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In March of 1976, while a college senior, I submitted my undergraduate thesis in economics, with the catchy title, "Adopting a Policy of Stiffer Sentencing for Convicted Felons: An Analysis of its Abridgement of Justice and the Cost-Effectiveness of its Incapacitation Effect." I will spare you from reading its 220 pages, all typed on a manual typewriter. Suffice it to say that the conclusion of that thesis was that, based on the available data, the crime-reduction benefit obtained from an overall increase in the length of imprisonment was not nearly as great as many had claimed, and produced little bang for the buck.

I come before you today, 39 years later, with the benefit of having spent eight years as a prosecutor recommending criminal sentences and nearly twelve years as a Superior Court judge imposing them, with a new thesis regarding sentencing, this one limited to the sentencing of drug offenders and, fortunately for you, far shorter than 220 pages. The conclusion of this thesis is that minimum mandatory sentences for drug offenses violate three fundamental principles of sentencing. In addition, they are unfair to minority populations; they fail to address the drug epidemic; and they are a poor investment of public funds.

Let me begin with the three fundamental principles of sentencing:

1. The sentence should be proportionate to the seriousness of the crime, and reflect the need for just punishment, deterrence, and, where appropriate, the need to protect the public and the victim from further crimes of the defendant.
2. The sentence should be no greater than necessary to accomplish the first principle, because a criminal sentence inflicts many different types of costs on the defendant and the defendant's family, as well as financial costs that must be borne by the taxpayers.

3. The sentence should be crafted to best enable the defendant, in the words of a reverend from Cambridge, to "get past the past," that is, to address the problems that brought the defendant to the courtroom in order to diminish the risk that he or she (usually he) will commit additional crimes.

I did not invent these principles. They have been embedded in a Federal statute since 1984,<sup>1</sup> and they are reflected, to varying degrees, in virtually every discussion of sentencing I have seen in the scholarly literature. I doubt that any of you disagree with them. But these principles have meaning only if we act in accordance with them. If we espouse these principles but allow laws to stand that undercut them, or fail to sentence in accordance with them, then we cannot truly be said to respect them. So let us look closely at each of these principles and examine what practical consequences arise from them.

The first principle requires that we consider the circumstances of the crime and the role the defendant played in the commission of it. We should not punish the drug courier the same as the drug kingpin, even if the amount of drugs at issue is the same.

Where there might be a need to protect the public or the victim from further crimes of the defendant, we need to assess the defendant's risk of recidivism, based on information regarding the individual circumstances of the defendant. 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. For instance, criminal justice experts have found that the risk of recidivism is far less for a criminal who was convicted of two crimes in his early twenties, and is then convicted of a third after he turned forty, than for a defendant with three prior convictions in his twenties.<sup>2</sup>

The need to protect the public from the crimes of the defendant also depends on the nature of the crime. As Professor Mark Kleiman notes in his book, When Brute Force Fails, when one puts a professional burglar in prison, the burglaries this defendant can no longer commit because he is incarcerated are not likely to be committed by other burglars who see a vacuum in the burglary market and seek to fill it. But the same cannot be said about street drug dealers. Take one dealer out, and others are likely to take his place, leaving the price and availability of drugs essentially unchanged.<sup>3</sup> To be sure, if you can take out a drug kingpin or a major source of supply in a neighborhood, you may be able to disrupt the drug market and affect price and availability, at least for a short time, but drug dealers are too easily replaced for their incarceration to make a significant dent in the market. In short, as we have learned, we cannot incarcerate our way out of the drug problem.

