

Sheriff Andrea Cabral

Dr. Matilde Castiel

Congressman Bill Delahunt

Maryanne Frangules

Voices for Reform

30 Years of Mandatory Minimums in Massachusetts

JUDGE NANCY GERTNER

Dennis Lehane

Linda Sullivan

Judge Robert Ziemian

FAMIM
FAMILIES AGAINST MANDATORY MINIMUMS
Sentences that fit. Justice that works.

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Preface

Families Against Mandatory Minimums (FAMM) was founded in 1991 as the national voice for fair and proportionate sentencing laws. We shine a light on the human face of sentencing, advocate for state and federal sentencing reform, and mobilize thousands of individuals and families whose lives are adversely affected by unjust sentences. FAMM's vision is a nation in which sentencing is individualized, humane and sufficient but not greater than necessary to impose just punishment, secure public safety and support successful rehabilitation and reentry.

FAMM's Massachusetts Project opened its doors in 2008. Our Massachusetts campaign focuses on the state's harsh mandatory minimum sentencing laws for drug offenses, most of which were enacted 30 years ago. We seek to repeal those laws so that the courts can exercise discretion when imposing sentences. We also seek to repeal the restrictions under which drug offenders serve their mandatory sentences. Drug offenders should be eligible for parole, work release and earned "good conduct" credits – like most other prisoners. They need the same opportunities to prepare for a successful return to their communities and to law-abiding lives.

But that's what you'd expect FAMM to say. Don't just take our word for it. Please consider the voices for reform that we present here – from a variety of other perspectives honed by decades of experience. Most of our contributors have dedicated their careers to criminal justice or addiction treatment. All of them speak of the financial and human costs of sentencing laws that fail to allow punishment that fits the crime, the offender and the public's interest.

Barbara J. Dougan, Massachusetts Project Director

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Introduction by Dennis Lehane

The problem with mandatory drug sentencing is that it prevents intelligent and informed decisions about how we should punish a drug crime. A range of players in a particular drug deal are often punished the same as the kingpin who runs the show – or even worse, because they didn’t have information to trade. We don’t distinguish between the hardened criminal and the person who made a stupid mistake, or the drug dealer who preys on others and the drug addict who needs help. We don’t ask if a drug offender needs to be sent to prison to keep the rest of us safe, and if so, for how long. While judges may occasionally err, their percentage of successful sentencing decisions is bound to be much higher than the sentences predetermined by mandatory minimum drug laws.

In so many narcotics cases, the only victims are the users of the drugs themselves. To pile onto their misery by equating an addict selling enough drugs for his next fix, say, with distribution of truckloads of methamphetamine is not only draconian, it’s insidious. The war on drugs, with its disproportionate number of urban “criminals,” has become a de facto war on the poor who fill our prisons and weakens the social fabric of families and communities. To further victimize the urban populace by manacled judges with mandatory minimum sentencing requirements is the true crime.



Dennis Lehane is the author of nine novels — including the New York Times bestsellers *Gone, Baby, Gone*; *Mystic River*; *Shutter Island* and *The Given Day*. He has also written for the HBO series, “The Wire.” Lehane was born and raised in Boston’s Dorchester neighborhood. He now divides his time between Boston and the Gulf Coast of Florida.

Sheriff Andrea Cabral

I have been in law enforcement for 26 years. In addition to the last eight and a half years as Sheriff of Suffolk County, over the course of 16 years I was an Assistant District Attorney in two District Attorneys' offices and an Assistant Attorney General for the Commonwealth of Massachusetts. I was a prosecutor in Middlesex County when the so-called "school zone" law went into effect in 1989. Watching communities buckle under what was sometimes a revolving door of charges, guilty pleas and lenient sentences from busy district courts, I thought that mandatory sentences would provide some level of deterrence and give prosecutors a meaningful opportunity to temporarily put mid-level drug dealers out of business.

