

# MASS INCARCERATION: THE OBSTRUCTION OF JUDGES

TRACIE A. TODD\*

## I

### INTRODUCTION

Mass incarceration is a big and well-recognized problem nationwide. There is widespread agreement that too many people are being incarcerated for too long. State and federal legislators have passed legislation aimed at reducing rates of incarceration. In 2018, Congress responded to this crisis through the passage of a criminal justice reform bill known as “The First Step Act” that implements reforms aimed at reducing incarceration rates in federal prisons for non-violent criminal offenders.<sup>1</sup> In academic and policy circles, the topic of mass incarceration has been widely debated. Judges, of course, play a role in that process. Yet, very little attention has been paid in public discourse to what judges think about their role in sentencing, and how it relates to mass incarceration.

State and federal judges are responsible for adjudicating criminal cases, and most importantly imposing sentences. But state courts impose most criminal sentences. In 2017, roughly 14 million or 95 percent of criminal cases were filed in state court systems, compared to 75,861 in federal court.<sup>2</sup> This statistic demonstrates the importance of state courts in any discussion relating to mass incarceration. In this study I interviewed thirty-three judges in starkly different jurisdictions—Alabama and Massachusetts. Alabama and Massachusetts have vastly different rates of incarceration. Alabama has one of the highest incarceration rates in the country, while Massachusetts has one of the lowest. The study reveals several factors that may attribute the differences in incarceration rates to the institutional and political contexts in which these judges work and how it may affect their decisions.

According to the United States Bureau of Justice 2018 statistics, an estimated 2 million people were imprisoned in facilities across the country. The United

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\* Judge Tracie A. Todd serves as a State of Alabama Circuit Court Judge for the Tenth Judicial Circuit Criminal Division where she has presided over felony and misdemeanor offenses since 2012. She is a former municipal court judge, prosecutor, Japanese language interpreter, and international language teacher. Tracie earned a dual Bachelor of Arts in International Business and Japanese Studies from Dillard University, Juris Doctor from the University of Alabama School of Law and Master of Laws in Judicial Studies from the Duke University School of Law. This project is dedicated to my family, staff and the thirty-three judges who made its completion possible.

1. Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act, Pub. L. No. 115-391, 132 Stat. 5194(2018).
2. NATIONAL CENTER FOR STATE COURTS, COURT STATISTICS PROJECT (2018).

States incarcerates 693 people for every 100,000 Americans on average, placing the United States as the eleventh highest incarcerator in the world.<sup>3</sup> Alabama itself is within the top five highest incarcerators globally while Massachusetts is within the bottom five in the United States, and approximately sixtieth in the world.<sup>4</sup>

There are roughly 5 million people living in the State of Alabama according to the U.S. Census Bureau. Approximately 26.8 percent of the state's population identified as African American; 4.2 percent identified as Hispanic or Latino; and 65 percent of the population identified as White only.<sup>5</sup> In 2016, nearly 30,000 people were sentenced to the Alabama Department of Corrections, or ADOC.<sup>6</sup> African Americans made up roughly 54 percent of the inmates housed in ADOC facilities as well as community corrections, federal, other states, and county jail custody.<sup>7</sup> Alabama does not systematically account for inmates who identify ethnically or racially as Hispanic or Latino. Instead, it seems that this group is classified as "White" or "Other."<sup>8</sup> Although incarceration rates have declined, Alabama still incarcerates approximately 987 people for every 100,000 Alabamians, with prison inmate capacities exceeding 180 percent in recent years.<sup>9</sup> As one Alabama judge opined, "In other communities the impact of race [is] harder to pinpoint, but it's pretty easy to pinpoint in Alabama."

In contrast, the Commonwealth of Massachusetts with a population of approximately 7 million incarcerates roughly 330 people for every 100,000 Massachusettsans.<sup>10</sup> Although Massachusetts has lower incarceration rates, the commonwealth is "fairly high up because of racial disparities." In Massachusetts, 8.6 percent of the population identified as African American; 11.5 percent identified as Hispanic or Latino and 73 percent of the population identified as White only.<sup>11</sup> African Americans accounted for approximately 27 percent of the prison population.<sup>12</sup> Roughly 25 percent of prison inmates self-reported as

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3. Peter Wagner & Alison Walsh, *States of Incarceration: The Global Context*, THE PRISON POLICY INITIATIVE (June 16, 2016), <https://www.prisonpolicy.org/global/2016.html> [https://perma.cc/PC4G-MNDK].

4. *Id.*

5. UNITED STATES CENSUS BUREAU, *ALABAMA: RACE & HISPANIC ORIGIN* (2018).

6. ALABAMA DEPARTMENT OF CORRECTIONS, *ANNUAL REPORT FISCAL YEAR 2016* (2016).

7. *Id.*

8. ALABAMA DEPARTMENT OF CORRECTIONS, *COMMUNITY CORRECTIONS PROGRAM MANUAL REPORT FISCAL YEAR, 2018* (2018).

9. Chris Mai & Ram Subramanian, *The Price of Prisons: Examining State Spending Trends, 2010–2015*, VERA INSTITUTE OF JUSTICE (May 2017), [https://storage.googleapis.com/vera-web-assets/downloads/Publications/price-of-prisons-2015-state-spending-trends/legacy\\_downloads/the-price-of-prisons-2015-state-spending-trends.pdf](https://storage.googleapis.com/vera-web-assets/downloads/Publications/price-of-prisons-2015-state-spending-trends/legacy_downloads/the-price-of-prisons-2015-state-spending-trends.pdf) [https://perma.cc/4AHT-PJ3V].

10. Wagner & Walsh, *supra* note 3.

11. MASSACHUSETTS DEPARTMENT OF CORRECTIONS, *MASSACHUSETTS DEPARTMENT OF CORRECTIONS PRISON POPULATION TRENDS, 2016* (2017).

12. *Id.*

Hispanic.<sup>13</sup> Like Alabama, more than half of the Massachusetts prison population is comprised of racial minorities.<sup>14</sup>

## II

### THE FRAMEWORK

Studies of criminal justice reform have traditionally examined the impact of sentencing disparities, systematic deficiencies, inadequate funding, and political mandates on mass incarceration trends in the United States. Historically, these studies exclusively analyze the judicial decision making of unelected federal judges. However, the literature is substantively void of introspective contributions from key participants in the criminal justice system—state judges. A closer look at the role of state judges in the context of contemporary mass incarceration provides myriad academic and practical applications, especially where there are substantive nonconformities. The State of Alabama and the Commonwealth of Massachusetts squarely fit within this paradigm.