The second principle -- that the sentence should be no greater than necessary to accomplish the first principle -- is generally called the principle of parsimony, but I prefer to call it the principle of frugality because that is the word most commonly used when we speak of the avoidance of needless waste. It is somewhat astonishing that this principle has been declared in a federal sentencing statute since 1984,<sup>4</sup> because in that time period the average federal sentence has increased from approximately three years to more than nine years,<sup>5</sup> and the number of persons incarcerated in Federal prisons has increased from approximately 40,000 to more than 210,000.<sup>6</sup> So, best I can tell, that provision of Federal law has been observed largely in the breach. But this principle of frugality has meaning and it should have consequence. Every time a judge sentences a defendant to five years in prison, the judge is not only depriving a human being of his liberty for five years but is also causing the state to expend, on average, over \$250,000 to house, feed, and secure that defendant.<sup>7</sup> The judge may also be depriving that

defendant's family of the income the defendant could have earned during those five years and may be depriving a wife of her husband and his children of their father. If that family did not need public assistance before but does now, the sentencing judge is also imposing that cost on the taxpayers.

In medicine, there is a principle that a doctor should inflict no more pain and furnish no more medication than is necessary to treat the patient,<sup>8</sup> and we need to act on a comparable principle in sentencing. Just as surgery should be spared where physical therapy would suffice, incarceration should be spared where probationary conditions will suffice. If incarceration is necessary to accomplish the first principle, a judge must determine what is the least amount of incarceration that is necessary.

The third principle -- that the sentence should be crafted to best enable the defendant to "get past the past" -- requires a judge to evaluate the individual circumstances of a defendant and determine what can be done to reduce the risk of recidivism. If we are to help a defendant get past the past, we must determine whether he needs drug or alcohol treatment, whether he has mental health problems that require medication or counseling, and whether he has a history of domestic violence that requires him to get batterer's intervention. And we need the resources that will enable a defendant to get this help, as well as the probation and parole supervision to ensure that the defendant is making good use of these resources. In assessing the needs of a defendant, we must consider the social science data that will allow us to evaluate which programs succeed in reducing recidivism and which do not, and which defendants are likely to be helped by intensive supervision and which are better off with minimal supervision.

We as a judiciary are seeking to implement these three principles by establishing sentencing best practices. A best practices committee has been created in each trial court

department with criminal jurisdiction, comprised of judges, probation officers, prosecutors, defense lawyers, and police chiefs. The committees will devise a set of best practices appropriate to each trial court department, because the best sentencing practices in a Juvenile Court may not be the best in a District Court or a Superior Court. I have asked each committee to prepare a first draft by Thanksgiving, and I aim for each department to have adopted its set of best practices by next spring. In devising best practices, we are looking not only at the initial sentencing of a defendant, but also at what I call the second sentencing, that is, the sentence that follows a revocation of probation. There are approximately 81,000 individuals under probation supervision across the Commonwealth,<sup>9</sup> and a significant percentage of the defendants in our prisons and jails are there because of a sentence imposed following a probation revocation. We are considering whether to apply the principle of frugality to the length of probation supervision and to the special conditions imposed, both to make the most effective use of our understaffed probation department and to diminish the risk that a defendant will violate probation and face a second sentencing. We are also looking at whether probation conditions can not only deter bad behavior but incentivize good behavior, such as by promising to reduce the length of a defendant's probation supervision if he complies with all conditions during an established time period. In short, by spring of next year, in cases where a judge is not constrained by statutes requiring a minimum mandatory sentence, a judge will sentence a defendant with a set of best practices that will ensure individualized, evidence-based sentences handcrafted for each defendant.

But we know that judges rarely are free from these constraints when they sentence a defendant charged with drug trafficking, because most of those crimes carry minimum mandatory sentences.<sup>10</sup> When a defendant is charged with an offense carrying a minimum

mandatory sentence, the judge has no choice but to impose a sentence at least equal to the minimum mandatory if the defendant pleads guilty to that offense or is convicted at trial of that offense. Even when the prosecutor agrees to drop the minimum mandatory charge in return for a plea, the judge still generally has no choice in the sentence, because the price the prosecutor often demands to drop the minimum mandatory is an agreed-upon sentence, which the judge has little choice but to accept, because the alternative is to force the defendant to go to trial, where if he loses, he will receive the higher minimum mandatory sentence.

