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Testimony of Prisoners Legal Services, the American Civil Liberties Union of Massachusetts, Committee for Public Counsel Services, Mental Health Legal Advisors Committee, and Disability Law Center to the Joint Committee on the Judiciary in Support of H.1900: An Act relative to telephone service for inmates in all correctional and other penal institutions in the Commonwealth, October 5, 2021

Massachusetts must follow the lead of Connecticut, New York City, San Francisco, and San Diego and eliminate the financial barrier to communication between incarcerated people and their loved ones.

The current system is causing harm.

Incarcerated people and their loved ones face many challenges staying connected. These relationships are vital to people who are trying to survive in a brutal prison environment and looking to succeed when they are released.¹ Their children and other loved ones need this contact just as much. Yet these families now have to choose between paying for phone calls and paying for basics like groceries, utilities and rent. Frequent visits are not an option for many, even aside from COVID-19, because most prisons are located far from the home communities of incarcerated people and far from mass transit.

Prison telephone consumers overwhelmingly come from under-resourced communities of color. Yet in 2018, those in Massachusetts paid some \$25 million to keep in touch, including \$16.8

¹ Half century of studies show a consistent relationship between strong family and community contact during incarceration and reduced recidivism rates. See Commonwealth of Massachusetts Governor's Commission on Corrections Reform, Strengthening Public Safety, Increasing Accountability, and Instituting Fiscal Responsibility in the Department of Correction (i) (2004), *available at* <http://www.mass.gov/eopss/docs/eops/govecommission-corrections-reform.pdh> Daniel LeClair, Massachusetts Dep't of Correction, *The Effect of Community Reintegration on Rates of Recidivism: A Statistical Overview of Data for the Years 1971 Through 1987* at 2, 10, 11 (1990), *available at* <https://www.ncjrs.gov/pdffiles/Digitization/137240NCJRS.pdh> Christy A. Visher & Jeremy Travis, *Transitions From Prison to Community: Understanding Individual Pathways*, 29 Ann. Rev. of Soc. 89, 100 (2003); U.S. Dep't of Justice & Office of the Inspector Gen., *Criminal Calls: A Review of the Bureau of Prisons' Management of Inmate Telephone Privileges*, Ch. II, n. 6 (Aug. 1999), *available at* <http://www.usdoj.gov/oig/special/9908/>.

million in calls,² plus an estimated \$2.4 million in phone company account fees and an estimated \$5.8 million in other government fees and taxes.³

Prisons, jails and phone companies alike are profiting by extracting money from overwhelmingly low-income families.

Part of the reason why families pay so much is that prison phone companies give a chunk of what consumers pay right back to the prisons as “site commissions,” glorified kickbacks that amounted to \$7 million in 2018 in Massachusetts alone,⁴ though that number is lower now, since rates and commissions in the counties have come down substantially. Instead of competing for consumers, the phone companies compete for contracts by offering prisons these kickbacks, as well as technology and administrative fees.

Until recently, a fifteen-minute call cost from \$3.15 to \$4.50 in seven county jails and \$2.10 - \$2.70 in five others, with one (Hampden) charging \$1.80. After Connecticut eliminated payment for calls, Massachusetts Sheriffs have tried to block real change by agreeing to limit rates to 14 cents per minute, or \$2.10 for 15 minutes, and offer ten free minutes a week to those in custody as of August 2021.⁵ These new contracts are aimed at keeping the same corrupt system in place. Plymouth County and Hampden County are continuing site commissions of 76 and 85 percent respectively -- meaning that three quarters of what prison families pay will go right back to pay for incarceration. Many other counties have dropped commissions to below 25 percent as their rates have dropped. Barnstable County will continue to extract \$18,000 per month (\$216,000 a year) from consumers via these kickbacks.

We know that the true cost of providing phone service is far less than \$0.14 per minute, given rates of \$0.05 per minute and lower in other state and county systems -- including less than a penny per minute in Illinois and 1.3 cents in New Hampshire. We know, for example, that when Worcester paid for free calls during the pandemic it negotiated a rate of \$0.025 per minute. Yet the contract it recently negotiated for those in its custody will cost families \$0.14 per minute.

Video calls are becoming another profit center for prisons and phone companies. In Barnstable County, the charge is \$12.99 for 20 minutes and the Sheriff receives half of the revenue in site commissions. Elsewhere, rates are generally \$5 for 20 minutes or \$9 for 40 minutes. Given the barriers to visitation -- distance, lack of transportation, and the ongoing danger of COVID-19 --

² See “Study and Report of the Department of Correction,”(DOC Report”) Mass. Dep’t of Correction, December 2018, a report mandated by the Legislature, available at http://bit.ly/DOC_phone_report. While telephone rates, revenues, call volume and site commissions have changed since 218, this is the last year for which we have data on revenues and site commissions for all counties and the DOC.

³ See Letter from Worth Rises to Sen. Cynthia Creem and Rep.Chynah Tyler, *available at* <http://bit.ly/WRphones>.

⁴ See DOC Report at pp. 12-13, showing \$2.5 million in site commissions to DOC and \$4.5 million to the counties in 2018. This is the last comprehensive data available; since then, commissions have been reduced in several jurisdictions, likely bringing the total amount of commissions collected down.