In both Alabama and Massachusetts, the district and trial courts have jurisdiction over criminal sentencing. Although there are some institutional differences in the authorities vested in each jurisdiction, judges in these courts are responsible for sentencing criminal offenders. According to the Alabama Administrative Office of Courts, there are 245 circuit and district court judges vested with jurisdiction to decide criminal cases.<sup>15</sup> Judges in Alabama are selected through a partisan election process for a six-year term.<sup>16</sup> Political pundits describe Alabama as a conservative, red state associated politically with the Republican Party.<sup>17</sup> In Massachusetts, there are 344 comparative judicial offices, including 249 superior and district court judges vested with jurisdiction in criminal cases.<sup>18</sup> Massachusetts judges are selected by gubernatorial appointment for a permanent term with a mandatory retirement age of seventy. Massachusetts is described politically as a socially progressive, blue state associated politically with the Democratic Party.<sup>19</sup>

I individually interviewed a total of thirty-three Alabama and Massachusetts trial and district court judges. The judges were interviewed with the stated condition of anonymity. I gave preliminary instructions regarding the study topic

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13. *Id.*

14. *Id.*

15. This information was provided by the Alabama Administrative Office of Courts via a direct email request to the human resources department.

16. ALABAMA ADMINISTRATIVE OFFICE OF COURTS, FISCAL YEAR 2016 ANNUAL REPORT & STATISTICS (2017), (on file with the Journal).

17. *See, e.g.*, PEW RESEARCH CENTER, PARTY AFFILIATION BY STATE (2014); Pat Roberts & Mark Begich, *How Red or Blue is Your State?*, THE HILL (Oct. 24, 2014), <https://thehill.com/blogs/ballot-box/house-races/221721-how-red-or-blue-is-your-state> [<https://perma.cc/M2ZA-Y9F2>].

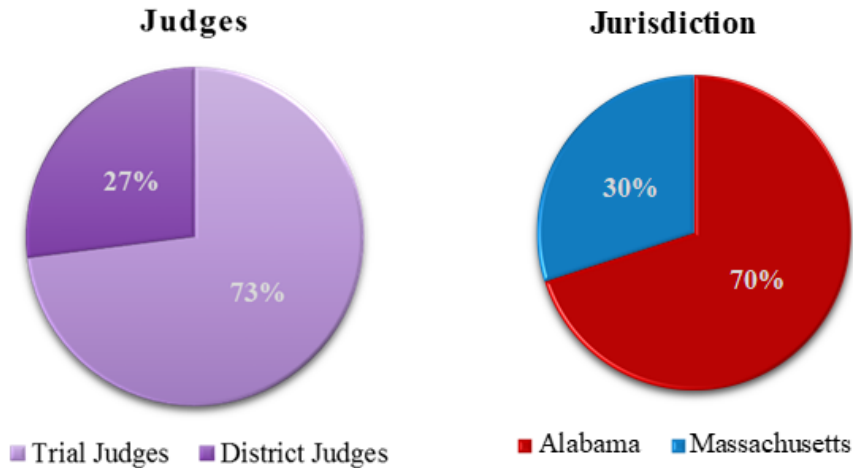
18. MASSACHUSETTS TRIAL COURT, MASSACHUSETTS TRIAL COURT ANNUAL DIVERSITY REPORT (2017). Boston Municipal Court also has concurrent jurisdiction over some felony offenses. However, there is no comparable structure in Alabama.

19. *See, e.g.*, PEW RESEARCH CENTER, *supra* note 18; Roberts & Begich, *supra* note 18.

and expressly explained my role as researcher to counteract assumptions about my knowledge of the subject matter as a sister judge. All judges gave extremely candid and complete answers. During the interviews, the words “conservative” and “progressive” peppered the responses in political and social contexts. Focusing on introspective judicial decision making and institutional features, I started the interviews asking for a broad definition of criminal justice reform to establish a framework for the judges and identify common themes. There were four main topics for the judges to consider: 1) Responsibility for criminal justice reform; 2) Effectiveness of current reform efforts; 3) The judge as participant in reform; and 4) The judicial selection process. Nevertheless, some judges, especially my Alabama colleagues, tended to presume my awareness. In these instances, I gave intermittent explanations of my role as researcher. However, the interviews, designed to last one to one-and-a half hours, averaged forty-five minutes to an hour.

Most interviews were conducted by phone. As a current member of the bench, I drafted questions based on existing literature and commonly expressed concerns among colleagues. I was looking for patterns in the responses primarily from judges outside of my jurisdiction to counter slants toward possible preconceptions based on jurisdictional homogeneity. Alabama judges voluntarily responded to my direct email request. Requests for participation in Massachusetts were made through two intermediaries, a court official and a law professor. More Alabama judges were interviewed than Massachusetts judges. More trial judges were interviewed than district judges in both jurisdictions. Still, the voluntary response created a diverse pool with varying age, race, gender, experience and political affiliation.

The judges related factors that may correlate high rates of incarceration with judicial attitudes and sentencing practices. The interviews provided vital information explaining perceived obstructions caused by politically motivated legislative mandates, inadequate funding, and the respective judicial selection processes. The responses are presented in aggregate. Anonymous quotations are included to clearly express areas of consensus and jurisdiction specific discussions. As a member of this professional group, I also added quotations as a quality control measure to assure the reader that the expressed views are solely those of the participants.

**Figure 1.****Interview Participant Demographic Charts****III****PUBLIC OPINION AND THE SELECTION PROCESS**

One of the most obvious factors to consider in the discussion of mass incarceration between the Alabama and Massachusetts justice systems is the starkly different judicial selection processes. Alabama judges are selected by contested partisan election. Judicial candidates for office at all levels of the judicial system are required to qualify with a political party or adhere to requirements for independent candidates.<sup>20</sup> For over two hundred years, judges in Massachusetts have been selected by gubernatorial appointment to serve a lifetime appointment, now with a mandatory retirement age of seventy.<sup>21</sup> The opposing judicial selection processes may be the most prominent factor when considering the diverging incarceration rates.

All Alabama judges rebuffed or tepidly considered the idea of an appointment process. Massachusetts judges homogeneously rejected the proposition of a contested election as a judicial selection method. Nevertheless, the responses suggested that the judicial selection processes may influence sentencing decisions that affect the respective rates of incarceration.

Participants affiliated with the Democratic Party made up 52 percent of the judges interviewed from Alabama, and the remaining 48 percent affiliate with the Republican Party. Although Massachusetts judges are appointed, 60 percent of

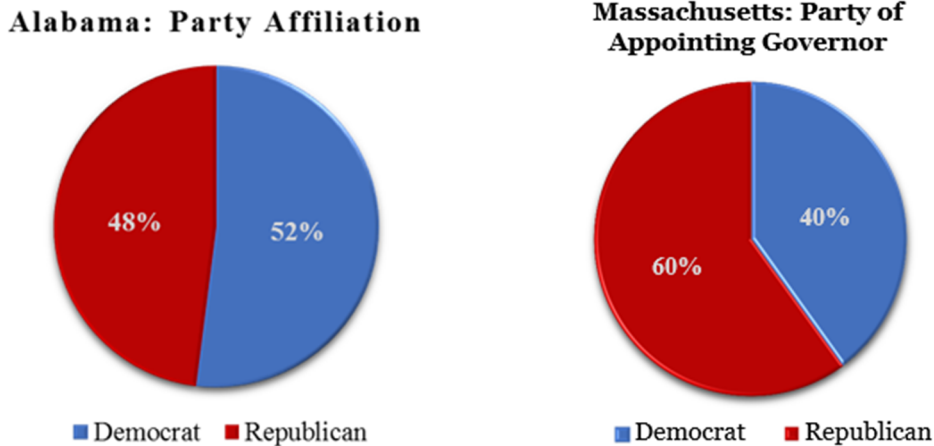
20. ALABAMA LAW INSTITUTE, ALABAMA ELECTION HANDBOOK 2017-2018 (2018).

