

PAROLE AND RECIDIVISM:
Progress or Failure of Leadership?

A Lifers' Group Report

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accessible at www.realcostofprisons.org/writing

INTRODUCTION

During 2016, with support from the U.S. Department of Justice Bureau of Justice Assistance and the Pew Charitable Trusts, leaders from all three branches of the Massachusetts government along with county and state corrections departments, in conjunction with a research and analysis team from the Council of State Governments Justice Center, studied the Commonwealth's criminal justice system and issued a report: "Justice Reinvestment in Massachusetts".¹ The major recommendations arrived at were to develop policy initiatives in four areas: (1) to better align parole and probation supervision to reduce recidivism; (2) to improve access to behavioral treatment while incarcerated for those prisoners requiring it; (3) to make parole

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release more efficient and timely; and (4) to reduce the Department of Correction (DOC) population and increase the number who receive post-release supervision. The report also provided a list of five policy options to begin implementing these initiatives. These required up front investments of \$3.5 million during the first year, rising to \$8.3 million by 2023, for a total investment of \$34.4 million over 5 years.²

This report reviews Department of Correction data between

2004 and 2016 to assess baseline outcomes during that period with an emphasis on post-release supervision and recidivism. We will see that these data reveal some opportunities that have been realized while others have been wasted in areas that anticipated at least three of the policy initiatives suggested by the Justice Center. The data also will reveal that at least \$100 million have been lost because of failures of leadership in multiple branches of state government and agencies. In the future, resources need to be more rationally deployed to maximize outcomes for the state and prisoners as well as to revitalize communities burdened by poverty and over-incarceration.

RESULTS

Table 1 summarizes the numbers and percentages of released prisoners by post-release supervisory status, 2005 through 2016. Some prisoners were released with simultaneous parole and probation supervision and, like those released only on parole, were released from prison custody even though their sentences were not expired. Parole, therefore, reduces costs by releasing prisoners earlier than the expiration of their prison sentence. Probation starts at the completion of incarceration and adds less costly community supervision after the prison sentence is wrapped up and has no direct effect on costs of incarceration. Data show that approximately 90% of those with dual parole and probation supervision that return to prison do so for a parole violation, with only about 10% returning for probation violation.³ The table also sums the two columns (parole and dual supervision), conveniently grouping all those with early parole release as

TABLE 1
SUPERVISORY STATUS OF RELEASED PRISONERS^a

Year	Paroled	Parole & Probation	Total Parole	Probation	No Supervision	Total
2005	535 22%	287 12%	822 35%	566 24%	990 42%	2378 100%
2006	531 22%	290 12%	821 34%	618 26%	952 40%	2391 100%
2007	594 23%	321 13%	915 36%	659 26%	988 39%	2562 100%
2008	657 24%	345 13%	1002 37%	636 23%	1081 40%	2719 100%
2009	691 24%	388 14%	1079 38%	726 25%	1044 37%	2849 100%
2010	653 22%	375 13%	1028 35%	717 25%	1161 40%	2906 100%
2011	274 12%	166 7%	440 19%	790 33%	1147 48%	2377 100%
2012	346 13%	222 8%	568 23%	905 33%	1232 46%	2705 ^b 100%
2013	441 17%	275 10%	716 27%	915 34%	1045 39%	2676 ^b 100%
2014	441 17%	254 10%	695 23%	830 33%	1012 40%	2537 100%
2015	455 18%	278 11%	733 28%	901 35%	946 37%	2580 100%
2016	356 15%	227 10%	583 25%	859 37%	886 38%	2328 100%

^a Criminally sentence jurisdiction population

^b There were an unexpected high number of court releases in 2012 (334) and 2013 (134), mostly due to a change in drug mandatory minimums and approximately 300 dismissed cases because of a crime lab analyst's malfeasance