⁵ Current data and sources can be found here:

https://www.prisonpolicy.org/phones/massachusetts_contracts.html.

we must do all we can to provide free video calls, and we should not allow site commissions on these calls.

Taking money from families to pay for incarceration is wrong.

Massachusetts Sheriffs have long defended their use of funds extracted from prison families via site commissions by saying this money goes towards treatment and rehabilitation programs. Hampden County Sheriff Nicholas Cocchi recently told Pew Charitable Trust's *Stateline*, "The bills with wide open free phone calls wouldn't have allowed us to fund so many inmate services and programs that we provide." The irony is breathtaking. Cocchi and other Sheriffs would deprive prisoners of calls with loved ones -- contact that is vital to mental wellbeing in prison and success afterwards -- in the name of rehabilitation. Incarceration is mandated by the state in the name of public safety. If the state believes in rehabilitation, the state must pay for it, including treatment and programs.

There has been no accountability for counties' use of the kickbacks from consumers and no demonstrated need for the state to replace this money. Between 2014 and 2019, the average daily number of people incarcerated by the counties dropped by 19.8 percent, from 10,671 to 9,191⁶, yet spending rose by 15.7 percent during that period, to over \$631 million.⁷ By mid-2021 the population was down to 6,045 (though this was due in large part to a temporary drop in admissions due to COVID) but appropriations for county operating costs remained at \$629 million.⁸ With large budgets and declining populations, the Sheriffs' claim that they need the extra money rings hollow. They themselves have never prioritized rehabilitative programming or education, which has accounted for some 3 percent of their budget.⁹ Yet, while site commissions are a small part of Counties' budget, they are a large burden on prison families.

We can fix this.

Connecticut recently became the first state to provide prison calls at no cost, joining New York City, San Francisco and San Diego County. The organization Worth Rises, based on its experience in these jurisdictions and historical call volume in Massachusetts, estimates that if calls were free, incarcerated people in our state would use an average of 30 minutes a day. The group estimates it would cost about \$5.9 million to pay for the cost of service, based on

⁶ Mass. Department of Correction Weekly Count Sheets, June 28, 2021, *available at* <https://www.mass.gov/doc/weekly-inmate-count-6282021/download>

⁷ "Department of Correction and Sheriffs' Funding Overview," powerpoint, Senate Committee on Ways and Means, Mark O'Halloran, September 17, 2019, *available at* <http://correctionalfunding.com/wp-content/uploads/2019/12/DOC-Sheriffs-Funding-Overview-SWM-Senior-Fiscal-Policy-Analyst-Mark-OHalloran.pptx>.

⁸ See FY 2021 budget, operating expenses allocated for counties, at 8910-0102, - 0105, - 0107, -0108, - 0110, -0145, -0619, -8200, -8300, -8400, -8600, -8700, -8800, *available at* <https://malegislature.gov/Budget/FY2021/House>

⁹ Education and program services made up just 3.1 percent of spending for sheriffs' departments and 4 percent of DOC expenditure in FY 2017. "Revisiting Correctional Expenditure Trends in Massachusetts, Ben Forman and Michael Widmer," Mass.Inc. (May 2018) *available at* <https://massinc.org/wp-content/uploads/2018/05/Revisiting-Correctional-Expenditure-Trends-in-Massachusetts.pdf>

charges of \$0.03 to \$0.05 per minute depending on the agency size, which is conservative given far lower rates negotiated elsewhere (Illinois, Dallas, California and Rhode Island are lower).¹⁰ And costs will be further reduced if the incarcerated population remains below pre-COVID levels, or if procurement is done differently -- by phone line, rather than per call, for example, or with corrections agencies joining together in a single contract. There is no demonstrated reason to replace the site commission revenue but, even if we did, that would likely amount to far less than the \$7 million families effectively paid to prisons in 2018, given the reduction in site commissions this year.

This cost is small compared to the benefits. We're spending over \$70,000 a year on average for each person held in DOC - and that's what we'll save for each person we help to avoid re-incarceration. The value of family ties -- a good-night call to a child, an "I love you" to a spouse -- is impossible to calculate.

We can't count on the Federal Communications Commission to fix the problem, since the FCC has no jurisdiction over in-state prison telecommunication rates.¹¹ And Securus, the company serving nearly all MA prisons and jails, claims it is exempt from state regulation by the Massachusetts Department of Telecommunications and Cable; it has withdrawn its tariffs and openly violated its rate caps.¹² Rather than try to regulate profiteering, we should eliminate consumer charges altogether.

We urge you to vote H.1900 out of the Judiciary Committee favorably, and urge your continued support for H.1900 and S.1559.

¹⁰ Letter from Worth Rises to Sen. Cynthia Creem and Rep. Chynah Tyler, *available at* <http://bit.ly/WRphones>.

¹¹ See *Global Tel*Link v. FCC*, 866 F.3d 397, 413 (D.C. Cir. 2017).

¹² See Securus Notification of Withdrawal and Cancellation of M.D.T.C. Tariff, No. 1 and attached letter stating that Securus is exempt from regulation in Massachusetts under G.L. c. 25C § 6A, *available at* <https://www.mass.gov/doc/dtc-11-16-securus-request-to-cancel-tariff-and-be-removed-from-service-list/download>