21. AMERICAN JUDICATURE SOCIETY, METHODS OF JUDICIAL SELECTION: MASSACHUSETTS (2014).

the participants in this study were appointed by Republican governors. The remaining 40 percent by Democratic Governors.

**Figure 2**

Participant Political Affiliation Charts



### A. The Election

Alabama judges commonly believe that the partisan component of the judicial selection process may negatively influence sentencing decisions and contribute directly to the state's overcrowded prison system.<sup>22</sup> Generally, Alabama judges pointed to the partisan component of the selection process as problematic, or at least concerning, in a state where straight party voting dominates judicial races. One judge summarized this notion stating, "when you're...associated with [a] particular party...it's just not a good visual for the general public...it seems ridiculous on its face to say that you're one or the other when you're supposed to be totally unbiased." Described in religious terms by another judge, "judges should be non-denominational." The significance of this acknowledgement relates directly to judicial attitudes among Alabama judges about sentencing practices. Although expressed objectively, most Alabama judges believed that "there is some correlation between" the judicial selection process in Alabama, "how [judges] impose punishment," and Alabama's prison population. Democratic judges inferred that their Republican counterparts experience more community pressure to be "tough on crime." One judge candidly described this inference in a distinctly political science context:

[A] judge is going to serve in the community that he's a part of by and large...[I]f that is a more moderate or liberal or conservative community, then typically that judge, will

22. Michael H. LeRoy, *Do Partisan Elections of Judges Produce Unequal Justice When Courts Review Employment Arbitrations?*, 95 IOWA L. REV. 1569, 1569–1616 (2010).

serve the needs [of that community]. We don't have our own goal; we have to serve the goals of our constituents. Judges are [required] by law as far as what they can do, but for the most part they are serving the people of that community. So, you have to sort of acquiesce in a sense to what that community needs and what they want you to do as an elected official.

In affirming this point, there were repeated references to fears of special interest groups running “Willie Horton” political advertisements. The premise of the “Willie Horton” ad, ironically based on a Massachusetts case, centers on a judge releasing an offender from custody who then commits a heinous crime after release. In summary, one judge explained:

In six years [judges] stand for reelection and some lawyer out there decides...to say...he is soft on crime...she's talking about rehabilitating somebody who's a rapist, who's a murderer, who's a robber, you know. So, if you note that in the back of your head and you know that another lawyer could use that in a campaign...you're going to be a little bit more cautious about that. May not be quite as ambitious...If I lose the election, then, you know, I don't have a platform at all to try to help, educate the community, educate other lawyers, judges [or] the legislature as to what needs to be done in this criminal justice system.

Although Alabama judges acknowledge that there is likely a correlation between the role of a judge as a partisan political figure and the overcrowded prisons in Alabama, the judges unanimously expressed contentment with some form of an election process. Each judge was generally “opposed to appoint[ing] judges” citing perceived hindrances to minorities and socio-economically disadvantaged Whites being appointed by a governor. Therefore, most Alabama judges believe that the selection of judges is “within the province of the people.” However, there was a consensus among Alabama judges that partisanship and the public demand for tough-on-crime punishment probably influence sentencing decisions and thereby contribute to incarceration rates.

## B. The Appointment

Under Massachusetts law, “[a]ll judicial officers . . . shall be nominated and appointed by the governor, by and with the advice and consent of the council.”<sup>23</sup> In 1975 a formalized merit-based selection process was created for the appointment of judges.<sup>24</sup> Massachusetts judges unanimously and enthusiastically touted the judicial appointment process. The judges attribute the quality of the Massachusetts judiciary to the rigors of the merit selection process. The judges expressed in varying degrees an aversion to the idea of judicial elections. Most judges believe that the judicial appointment process insulates them from the political pressures associated with answering to an electorate, “no one can either implicitly or explicitly threatened you with your job”. Likewise, Massachusetts judges describe an independence that allows them to exercise judicial discretion without fear of electoral retribution with respect to sentencing decisions.

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23. MASS CONST. ch. 2, art. IX.

24. Martin W. Healy, *A Guide to the Massachusetts Judicial Selection Process: The Making of a Judge*, MASSACHUSETTS BAR ASSOCIATION (2015), <https://www.massbar.org/docs/default-source/advocacy/mjssp-3-ed.pdf?sfvrsn=2> [<https://perma.cc/7M2Y-9PQ6>].

“Massachusetts judges are very proud and feel very strongly that the [merit selection process] gives us the opportunity to be independent [and] true to the law without worrying about public clamor.” There was an overwhelming presumption among Massachusetts judges that the gubernatorial appointment process insulates the judiciary from political considerations that may influence sentencing decisions, which corresponds with decreasing incarceration rates.

#### IV

#### RACE AND SOCIOECONOMICS

In addition to variances in judicial selection, considerations of race and socioeconomics are also routinely debated in the context of mass incarceration. Theoretically, neither race nor socio-economics should affect sentencing in a blind justice system. But the responses given by the judges suggested that these factors are considered in sentencing decisions at least in the margins and where judges have discretion.

It is well settled that racial minorities, especially African Americans and people of Latino descent are incarcerated at higher rates than Whites.<sup>25</sup> According to the United States Census Bureau, in 2017 13.3 percent of the American population identified as African American; 17.8 percent identified as Hispanic or Latino and 61 percent identified as White only. However, in July of 2018, African Americans made up almost 40 percent of the total prison population.<sup>26</sup> In examining criminal justice reform in this context, there was consensus among judges in both jurisdictions that “disparit[ies] in sentencing” serve as a primary contributor to mass incarceration. Therefore, reducing “racial disparities in sentencing” was deemed an indispensable aim in reforming the criminal justice system and reducing incarceration rates. Nationally, opposing factions cite varying economic, social or political rationales in support of criminal justice reform and the need for reduced incarceration rates.<sup>27</sup>

The bi-partisan debate relating to mass incarceration has been fueled to some degree by the growing opioid crisis in the U.S.<sup>28</sup> There was a presumption among the judges that the exercise of judicial discretion in sentencing should not be “influenced by a person’s race, economic status or the implicit bias of the judges.” The criminal justice system should be “blind to race and other extraneous” considerations. But race was also discussed in direct relation to the government and public efforts to reform the criminal justice system in response to this crisis. In summarizing a viewpoint shared by others, one judge explicitly associated the

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25. Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, THE SENTENCING PROJECT (June 2016), <https://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf> [https://perma.cc/6KM9-CN8Y].

26. FEDERAL BUREAU OF PRISONS, INMATE RACE STATISTICS (2018).

27. Cameron Smith, *We Need Better Solutions than ‘Big Government’ Incarceration*, AL.COM (Mar. 16, 2017), [http://www.al.com/opinion/index.ssf/2017/03/we\\_can\\_do\\_better\\_than\\_the\\_big.html](http://www.al.com/opinion/index.ssf/2017/03/we_can_do_better_than_the_big.html) [https://perma.cc/6A44-BM3H].