Minimum mandatory sentences are inconsistent with each of the three principles of sentencing that I have articulated, and the inconsistency is greatest when minimum mandatory sentences are applied to narcotics offenses. They permit neither individualized, nor evidence-based sentencing. They treat the drug courier the same as the kingpin, because the length of the minimum mandatory sentence depends solely on the amount of drugs, not on the defendant's role in committing the offense. They ignore the risk posed by a defendant, treating the defendant who is unlikely to commit another offense the same as the person who will likely commit additional crimes. And they treat the defendant motivated by addiction the same as the defendant motivated by predatory greed.

They also violate the principle of frugality every time a judge imposes a mandatory or agreed-upon sentence that is greater than the judge would otherwise think appropriate. At a time of budget cutting, when the Department of Correction population is at 130% of design capacity,<sup>11</sup> we can ill afford to incarcerate drug offenders longer than they deserve.

Minimum mandatory sentences do nothing to help drug offenders get past the past, and often make it more difficult for them to do so by imposing long sentences during which they will generally have little access to treatment for their drug, alcohol, or mental health problems, and

will be given little opportunity to get an education or learn a skill that will help them find a job. These long sentences force public funds to be allocated to incarceration that could otherwise be reinvested and spent more wisely in drug treatment programs and intensive probation supervision. And minimum mandatory sentences violate each of these three principles without making a significant impact on either the price or availability of drugs because there are likely to be other drug dealers who will quickly fill whatever niche is left in the market by the incarceration of their competitors. In short, if you believe in the three principles of sentencing, you cannot support minimum mandatory sentencing in drug cases.

If that were not enough, the empirical evidence demonstrates that minimum mandatory drug sentencing has had a disparate impact upon racial and ethnic minorities. In fiscal year 2013, 450 defendants in Massachusetts state courts were given minimum mandatory sentences for drug offenses.<sup>12</sup> In that year, which is the most recent year for which data are available, racial and ethnic minorities comprised 32% of all convicted offenders, 55% of those convicted of non-mandatory drug distribution offenses, and 75% of those convicted of minimum mandatory drug offenses.<sup>13</sup> I do not suggest that there is intentional discrimination, but the numbers do not lie about the disparate impact of minimum mandatory drug sentences.

So what are the arguments made in support of minimum mandatory sentences in drug cases? Here are the five most common that I have heard.

First, some argue that minimum mandatory sentences in drug cases reflect the legislative intent to limit discretion and ensure uniformity in sentencing so that drug offenders receive a sentence no less than the minimum mandatory. But this assumes that minimum mandatory sentences are treated as minimum mandatories by prosecutors, and we know that they are not. A prosecutor will routinely dismiss a charge with a minimum mandatory in return for a plea to a

lesser or different crime without one. Consequently, minimum mandatory sentences are only mandatory for the judge and the defendant, not for the prosecutor, who retains the discretion to charge a crime with a minimum mandatory sentence or not. Moreover, what does it say that we want prosecutors to agree to drop a minimum mandatory charge as part of a plea bargain, because otherwise the minimum mandatory sentence would too often be unjustly harsh and inappropriate? And what does it say that prosecutors are willing to drop a minimum mandatory charge only where the defendant is willing to plead guilty? Where the defendant rejects a plea and insists on his right to trial, because he maintains his innocence or believes the evidence falls short of proof beyond a reasonable doubt, the sentence that the prosecutor was willing to surrender in return for a plea is the sentence the judge has no choice but to impose if the defendant is found guilty at trial. How bizarre is it that the defendant most likely to receive a minimum mandatory sentence is the defendant with a triable case?

Second, some say that minimum mandatory sentences in drug cases are necessary to prevent judges from imposing sentences that are unfairly lenient. But where is the empirical evidence for this argument? There are not minimum mandatory sentences for many crimes, including attempted murder, armed robbery, rape of a child by force, arson, burglary, bribery, and perjury. Is there any evidence that judges are running amuck imposing unfairly lenient sentences in these cases? Since when did judges, many of whom, like myself, were prosecutors before they became judges, suddenly take a liking to drug dealers? The so-called leniency that some fear is the ability of a judge to distinguish a small-time drug dealer -- who is dealing to support his habit and who may benefit from a lesser sentence that includes drug treatment -- from the kingpin who is getting rich from the sale of drugs.