contrasted to those with completed prison sentences. It is apparent that all columns dealing with parole show a dramatic, approximately 50% reduction in the numbers and percentages of prisoners released on parole after the members of the Parole Board were fired and replaced in early 2011. Probation sentences, by contrast, because they are separately imposed by judges on individual prisoners at the time of sentencing, were not affected and show an increase, possibly reflecting an increasing awareness by judges that post-release supervision was considered desirable. However, the marked decrease in paroles masked the concomitantly expected decrease in unsupervised released prisoners caused by the added rates of probation. An apparent and aberrant bulge in the total and unsupervised release population in 2012 and 2013 was likely due to a one-time confluence of court releases because of a sudden reduction in mandatory minimum drug sentences resulting from new legislation⁴ and the dismissal of a number of drug cases after scandalous malfeasance by a crime lab analyst.⁵ By 2016 the numbers and percentages of those released with expired prison sentences without supervision and those with probation were essentially equal. A decade earlier the ratio was closer to 3:2, a change likely reflecting judges' awareness that correctional experts have recommended increasing post-release supervision. By contrast, prisoners released on parole supervision were abruptly decreased because of the change in philosophy by the new Parole Board installed in 2011. Despite a modest resurgence in paroles granted during the brief tenure of a different Parole Board chairperson, overall parole releases

remained far below the rates prior to 2011 (see also Tables 4, 5 and discussion).

Table 2 summarizes ten years of incarceration and three-year recidivism data for DOC prisoners. More recent data are not available because recidivism results require a three year delay for data collection. Shown are total prisoner populations and release numbers, overall recidivism rates, rates for prisoners released after sentence expiration ("wrapped") with and without post-release probation, and prisoners on parole. Overall, recidivism rates have decreased in all groups listed. The aforementioned reduction in the percentage paroled is obvious, as is the corresponding increase in the percentage of released prisoners who have wrapped up their prison sentences. After 2010, this latter group dominates the released group, essentially setting the recidivism rates for the entire release cohort. As shown in Table 1, for 2011 through 2013, the numbers of unsupervised released prisoners were almost 50% greater than those on probation, suggesting that these lower recidivism rates were not achieved by increasing post-release supervision, but for other, as yet unexplained reasons. In fact, the overall recidivism rates since 2011 essentially approximate the rates of those whose sentences have expired.

TABLE 2

3-YEAR RE-INCARCERATION RATES

Year	Total ^a Population	<---Total Released---> # Released % Released	<---Wrapped Released---> # Recid'd % Recid'd	% Wrapped	<---Paroled Released---> # Recid'd % Recid'd	% Paroled	% Recid'd
2004	10242	2344 23%	1005 43%	61%	39%	39%	49%
2005	10138	2298 23%	1018 44%	65%	41%	35%	50%
2006	10699	2329 22%	964 41%	66%	-- ^d	34%	-- ^d
2007	11045	2536 23%	1079 43%	64%	39%	36%	49%
2008	11364	2718 24%	1072 39%	63%	34%	37%	49%
2009	11438	2758 24%	1123 41%	61%	35%	39%	50%
2010	11361	2725 24%	1076 39%	65%	-- ^d	35%	-- ^d
2011	11409	2276 20%	806 35%	81%	34%	19%	43%
2012	11723	2346 20%	753 32%	76%	30%	24%	39%
2013	11403	2518 22%	802 32%	72%	31%	28%	34%

^a Total Jurisdiction population January 1 of each year

^b Wrapped = sentence expired, with/without on & after probation but no parole

^c Paroled = variable number of years parole to serve after conditional release

^d -- = data not available (detailed recidivism report not published for that year)

TABLE 3
EFFECT OF TECHNICAL VIOLATIONS ON 3-YEAR RE-INCARCERATION RATES^a

Year	<-----All Released----->			<-----Paroled----->			<Wrapped +/- Prob>	
	(+)Tech	(-)Tech	%Tech	(+)Tech	(-)tech	%Tech	(+)Tech	(-)Tech
2004	43%	37%	15%	49%	33%	37%	39%	38%
2005	44%	39%	12%	50%	34%	32%	41%	41%
2006	41%	--	--	--	--	--	--	--
2007	43%	35%	12%	49%	30%	38%	39%	38%
2008	39%	32%	18%	49%	29%	40%	34%	34%
2009	41%	31%	25%	50%	25%	49%	35%	34%
2010	39%	--	--	--	--	--	--	--
2011	35%*	30%	15%	43%	18%	57%	34%	33%
2012	32%*	27%	15%	39%	19%	51%	30%	30%
2013	32%*	27%	16%	34%	17%	52%	31%	31%

^a Data are 3-year re-incarceration rates (+) or (-) technical violations except for the columns labeled %Tech which are the percent of violations due to technical violations. 'Wrapped +/- Prob' refers to prisoners released after expiration of prison sentence with or without 'on and after' period of probation. Missing data is due to lack of detailed recidivism reports for 2006 and 2010.