28. James G. Hodge et al., *Redefining Public Health Emergencies: The Opioid Epidemic*, 58 JURIMETRICS J. 1, 1–17 (2017).



legislative efforts to combat opioids with the drug epidemic now becoming a “White problem.” This viewpoint centers on the crack epidemic, which disproportionately affected the African American community in the early 1980’s and 1990’s, when defendants charged with crack related offenses “were getting some long sentences.” Another judge explained, “[o]nce [drugs] became a white problem . . . we weren’t just locking people up to solve the problem.” Disparate enrollment in deferred sentencing programs was also cited in relation to race and sentencing practices. A sampling of Massachusetts Drug Court programs revealed that 87 percent of Drug Court participants were White, even when the court is in a predominately African American community.<sup>29</sup> According to one Massachusetts judge, “There’s a lack of diversity in our drug courts . . . that’s tough for people to . . . take a real look at the issue of race[.]”

In addition to racial disparities, each judge referred in varying ways to “a direct relation with poverty and crime.”<sup>30</sup> According to the United States Census Bureau, the median income in Alabama is \$44,758.00, and educational attainment is below the national average. Correspondingly, Alabama has one of the highest violent crime rates in the United States.<sup>31</sup> Conversely, the median income in Massachusetts is \$70,954.00, and educational attainment is above the national average.<sup>32</sup> Likewise, Massachusetts has an average or below average crime rate.<sup>33</sup> Relating to race, judicial decision making may be influenced to some degree by the reality that “judges bring their own experiences with them.” In considering matters of race and socio-economics in the context of judicial attitudes about criminal justice reform, one judge candidly explained:

[Y]our personal life experiences are [your] teacher and if you have never been around groups of people less fortunate than yourself or you have never even had the opportunity to experience groups of people less fortunate than yourself, then you are shaped...that’s your world. I think it’s hard for people to understand folk less fortunate than them. Most of the time the only interaction [judges] have with people of color or people who are less fortunate than them are in these jobs and it’s just hard for them to care about criminal justice reform.

## V

### OBSTRUCTIVE LEGISLATION

While judges are authorized to exercise some discretion in sentencing, the discretion is not unconstrained. It has long been concluded that the mass

29. Shira Schoenburg, *Participants in Massachusetts’ Drug Courts are Overwhelmingly White*, MASSLIVE (Apr. 20, 2016), [http://www.masslive.com/politics/index.ssf/2016/04/participants\\_in\\_massachusetts.html](http://www.masslive.com/politics/index.ssf/2016/04/participants_in_massachusetts.html) [<https://perma.cc/8E3D-X8JJ>].

30. Stephanie Hong, *Say Her Name: The Black Woman and Incarceration*, 19 GEO. J. GENDER & L. 619, 627 (2018).

31. Leada Gore, *Alabama’s Place on the List of Most Dangerous States*, AL.COM (Nov. 15, 2018), <https://www.al.com/news/2018/11/alabamas-place-on-the-list-of-most-dangerous-states.html> [<https://perma.cc/7H7W-943K>].

32. UNITED STATES CENSUS BUREAU, MASSACHUSETTS: QUICK FACTS (2018).

33. FEDERAL BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTING STATISTICS, 2016 (2019).

incarceration phenomena in the United States occurred as a direct result of the pivot from a rehabilitative criminal justice system to a retributive, draconian criminal justice system.<sup>34</sup> Even a glancing analysis of mass incarceration in all fifty states confirms incarceration rates higher than those of countries and territories internationally condemned as human rights violators.<sup>35</sup> The retributive policies of the 1990's War on Drugs and its offshoots placed federal and state legislative "tough on crime" mandates primarily on judges, especially state judges.<sup>36</sup>

#### A. Tough-on-Crime

Mandatory minimum sentencing guidelines have become the most prominently scrutinized tough-on-crime mandate, and widely credited for exponential increases in incarceration rates. Under the mandatory minimum sentencing structure, judges have no discretion in the minimum prison sentence imposed for certain crimes. Judges in both jurisdictions unanimously attributed high prison incarceration rates in significant part to tough on crime mandates. "Some judges are of the view that if not for that mandatory minimum, they might come up with a different sentence that might be more appropriate for the particular offender." Mandatory minimum sentencing was perceived among judges in both jurisdictions as a practical obstruction to effective sentencing strategies. Mandatory minimum sentencing was described by one judge as "shift[ing] discretion from the judge to the prosecutor." The judges intuitively used low level drug crimes as the foremost example of the negative impact on prison populations caused by mandatory minimum sentencing. In discussing this universal frustration with the adverse effects of mandatory minimum sentencing, one judge explained:

"We first [...] have to decide what we're going to do. Are we going to treat everybody as if they are a dangerous major drug dealer? Are we going to carve out for those persons who are addicted[,] who are as much a victim of the drug? Are we going to incarcerate them for the duration of their life as we would a major dangerous [offender]?"

On this point, there was consensus that mandatory minimum sentencing related to drug offenses, mental illness, and "spin off" crimes creates an unworkable mandate on judges. Reportedly, the divesting of discretion here impedes the judges' ability to tailor sentences to specific circumstances. "It's not going to work . . . unless you tailor it to each person's case individually." In other words, the judges correlate mandatory minimum sentencing with the inability to effectively address substance abuse and mental health illness in the criminal

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34. Albert Alschuler, *The Changing Purposes of Criminal Punishment: A Retrospective on the Past Century and Some Thoughts About the Next*, 70 U. CHI. L. REV. 1, 1–22 (2003); Mark R. Fondacaro, *The Rebirth of Rehabilitation in Juvenile and Criminal Justice: New Wine in New Bottles*, 41 OHIO N.U. L. REV. 697, 697–726 (2015).

35. Wagner & Walsh, *supra* note 4; New York Times Editorial Board, *Justice Reform in the Deep South*, N. Y. TIMES (May 18, 2015), <https://www.nytimes.com/2015/05/18/opinion/justice-reform-in-the-deep-south.html> [<https://perma.cc/UX7C-Z3K4>].

36. William N. Clark, *The Criminalization of America*, 76 THE ALABAMA LAWYER 224, 224–232 (2015).

justice system. In support of this view another judge stated, “[i]f you look at the population in the prisons..., overwhelming numbers...have either substance abuse or mental illness or both. If you could treat all of that effectively, you could close a lot prisons and prevent a lot of crime.”