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Mandatory minimum sentences for violations of the school zone law haven't worked for two reasons. First, they have absolutely no impact on supply, which is driven by profit, or on demand, which is driven by addiction. Second, they are enforced in ways that are arbitrary and irrelevant to keeping school perimeters free from drug dealing. The revolving door hasn't slowed in the slightest. Mandatory minimum sentences do have a significant impact on prison populations as charges that carry mandatory sentences are used to leverage guilty pleas to reduced charges and lesser terms of incarceration. Non-addicted "real" dealers and those who sell to support their own addictions are charged, convicted and incarcerated alike. The cost of these incarcerations is enormous and unsustainable. Moreover, these incarcerations are not supported by the allocation of any resources for mandatory treatment either during the sentence or after release.

Whatever its original aim, the mandatory minimum sentencing law for school zone offenses has actually worsened an already desperate situation. We continue to consciously ignore the need to *reduce demand*, i.e., substantively address the prevalence and root causes of addiction and to provide adequate permanent resources for treatment. Instead, we prefer to focus exclusively on punishment. If punishment were enough, then we would be spending significantly less on corrections. Instead, we are spending significantly more, yet without either a decrease in drug offenses or drug abuse or an increase in public safety.



Andrea Cabral was appointed Sheriff of Suffolk County in 2002 by former Governor Jane Swift. She then won election in 2004 and reelection in 2010. She previously served as Chief of District Court and Community Prosecutions as an Assistant District Attorney with the Suffolk County District Attorney's office. She also created and directed Suffolk County's first major felony Domestic Violence Unit. In 2007, Sheriff Cabral was awarded a prestigious Eisenhower Fellowship and traveled to Australia to study its criminal justice system. In 2010, Sheriff Cabral was one of 18 national experts appointed by U.S. Attorney General Eric Holder to the Department of Justice's Science Advisory Board.

Dr. Matilde Castiel

When the state's mandatory minimum drug laws were passed 30 years ago, we had very little understanding of addiction. That has changed greatly and it is time for sentencing patterns to reflect this new understanding.

Consider the chronic disease of diabetes. It affects approximately seven percent of the population, is well known and is beginning to get the attention it deserves. In contrast, addiction is a disease that gets nowhere near the attention it deserves, even though it is more

common than diabetes. The fact that addiction crosses all socio-economic, cultural and educational boundaries confirms that it is indeed a disease and not a moral weakness. Susceptibility to addiction is a genetic inheritable trait. Children of addicts are eight times more likely to develop an addiction than the children of those not affected. If some-

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one does become an addict, their brain function is changed. Even though the initial use of drugs may have been voluntary, the addict's ability to control his or her drug use becomes significantly impaired.

The good news is that treatment is available and can be effective. But prison is the least appropriate setting imaginable for treatment. Nonviolent offenders who do not pose a threat to public safety should receive the treatment they need in a therapeutic setting, not in a penal setting that is more likely to aggravate their addiction and related conditions.

I strongly urge our policy makers to recognize the need to treat the disease of addiction aggressively. There is powerful data showing that treatment has a higher impact and is much more cost effective

than incarceration. In Massachusetts, the most frequently occurring drug offenses involve cocaine. Research has shown that residential treatment of heavy cocaine users is five times more cost-effective at reducing cocaine consumption than longer sentences.

In my experience, I have seen clearly that outcomes are best when addiction is treated as the disease it is. This is true both at the residential treatment centers I am affiliated with – the Hector Reyes House and Casa Reyes – as well as for those treated through the University of Massachusetts Center of Excellence in Addictions. I have gone to court with various residents who were charged with minor offenses secondary to drugs. I presented data showing that treatment would be more effective both in terms of costs and outcomes and asked the court to order the residents to our treatment program. Despite this, I was always told that they had to be incarcerated because “this was the law.”

Fortunately, government policy makers increasingly are ensuring that addiction is seen as a disease and treated accordingly. In 2008 Congress enacted the Mental Health Parity and Addiction Equity Act, requiring health insurers that cover mental health and addiction services to treat these diseases in the same manner as any other surgical or medical condition. But Massachusetts’ drug sentencing laws lag behind. Our laws – and the attitudes they represent – need to change, given the overwhelming evidence showing the advantages that residential treatment has over incarceration.



Dr. Matilde Castiel is the Executive Director of the Latin American Health Alliance of Central Massachusetts. She is also a practicing physician at the University of Massachusetts Memorial Medical Center and an Assistant Professor of Internal Medicine, Family and Community Medicine, and Psychiatry at the University of Massachusetts Medical School.