Let us be honest. When some district attorneys say they fear judicial leniency, they really are saying that they do not want to relinquish to judges the power to impose sentences that minimum mandatory sentences give to prosecutors. They would prefer that prosecutors decide what sentence a drug dealer receives. They want to preserve the ability to refuse to drop a minimum mandatory charge and be guaranteed a lengthy sentence upon conviction, as well as the leverage to induce a plea by dropping the minimum mandatory charge. I understand why they would like to preserve their power to sentence; what card player would agree to surrender the cards that yield a superior hand? But as long as prosecutors, rather than judges, hold the cards that determine sentences, we will not have individualized, evidence-based sentences, and we will not be applying any of the three principles of just and effective sentencing.

Third, some argue that drug crimes are so interwoven with violent crimes and property crimes that eliminating minimum mandatory sentences in drug offenses will produce an increase in the rate of these crimes. But other states, including Michigan, New York, Rhode Island, Indiana, Delaware, and South Carolina,<sup>14</sup> have eliminated or substantially reduced the scope of minimum mandatory sentences in drug cases, without any apparent adverse impact on public safety. In fact, since repeal, the violent crime rate in these six states combined has fallen on average by 10%, and the property crime rate has fallen on average by 12.9%.<sup>15</sup> Here in Massachusetts, the legislation enacted in 2010 and 2012 that reduced the scope of minimum mandatory drug sentencing<sup>16</sup> has had no apparent adverse impact on public safety: between 2010 and 2012, the violent crime rate fell by 13.1% and the property crime rate fell by 8.4%, and since 2012, both the violent crime and property crime rates have continued to fall.<sup>17</sup> I recognize that factors other than the elimination or substantial reduction of minimum mandatory sentences in drug cases are influencing this crime reduction. But at a minimum these numbers demonstrate

that the public safety sky does not fall when a state ends minimum mandatory sentences in drug cases.

Fourth, some district attorneys say that they use the threat of minimum mandatory sentences to induce drug dealers to cooperate against other drug dealers. I have no doubt that this happens, but let us look more closely at what this means. Where the defendant the prosecutor seeks to squeeze has committed drug crimes so serious that most judges would be likely to impose a sentence at least as long as the minimum mandatory, the threat of a minimum mandatory sentence adds little to the inducement. The inducement produced by a minimum mandatory is greatest where the minimum mandatory sentence would be far greater than a judge would otherwise impose. And a prosecutor who has offered this inducement, to preserve the credibility of the threat, needs to carry out the threat and insist upon a minimum mandatory sentence, no matter how unfair, if the defendant refuses to cooperate. Therefore, every time this threat has meaning and fails, a defendant is unfairly sentenced. By this logic, minimum mandatory sentences in every drug case should be increased to twenty years, because that would strengthen the inducement to cooperate, but that would also mean that those who, for whatever reason, refuse to cooperate would receive a twenty year sentence upon conviction, even though under our three sentencing principles they should receive far less. Without minimum mandatory sentences, prosecutors can still promise leniency in return for cooperation; they simply lose the threat of an unfairly high sentence as an inducement.

Fifth, some argue that eliminating minimum mandatory sentences in drug cases will not stem the tide of the rising opioid addiction crisis and will simply make it worse. No one claims (certainly, I do not claim) that an end to minimum mandatory sentences in drug cases will miraculously turn around our drug problem. But it will allow this Commonwealth to accelerate