### B. Judges as Lobbyists

The judges believed good a legislative-judicial relationship to be critical in the creation of legislation that allows them to use their discretion “to help people.” The judges collectively acknowledged a subjective role in criminal justice reform and reducing incarceration rates. One of the many judges who addressed this point affirmed that “[W]e can put a face to it. We see it day in, day out. We see individuals. We see the lives that have been destroyed...victims, defendants and their families. So . . . it’s personal.” Both Alabama and Massachusetts legislatures have recently passed measures to address mass incarceration and the resulting fiscal and social burdens placed on each prison system. But the legislation passed in each jurisdiction looks different, and so do the legislative-judicial relationships.<sup>37</sup>

Every judge identified the legislature as having primary responsibility because criminal justice reform primarily “lives within the prerogative of the legislature.” This presumption was based on the legislature’s power of pen and most importantly purse. But the public’s demand for punishment was uniformly identified as the leading influence on legislative decision making and the enactment of retributive mandates, making matters of reform “all politics.” When discussing perceived impediments to substantive criminal justice reform, across the board the judges pointed to the political pressure of legislators being labeled “soft on crime.” One judge explained that the Nixonian tough-on-crime mandate “plays well with the public and the legislature,” encouraging retention of retributive sentencing policies that exponentially increase incarceration rates.

Generally, judges in both jurisdictions optimistically believed that increased awareness among the electorate and legislature would encourage a more dramatic shift away from a “tough on crime” approach toward a more effective “smart on crime” strategy. The process of educating the legislature revealed interesting discussions about the judiciary’s interaction with the legislature. Both state and commonwealth canons of judicial ethics make allowances for judges to engage in discussions with legislators and the public on matters concerning the court. There are no statutory or ethical constraints on judges initiating contact with the legislature to discuss topics relating to sentencing and criminal justice reform generally. But the strategies exercised in the jurisdictions are starkly different, as is the resulting criminal justice legislation that directly correlates with mass incarceration rates.

Alabama judges described an unorganized hodgepodge of methods used to influence legislators. The kaleidoscope of methods included direct contact with

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37. See Appendices A & B.

respective legislators, submission of opinion editorials, lobbyists retained by the circuit and district judges' associations, communications by way of the presiding judges of each circuit, and direct appeals to the community through public discourse and presentations. There was no consensus among Alabama judges on the effectiveness of any one method or combination of methods employed to educate lawmakers. Alabama judges, in stark contrast to their commonwealth counterparts, described historic and contemporary conflicts in legislature-judicial branch relations that have created an "indifference toward the judiciary." Despite an unbridled ability to communicate with legislators, Alabama judges generally believed that input from the judiciary was not adequately considered in the most recent criminal justice reform legislation. In affirming this point one judge explained, "In order for us to get our prison populations down or criminal justice reform, if that is important to our state, we've all got to talk." Another judge explained, "We need to look at evidence based practices as a basis for the way we do the reform." But the consensus among Alabama judges was that there is "a disconnect between the legislature and the judicial branch." Alabama judges universally acknowledged problems with the disjointed legislature-judiciary communication processes, coupled with inherent political considerations. There was agreement among Alabama judges that critical judicial input in the criminal justice legislative process has been impeded. As a result, Alabama judges describe criminal justice policies that "play[] well with the public," but may not adequately reduce the state's prison population.

Although Massachusetts judges are permitted to individually communicate with legislative officials, most did not find such a proposition necessary and gave great deference to "tradition." There was a clear aversion among Massachusetts judges to individually engage legislators, telegraphing a rank and file mindset in this regard. One Massachusetts judge explained the universal commonwealth sentiment stating, "I've just never felt comfortable in our role of addressing the legislature . . . So we try to let the chiefs of the departments along with the chief of the appeals court and the chief of the [Supreme Judicial Court] do the speaking for us." Each Massachusetts judge described a positive relationship between the legislature and judiciary. Although there has been "some fluctuation" there has been a positive "consistency" with legislature-judiciary relations. Overall, Massachusetts judges believe that "there's a lot of respect for the judiciary and that "historically there's no animosity between branches." The reported amicability between these branches of government may be attributed in part to the regulated interbranch communication system. Collectively, Massachusetts judges perceived the judiciary to be a respected branch of government. In support of this belief one Massachusetts judge explained that "the legislature has tried to be very cooperative with us and responsive . . . I think they have[.]" The judiciary reportedly had a significant role in the debate and drafting of the commonwealth's most recent criminal justice reform legislation. Supreme Judicial Court leaders served as key advisors and liaisons throughout the process. The judiciary worked with the Governor, and legislative leaders to introduce legislation based on a comprehensive study of the Massachusetts Court System

conducted by the Council on State Governments. In affirming this point one judge explained, “Our chief justice of the supreme judicial court has been quite outspoken about proposing changes in law that would give judges more discretion about sentencing [and] make sentencing more evidence based.” Massachusetts judges described the judiciary as a non-partisan, respected and co-equal branch of government that utilizes a uniformed communication system to sustain positive legislature-judiciary relations. This perception corresponds with the judiciary’s prominent role as a participant in drafting criminal justice reform legislation that may prove to effectively reduce incarceration rates.

## VI JUDICIAL TRAINING

Perhaps surprisingly, another factor that may affect sentencing decisions among the judges is the training that they receive after taking the bench. Here, there was a striking difference between Alabama and Massachusetts judges in relation to sentencing decisions and continued judicial education. In both jurisdictions, judges who reportedly practiced “little criminal law,” if any, prior to becoming a judge discussed the learning curve in this new area of substantive law and the importance of judicial education. But, judges with substantial criminal law experience also considered judicial training vital for judges to “know what to do.” Here deviating practices surfaced creating an interesting consideration in the analysis of mass incarceration and sentencing decisions.

Newly elected judges in Alabama may electively participate in a state sponsored orientation that typically commences over a two to five-day period. These judges are also encouraged to attend the two-week general jurisdiction course at the National Judicial College. The state pays the expenses for this training through dedicated funds and scholarships. As announced in 2013, all other judges are exempt from continuing judicial education requirements.<sup>38</sup> One judge explained that training is “not mandatory [in Alabama] because they can’t afford to pay for us to go. So, it’s limited.” Nevertheless, the Administrative Office of Courts in collaboration with the judicial program committee coordinates most of the elective in-state training opportunities for judges at the semi-annual state judicial conference. Over the years, Alabama prison reform has occupied a vast space in judicial training discussions. But, according to a conference presenter, some judges may have been “overwhelmed” by the topic. So, “very little criminal law” was offered at recent trainings. As a result, concern was expressed that judges are not receiving training on proper application of criminal laws especially relating to sentencing. In expressing this view, one Alabama judge opined,

We’re called upon to handle issues of life and death and there is no mandatory training...for [ ] judges. [T]here should be mandatory training for us. But even if it’s not mandatory, I think most good judges want training and we can’t even get it. I don’t even

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38. This information came from a set of emails sent at the author’s request to the director for judicial training at the Alabama Administrative Office of Courts.

think we would need to rewrite laws if we just had adequate training...yearly judicial training, but good judicial training, not training that is led by a judge just because he has been a judge for 25 years. I mean, good judicial training.

Another judge explained,

The state overall does the best that they can do[.] There's just so many complexities that they really can't educate you on everything...We do a pretty good job. Could we do better? Yes, we could always do a better...but maybe it's up to the department of corrections to say, hey, we're overcrowded. We've got these other options for sentencing...Responsibility rests with a number of individuals.

There was little mention of training opportunities outside of the biannual state judicial conference and the general jurisdiction course at the National Judicial College. Overall, state sponsored training for judges was believed to be important for fundamental understanding, accurate implementation of criminal laws and sentencing practices that avoid exacerbating incarceration rates.

