

A REPORT ON THE MASSACHUSETTS DEPARTMENT OF
CORRECTION -- 2011

by

Gordon Haas
Chairman
Norfolk Lifers Group

January 2012

TABLE OF CONTENTS

Introduction.....	2-3
The Prison Population.....	3-4
Expenses.....	5-6
Recidivism.....	6-9
Staffing.....	9-10
Workplace Violence.....	10-11
Annual Reports.....	11-12
Discussion.....	12-15
Conclusion.....	15-16
End Notes.....	17-20

THE MASSACHUSETTS DEPARTMENT OF CORRECTION - 2011

A. INTRODUCTION

The Massachusetts Department of Correction (DOC) has both a Vision Statement and a Mission Statement. The Vision Statement is: *to effect positive behavioral change in order to eliminate—Violence, Victimization, Recidivism.*¹ The Mission Statement is to: *promote public safety by managing offenders while providing care and appropriate programming in preparation for successful reentry into the community.*² Both statements are laudable and issue significant challenges to the nearly 5,000 full-time DOC employees. Common to both statements is the goal to reduce/eliminate recidivism while preparing prisoners to successfully reenter society. At a cost in excess of \$500,000,000 per year, it is fair to ask: How close is the DOC in 2011 to achieving both its vision and mission?

In 2008, the DOC contracted with MGT of America Inc. to study the DOC from top to bottom. MGT found the organizational culture to be risk averse, conservative, reactive, slow to change, and hierarchical.

*Collectively they [the factors describing the DOC's organizational culture] play a significant role in the department's perception and response to key issues and on a regular basis determine the department's policy responses to specific issues sometimes at the expense of sound correctional management approaches that enhance efficiency, while maintaining public safety.*³

MGT adds that: *[t]he organizational culture of the MDOC slows change and produces a very cautious approach to recognizing and addressing problems.*⁴

In 2011, a spokesperson for the DOC, Christopher Fallon, responding to a statement by the president of the Massachusetts Correction Officers Federated Union decrying the increase in violence at the state's maximum prison, opined that: *Corrections is a dangerous business. With the type of population, you can't prevent everything.*⁵ Fallon's statement is akin to that of Diane Wiffin, the spokesperson for the DOC in 2009. Wiffin also claimed that an increase in violence at Souza-Baranowski : *has nothing to do with double-bunking and everything to do with the type of inmates now housed (there).*⁶ The root of the problems within the DOC, however, stems not from the "type of population" as both Fallon and Wiffin claimed, but from the conditions which circumscribe life in all Massachusetts prisons.

Responsibility for the state of the DOC begins with its head and permeates inexorably downward through a veritable maze of deputy commissioners, associate deputy commissioners, assistant deputy commissioners, directors, assistant directors, managers, superintendents, deputy

superintendents, institutional level directors, captains, lieutenants, sergeants, correctional program officers and, finally, correction officers themselves. While the titles may change, the faces remain the same resulting in a DOC which continues to be as MGT found it : conservative and slow to change. The primary mistake of the previous commissioner, Harold Clarke, was that he tried to go it alone. Clarke did not bring new professionals, untainted by the Massachusetts’ DOC’s entrenched cultural malaise, into critical positions to help change the DOC’s direction. That was a sure sign that he would not last long as commissioner. And, he did not as he abruptly left for Virginia after only three years in the position. What did Clarke leave behind?

B. THE PRISON POPULATION

In 2007 alone, the prison population in Massachusetts increased by 3.7%, more than any neighboring state, e.g., Connecticut (1.0%), Rhode Island (3.1%) and nearly three times the national average of 1.3%.⁷ From 2004 to 2009, the Massachusetts prison population increased per year on average by 3.2% (17.1% for the five years); the annual national increase was 1.7% (7.0% for the same five year period).⁸ The year 2010 ended with a prison population of 11,409.⁹ As of January 2010, the prisons in the DOC were a combined 140% over-occupied.¹⁰ And, the DOC projects that the prison population will grow to 14,873 by 2019,¹¹ an increase of 30.3% from 2011.