the necessary policy shift towards justice reinvestment -- the reallocation of scarce criminal justice resources away from overincarceration and into evidence-based drug treatment and recidivism reduction strategies that can enhance public safety, save valuable tax dollars, and, most importantly, save lives. The fact of the matter is that minimum mandatory sentences in drug cases have failed to substantially affect the price or availability of dangerous narcotics. Narcotics are cheaper, more easily available, and more deadly than they have ever been in our lifetime.<sup>18</sup> In 2013, roughly twice as many of our residents died of unintentional opioid-related overdoses as died in 2000: an estimated 674 in 2013, compared with 338 in 2000.<sup>19</sup> If we look back to 1990, the number of such deaths was 94.<sup>20</sup> They are dying not only in our inner cities, but in our suburbs and rural villages. On March 10, Yarmouth police reported its 39th heroin-related overdose and fifth heroin-related death this year.<sup>21</sup> Drug overdose is now the leading cause of accidental death in Massachusetts, exceeding motor vehicle accidents.<sup>22</sup>

When I was a prosecutor, I urged every jury to carefully examine the evidence in light of the law, because I was convinced that, if they did that, they would conclude that I had proven the defendant guilty beyond a reasonable doubt. Now that I am Chief Justice, I urge every Massachusetts legislator to carefully examine the evidence against minimum mandatory sentences in drug cases, because I am convinced that, if they do that, they will conclude that the reasons to end them are so compelling, and the reasons to keep them are so flawed, that the time has come to go beyond the important reforms accomplished in 2010 and 2012, and abolish minimum mandatory sentences in drug cases in Massachusetts, so that judges may be allowed to set individualized, evidence-based sentences in accordance with best practices.

The call to end minimum mandatory sentences in drug cases comes not only from me; it comes from many Sheriffs, including Sheriffs Ashe, Tompkins, Bellotti, and Koutoujian. It

comes from former Boston Police Superintendent Ed Davis. It comes from former U.S Attorney Wayne Budd, who has had the benefit, not only of reflection and perspective on his experience as a prosecutor, but of careful study of the drug problem. It comes from the Special Commission on the Massachusetts Criminal Justice System - a commission created by the Legislature. It comes even from the majority of residents of Massachusetts. In the Mass. Inc. survey of Massachusetts residents published in April, 2014, when asked, "Which is the best way for judges to sentence convicted offenders?," only 11% favored minimum mandatory sentences; 44% favored having judges use sentencing guidelines while still having some discretion; 41% favored letting judges decide the punishment each time on a case-by-case basis.<sup>23</sup> And, increasingly, the call to end minimum mandatory sentences in drug cases is coming from our legislators, who recognize the need for justice reinvestment, who know the difference between being smart on sentencing and being tough on sentencing. I am convinced that minimum mandatory sentences in drug cases will be abolished; the only question is when. Why am I so sure? Because doing so makes fiscal sense, justice sense, policy sense, and common sense. And, ultimately, good sense will prevail.

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<sup>1</sup> See 18 U.S.C. § 3553 (a) (2012) ("The court shall impose a sentence sufficient, but not greater than necessary, to . . . reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; . . . to afford adequate deterrence to criminal conduct; . . . to protect the public from further crimes of the defendant; and . . . to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner").

<sup>2</sup> See DuRose, Cooper, & Snyder, *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010*, at 12 (Bureau of Justice Statistics Special Report) (Apr. 2014) ("Younger released inmates were arrested at higher rates than older inmates following release"); Kohl et al., *Massachusetts Recidivism Study: A Closer Look at Releases and Returns to Prison 10* (Urban Institute) (Apr. 2008) ("Although the average age at release for this cohort was 35 years, a disproportionate amount of recidivists were under age 35 at release and when they were reincarcerated").

<sup>3</sup> See Mark A. Kleiman, *WHEN BRUTE FORCE FAILS: HOW TO HAVE LESS CRIME AND LESS PUNISHMENT* 154-155 (2009).

<sup>4</sup> See *supra* note 1.

