



Good morning Chairman Greenleaf, Chairman Leach, and members of the committee. Thank you for the opportunity to provide testimony on this important topic. I will keep my comments brief because many of the points I would otherwise make will no doubt be better made by the other eminent scholars on this panel. I would like to instead focus my short testimony around some Pennsylvania-specific data points related to mandatory minimums, and also around clarifying some arguments that have been made in the debate here in Pennsylvania on this topic.

1. Proponents of mandatory minimums have in various forums cited certain academics for whom they claim provide support for the efficacy of mandatory minimum sentencing. Most notably, they have cited the work of economist Steven Levitt and of the late great social scientist James Q. Wilson. I'm very familiar with the work of these scholars, and I contend that a careful reading of the work of both of these scholars reveals that their work does not in fact support mandatory minimum sentencing.

Take for example James Q. Wilson's seminal piece in *The Atlantic* entitled "Thinking About Crime," where he writes about the effectiveness of deterrence in the criminal justice system. In one section of that piece, he specifically discusses research on mandatory minimum sentencing, and points to the ineffectiveness of the New York Rockefeller drug laws in alleviating heroin use (how timely). He points to research on New York's heroin mandatory minimum, which found "no evidence that the law had reduced the availability of heroin on the streets of New York City or reduced the kinds of property crime often committed by drug users." He goes on to conclude that "the number of deaths from narcotics overdoses did not change markedly, nor did admissions to drug treatment programs or the price and purity of heroin available for sale on the street (as inferred from buys of heroin made by undercover narcotic agents)." Wilson further contends that the certainty and swiftness of punishment are most important for deterrence to be effective, and that the severity of punishment (which is the prime target of mandatory minimums) proves to be the enemy of certainty and swiftness. This hardly sounds like support for mandatory minimums.

And then there is the work of Steven Levitt which is often cited by mandatory minimum proponents because he once concluded that as much as one-third of the crime drop in the late 1990s was a result of more incarceration. More recently, Levitt has made the following statement: "In the mid-1990s I concluded that the social benefits approximately equaled the costs of incarceration. Today, my guess is that the costs outweigh the benefits at the margins. I think we should be shrinking the prison population by at least one-third." Again, this hardly constitutes support for mandatory minimum sentencing.

To be clear, there is no credible research that finds a public safety benefit from mandatory minimum sentencing.

2. Much attention has rightly been brought to the Pennsylvania Commission on Sentencing's 2009 study on mandatory minimums, which is an excellent study that demonstrates the ineffectiveness of mandatory minimum sentencing right here in Pennsylvania. I expect that Executive Director Mark Bergstrom will speak further about this study, so I will not speak about it here. But I do want to mention another Pennsylvania study which I believe can speak to this debate insofar as this debate revolves around the effectiveness of sending more individuals to state prison and for longer periods of time. A 2012 study by Daniel Nagin and Matthew Snodgrass took an innovative approach to this topic by exploiting the fact that in many Pennsylvania counties cases are randomly docketed to judges, in part to avoid "judge shopping." This fascinating study examined recidivism rates for judges within the same county who sentenced individuals to prison at different rates. The study showed a null effect for incarceration. In other words, there were no meaningful differences in recidivism rates between judges who sentenced at higher versus lower rates to state prison in Pennsylvania. This provides more evidence specifically from Pennsylvania that mandatory minimums are not likely to be effective from a deterrence standpoint.
3. Proponents of mandatory minimums have said that those opposed to mandatories do not respect victims. They say that the issue is about human lives, and is not simply about empirical evidence. I agree that the issue is about human lives, and about the toll that individual victims of crime must bear. Indeed, I believe that we should respect victims of crime like we respect victims of illness and disease, by providing them with the best treatment that science has to offer, but not providing a false hope based on ineffective and unproven treatments. In short, empirical evidence matters precisely because victims matter.
4. Proponents of mandatory minimums also have painted a picture of all drug dealers as predatory, violent offenders who prey on innocent drug users. This ignores the reality that many drug dealers are themselves users, that they are dealing in order to support their own habit, and are thus themselves victims of substance abuse. Our own data at the Department of Corrections shows that among serious drug dealers who are serving a minimum sentence of more than five years in prison, two thirds (67%) are diagnosed according to the Diagnostic Statistical Manual (DSM) as having a substance use disorder. It is a vast over-simplification to describe illicit drug markets in binary terms of drug dealers versus drug users. Drug users need treatment. In many cases, drug dealers are those drug users.
5. Mandatory minimums for violent offenses have very little impact to the Department of Corrections. For example, Department of Corrections data shows that the average sentence length for child rapists has actually gone up without the mandatory, from an average minimum sentence of 13.6 years in 2012 to an average minimum sentence of 13.9 years in 2016.

