

**Talking Points in Opposition  
to Mandatory Minimum Sentencing**

**Presented by Martin F. Murphy, BBA Secretary**

**June 19, 2017**

House Chairwoman Cronin, Senate Chairman Brownsberger, and members of the Joint Committee on the Judiciary, my name is Martin Murphy, and I am here on behalf of the Boston Bar Association.

By way of introduction, I am a partner at the Boston firm Foley Hoag LLP. I have spent the last 30 years working in the criminal justice system, on both sides of the aisle, prosecuting and defending nearly every kind of case, from drunk driving to murder, including many drug cases. I am also the co-chair, along with former BBA President Kathy Weinman, of a criminal-justice working group that I anticipate will soon be making recommendations on a broad range of reforms to the criminal-justice system. The BBA will speak broadly on these issues once the report is adopted, but for today, I will focus my remarks on mandatory minimums, which the BBA has spoken out against for decades.

In the time permitted, please permit me to make four brief points:

**Point One: Mandatory minimum sentences fail every test by which we should measure the strength of our justice system:** In place of proportionality—a system where the punishment fits the crime—they offer one-size-fits-all justice. They frequently require incarceration for longer than the judge believes is either necessary or just, as demonstrated by the prevalence of “and a day” sentencing. These overly-long sentences, in turn, delay the possibility of re-integration, restrict access to the very programs shown to help make that process a success,

and often turn prisoners back to the street without help to find employment, or housing, support or supervision.

**Point two: Mandatory sentencing statutes effectively turn over the reins of the criminal justice system to prosecutors, and strip judges of their power to impose the kind of individualized sentences that would in fact make the punishment fit the crime.** Mandatory sentences are mandatory only when prosecutors want them to be; in practice, prosecutors often use them as bargaining chips in the plea bargaining process. When prosecutors use the threat of mandatory sentences to drive the plea-bargaining process, there is no transparency and no accountability. Instead, the result is justice produced behind closed doors, with the prosecutor choosing both charge and sentence.

**Point 3: The evidence shows that mandatory minimum sentences help drive one of the most deeply disturbing aspects of our state's criminal justice system: the problem of racial disparity.** Massachusetts may have one of the lowest incarceration rates in the nation; but our criminal justice system's record on race is nothing to be proud of. A study released last year by the Fair Sentencing Project revealed that the Massachusetts rates of racial and ethnic disparity is among the highest in the United States. For African-Americans the rate of disparity (that is, incarcerations rates of black compared to white residents) was the 13<sup>th</sup> highest in the country. For Hispanics, Massachusetts ranked first: Number 1. Mandatory minimum sentences help drive that rate of disparity: three out of every four defendants sentenced to mandatory minimum sentences are defendants of color. As recent studies have confirmed, and as our own experiences teach, these sentences tear lasting holes in defendants' families, and in entire communities.

**Fourth, there is no time better than the present to address this issue.** Massachusetts reduced mandatory minimums in both 2010 and 2012 without the kind of harm to public safety

opponents of reform predicted. Since then, we have watched crime rates continue their historic decline. There is certainly much to praise in the CSG's framework, and in the CSG bill before you today. The BBA thanks all of those who devoted so much of their time, over so many months, to producing a strong outcome. But it is our hope that the best and longest-lasting legacy of the CSG process will be the foundation it lays on which to build additional criminal-justice reforms, continuing the work begun in 2010.

As the BBA's founder, John Adams, observed nearly 250 years ago: "facts are stubborn things." And the stubborn fact is that our prison and jail populations have skyrocketed over the past several decades, just as the prison populations have increased in other states. Massachusetts taxpayers deserve to see their money spent wisely. No one disputes that certain offenders deserve to be incarcerated—sometimes for a long time. But the length of that sentence should be determined by a well-qualified judge, ruling on the unique facts and circumstances of the case, and the individual defendant's history and background—not by the cold calculus of arbitrary justice, which is all that mandatory minimums can ever offer.

Thank you very much for your attention.