In contrast, judicial training in Massachusetts is a combined mandatory and elective system. Training for new commonwealth judges includes a two-year curriculum that focuses on mentorship, orientation, and in-class presentations on relevant subject matter.<sup>39</sup> One Massachusetts judge commended the training, stating, "I didn't realize as a lawyer that there was that sort of collegiality and support among the judges and that's impressed the heck out of me." Senior Massachusetts judges attend elective and mandatory "regional meetings like four times a year" organized by the judicial leadership. Training on specific subjects such as race and implicit bias have been made mandatory for all Massachusetts judges. Expenses for judicial training are funded by the state. Additional judicial training is offered at the Flaschner Institute, a center established for educating commonwealth and federal judges in Massachusetts offering more than thirty-five training opportunities on different areas of substantive law and specialized subject matters throughout the year. In addition to judicial training, the Massachusetts Superior Court leadership collaborated efforts between the judiciary, prosecutors, defense counsel, the legal academy and the legislature to study and develop evidence-based practices for the trial court. In 2016, the Massachusetts Superior Court published *Best Practices for Individualized Evidence-Based Sentencing*. The Best Practices guide provides instruction for superior court judges to identify

[F]actors relevant to the imposition of a committed sentence, to alternatives to a committed sentence, and to supervision upon release...probation, including use of a risk/assessment tool to determine the level of supervision...identify conditions of probation that...decrease recidivism; and...probation violations, to ensure that a probationer is held accountable in a timely and proportional manner.<sup>40</sup>

The Best Practices guide was well received among superior court judges, Especially those with "very little criminal law" experience prior to taking the

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39. The information was provided in the 2017 *Judicial Education in the Trial Court* inter-court memorandum disseminated by the chief judges. Memorandum from State Trial Court Chief Judges on Judicial Education in the Trial Court (2017) (on file with author).

40. MASSACHUSETTS SUPERIOR COURT, BEST PRACTICES FOR INDIVIDUALIZED EVIDENCE-BASED SENTENCING (2016).

bench. They described the guideline as helpful. Many explained that it provides consistent and proportional sentencing practices across the Massachusetts court system. Although this guide is not mandatory, most trial judges find it to be helpful and follow the guideline “closely.” For these judges, the Best Practices gives “guidance from people who know what works and what doesn’t work” in making effective sentencing decisions and reducing the incarceration rate.

## VII

### CONCLUSION

The plight of mass incarceration has forced opposing policy makers at the federal and state levels to address specific problems like prison overcrowding, albeit for varying philosophical reasons. Conservative-leaning policy makers explain the need for criminal justice reform primarily in terms of economic hardships.<sup>41</sup> Many progressive or liberal-leaning policy makers point to social injuries caused by mass incarceration.<sup>42</sup> However, it is a generally accepted premise across the political spectrum that the current rates of mass incarceration are fiscally unsustainable. In other words, “the public doesn’t want to build more prisons, [and the] legislature doesn’t have money to build prisons.”

As a general premise, it can be concluded from this study that legislative mandates and institutional features may affect judicial discretion in sentencing. The conclusion relates directly to the widely divergent incarceration rates in Alabama and Massachusetts. The study revealed variations in attitudes, practices and policies that judges as actors in the criminal justice system believe to be obstructive to efforts aimed at reducing incarcerations rates. Judges perceive themselves as intermediaries between the criminal justice system and the communities to which most offenders will be returned. Therefore, any genuine effort to effectively reform the criminal justice system and reduce prison populations must include substantive involvement of state judges. Overcrowded prisons have necessitated reform of the criminal justice system. While this study centered on surface level political mandates and institutional features, the study of state judges as participants in the criminal justice system is vastly uncharted territory. Further study of these key actors in the criminal justice system is ripe for original contribution to the literature, and perhaps a missing consideration in the criminal justice and mass incarceration debate.

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41. Fondacaro, *supra* note 35.

42. Anne R. Traum, *Mass Incarceration at Sentencing*, 64 HASTINGS L.J. 423, 423–468 (2013).

## APPENDIX A: RECENT ALABAMA CRIMINAL JUSTICE REFORM LEGISLATION

<p style="text-align: center;"><b>2015 Criminal Justice Reform Council of State Government Summary of A.L.S.Bill 67</b></p>	<p>Strengthen community-based supervision to reduce recidivism.</p> <ul style="list-style-type: none"> <li>▪ Standardize the use of risk and needs assessments to target supervision resources for people who are most likely to reoffend, and reduce probation and parole officers' caseloads by prioritizing intense supervision for people more likely to reoffend and providing limited supervision for people less likely to reoffend.</li> <li>▪ Establish intermediate sanctions to respond to technical violations of probation and parole, and allow for short jail stays prior to revocation in the range of possible sanctions.</li> <li>▪ Improve the quality of Community Corrections Programs (CCPs) by creating a new funding standard for CCPs that sets appropriation levels based on the degree of implementation of evidence-based practices.</li> <li>▪ Allow people on supervision who have lost their driver's licenses as a result of their convictions to apply for a driver's license with limited driving privileges.</li> </ul> <p>Prioritize prison space for violent and dangerous offenders. Divert people convicted of low-level property and drug offenses away from prison</p> <ul style="list-style-type: none"> <li>▪ Create a new Class D felony category for the lowest-level property and drug offenses, and require sentences to CCPs instead of prison. Modify the classification of third degree burglary to a nonviolent offense if an individual enters an uninhabited, non-domicile building and no person is encountered while the crime is being committed.</li> <li>▪ Respond to serious technical probation and parole violations with 45-day periods of incarceration followed by continued supervision.</li> </ul> <p>Improve efficiency and transparency of the parole decision-making process</p> <ul style="list-style-type: none"> <li>▪ Require the parole board to create structured parole guidelines, based on current research and best practices, to ensure consistency in the factors the parole board considers when determining if a person is ready for parole.</li> </ul>
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	<ul style="list-style-type: none"> <li>▪ Mandate that the parole board record and share reasons for parole denial with the person who was denied parole, the victims, and the Department of Corrections (DOC).</li> </ul> <p>Ensure supervision for everyone upon release from prison, and expand victim notification.</p> <ul style="list-style-type: none"> <li>▪ Require people convicted of a Class C offense—which includes property, drug, and person offenses—to serve split sentences, which provide a fixed term of incarceration and guarantee a period of supervision after release from prison or jail.</li> <li>▪ Require that people serving a straight prison sentence receive a period of supervision upon release.</li> <li>▪ Complete the development of the electronic victim notification system, and expand victim notification regarding releases from prison.</li> </ul>
<p><b>2017</b>  <b>Cody Nickel,</b>  <i>Alabama Ends Death Penalty by Judicial Override,</i>  <b>ASSOCIATED PRESS</b></p>	<p>Repeal of judicial override allowing a judge to impose the death penalty when a jury has recommended life imprisonment.</p>
<p><b>2018</b>  <i>A Look at What Passed in the Alabama Legislature,</i>  <b>ASSOCIATED PRESS</b></p>	<p>Increased prison funding by additional \$85 million for the state prison system over the next two years.</p> <p>Nitrogen Execution Bill allows the condemned to choose execution by nitrogen hypoxia if lethal injection is unavailable, or if they so elect.</p> <p>Human Trafficking Bill enhances the penalties already in place, increasing the offense to a Class A felony, with a minimum jail sentence of ten years.</p>