The fastest growing age group of prisoners in Massachusetts is those aged 60–70+ (5.5%). (See Table 1 below.) The second fastest growing age group is those aged 50–59 (3.1%). This has significant cost ramifications. Elderly prisoners, those 55 and over, can cost four times as much to house, primarily due to increased costs for health care.¹²

TABLE 1

<u>Age Group</u>	<u>2009</u> ¹³	<u>2010</u> ¹⁴	<u>Change</u>	<u>%</u>
Under 20-29	2936	2904	- 32	-1.09
30-39	3377	3360	-17	- .5
40-49	2918	2933	+15	+ .51
50-59	1475	1520	+45	+3.05
<u>60-70+</u>	<u>656</u>	<u>692</u>	<u>+36</u>	<u>+5.49</u>
Totals	11,362	11,409	+47	+4.1

Assuming the number of prisoners in the 60–70+ age group continues to increase at the same rate each year, the number of prisoners 60 and over will exceed 1,000 in 2017. Given the steep drop in paroles since the Parole Board was restructured, a continued 5.49% increase per year for those age 60–70+ seems not to be unreasonable.

A comparative breakdown for 2009 and 2010 by governing offense for prisoners in the DOC who are serving criminal sentences, i.e., excluding those under DOC jurisdiction for civil

commitments or awaiting trial, demonstrates that the make-up of the prisoner population has not changed significantly. (See Table 2.) There was a small increase (1.8%) in violent offenders sentenced for offenses against persons and a decrease (9.0%) in non-violent drug offenders. The net change was a decrease of thirty-seven offenders or .4%.

TABLE 2

	<u>2009</u> ¹⁵	<u>2010</u> ¹⁶
Violent Offenses		
Person	4772 (46.5%)	4876 (47.7%)
Sex	1348 (13.1%)	1355 (13.3%)
Non Violent Offenses		
Drug	2571 (25.1%)	2341 (22.9%)
Property	845 (8.2%)	872 (8.5%)
Other	<u>723 (7.1%)</u>	<u>778 (7.6%)</u>
Totals	10,259	10,222

Table 3 below presents a comparative breakdown of the total prisoner population under the DOC jurisdiction for 2009 and 2010 by gender. While the male population increased slightly (.02%), the female population increased 6.3%.

TABLE 3

	<u>2009</u> ¹⁷	<u>2010</u> ¹⁸
Male	10,635	10,637
Female	<u>726</u>	<u>772</u>
Totals	11,361	11,409

Table 4 below presents a comparative breakdown of the total prisoner population under DOC jurisdiction for 2009 and 2010 by race.

TABLE 4

	<u>2009</u> ¹⁹	<u>2010</u> ²⁰
White	4868 (42.9%)	4918 (43.1%)
Black	3195 (28.1%)	3230 (28.3%)
Hispanic	3010 (26.5%)	2955 (25.9%)
Asian	150 (1.3%)	143 (1.3%)
Native American	70 (.6%)	84 (.7%)
Other	<u>68 (.6%)</u>	<u>79 (.7%)</u>
Totals	11,361	11,409

C. EXPENSES

The Massachusetts DOC has fared very well in the race for taxpayers' dollars when compared with other state agencies. From 1998 to 2008, the DOC's expenses increased by more than 12%, despite only a 5% increase in the prison population. In contrast, the money spent by the Department of Public Health decreased by 3%, Local Aid by .8%, and Higher Education by 8%.²¹ In Fiscal Year 2010, the DOC remained essentially level funded with a reduction of a mere 1.9%. Yet, Public Health was decreased 13%, Higher Education by 17%,²² and Women, Infants, and Children by 20%.²³ In Fiscal Year 2009, the DOC accounted for 40.6% of the total spending in the Department of Public Safety and Security, while the State Police accounted for 22.8%.²⁴

Rising corrections costs might be acceptable if public safety is improved, if the corrections system is run efficiently and transparently, and if recidivism is reduced. Growing corrections budgets would probably be acceptable if the prison population grew substantially in response to higher crime rates. Yet none of these are what drove the growth of the corrections budget over the past 10 years.²⁵

Table 5 below lists the categories for expenses by the DOC for 2007, 2009, and 2010. The expenses for 2008 were not reported in the DOC's 2008 Annual Report.

