine long-term outcomes prospectively and wider applicability of the programme through a multi-centre study.

In addition to examining the impact of a programme on recidivism rates, it is important to evaluate its economic merits, especially during an era of public and political cost-consciousness. Thus, while it is difficult to place a price on protecting the general public and on the quality of life that comes with safety, an analysis can be made as follows. The imprisoned offender requires approximately US\$24 783 per year (the cost of housing of \$21 352 plus medical expenses of \$3 431), or about \$68/day. For inmates' families who go on welfare as a result, the costs on average is an additional \$21/day.¹⁵ All this is without counting medical spending, work loss and need for public programmes, not to mention offender criminal processing, adjudication, probation and parole, unpaid state or federal taxes, and the escalating cost of building new prisons as a result of overcrowding. Counting a reduction of 22.1 days spent in custody during the following year for 110.9 days of RSVP, an additional cost of

\$21/participant-day was incurred to cover all offender, victim and community portions. However, the average 0.14 reduction in re-arrests during the year post-release is an estimated average saving of as much as \$28 000 in total violence-related costs per offender, including medical and mental health spending, victim work loss, public programmes, property damage, criminal justice processing, legal defence, sanctioning and offender work loss.^{16,17} It was found that by reducing violence-related re-arrests and reincarcerations, there was a gain of approximately \$4 in total expenses for every dollar spent for the programme.

Not included here are non-monetary losses from incarceration, such as loss of job skills; disruption of family structure; loss of community integration; further training in violent and socio-pathic mores; loss of avenues for restitution; and increasing likelihood of imprisonment with longer stays in custody. Added together, the benefits that offenders and the public derive from violence prevention programmes such as RSVP are immense. Nevertheless, efforts to expand correctional initiatives without implementing concomitant changes in community environments that engender violence is short-sighted, and ex-offenders, as they rehabilitate into productive rather than destructive members of society, will be a valuable resource here.

Conclusion

RSVP was intended to be a comprehensive, major and multidimensional intervention to decrease violence, and the changes that remained for 1 year post-release following only a short stay in jail attest to the programme's effectiveness. The evaluation generated some optimistic conclusions on multilevel prevention approaches that emphasize restoration over purely retributive efforts. More experimentation with, and evaluations of, similar programmes in a variety of different social contexts, coupled with further enhancements of our empirical knowledge and theoretical understanding of the root causes of violence, may enable us to develop ever more potent and successful models for its prevention. From the perspective of public health, the programme described here represents only tertiary prevention (i.e. intervention only with those individuals who have already become sick, or in the case of violence, have already injured others), but as it is now being adapted for use in a variety of settings including in schools, it should be possible to determine whether it can also lead to primary and secondary prevention – i.e. preventing violence before it occurs in the first place.