APPENDIX B: RECENT MASSACHUSETTS CRIMINAL JUSTICE REFORM  
LEGISLATION

<p><b>2018 PRISON REFORM LEGISLATION BASED ON SUMMARY BY SENATOR WILLIAM BROWNSBERGER</b></p>	<p>Decriminalize minor offenses:</p> <ul style="list-style-type: none"> <li>▪ Minor offenses for juveniles—civil infractions and first offense misdemeanors with penalties under 6 months—cannot be the subject of delinquency findings</li> <li>▪ Disruptive behavior in school (disturbing assembly or disorderly conduct) cannot be the subject of delinquency findings (but more serious behavior can still be prosecuted); Additionally, schools shall enter MOUs with school resource officers defining non-disciplinary role of school resource officers</li> <li>▪ Repeal offense of being in the presence of heroin</li> <li>▪ Expand scope of good Samaritan protections to youth alcohol and to probation violations</li> <li>▪ Specify that use of prescribed drugs and medical marijuana, shall not constitute a probation violation</li> </ul> <hr/> <p>Divert minor offenses away from prosecution and incarceration:</p> <ul style="list-style-type: none"> <li>▪ Create mechanism for judicial diversion of juveniles for less serious offenses</li> <li>▪ Improve and expand mechanism for district court diversion of adults <ul style="list-style-type: none"> <li>▪ Eliminate defunct requirement for probation certification of diversion programs</li> <li>▪ Eliminate age restrictions on diversion</li> <li>▪ Exclude serious offenses from diversion</li> <li>▪ Assure that victims are heard in diversion decisions</li> </ul> </li> <li>▪ Create legal/administrative framework to expand use of restorative justice programs for diversion of both juveniles and adults</li> <li>▪ Require judges to make written findings before imposing a sentence of incarceration of primary caretakers of children</li> <li>▪ Make drug diversion more workable by making it possible for a wider range of professionals to make findings of dependence</li> <li>▪ Preserve powers of District Attorneys to divert cases and manage their own diversion programs</li> </ul>
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	<ul style="list-style-type: none"> <li>▪ Require District Attorneys to develop diversion programs for veterans and people with mental illness or substance use disorders.</li> </ul> <p>Reform Bail to reduce unnecessary incarceration:</p> <ul style="list-style-type: none"> <li>▪ Codify main holding of the Brangan case – judge should consider financial capability of defendant and set bail only as high as needed to assure defendant’s return</li> <li>▪ Require that if judge needs to set unaffordable bail to assure return, the judge make written findings that the Commonwealth’s interest in assuring return outweighs the harm of detention to the individual and their family</li> <li>▪ Allow judges to use community corrections facilities for pre-trial release (consistent with CSG report)</li> <li>▪ Create pre-trial services unit to remind defendants of upcoming court dates using modern messaging approaches</li> <li>▪ Create commission on bail to monitor change and suggest further improvements</li> </ul> <p>Repeal/limit mandatory minimums for non-opiate, non-weight retail drug offenses:</p> <ul style="list-style-type: none"> <li>▪ Limit applicability of school zone law to cases involving guns or minors</li> <li>▪ Eliminate mandatory for second offense class B (make fentanyl class A)</li> <li>▪ Eliminate mandatory for first offense cocaine/PCP/meth</li> <li>▪ Eliminate mandatory for second offense class cocaine/PCP/meth</li> <li>▪ Eliminate mandatory for second offense class C</li> <li>▪ Eliminate mandatory for second offense class D</li> <li>▪ Eliminate mandatory for sales of drug paraphernalia</li> </ul> <p>Strengthen minimum mandatories for opioid trafficking:</p> <ul style="list-style-type: none"> <li>▪ Make all federally scheduled synthetic opioids class A drugs in Massachusetts (if not otherwise classified in Massachusetts)</li> <li>▪ Include fentanyl, carfentanil and emerging synthetic opiates in trafficking weight ladder – mixtures containing these substances and weighing over 18g, 36g, 100g, or 200g will draw the same minimum mandatory penalties currently applicable to mixtures containing heroin</li> </ul>
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	<ul style="list-style-type: none"> <li>▪ Modify fentanyl trafficking statute so that it applies to mixtures weighing over 10 grams that contain fentanyl. Add minimum mandatory of 3.5 years, effectively adding a special bottom rung applicable only to fentanyl to the trafficking weight ladder. 10 grams gets 3.5 years under this section, 18 grams gets 3.5 years (from the main opioid ladder)</li> <li>▪ Add a special minimum mandatory of 3.5 years applicable to mixtures of any weight containing carfentanil in any quantity but with the proviso that the commonwealth must prove knowledge that the mixture contained carfentanil</li> </ul> <p>Strengthen Protections for Public Safety:</p> <ul style="list-style-type: none"> <li>▪ Strengthen penalties for intimidation of witnesses</li> <li>▪ Broaden eligibility for witness protection programs</li> <li>▪ Strengthen penalties for solicitation of murder and other crimes</li> <li>▪ Allow district court prosecution of conspiracy, solicitation and intimidation</li> <li>▪ Strengthen penalties for corporate manslaughter</li> <li>▪ Strengthen penalties for high repetition of Operating Under the Influence (OUI) offenses</li> <li>▪ Broaden definition of inhalants that may result in OUI prosecution</li> <li>▪ Strengthen penalties for reckless homicide by motor vehicle</li> <li>▪ Create new crime of assault and battery on police officer causing serious injury</li> <li>▪ Create new crime of unlawful possession of credit card scanner</li> <li>▪ Expand crime of providing false information to police officer</li> <li>▪ Disclose findings of not guilty by reason of insanity in the same way as convictions for general employers and landlords.</li> <li>▪ Strengthen DNA collection procedures from serious offenders—collect forthwith upon conviction</li> <li>▪ Mandate better tracking and retention of rape kits</li> <li>▪ Mandate creation of police training program for bias-reduction and de-escalation</li> </ul> <p>Reduce solitary confinement:</p>
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	<ul style="list-style-type: none"> <li>▪ Repeal archaic solitary confinement concept (“isolation”) and define more humane restrictive housing concept</li> <li>▪ Define minimum humane conditions for restrictive housing.</li> <li>▪ Require that the commissioner develop regulations “to maximize out-of-cell activities in restrictive housing and outplacements from restrictive housing consistent with the safety of all persons.”</li> <li>▪ Require that prisoners confined to restrictive housing shall, under regulations to be developed, have “access to vocational, educational and rehabilitative programs to the maximum extent possible consistent with the safety and security of the unit”</li> <li>▪ Require that prisoners confined to restrictive housing receive regular reviews to see if they are ready to return to general prison population and have an opportunity to participate in those reviews</li> <li>▪ Assure that correctional officers staffing restrictive housing facilities have appropriate training</li> <li>▪ Protect LGBTQ prisoners from arbitrary use of restrictive housing</li> <li>▪ Assure that those segregated from other inmates for their own safety are not placed in restrictive housing, but in conditions comparable to general population</li> <li>▪ Create a balanced oversight board with access to data, prison facilities and prisoners to report on conditions in restrictive housing and progress in reducing restrictive housing. The oversight committee will have no authority over individual prisoner confinement decisions</li> </ul> <p>Generally improve prison conditions:</p> <ul style="list-style-type: none"> <li>▪ Assure that transgender prisoners are housed with prisoners of the same gender identity unless it would endanger the prisoner or other prisoners</li> <li>▪ Require that all prisoners without high school diplomas have access to education programming</li> <li>▪ Require that all prisoners are assessed for substance use disorders (but do not require medically assisted treatment)</li> <li>▪ Preserve inmate access to regular in-person visitation—video visits permitted, but not in lieu of in person visits</li> </ul>