Congressman Bill Delahunt

As the former Norfolk County District Attorney, with the perspective of 22 years in office, I saw the recurring nexus between crime and drugs. Yet we have been waging the so-called War on Drugs for decades without success. The imposition of lengthy sentences does nothing to reduce the trafficking of controlled substances. And depriving judges of the ability to exercise discretion is not the answer either. Mandatory minimum

Mandatory minimums require the sentencing court to impose the same sentence on very different offenders when common sense and simple justice call for reasonable differences in punishment. In addition, mandatory minimums have proven to be a considerable waste of taxpayers' money.

sentences have been studied extensively and have been proven to be ineffective in the prevention of crime.

Mandatory minimum sentencing laws may have been enacted for deterrence and consistency of punishment. But in practice, they

do little to deter and they result in unwarranted sentencing disparities. Mandatory minimums require the sentencing court to impose the same sentence on very different offenders when common sense and simple justice call for reasonable differences in punishment.

In addition, mandatory minimums have proven to be a considerable waste of taxpayers' money. They keep offenders who played a minor role in the offense locked up longer than necessary, while the worst offenders get no more time than they would have received under a discretionary sentencing system. Our prison population is expanding at an alarming, unsustainable rate. Our prisons are overcrowded with people who are serving long sentences for nonviolent

offenses. Men and women in prison cannot raise families, cannot hold jobs, cannot pay taxes and cannot support the economy.

Lengthy mandatory minimums do not make us safer. When they leave prison, many who might have turned their lives around will have become hardened criminals, ready to return to the only life they know. A rigid, mechanical system of mandatory sentences cannot do justice, either to the accused or to the Massachusetts communities to which the thousands we imprison today will one day return.

Conservatives and liberals alike have recognized that this situation poses a threat to the future of our cities, our families, our economic well being and the health of our democracy itself. We must attack the issue of drug abuse on the demand side, with far greater emphasis on the treatment of addictions. Growing numbers of prominent conservatives have joined in calls for an end to mandatory minimum sentences, including the leadership of the new Right on Crime movement. We need to rethink our handling of drug policy and come at it with an open mind.

The Hon. William D. Delahunt represented Massachusetts' 10th District in the U.S. House of Representatives from 1997 to 2011. He served as Norfolk County District Attorney from 1975 to 1996. He also served in the Massachusetts House of Representatives from 1973 to 1975.



Maryanne Frangules

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 2002 and

2007, 3,265 Massachusetts residents died from opiate-related overdoses, 42 times the number of soldiers from our state who died in Iraq and Afghanistan. Another 594 people died in 2008. We are 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.

We should use prisons for those who actually threaten our public safety. For those who don't, drug courts should be used more often. There can be great results when everyone is working together, using sanctions and rewards in constructive ways.

It's a rare addict who can finance his or her addiction through legitimate means. People will steal to get money, sell drugs to others and even sell their own bodies. They go into prison as addicts and, unless there has been supportive intervention, they leave prison as addicts. 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 should be used more often. There can be great results when everyone is working together, using sanctions and rewards in constructive ways.

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.



Maryanne Frangules is Executive Director of the Massachusetts Organization for Addiction Recovery (MOAR). MOAR organizes recovering individuals, families and friends into a collective voice to educate 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 all our communities.

Judge Nancy Gertner

Sentencing is different from almost all functions of the government and surely different from the other functions of the judiciary. It is the moment when state power directly meets a citizen. It requires judges to focus on a particular human being and craft a punishment proportionate to the offense and to the offender. That duty is substantially compromised by mandatory minimum sentencing laws.

As a federal judge for the past 17 years, I have had the unpleasant task of sentencing people to lengthy sentences for drug offenses, all the while knowing that the sentences did not promote fairness, much less contribute to public safety. I had to apply the mandatory minimums even when studies suggested that they did not reduce recidivism or aid in rehabilitation, when a chorus of voices had decried them. It is significant that judges have spoken out against mandatory sentences at the state and federal levels, from around the country, and across the political spectrum. Commentators too have focused on the disruptive impact of lengthy maximums on communities and families, all without a commensurate benefit in terms of public safety. People get out of prison. The longer they have been incarcerated the more difficult the transition. And in a time of limited budgets, the more money we put into building walls, the less we have to focus on reentry into society after incarceration and for crime prevention before.