* Separate analysis suggests that these percentages may be artifactually lowered by 3 percentage points because of the marked decrease in the number paroled (see note 9 and Discussion).

Table 3 reports three-year re-incarceration rates by supervisory status and expands on these by showing results including and excluding technical violations. Technical violations are the result of violating the rules or conditions of parole or probation but without committing a new offense. Violations excluding technical violations usually result from an arrest (whether or not resulting in an eventual charge or conviction) or the commission of a new crime. Additionally, columns labeled "%Tech" refer to the percent of total violations

due to technical violations. As already discussed, recidivism rates decreased across the board between 2004 and 2013 although the very high and even increasing rate of technical violations for those on parole has blunted that decrease. By contrast, there was virtually no difference in the rates including or excluding technical violations for those with wrapped prison sentences even though one-third to one-half of them were subject to probation. The DOC does not separately track or report results for prisoners supervised only by probation but, as mentioned, for those subject to dual parole and probation supervision, the rates of technical probation violations have occurred at approximately one-tenth of the rates of technical parole violations.⁶ The low rates of parole violations excluding technical violations suggests that in recent years most parole violators are not getting re-arrested or committing new crimes.

Tables 4 and 5 summarize the impacts of the change in the philosophy and policies of the newly installed Parole Board. Table 4 shows the percent of all prisoners released each year on parole, parole and probation, probation or without supervision during the six years before and after the change. Parole data for second degree lifers is also shown. The fractions released on parole during 2011-2016 decreased by 31% while the fraction on probation increased by 39%. It should be remembered that when parole eligible prisoners are denied parole, they may not be released until their prison terms are maxed out, i.e. expired, causing them to be released at a later date, sometimes years later, without supervision. Because probation coincidentally

TABLE 4
COMPARISON OF RELEASING & PAROLING RATES 2005-2010 vs 2011-2016^a

<-----General Population-----> <2° Lifers>						
Year	Parole only	Parole & Probation	Total Parole	Probation only	No Supervision	Lifer ^b Parole
2005	22%	12%	35%	24%	42%	33%
2006	22%	12%	34%	26%	40%	30%
2007	23%	13%	36%	25%	39%	28%
2008	24%	13%	37%	23%	40%	31%
2009	24%	14%	38%	25%	37%	39%
2010	22%	13%	35%	25%	40%	34%
Subtotal	22.8%	12.8%	35.7%	24.6%	39.7%	32.5%
2011	12%	7%	19%	33%	48%	18%*
2012	13%	8%	21%	33%	46%	
2013	17%	10%	27%	34%	39%	15%
2014	17%	10%	27%	33%	40%	36%
2015	18%	11%	29%	35%	37%	29%
2016	15%	10%	25%	37%	38%	18%
Subtotal	15.3%	9.3%	24.7%	34.2%	41.3%	23.2%
% Change	-33%	-28%	-31%	+39%	+4%	-29%

^a Percentages are percent of total prisoners of indicated supervisory status released each year.

^b Second degree lifer data shown is percent of lifers receiving hearings in calendar year who were granted parole (not necessarily released in that year because delays in notification and conditions imposed may defer actual release).

* Data for 2011/2012 summed because the number of hearings and paroles granted separately were too low for valid comparison.

increased by 39%, the otherwise sizeable increase in unsupervised releases was masked and increased only 4%.

Table 5 reports the same phenomenon, but compares the absolute numbers of prisoners released during the two time periods, 2005-2010 versus 2011-2016. Comparisons are facilitated because the total numbers of prisoners incarcerated and the numbers released during both six-year periods were virtually identical. The most dramatic difference seen is the 34.1%

TABLE 5

CONSEQUENCES OF CHANGED PAROLE BOARD & POLICY

Years	Total Prisoners ^a	Total Released	Parole Released ^b	Probation Released ^c	Unsupervised Released ^d
2005-2010	66045 100%	15805 23.9%	5667 8.6%	3922 5.9%	6216 9.4%
Parole Board Fired and Replaced					
2011-2016	66396 100%	15203 22.9%	3735 5.6%	5200 7.8%	6268 9.4%
Change	+351 +0.5%	-602 -3.8%	-1932 -34.1%	+1278 +32.6%	+52 +0.8%

^a Jurisdiction population.

^b Prisoners released on parole + on parole and probation.