6. Proponents of mandatory minimums have used old political rhetoric based on faulty logic. They claim the Department of Corrections is “soft on crime” because we don’t support mandatory minimums, and that the Department of Corrections wants to “empty out our prisons.” Equating data-driven, “smart-on-crime” strategies as being “soft on crime” is a false equivalence. It is, after all, possible to be smart on crime and tough on crime at the same time. We recognize that there are individuals who belong in prison for a long time, and that there is a proper role for prisons. The notion that anyone at the Department of Corrections wants to “empty out our prisons” is simply false.

Some proponents of mandatory minimums have also contended that the Department of Corrections should “stay in its lane” and leave the job of ensuring public safety up to prosecutors for whom the proper role supposedly lies. This takes us back to a time when the criminal justice system was not operating as a system, but rather as individual organizations operating in silos. As part of President Lyndon Johnson’s 1967 Crime Commission, Al Blumstein helped to first conceptualize how the various actors in criminal justice work together as an integrated and inter-related system, with shared objectives such as ensuring public safety. This was an important and pivotal development in criminal justice. All of us who work in the criminal justice system have a role to play in ensuring public safety. When it comes to the set of agencies and organizations which comprise what we refer to as the criminal justice system, public safety is everyone’s business. After all, we are a system.

Relatedly, some proponents of mandatory minimums have claimed that academic criminologists are not on the front lines of crime fighting and thus are removed from the real world and have little to offer for improving public safety. This is an odd argument, since one would be hard pressed to find a similar argument in other fields. For example, in the medical field, science is used to guide almost every decision. I doubt that when Jonas Salk discovered a cure for polio that his research was ignored because he was not a practicing physician.

7. Some proponents of mandatory minimums have claimed that the absence of mandatory minimums for drug dealers in Pennsylvania has made our current heroin/opioid epidemic worse in the last couple of years, and that bringing back these mandatory minimums will help alleviate the epidemic. This issue was raised in a new grand jury report on Pennsylvania’s opioid epidemic which was released last week by the Montgomery County district attorney. It claims to show that drug-related deaths increased in Pennsylvania between 2013 and 2015 as a result of not having these mandatory minimum sentences. Ironically, a mid-2016 report by the DEA found that overdose deaths in Montgomery County dropped 16% during 2015. Additionally, there are several statistical errors with this claim of the Montgomery County grand jury report. To believe that there is a connection between the absence of mandatory minimums and a rise in drug-related deaths, two things would have to be true: 1) overdose deaths would have to have risen at an increasing rate after the mandatory minimums were invalidated compared to before, and 2) overdose deaths in Pennsylvania during the period without the mandatory minimums would have to have increased at a higher rate than overdose deaths in other similar states who still have

mandatories in place. The “mandatory minimums-opioid epidemic connection” theory fails on both accounts. The current heroin/opioid epidemic started in force in about 2010. According to statistics from the Center for Disease Control and Prevention (CDC), from 2010 to 2013 (before the Alleyne court decision), the rate of opioid overdose deaths in Pennsylvania increased by 53%, whereas after the mandatories were invalidated (2013 to 2015) the rate of opioid overdose deaths in Pennsylvania increased by only 44%. The growth rate in overdose deaths has thus been lower without the mandatory minimums than with the mandatory minimums in Pennsylvania. We can also look at our opioid overdose rate compared to our neighboring state Ohio, who still has mandatory sentencing in place for heroin trafficking. In Ohio, the opioid overdose rate grew by 69% between 2013 and 2015, while Pennsylvania’s opioid overdose rate grew by only 44% during that same time period. Why then was Pennsylvania’s overdose growth rate lower than Ohio’s if the absence of mandatory minimums contributed? It cannot be repeated enough, there is no evidence that mandatory minimum sentencing will help alleviate Pennsylvania’s current heroin/opioid epidemic.

8. Finally, it is a bit surreal that in the current fiscal and budgetary environment which we face, expensive mandatory minimums which show no evidence of improving public safety are not viewed as wasteful government spending. If mandatory minimum sentencing was any other government program, we would surely view it as wasteful government spending. Where else would we move to enact a government program that costs as much as \$85.5 million per year without any evidence that it is effective in reaching its stated goals?

Thanks again for the opportunity to testify on this important topic, and I would be happy to answer any questions.