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References

- 1 Reiss AJ, Roth JA, eds. *Understanding and preventing violence*. Washington, DC: National Academy Press, 1993.
- 2 U.S. Center for Disease Control Research. Youth Violence Prevention: Description and Baseline Data from 13 Evaluation Projects. *Am J Prev Med*, 1996 Supplement to **12**: (5)
- 3 Sherman LW, Gottfredson D, MacKenzie D, *et al.*, eds. *Preventing crime: what works, what doesn't, what's promising: a report to the United States Congress prepared for the National Institute of Justice*. Washington, DC: U.S. Department of Justice, 1997.
- 4 Van Voorhis P, Cullen FT, Applegate B. Evaluating interventions with violent offenders: A guide for practitioners and policymakers. *Federal Probation* 1995; **59**: 17–27.
- 5 Gartner R. The biology and sociology of violence: Toward a new synthesis. In: Grisolia JS, Sanmartin J, Luján JL, Grisolia S, eds. *Violence: from biology to society. Proceedings of the International Meeting on Biology and Sociology of Violence, Valencia, Spain, 16–18 September, 1996*. New York, NY: Elsevier, 1997; 261–267.
- 6 Zimring FE, Hawkins G. *Crime is not the problem: Lethal violence in America* New York, NY: Oxford University Press, 1997.
- 7 Steffensmeier D, Harer MD. Bulging prisons, an aging U.S. population, and the nation's violent crime rate. *Federal Probation* 1993; **57**: 3–10.
- 8 Linsky AS, Straus MA. *Social stress in the United States: links to regional patterns in crime and illness*. Dover, MA: Auburn House Publishing Co., 1986.
- 9 Byrne JM, Kelly L. *Restructuring probation as an intermediate sanction: An evaluation of the Massachusetts Intensive Probation Supervision Program*. Final Report. Washington, DC: National Institute of Justice, 1989.
- 10 Sampson RJ, Laub JH. Crime and deviance in the life course. *Ann Rev Sociol* 1992; **18**: 63–84.
- 11 U.S. Department of Justice Office Programs. *The Costs of Crime to Victims*. Washington, DC: Bureau of Justice Statistics, 1994.
- 12 San Francisco Police Department Monthly Crime Statistics January–October (Preliminary Reports). San Francisco, CA: City and County of San Francisco Records, 1996.
- 13 Lee B, Gilligan J. The Resolve to Stop the Violence Project: transforming an in-house culture through a jail-based programme. *J Public Health (Oxf)* 2005; **27**: 149–155.
- 14 Andrews DA, Zinger I, Hoge RD *et al.* Does correctional treatment work? A clinically relevant and psychologically informed meta-analysis. *Criminology* 1990; **28**: 369–404.
- 15 California Department of Social Services Research and Development Division. *CAL Statistics Fiscal year 1997/1998*. Sacramento, CA: Data Analysis and Publications Branch, 2001.
- 16 Children's Safety Network Economics and Data Analysis Resource Center. *Cost of Violent Crime and Impaired Driving (Fact sheet)*. Newton, MA: Education Development Center, 1997.
- 17 California Department of Justice, Division of Criminal Justice Information Services. *Crime and Delinquency in California, 1997*. Sacramento, CA: Criminal Justice Statistics Center, 1998.

11-9-15


Mass Sentencing Commission,

To Whom it may Concern,

My name is Stephen Cole, I'm writing on behalf of my life partner [REDACTED] who is currently serving a 4yr. sentence for larceny over \$250.00. at MCI Framingham. We believe that her sentence is a bit exorbitant for a first time offence. We have a 2yr old at home, which wasn't taken in to account at the time of her sentencing. Our family is dealing with some extreme emotional and financial struggles. We are in jeopardy of losing our home. I truly believe that my partner's time will be better served at home with our family. Please consider fighting for inmates with non violent offences like larceny and other "Money" crimes when you meet for the rally on November 18th.

Thank you in advance

Yours Truly,


Stephen Cole.



Massachusetts Sentencing Commission Written Testimony Log Sheet

| Name | Agency / Organization | Date Received | Received Via |
|---------------------------------------|---|---------------------|----------------------|
| 1 George Labadie | Inmate - MAT Plymouth | 11/13/2015 | Mailed |
| 2 Colleen Kirby | League of Women Voters MA | 11/19/2015 | E-mail |
| 3 Lori Kenschaft | Mass incarceration working group of The First Boston Unitarian Universalist Alliance | 11/17/2015 | E-mail |
| 4 Francis J carney | MSC - Retired | 11-18-2015 | Email |
| 5 Mary Valerio | Private Citizen | 11-18-2015 | Hand carry |
| 6 John Bowman | United Parish of Brookline + San Jose Fair | 11/18/2015 | email + hand carry |
| 7 Josh Beardsley | Jobs Not Jails | 11/18/2015 | email / hand carry |
| 8 Lloyd Fillion | Criminal Justice Policy Coalition | 11/18/15 | handwritten |
| 9 Bob Marra | Criminal Justice Policy Coalition | 11/18/15 | hardcopy |
| 10 Robert Williams | Greater Boston - ABIO | 11/18/15 | hard copy |
| 11a Beverly Williams + Keaton Heckman | Greater Boston - ABIO Interfaith organization | 11/18/15 | hard copy |
| 12 Robert Williams | Families Against Mass Incarceration | 11/18/15 | MBA |
| 13 Robert Williams | President, Mass Sentencing Reform | 11/18/15 | hard copy |
| 14 Robert Williams | Acting of Mass | 11/18/15 | hard copy |
| 15 Manjanne Prange | Mass. Org. for Addiction Recovery | 11/18/15 | hard copy |
| 16 Chrshe Poff | NASW-MA | 11/18/15 | |
| 17 Ron Madnick | 100 Committee for Responsible Government | 11/18/15 | hard copy |