TABLE 5

	<u>2007</u> ²⁶	<u>2009</u> ²⁷	<u>2010</u> ²⁸
Staff Salaries	363,536,888 (67.9%)	356,358,094 (68.5%)	351,126,608 (68.4%)
Inmate Health Care	96,482,199 (18.0%)	87,042,764 (16.7%)	94,444,002 (18.4%)
Utilities	28,284,056 (5.3%)	29,072,299 (5.6%)	25,455,561 (5.0%)
Inmate Programs	13,409,837 (2.5%)	12,882,947 (2.4%)	11,308,339 (2.2%)
Food	11,215,739 (2.1%)	13,546,644 (2.6%)	14,616,679 (2.8%)
IT Expenses	2,993,903 (.6%)	3,359,903 (.6%)	Not Reported
Legislative Earmarks	2,382,500 (.4%)	1,010,500 (.2%)	Not Reported
Administrative Expenses	<u>1,785,040 (.3%)</u>	<u>2,285,040 (.4%)</u>	<u>2,241,760 (.4%)</u>
Totals	535,674,847	520,426,848	513,611,092

The overall decrease in percentage for the total spending by the DOC from 2007 to 2010 was 4.1%. The decrease in inmate population for the same period was, however, 6.9%. While the amount paid for staff salaries decreased 3.4% from 2007 to 2010, the percentage of staff salaries to total expenses for the period actually increased, from 67.9% to 68.4%. The amount expended for inmate programs dropped 15.7% and inmate health care expenses decreased 2.1%.

Two expense categories had percentage increases for the period: inmate food (28.6%) and administrative expenses (25.6%).

For inmate programs, the amount spent per inmate decreased from \$1,215 in 2007 to \$1,100 in 2010, i.e., by 9.5%. In contrast, the per capita amount spent for inmate health care increased from \$8,739 to \$9,191, an increase of 5.2%. Similarly, the per capita amount spent on inmate food increased from \$1,016 in 2007 to \$1,403 in 2010, an increase of 38.1%.²⁹

In a study of Adult Correctional Budgets for 2009 - 2010 in forty-four states published in the *Corrections Compendium*,³⁰ Massachusetts was the fourth highest state for combined administration and security staff expenses as a percentage of the budget for 2009–2010 (67.4%). Higher states were: Hawaii (77%), Maine (76%), and New Hampshire (74.3%). Conversely, for providing Institutional Services, Massachusetts was the ninth lowest at 4.8% of the 2009–2010 budget.³¹

The DOC has experienced excessive sick time and resultant overtime expenses for years. As a result, in 2007, nearly eighty correction officers were each paid in excess of \$100,000. The highest paid correction officer grossed \$144,374 with a base pay of \$75,891—nearly doubling his base pay with overtime. The next four highest paid were captains who grossed: \$137,842, \$133,959, \$128,014, and \$125,643 respectively. For the five, their combined base pay totaled \$395,206. With overtime, the total gross pay was \$669,832, an increase of 69.5%.³²

In 2004, the average salary per day per correction officer was \$229.51 or \$83,771.15 annually. The average number of sick days taken per year by correction officers was 17.35—under their labor contract, correction officers are allowed fifteen sick days per year. The 3,573 correction officers in 2004 called in sick for a total of 62,012 days at a cost to the Massachusetts taxpayers for paid sick days of \$10,118,724. In addition, the overtime cost due to the sick days taken in 2004 was approximately \$3.8 million.³³ By contrast, in the same year, the average American employee took 3.9 days of sick time. In the Northeast, the average was 4.3 sick days. The Massachusetts Department of Mental Retardation, with 3,979 employees in 2004 (407 more than the number of correction officers), took 40,506 sick days (21,506 fewer than the correction officers)—an average of ten days of sick leave per employee.³⁴

In 2005, there was a slight improvement with the 3,510 correction officers taking on average 14.9 sick days, for a total of 52,339 paid sick days. The cost to the taxpayers in 2005 for paid sick days was \$8,644,101 and \$3.7 million for overtime related to sick days. The average salary per day, per correction officer, however, increased to \$234.96 or \$85,780.40 annually.