^c Prisoners released on probation upon prison sentence expiration (excludes concomitant parole).

^d Prisoners released upon sentence completion without supervision.

reduction in paroles granted, totalling 1932 fewer prisoners 2011-2016 compared to the earlier time period. Probation numbers increased by 1278 (32.6%) and prisoners released without supervision increased by 52 (0.8%), totalling 1330. Overall releases were 602 fewer (1932-1330) inspite of the modest increase in the total population of 351 (0.5%).

DISCUSSION

Reducing recidivism has long been a goal of the DOC and is encoded in its strategic plan and Mission statement.⁷ It is also included among the policy initiatives recommended by the Council of State Governments Justice Center in their final report.⁸ The good news is, as summarized by Tables 2 and 3, that recidivism

rates have been reduced by approximately 10 percentage points, or by about one-quarter between 2004-2006 average rates and those for 2011-2013. Some of this improvement may be an artifact caused by the concomitant and severe reduction in the numbers granted parole since 2011. A careful analysis has suggested that the overall recidivism rates were artificially reduced because of the marked attrition of paroles in 2011 and 2012⁹ and the same reasoning applies to 2013 data. These conclusions seem to be borne out by the data in this report. Had a larger number been paroled, the overall recidivism rates would undoubtedly have been increased. Nevertheless, there is independent data to support that there has been a real change. This is found in the data referring to those with completed or "wrapped" sentences whose overall recidivism rates are the lowest of any supervisory group. Because they also constitute 72-81% of the total released prisoners in 2011 to 2013, they essentially set the re-incarceration rate for the whole cohort. This observation would seem to run counter to the assumptions of the Justice Center and current conventional wisdom that argue that reducing the fraction of unsupervised prisoners will necessarily lower re-incarceration. While it is correct that the very lowest rates of re-incarceration were achieved by parolees when excluding technical violations, both before and after the changing Parole Board in 2011, the actual total rates of re-incarceration among parolees were and continue to be the highest of any category of released prisoners, no matter the severity of the Parole Board. To some extent, this is due to the largely out-dated policies of

the Massachusetts Parole Board whose reflexive reaction to any perceived violation is re-incarceration. Other agencies and states have adopted more measured responses, imposing a range of graduated sanctions such as substance abuse monitoring, overnight or weekend detentions and other less restrictive measures than imprisonment for violations of lesser severity or frequency. These graduated sanctions have the important advantage of keeping the parolee in the community and out of prison for lesser infractions. This supports the parolee's ability to maintain family connections as well as hard-earned jobs and housing, all of which are critical determinants of ultimate success.¹⁰ In fact, current parole policies, which also include long delays in re-release for even minor infractions actually promote disruption of re-entry, thereby increasing post-release failure and recidivism.¹¹

In addition to handicapping the success of the parolees it did release with technical violation rates over 50%, the post-2011 Parole Board also drastically curtailed the overall numbers of prisoners granted parole in the first place. As shown in Table 1, 588 and 460 fewer prisoners, respectively, were paroled in 2011 and 2012 compared to 2010. Table 5 confirms that this trend has continued to the present day, with a total of 1932 or 34% fewer prisoners released on parole 2011-2016 compared to 2005-2010. Although more prisoners have added probation in recent years, it is important to remember that probation does not involve keeping prisoners incarcerated, while parole denials do just that. Probation supervision occurs in the community at

substantially lower costs, typically no more than 10% of the costs of incarceration. Additionally, probationers are able to re-integrate into society, re-establishing family ties, gainful employment and possibly pay taxes. By contrast, prisoners denied parole remain in prison for at least a year, and often far longer. Many will eventually max out their sentences before release, each accruing multiple additional years of imprisonment.

The Parole Board was fired and replaced in 2011 after a police officer was shot and killed in a gun battle during an aborted robbery by a second degree lifer who was on parole. This prompted a media storm and led the Governor to demand resignations from the entire Board, replacing it with law enforcement-oriented personnel. This politically motivated response ignored that prior to 2011 the Parole Board had been very successful in appropriately screening and paroling prisoners, including second degree lifers, achieving low rates of criminal re-offense in the context of steadily falling crime rates.¹² This change, however, also had a different consequence: by strikingly reducing the rate of granting paroles, the Board added a large and significant additional expense to the Commonwealth. In 2011 the annual cost to incarcerate a state prisoner was \$45,500¹³, and this expense has steadily risen up to \$55,000 and even \$60,000 per prisoner per year.¹⁴ Consequently, a conservative estimate of the cost of denying parole release for only one year to the 1932 prisoners who would have been paroled in prior years, totals at least 100-million dollars. The real total is likely far greater as many potential parolees' releases

will have been delayed for more than one year.