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	<ul style="list-style-type: none"> <li>▪ Expressly authorize creation of special prison units for emerging adults (ages 18 to 24)</li> <li>▪ Create commission to study LGBTQ prison health</li> <li>▪ Create task force to study correctional officer suicides</li> <li>▪ Study prison long distance phone costs</li> </ul> <p>Release prisoners who are permanently incapacitated and pose no safety risk:</p> <ul style="list-style-type: none"> <li>▪ Prisoners who are so debilitated that they do not present a public safety risk may petition their superintendent or sheriff for medical release</li> <li>▪ The sheriff or superintendent shall make a recommendation to the commissioner of correction</li> <li>▪ The commissioner of correction will determine whether the inmate is incapacitated and the medical release plan is appropriate</li> <li>▪ The parole board will supervise the released prisoners and re-incarcerate them if they are recovering contrary to expectations</li> <li>▪ Judicial review is only by certiorari</li> </ul> <p>Make it easier for people to get back on their feet:</p> <ol style="list-style-type: none"> <li>1. Reduce fees imposed on defendants <ul style="list-style-type: none"> <li>▪ Eliminate counsel fee for juvenile defendants</li> <li>▪ No parole fee for the first year after release from prison</li> <li>▪ No probation fee for the first six months after release from prison</li> <li>▪ Make more fees waivable and standardize waiver language across fees</li> <li>▪ Streamline waiver process for probation fees – no written finding required</li> <li>▪ Improve procedural protections for people facing incarceration for non-payment of fines and increase rate at which fines are worked off from \$30 per day to \$90 per day</li> </ul> </li> <li>2. Ensure that when state criminal records are sealed or expunged, national fingerprint records are also sealed or expunged <ul style="list-style-type: none"> <li>▪ Require that offense based tracking number (OBTN) associated with a set of fingerprints taken at arrest is recorded in court files (not expand scope of fingerprinting)</li> </ul> </li> </ol>
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	<ul style="list-style-type: none"> <li>▪ Ensure that when cases are disposed of, the disposition is transmitted to the national system (using the OBTN)</li> <li>▪ Similarly assure that sealing and expungement orders are transmitted for parallel action in the national system</li> </ul> <p>3. Make criminal records more private</p> <ul style="list-style-type: none"> <li>▪ Ensure that cases dismissed before arraignment do not appear on criminal records</li> <li>▪ Ensure that youthful offender cases tried in juvenile court are treated as juvenile instead of adult CORI</li> <li>▪ Accelerate sealing availability from 10 years to 7 years for felonies and from 5 years to 3 years for misdemeanors.</li> <li>▪ Fix the glitch that causes resisting arrest charges to be non-sealable</li> <li>▪ Allow expungement of cases involving errors of justice</li> <li>▪ Allow expungement of non-serious cases up to age 21 (both juveniles and young adults)</li> <li>▪ Exclude juvenile arrests from public police log and expunge public police logs if the court case is expunged</li> <li>▪ Raise threshold that defines felony larceny from \$250 to \$1200, so making more cases misdemeanors that can be quickly sealed or expunged (preserve ability of officers to arrest defendants in cases above \$250)</li> <li>▪ Require that licensing authorities disclose in advance offenses that may be disqualifying</li> <li>▪ Confirm that sealed records need not be mentioned in applications for housing or professional licensure</li> <li>▪ Prevent employers from inquiring about sealed or expunged cases</li> <li>▪ Protect employers from liability for failing to know about cases that they are not permitted to know or inquire about under CORI law.</li> </ul> <p>4. Reduce entanglements with the registry of motor vehicles</p> <ul style="list-style-type: none"> <li>▪ No longer suspend licenses upon court defaults</li> <li>▪ No longer suspend licenses upon conviction of tagging or vandalism</li> </ul>
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	<ul style="list-style-type: none"> <li>▪ Assure that parents will not lose their license for non-payment of child support if the warning notice is going to a bad address (do not limit otherwise limit ability of the DOR to suspend licenses)</li> </ul> <p>Take better care of juveniles and young adults:</p> <ul style="list-style-type: none"> <li>▪ Raise minimum age of juvenile court jurisdiction to 12</li> <li>▪ Do not raise age of criminal adulthood to 19, but</li> <li>▪ Expressly authorize creation of young adult units within Houses of Correction (18-24)</li> <li>▪ Expressly authorize designation of youth probation officers</li> <li>▪ Create task force to “to examine and study the treatment and impact of individuals ages 18 to 24 in the court system and correctional system of the commonwealth.”</li> <li>▪ Minimize harsh detention of minors (mostly codifying existing good practice)</li> <li>▪ Assure swift parental notification and appropriate handling upon arrest</li> <li>▪ Limit shackling in court room settings</li> <li>▪ Prohibit housing of juveniles in contact with adults</li> <li>▪ Prohibit the use of room confinement as a disciplinary measure for juveniles in DYS custody</li> <li>▪ Protect the parent-child relationship by disqualifying parents and children from being called to testify against each other in court (this does not apply to domestic situations and does not prevent parents from asking the police for assistance with their children if necessary)</li> <li>▪ Create a juvenile justice policy and data board to oversee and improve treatment of juveniles.</li> <li>▪ Create task force on trauma-informed juvenile care</li> <li>▪ Provide access to counsel at parole hearings for juveniles sentenced to life</li> </ul> <p>Improve transparency of the criminal justice system</p> <ol style="list-style-type: none"> <li>1. Mandate National Incident Based Reporting System for arrests, including racial data</li> <li>2. Juvenile justice policy and data board is to drive consolidation of information about juvenile contacts with the system</li> </ol>
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	<p>3. Require the Secretary of Public Safety to lead improvement of adult criminal justice data systems, creates adult criminal justice systems board</p> <p>4. Require expanded reporting on civil forfeitures.</p>
	<p>Better protect women in the criminal justice system</p> <p>1. Mentioned above: Mandate better tracking and retention of rape kits</p> <p>2. Allow vacatur of crimes committed by victims of human trafficking</p> <p>3. Create commission on justice involved women</p>
	<p>Reduce and remedy errors of justice</p> <p>1. Empower stronger oversight of forensic labs and techniques</p> <p>2. Increase access to compensation for wrongful convictions</p>