



Written Statement of Daniel Landsman  
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In Support of S. 977 and H. 1910  
Joint Committee on the Judiciary  
October 5, 2021

I want to thank Chair Eldridge, Chair Day, Vice Chair Lesser, Vice Chair Tyler, and the members of the Joint Committee on the Judiciary for the opportunity to submit written testimony in support of S. 977 and H. 1910 – legislation to repeal Massachusetts’ drug mandatory minimums. Over 30 years of evidence has shown that mandatory minimum sentencing laws have failed to have a meaningful impact on public safety in Massachusetts and nationwide. Instead of improving public safety and reducing drug use, mandatory minimums have led to crowded prisons, broken families and communities, and a bloated corrections budget. I greatly appreciate this deliberative body’s diligent review of these pieces of legislation and urge this committee to approve these bills and bring the commonwealth one-step closer to repealing these harmful sentences.

FAMM is a nonpartisan, nonprofit sentencing reform advocacy group founded in Washington, D.C. in 1991. FAMM’s mission is to protect public safety and promote efficiency in the criminal justice system by advocating for individualized, proportional criminal sentencing laws. We are not against punishment or prisons. We simply believe that sentences should fit the crime and the offender, and that judges are in the best position to decide the proper punishment in each and every case.

FAMM supports the repeal of mandatory minimum drug sentencing laws because every individual before the court and every case is unique, and because more discretion at sentencing increases public safety. One-size-fits-all sentences do not permit courts to consider all of the relevant facts and circumstances about the crime and its impact on the community, or the individual’s criminal record, role, motive, profit from the offense, age, likelihood of rehabilitation, or need for mental health or drug treatment. All of these factors should be taken into consideration when crafting an appropriate sentence. Mandatory minimums ban judges from considering any of them.

At the same time, mandatory minimums often make a single fact the *only* relevant variable in sentencing. One good example is tying mandatory sentences to particular drug amounts, like Massachusetts does currently. This sentencing structure is inherently arbitrary, and leads to arbitrary results, including what we call “cliff effects.”

Consider that judges have greater discretion to sentence offenders convicted of possession with intent to distribute 17.9 grams of cocaine; that offense does not carry a mandatory minimum prison term under Massachusetts law. But for a conviction of possession with intent to distribute 18 grams of cocaine, judges’ hands are tied by a mandatory minimum sentence. We trust judges



to handle sentencing of distribution cases below the threshold, but add one-tenth of a gram, and current statutes assume they lose all competence to impose an appropriate sentence.

And empirical data collected at the national level support the repeal of these failed policies. The Department of Justice's National Institute of Justice has disproven the deterrence theory framework that many use to support the existence of mandatory minimums, finding that it is the certainty of being caught, not the severity of punishment, that deters crime.<sup>1</sup> Furthermore, a recent 50-state study by the Pew Charitable Trust found no statistically significant relationship between drug sentencing and three major indicators of drug problems: drug arrests, drug use, and drug overdoses.<sup>2</sup> And simply putting more people in prison does not reduce crime. Another Pew Charitable Trust study found that 35 states reduced their prison populations and crime rates simultaneously.<sup>3</sup>

These failed policies come at a high cost to Massachusetts taxpayers. As recently as 2018, the cost of incarceration in a Massachusetts state prison was 70,892.56.<sup>4</sup> That means one mandatory minimum for possession with intent of 18 grams of cocaine would cost the commonwealth \$141,785.12. A 1997 report from the RAND Corporation found that mandatory minimum sentences were not worth the exorbitant cost. The report found that one million dollars spent on mandatory minimum sentences for cocaine offenses was less effective than one million dollars spent on pre-mandatory minimum arrests, prosecution and sentencing, and was far less effective than one million dollars spent on drug treatment.<sup>5</sup> According to the Department of Corrections, 62 percent of people incarcerated for drug offenses are serving a mandatory minimum sentence – meaning Massachusetts will continue to waste money on these failed policies unless legislation is passed to repeal these sentences this session.<sup>6</sup>

Massachusetts has been successful in passing meaningful sentencing and criminal justice reform in recent years but its continued reliance on mandatory minimums puts it behind the curve. The commonwealth should join states such as Louisiana, New York, Michigan, Maryland, and

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<sup>1</sup> "Five Things About Deterrence" Washington, D.C.: National Institute of Justice, 2016.

<https://www.ncjrs.gov/pdffiles1/nij/247350.pdf>

<sup>2</sup> "More Imprisonment Does Not Reduce State Drug Problems," Pew Charitable Trust, March 2018.

[https://www.pewtrusts.org/-/media/assets/2018/03/pspp\\_more\\_imprisonment\\_does\\_not\\_reduce\\_state\\_drug\\_problems.pdf](https://www.pewtrusts.org/-/media/assets/2018/03/pspp_more_imprisonment_does_not_reduce_state_drug_problems.pdf)

<sup>3</sup> Adam Gelb and Jacob Denney, "National Prison Rate Continues to Decline Amid Sentencing, Re-entry Reforms," Pew Charitable Trust, January 16, 2018. <http://www.pewtrusts.org/en/research-and-analysis/articles/2018/01/16/national-prison-rate-continuesto-decline-amid-sentencing-re-entry-reforms>

<sup>4</sup> "Massachusetts Department of Corrections: Frequently Asked Questions," Massachusetts Department of Correction, January 1, 2019. <https://www.mass.gov/doc/frequently-asked-questions-january-2019/download>

<sup>5</sup> Jonathan Caulkins et al., "Mandatory Minimum Drug Sentences: Throwing Away the Key or Taxpayers Money," RAND Corporation, 1997. [https://www.rand.org/pubs/monograph\\_reports/MR827.html](https://www.rand.org/pubs/monograph_reports/MR827.html)

<sup>6</sup> Nicholas Cannatta et al., "Prison Population Trends 2020," Massachusetts Department of Corrections, May 2021, 23. <https://www.mass.gov/doc/prison-population-trends-2020/download>

California in repealing its mandatory minimums and moving beyond these harmful and ineffective policies.<sup>7 8 9</sup> FAMM urges this committee to advance S. 977 and H. 1910.

Thank you for your time and consideration of our views.

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<sup>7</sup> “Recent State Level Reforms to Mandatory Minimum Laws,” FAMM, May 10, 2017.

<sup>8</sup> Louisiana Senate Bill 220, 2017 Regular Session, <https://www.legis.la.gov/legis/ViewDocument.aspx?d=1051860>

<sup>9</sup> California Senate Bill 73, 2021 Regular Session, [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB73](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB73)