There is no evidence that this reduction of paroles has improved public safety. Crime rates were falling long before 2011 and, if anything, the rates of decline have slowed in recent years.¹⁵ Additionally, the radical change in the actions of the newer Parole Board has resulted in the exact opposite of the recommendations sought by the Justice Center in its report: parole release has been made less efficient; the numbers of prisoners released with supervision have not been reduced as they would have been; and parole supervision has not been aligned with a reduction of recidivism, which was only coincidentally reduced because of the performance of those with wrapped sentences.

The Justice Center has equated the value of probation and parole for post-release supervision.¹⁶ This, however, ignores not only the costs associated with parole denial and the associated frequent revocations, but also a fundamental psychological difference. Parole makes available possibilities of an earlier release from a longer prison sentence as long as prisoners can show appropriate efforts and success at behavioral improvements and rehabilitation during incarceration. This situation provides an important motivation for prisoners to improve attitudes and behavior while incarcerated. By contrast, probation in no way provides incentives for positive change during incarceration. Rather, it represents an arbitrarily added punishment imposed at the time of sentencing with no one able to assess or affect the prisoner's eventual behavior or outcome while incarcerated. Not only is a parole eligible prisoner likely to be more motivated to

effect and demonstrate rehabilitation, but prisoners and the DOC benefit by trading expensive prison time for early release for those demonstrating positive change while keeping sequestered those who remain more likely to re-offend. This attitudinal benefit derived from parole eligibility, when harnessed by a rehabilitation-focused prison environment, has the potential to markedly improve post-release outcomes.

The current dysfunctional parole situation developed from a broad-based failure of understanding about the function of the Massachusetts correctional system and a resulting lack of insightful leadership at multiple levels. The media ignited the firestorm but has failed to investigate the consequences of their short-lived indignation. The Parole Board has blithely pursued its philosophy of attrition with little attention to secondary outcomes. Along the way they also have indulged in multiple questionable choices: failing to follow their own risk-assessment tool ratings when granting parole;¹⁷ and, paradoxically, selectively paroling fewer older, less likely to re-offend prisoners in favor of the younger, more likely to recidivate;¹⁸ and, as discussed, ignoring the economic losses and lack of public safety benefits of their excessive unwillingness to grant paroles to viable candidates. For its part, the DOC has made apparent progress with recidivism in general, but has failed to inform (or, perhaps, even notice?) the increased costs and prisoner numbers resulting from the startling reduction in paroles and the consequent lengthening of prison terms. These omissions within the executive branch end with a governor and

cabinet who are probably unaware of the extent of the problem and who seem content with the status quo. Accordingly, they continue to staff the Parole Board with former prosecutors while failing to demand data systems and accountability standards that might expose the problems. Similarly, the legislature, while developing multiple promising legislative proposals including streamlining parole and other parts of criminal justice, remain timid about enacting anything involving prisoners, crime or their social and economic antecedents. In short, there has been a broad-based failure of leadership to rationally reform this dysfunctional criminal justice system. The Commonwealth cannot afford to throw away more than \$100 million on misguided ventures when every resource is needed to improve prison outcomes and revitalize communities blighted by poverty, lack of jobs and education as well as over-incarceration. The Justice Center has provided some data but the legislation they have proposed addresses only a minimal piece of the problem. Much more is needed, and we will have to see who will step up to provide the necessary leadership.

Data for this report has been culled from multiple reports published by the Massachusetts Department of Correction and its Research & Planning Division. Most important were the annual "Prison Population Trends" for 2009 through 2016 and the "Recidivism Reports" for the 2004, 2007, 2008, 2009, 2011, and 2012 release cohorts.

ENDNOTES

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12. Greineder "Recidivism of Second Degree Lifers" at 3-5, Table; Haas G and Fillion L. "Life Without Parole: A Reconsideration" 2nd Edition, with Updating Addendum (Criminal Justice Policy Coalition, Boston, MA and Norfolk Lifers Group, Norfolk, MA: 2016) at 15-16.
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