<sup>5</sup> Compare William J. Sabol & John McGready, Bureau of Justice Statistics Special Report, Time Served in Prison by Federal Offenders, 1986-97, at 2 (June 1999), available at <http://www.bjs.gov/content/pub/pdf/tspfo97.pdf> (average length of imposed sentence in 1986, the year before implementation of the federal Sentencing Reform Act of 1984, was 39 months) with Charles E. Samuels, Jr., Director of the Federal Bureau of Prisons, Statement Before the U.S. House of Representatives Committee on Appropriations, Apr. 17, 2013, at 3, available at <http://appropriations.house.gov/uploadedfiles/hhr-113-ap19-wstate-samuelsc-20130417.pdf> ("average sentence length for inmates in BOP custody is 9 ½ years"), and Federal Bureau of Prisons, Inmate Statistics: Sentences Imposed (last accessed Mar. 13, 2015), [http://www.bop.gov/about/statistics/statistics\\_inmate\\_sentences.jsp](http://www.bop.gov/about/statistics/statistics_inmate_sentences.jsp).

<sup>6</sup> Compare Bureau of Justice Statistics, Correctional Populations in the United States, 1985, at 5 (Dec. 1987) (federal prison population in 1985 was 40,223), available at <http://www.bjs.gov/content/pub/pdf/cpus85.pdf>, with Lauren E. Glaze & Danielle Kaebler, Bureau of Justice Statistics, Correctional Populations in the United States, 2013, at 11 (federal prison population in 2013 was 215,100) and Federal Bureau of Prisons, Population Statistics, [http://www.bop.gov/about/statistics/population\\_statistics.jsp](http://www.bop.gov/about/statistics/population_statistics.jsp) (last accessed Feb. 17, 2015) (total of federal inmates, updated weekly, was at 210,340).

<sup>7</sup> See Massachusetts Department of Correction, Frequently asked questions about the DOC, <http://www.mass.gov/eopss/agencies/doc/faqs-about-the-doc.html> (last visited Mar. 12, 2015) ("For Fiscal Year 2014, the average cost per year to house an inmate in the Massachusetts DOC was \$53,040.87").

<sup>8</sup> See, e.g., American College of Physicians, Ethics Manual (6th ed. 2012), available at [https://www.acponline.org/running\\_practice/ethics/manual/manual6th.htm#alloc](https://www.acponline.org/running_practice/ethics/manual/manual6th.htm#alloc) ("As a physician performs his or her primary role as a patient's trusted advocate, he or she has a responsibility to use all health-related resources in a technically appropriate and efficient manner. He or she should plan work-ups carefully and avoid unnecessary testing, medications, surgery, and consultations.").

<sup>9</sup> See Annual Report on the State of the Massachusetts Court System FY2014, at 39 (Feb. 2, 2015), available at <http://www.mass.gov/courts/docs/fy14-annual-report.pdf>.

<sup>10</sup> See General Laws c. 94C, §§ 32 et seq.

<sup>11</sup> Massachusetts Department of Correction, Quarterly Report on the Status of Prison Overcrowding, Fourth Quarter 2014, at 1 (Feb. 2015), available at <http://www.mass.gov/eopss/docs/doc/research-reports/overcrowding/2014-4thqtr-overcrowding-report.pdf>.

<sup>12</sup> Massachusetts Sentencing Commission, Survey of Sentencing Practices: FY 2013, at 31 (Dec. 2014), available at <http://www.mass.gov/courts/docs/admin/sentcomm/fy2013-survey-sentencing-practices.pdf>.

<sup>13</sup> *Id.* at 53.

<sup>14</sup> At least twenty-nine states have recently enacted legislation rolling back mandatory minimum penalties. See Subramanian & Delaney, Playbook for Change? States Reconsider Mandatory Sentences 8 (Feb. 2014), available at: <http://www.vera.org/sites/default/files/resources/downloads/mandatory-sentences-policy-report-v2b.pdf>. The six states mentioned here have been singled out because they have not simply reduced but repealed mandatory minimum sentences for at least some drug offenses. See P.A. 665, 666, & 670 (Mich. 2002); S. 56-B (N.Y. 2009); S. 39AA (R.I. 2009); H.R. 1892 (Ind. 2001); H.R. 19 (Del. 2011); S. 1154 (S.C. 2010). See also Families Against Mandatory Minimums, Recent State-Level Reforms to Mandatory Minimum Laws, <http://famm.org/wp-content/uploads/2013/08/FS-List-of-State-Reforms-2.25.pdf>.