D. RECIDIVISM

One indicator, perhaps the most important and significant, of the success or failure of the DOC to attain its vision and to succeed in its mission is how many prisoners return to prison after having been released, i.e., the recidivism rate. In a study conducted by the PEW Center On The States of prisoners released in 2004, of the forty-one states reporting data, Massachusetts had the

sixth highest recidivism rate, at 33%, for those returning to prison after committing new crimes.³⁶ Thirty-three states also provided data to the PEW Center for 1999 releases. Massachusetts was one of seventeen states with an increase in recidivism from 1999 to 2004; fourteen states reported a decrease, while two remained the same.³⁷ The PEW Center also reported the percentages of prisoners released in 2004 who did not return to prison for either a new crime or a technical violation of parole or probation. Twenty-four of forty-one states reported a higher percentage than Massachusetts (58%) of prisoners released in 2004 who did not return to prison (No Return)—ranging from 77% (Oregon) to 59% (Kentucky and North Carolina). Fifteen states reported lower No Return percentages—and one, reported the same No Return rate as Massachusetts.³⁸

In 2003 and 2008, the DOC published two recidivism studies. Recidivism statistics are also published by the DOC in annual Prison Population Trends reports beginning in 2009. Table 6 below breaks down recidivism statistics by the security levels from which prisoners had been released. One note, the statistics published for 2004, 2009, and 2010 include male and female prisoners. The statistics published by the DOC in 2008 include males only. The 2004 recidivism rate is for releases in 1998; the 2008 rate for releases in 2002; the 2009 rate for 2004 releases; and the 2010 rate for 2005 releases.

TABLE 6—RECIDIVISM RATES

<u>Released From</u>	<u>2004</u> ³⁹	<u>2008</u> ⁴⁰	<u>2009</u> ⁴¹	<u>2010</u> ⁴²
Maximum	53.1%	49.7%	57.0%	58.0%
Medium	41.6%	39.8%	44.0%	47.0%
Minimum/Pre-Release	<u>36.1%</u>	<u>34.9%</u>	<u>37.0%</u>	<u>36.0%</u>
Totals	40.1%	39.2%	43.0%	44.0%

The overall recidivism rate from 2008 through 2010 has steadily increased. Even more troubling is that it is the recidivism rates for those released from maximum and medium security which have increased each year. The recidivism rate for those released from minimum/pre-release increased only slightly from 2008–2010, but decreased from 2009–2010. The increasing recidivism rates for those released from maximums and mediums is particularly significant given, as will be shown in Table 7, nearly two-thirds of all prisoners are released directly to the streets from either maximum or medium security. This appears to be nothing short of a prescription for failure.

Included in the recidivism study published in 2008 by the DOC is an analysis of the recidivism rate for the DOC's Transition Program, which is designed to prepare prisoners for reentry into society. The failure of the DOC to accomplish the lowering of recidivism rates, a part of its Vision and Mission Statements, is amply demonstrated in the results. Of the 899 prisoners

who had participated in the Transition Program, 387 (43.0%) recidivated. Of the 887 prisoners who had not participated in the Transition Program, 313 (35.3%) recidivated. Thus, prisoners who had not participated in the Transition Program had a better chance of remaining out of prison upon their release than those who had participated.⁴³

TABLE 7-SECURITY LEVELS FROM WHICH PRISONERS WERE RELEASED

<u>Released From</u>	<u>1998</u> ⁴⁴	<u>2002</u> ⁴⁵	<u>2008</u> ⁴⁶	<u>2009</u> ⁴⁷	<u>2010</u> ⁴⁸
Maximum	4.7%	10.8%	6.7%	9.4%	11.2%
Medium	59.1%	55.2%	61.0%	56.6%	53.4%
Minimum/Pre-Release	37.2%	34.0%	32.3%	34.0%	35.4%
Maximum & Medium	62.8%	66.0%	67.7%	66.0%	64.6%
<u>Numbers Released From</u>					
Maximum	132	193	182	259	307
Medium	1638	985	1659	1561	1461
Minimum/Pre-Release	1027	608	878	940	970

From 1998 to 2011, the number of prisoners released from maximum security has increased 132.6%, while those released from medium and minimum/pre-release facilities has decreased by 10.8% and 5.6% respectively. A comparison of releases in 2008 and 2010 finds an increase in releases from maximum security of 68.7%, a decrease in releases from medium security of 11.9%, and an increase in releases from minimum/pre-release security of 10.5%. It would seem axiomatic that prisoners should be stepped down gradually as they near their release dates. The DOC, however, continually releases approximately 64% of its prisoners directly to the street either from maximum or medium security. The combined recidivism rate from maximum and medium releases in 2005, the latest cohort studied by the DOC, is 48%. With nearly 50% of those released from maximum and medium security recidivating, as compared to 36% released from minimum/pre-release facilities, it would seem nonsensical and counterproductive to continue to release nearly two-thirds of all prisoners directly to the streets from maximum and/or medium security prisons. Without benefit of a gradual movement to lower security levels, prisoners are ill-prepared to acclimate to the rigors of rejoining society as productive citizens who will not endanger public safety. As concluded in the 2008 Massachusetts Recidivism Study:

