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## **Executive Summary—Inequitable and Undemocratic: A Research Brief on Jury Exclusion in Massachusetts and a Multipronged Approach to Dismantle It**

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This research brief, prepared for the Jury Selection Working Group of Harvard Kennedy School’s Roundtable on Racial Disparities in Massachusetts Criminal Courts, synthesizes research on jury exclusion based on a felony record or having a loved one who has been arrested, prosecuted, or convicted of a crime and proposes a set of equitable reforms to reduce discrimination against people with criminal legal system contact in the jury selection process.

After an introduction in Part I (see Research Brief at 1-2), Part II begins with a brief history of felony jury disqualification. The majority of states, rooted in a tradition of English common law that was modified and codified in the Jim Crow era, continue to exclude people with felony records from jury service, but a handful of outlier states offer a radically different vision of jury composition (see Research Brief at 3.)

Part III takes stock of the current landscape of felony charging and sentencing in Massachusetts and the reach of the Commonwealth’s jury exclusion. Section A reviews available data to estimate that at any given time, at least 95,000 people are disqualified from jury service by virtue of a felony conviction within the last seven years, a pending felony charge, or current incarceration. Black and Hispanic people are disproportionately affected by this, with Black people convicted of felonies at more than 4 times the rate among White people, and Hispanic people convicted of felonies at more than twice the rate among White people. But ironically, the statutory felony disqualification specifically excludes, and only temporarily, people convicted of felonies who receive *shorter* sentences of incarceration or who are never sentenced to incarceration at all. Still, the disqualification results in a period of exclusion in the community for the vast majority of people sentenced for felony offenses, even those sentenced to periods in state prison. Further, women are disparately barred from jury service on the basis of this disqualification by virtue of relatively shorter felony sentences (see Research Brief at 3-7.)

In Section B, the brief then reviews how other states approach felony exclusion. States including Maine, Indiana, North Dakota, Colorado, Illinois, and Iowa only exclude people from jury service *during a period of incarceration*. Other states, like California, Connecticut, Florida, and Louisiana, have recently reduced their periods of exclusion or expanded the categories of people with criminal records eligible to serve. Taken

together, these peer jurisdictions illustrate that involving people with felony convictions in juries is administrable and workable, and that Massachusetts could join a wave of reforms aimed at improving equity in jury service (see Research Brief at 7-10.)

In Section C, the brief then reviews other barriers to jury service for people with a criminal record, or their loved ones, beyond *de jure* exclusion. This section begins by reviewing research on the practical complexities of informing people who have previously lost their rights that those rights have been restored and engaging them in civic participation. It then turns to other forms of *de facto* exclusion, as new research shows that the sweep of exclusion is broader than statutory disqualification. In court systems like Massachusetts, court officials routinely exclude people with any kind of criminal record, or people with loved ones with a criminal record, from the jury venire (the pool of people called to jury service from which a jury is chosen) through mechanisms like for cause challenges (removing a juror who cannot be impartial or comprehend the proceedings) and peremptory strikes (removing a juror for *any* reason at all). This results in racial disparities in seated juries, as people of color, and Black people in particular, are more likely to experience arrest, prosecution, or conviction directly *and* more likely to have family members with those experiences than any other racial or ethnic group. The current law on for cause challenges, criminal record checks, and peremptory strikes in Massachusetts do not protect against these kinds of exclusions—even though research shows that the rationale for these exclusions – an assumed inherent bias against the prosecution among people with criminal records or their loved ones – is not supported by empirical findings (see Research Brief at 10-18.)

In Part IV, the brief synthesizes the research and proposes a set of evidence-based reforms modeled on specific practices in other jurisdictions to preempt each layer of exclusion that keeps people with felony records out of the venire, the courtroom, the jury box, and the deliberations room. These reforms are divided into two categories: those addressing *de jure* exclusion and those addressing *de facto* exclusion. First, the brief proposes adjusting the statutory language to eliminate *de jure* disqualification of people with felony convictions and people facing felony charges from serving on juries. Turning next to *de facto* exclusions, the brief proposes revising the jury questionnaire to focus less on a person’s criminal history or the criminal histories of their social ties and more on their individualized biases; creating new rules to limit requests by prosecutors or defense attorneys to run the criminal records of prospective jurors; codifying rules that prevent “for cause” challenges from removing a juror based on the fact of a criminal record; creating a new regime to guide peremptory strikes, which enumerates specific rationales—including having a loved one with a criminal record or having prior contact with law enforcement—that are presumptively invalid because of their disparate racial impact; requiring affirmative restoration of affected individuals to the jury rolls by the office of the jury commissioner, creation of a standardized notice, and proactive notification by multiple agencies to inform people newly eligible to serve of their restored rights; and delaying implementation to allow for training of court officials and effective restoration and notification of potential jurors (see Research Brief at 19-26.)