<sup>15</sup> These numbers were calculated using crime data from the state offense tables ("Table 5") contained in the Federal Bureau of Investigation's (FBI's) annual publication, Crime in the United States, and are based on comparing the violent crime rates and property crime rates recorded for each of the six states for 2013 (the most recent year available) with the violent crime and property crime rates for each state that had been recorded for the year when the state originally passed legislation repealing minimum mandatory sentences (as cited in the previous endnote). See Crime in the United States, FBI Uniform Crime Reports, <http://www.fbi.gov/about-us/cjis/ucr/ucr->

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publications#Crime (providing links to report, with offense tables, for years 1995 through 2013). The percentage increase or decrease in violent crime rate and property crime rate was calculated for each of the six states, and the six results were then averaged. (For the violent crime rate comparisons, the "legacy definition" of rape was used in figuring the violent crime rates for 2013 -- rather than the expanded definition of rape that the FBI started using in 2013 -- in order to facilitate a comparison with prior years.)

<sup>16</sup> See S. 2583, 186th Sess., 2010 Acts and Resolves c. 256; H.R. 3818, 187th Sess., 2012 Acts and Resolves c. 192.

<sup>17</sup> These results are based on comparing the violent crime and property crime rates for Massachusetts for 2010, 2012, and 2013, as found in the FBI's Crime in the United States publication (and using the "legacy definition" of rape for 2013). See *supra* note 15.

<sup>18</sup> See A. Fries, R.W. Anthony, A. Cseko, Jr., C.C. Gaither, & E. Schulman, Institute for Defense Analyses, *The Price and Purity of Illicit Drugs: 1981–2007*, at 10-11 (Oct. 2008) (regarding price of heroin); U.S. Department of Justice, Drug Enforcement Administration, Office of Intelligence Warning, Plans and Programs, 2013 National Drug Threat Assessment Summary, at 5-6 (Nov. 2013) (regarding purity and availability of heroin).

<sup>19</sup> Massachusetts Department of Public Health, *Fatal Opioid-Related Overdoses Among MA Residents, 2000–2013*, at 2 (Apr. 2014), available at <http://www.mass.gov/eohhs/docs/dph/injury-surveillance/overdose/fatal-opioid-overdoses-2000-2013.pdf>.

<sup>20</sup> Massachusetts Department of Public Health, *Opioids: Trends and Current Status in Massachusetts*, at 1 (Feb. 2004), available at <http://www.mass.gov/eohhs/docs/dph/injury-surveillance/overdose/opioid-trends-2004.pdf>.

<sup>21</sup> See CBS BOSTON, *Spike in Fatal Heroin Overdoses Prompt Dire Warnings By Police* (Mar. 10, 2015, 12:36 PM), <http://boston.cbslocal.com/2015/03/10/spike-in-fatal-heroin-overdoses-prompt-dire-warnings-by-police/>.

<sup>22</sup> See Massachusetts Department of Public Health, *Massachusetts Provisional Deaths 2011*, at 59 (Dec. 2013); Massachusetts Department of Public Health & Bureau of Substance Abuse Services, *Opioid Overdose Response Strategies in Massachusetts*, at 3 (Apr. 2014); Centers for Disease Control and Prevention, *Prescription Drug Overdose in the United States: Fact Sheet*, <http://www.cdc.gov/homeandrecreationalafety/overdose/facts.html> (last visited Oct. 15, 2014).

<sup>23</sup> S. Koczela, R. Parr, & B. Forman, *Ready for Reform? Public Opinion on Criminal Justice in Massachusetts 6-7* (Apr. 2014) (report on results of research project of MassINC, The MassINC Polling Group, and Massachusetts Criminal Justice Reform Coalition), available at <http://www.massinc.org/~media/Files/Mass%20Inc/Research/Full%20Report%20PDF%20files/CriminalJusticePollReport.ashx>.