If an inmate is going to be released into a community without being paroled (as current trends indicate), policymakers should devise a method of reducing, if not eliminating, the number of inmates who live in a medium or maximum custody prison one day and in the

*community the next. This could be achieved in a variety of ways, such as using transition houses or a graduated step-down process with more intensive community supervision.*⁴⁹

It seems as of 2011, that the decision makers in the DOC have yet to get the message and the public continues to pay the price in dollars and reduced public safety.

E. STAFFING

The MGT of America, Inc. assessment of the DOC in 2008 noted that the central staff employed 564 full time employees, or 11.5% of the total number of employees in the DOC. Of those 564 employees, only 65 (12.0%) were designated as clerical staff in the central office.⁵⁰ In addition, MGT pointed out that Massachusetts was fourteenth highest of forty-two states surveyed with 6.7% of the total budget expended for Central Office Services and Operations. The average for the forty-two states was 5.9%—ranging from Alabama (12.1%) to Wyoming (1.8%). In comparison also are the neighboring states of: Connecticut (10.0%), New Hampshire (5.0%), Rhode Island (3.7%), Vermont (2.6%), New York and New Jersey at 5.0% each.⁵¹

The MGT report noted as well that the Massachusetts DOC has forty-two separate offices for the central staff, with only 20% located in Milford.⁵² The Human Resources Division alone employed seventy-one persons, nearly one-quarter of whom were designated as managers, in nine different locations.⁵³ The Research & Planning Division, the Office of the General Counsel, and the Investigation Services Division were all cited as having *somewhat higher staffing levels than seen in even large correctional system[s]*.⁵⁴ The MGT report concluded there were negative impacts of the large and dispersed number of offices such as *diminished communication and management supervision, loss of staff time and increased operating costs attributable to transportation, and increased clerical staffing to support multiple office locations*.⁵⁵

One relatively recent addition to the organization structure of the DOC has been the creation of northern and southern sectors. These two sectors divide evenly responsibility for the eighteen institutions under DOC's management. Given that all the prisons are clustered in central and eastern Massachusetts, within easy driving distance of each other, it seems not unreasonable to question what an Assistant Deputy Commissioner for each sector, with their own staff personnel and office location, adds to the efficient operation of the Massachusetts DOC? Texas, Alaska, Pennsylvania, and California, states with either a large territory to cover or large prison populations, and, as a result a large number of prisons, or both, may need to be broken down into sectors, but neither condition seems to apply to Massachusetts.

Table 8 below breaks down the overall staffing numbers of full time employees (FTE) for 2007, 2008, and 2010. The DOC Annual Report for 2009 did not include a staffing overview.

TABLE 8-DOC FULL TIME EMPLOYEES

	<u>2007</u> ⁵⁶	<u>2008</u> ⁵⁷	<u>2010</u> ⁵⁸	<u>2007-2010</u>
Security Staff	3534(71.5%)	3768(72.9%)	3517(72.5%)	-17 (-5%)
Captains	85(1.17%)	88 (1.7%)	90 (1.8%)	5 (5.9%)
Correction Program Officers (CPOs)	288 (5.8%)	306 (5.9%)	283 (5.8%)	-5 (-1.7%)
Educators	71 (1.4%)	79 (1.5%)	86 (1.8%)	15(21.1%)
Managers	248 (5.0%)	251 (4/9%)	222 (4.6%)	-26(-10.5%)
Support Staff	555(11.3%)	513 (9.9%)	495(10.2%)	-60(-10.8%)
Maintenance	<u>161 (3.3%)</u>	<u>162 (3.2%)</u>	<u>160 (3.3%)</u>	<u>-1 (-.6%)</u>
Total FTE	4942	5167	4853	-89 (-1.8%)

In a published report by The *Boston Globe* in 2004, Massachusetts had the lowest ratio of prisoners to security personnel of 2.7, i.e., 2.7 prisoners per each security employee. The national average was 5.3. The five states with the next lowest were: Maine (3.0), New York (3.1), Rhode Island (3.5), Minnesota (3.7), and Connecticut (3.8).⁵⁹ The prisoner to security personnel ratio, i.e., security staff and captains, has increased slightly the past few years as is shown in Table 9 to follow. The data in Table 9 for security personnel are taken from Table 8. Even with decreases in the number of security personnel, the ratio of prisoners to security personnel for Massachusetts surely remains among, if not, the lowest in the nation.