Mandatory minimum sentences distort our criminal justice system. In effect, the legislature is sentencing, when it knows little or nothing about the individual or what may work to deter him in the future. Or the prosecutor is sentencing, when he or she sees only one side – the offense – and rarely knows much about the defendant's life. The judge is effectively a bystander. And while the judge's decisions must be transparent, and are subject to appeal and public scrutiny, the prosecutor's are not.

Mandatory drug sentencing laws typically use one factor to calculate the sentence: the amount of a drug with which a defendant comes in contact. But drug weight is often a poor proxy for culpability. Drug dealers at the top of the drug trade, who make the profits and organize

the operations, are often able to negotiate their way out of mandatory sentences. They can provide assistance to prosecutors precisely because of their perch. They have information to offer. Too often the people who bear the brunt of mandatory sentences are those with nothing to trade and who, in fact, pose the least danger to public safety. They are the “mules” or the packagers or other low level functionaries.

One such “mule” came before me for sentencing. Probation reported that the woman had been beaten by her father and by her husband but no one had asked whether she had also been beaten by her supplier, the man who had facilitated her drug offense. Under the mandatory drug laws, it wasn’t a relevant question. To a criminal justice system that dealt only in generalities about drug quantity and stereotypes about offenders, she was nothing more than a woman who helped to distribute drugs. But there was a human tragedy hidden beneath the stereotype that mandatory minimum laws would not have recognized.

The public does not demand lengthy mandatory minimum sentences. Studies suggest that when the public is given the information about actual cases – whether the defendant is addicted, the defendant’s age and family circumstances – they favor sentences that are far, far less than the mandatory minimums require.

In the course of the last 30 years, we have jumped from the frying pan into the fire. We have moved from a regime which was perhaps overly focused on rehabilitation, even when there was little information on what punishments were effective, to one based largely on retribution and incapacitation. Perhaps the latter approaches won favor because they are more certain, more enforceable and sadly, more amenable to sound bites. Standing alone they do not serve justice. Now, when we can ill afford symbolic punishment gestures, when we need to focus on what works, is the time to do better.



Nancy Gertner served as a Judge of the U.S. District Court for the District of Massachusetts for 17 years, after being appointed in 1994 by President Clinton. She retired from the federal bench in September 2011. She is an internationally recognized expert on sentencing law and taught on the subject for over 10 years as a visiting lecturer at Yale Law School. In September 2011, Judge Gertner joined the faculty of Harvard Law School.

Linda Sullivan

My son Eric Duphily is serving a 13-year sentence for selling cocaine, with a 10-year mandatory minimum. I had no idea he was addicted to cocaine until he was arrested. He was living with his fiancée and her daughter and working hard at his job to support the family. If I was shocked when he was arrested, I was flabbergasted to learn that he was facing a sentence of 15 to 20 years. We looked up the law and found out that he was facing more time than if he'd been charged with manslaughter or many other violent crimes.

Someone as productive and responsible as Eric should be paying taxes and supporting his family. Instead, the taxpayers are supporting him. It makes no sense.

After Eric's arrest, I learned that he had agreed to sell drugs in order to pay off his debt to a drug dealer. Another drug user who was in trouble gave Eric's name to the police. Here's the part I've never been able to understand. When the police learned that Eric had a drug problem, no one reached out to help him. Instead, they set up several drug buys that would guarantee he faced at least 15 years in prison. When Eric agreed to plead guilty, the prosecutor insisted on a sentence of 13 years to 13 and a day. So Eric will never be eligible for parole. On the day of his sentencing, I sat in the back of the courtroom crying my eyes out. For weeks I could barely get out of bed. I couldn't believe that I had lost my only child for 13 years. It tore our family apart.

Let me tell you a little bit about the man who taxpayers will support for 13 years. After his arrest, Eric got clean on his own. He was willing to do random drug testing while he was out on bail for nearly two years. He worked hard to save up money so that his fiancée and her daughter would be okay while he was in prison. He was first sent to MCI Norfolk, basically a warehouse for over 1,500 men. He

worked hard at his kitchen job and took part in training and educational programs. This led to him being selected for the “cadre unit” at Bridgewater State Hospital. These prisoners work full time doing the jobs that the patients can’t do on their own. They prepare and serve the food, wash the laundry and clean the housing units. Eric also works as a landscaper. When he is not working, he takes classes. He has earned over 25 certificates in programs such as welding, money management and parenting. He is a peer educator in the Prison Health Awareness program and the Alternatives to Violence project. He is especially proud of the two letters of recognition he received for his role as a Teacher’s Assistant in the GED class. He also attends weekly Narcotics Anonymous meetings and in 2006 made his confirmation in the Catholic Church.

Someone as productive and responsible as Eric should be paying taxes and supporting his family. Instead, the taxpayers are supporting him. It makes no sense. I won’t retire and move from Massachusetts until Eric is out of prison. I refuse to leave my son behind. Every day I pray that the law will change so he can come home sooner – and that other parents will no longer see their sons and daughters sent to prison instead of getting help.



Linda Sullivan is a life-long resident of Massachusetts. She has worked since she was 16 and is currently employed as a business development manager. She visits her son Eric every other week. They also speak by phone several times a week so he can stay up to date on family matters. In her free time, Ms. Sullivan is an avid golfer and enjoys raising money to fight breast cancer.

Judge Robert Ziemian

As a prosecutor and during the first five years of being a District Court judge, I often saw the same defendants over and over again, either after having been on probation or after serving prison time. They were part of the well-recognized “revolving door” of recidivism. Drug abuse is a factor in the lives of many repeat offenders, leading to property and personal crimes, not just drug offenses. About 80 percent of those who are arrested for most types of crime have

Drug courts focus on a defendant’s use of drugs and are particularly well-suited for nonviolent drug offenders with a long history of failure with probation or jail.... Treatment is essential in order to reduce recidivism because it gets to the root of the problem. It may not work the first time and relapses are to be expected, but it’s the only way to attack the demand side of the drug trade.

a drug problem. There is also a high correlation between domestic abuse cases and drug abuse.

Besides drug offenses, men who are drug abusers are typically arrested for breaking and entering, larceny and poorly executed armed robberies. Drug abusing women are more likely to be charged with prostitution or shoplifting. Regardless of the specific offense, they are committing crimes in order to support their drug addiction. In fact, it has been estimated that a heroin addict who is not

getting treatment will commit about *300 crimes a year* for drug money.

Simply putting drug users in prison has been a failure when it comes to reducing either drug addiction or drug offenses. When they are released from prison, many drug abusers will go back to their old ways. Moreover, prison can actually make the situation worse because it serves as a good training ground for drug use, exposing “amateur” users to hardened dealers.

There had to be a better way, so I helped create Massachusetts’ first drug court in 1994. Drug courts focus on a defendant’s use of

drugs and are particularly well-suited for nonviolent drug offenders with a long history of failure with probation or jail. They succeed because of the court's power to coerce compliance with a rigorous regimen of treatment and intense supervision. Treatment is essential in order to reduce recidivism because it gets to the root of the problem. It may not work the first time and relapses are to be expected, but it's the only way to attack the demand side of the drug trade.

While some drug offenders have access to treatment programs in prison, it's not the same. Participation is voluntary and carries far less of an incentive to succeed. And there are the many negative counter-effects in that setting.

The success of drug courts has shown us that a treatment-focused approach really does work. The recidivism rate is about 30 percent, compared to over 40 percent for nonviolent drug offenders sent to prison in Massachusetts. On a daily basis, we see the men and women who take advantage of the opportunity to change their lives, do the hard work and go on to lead sober and productive lives. Addiction is a treatable illness. Drug offenders and taxpayers alike would be well-served by a criminal justice system focused on wellness, not incarceration.



The Hon. Robert P. Ziemian is a former prosecutor who was appointed to the bench in 1989 by Gov. Michael Dukakis. He started the state's first drug court in 1994, helped to create another eight drug courts in Massachusetts, and has assisted judges in other states to set up their own drug courts. A leading authority on the role of substance abuse treatment in the criminal justice system, Judge Ziemian was inducted into the National Association of Drug Court Professionals' Hall of Fame in 2003.



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