TABLE 9-RATIO OF PRISONERS TO SECURITY PERSONNEL

	<u>2007</u>	<u>2008</u>	<u>2010</u>
Security Personnel	3619	3856	3607
Prisoner Population ⁶⁰	11,099	11,364	11,361
Ratio	3.1	2.9	3.1

F. WORKPLACE VIOLENCE

The Massachusetts Correction Officers Federated Union is often decrying the allegedly ever increasing level of violence being perpetrated upon guards by prisoners. Presumably, assaults by prisoners on guards is the reason the guards' union's motto is: *We Walk The Toughest Beat In The State*. No argument can be made that at time prisons in Massachusetts can be violent. But, much depends on what an assault by a prisoner on a DOC employee actually means. There are

various forms of assault and not all are physical. The assumption that most, if not all, assaults by prisoners are violent attacks which place a DOC employee's life at risk is belied by the data. In 2010, there were 431 reported assaults by prisoners on staff. Of those, however, 265 (61%) involved unspecified but non-serious injuries, 142 (33%) involved the throwing of substances, and 24 (6%) involved serious injury.⁶¹ No death has resulted in Massachusetts' prisons from an assault by a prisoner on a staff person since 1972.

In 2008, the DOC reported 144 inmate-on-staff assaults.⁶² Yet, for the same year, MGT reported that staff assaults, presumably by inmates, at Cedar Junction totaled 21.⁶³ Those 21 assaults were, according to MGT, 44% of all assaults on staff in 2008. Assuming that data to be accurate, the total number of staff assaults in 2008, as determined by MGT, was 48, not the 144 as reported by the DOC. It appears that even the DOC is unable to define exactly what comprises an actual assault by an inmate on a staff person.

The Bureau of Justice Statistics studied workplace violence from 2005 to 2009. The results are enlightening. Correction Officers tied for tenth place (1.8%), with mental health workers, in the percentage of workplace violence per 1,000 employed persons. The highest was retail sales (9.8%), followed by law enforcement officers other than correction officers (9.1%), transportation occupations (6.6%), security guards (5.6%), nurses (3.9%), medical personnel other than doctors, nurses, or technicians (2.9%), high school teachers (2.6%), medical technicians (2.3%), and bartenders (1.9%).⁶⁴ In other words, correction officers are five times less likely to experience workplace violence than retail sales personnel and law enforcement officers (other than correction officers), three and one-half times less likely than those in transportation occupations, three times less likely than security guards, and twice less likely than nurses. The *toughest beat in the state* seems to be in stores, in neighborhoods, in transportation vehicles, in security outside prisons, and in hospitals, medical clinics and/or offices, not in the eighteen prisons in Massachusetts.

G. ANNUAL REPORTS

The most recent annual report (2010) published by the DOC is a significant departure from previous years, particularly in the absence of reported data and descriptions of the developments, challenges, and accomplishments of the thirty divisions which comprise the DOC. Missing were data on: inmate grievances, monetary settlements, staff grievances, incidents of sexual violence, stress unit interventions, results from employee grievance hearings, statistics on staff diversity, staff additions, staff development, Victim Services, classifications, and the results of inmate disciplinary reports. This absence of hard data and other information raises the issue of transparency, or the lack thereof. The 2010 Annual Report was the first under Commissioner Luis Spencer. Failing to report significant data, which had been reported in previous years, is not a positive development and, hopefully, not a trend.

What was prominently reported, however, were the awards presented by the DOC to themselves. Table 10 on the following page shows a comparison of the numbers of awards by

category from 2008 through 2010, and the number of Full Time Employees (FTE) for 2008 and 2010. The number of Full Time Employees was not included in the 2009 Annual Report.

TABLE 10-DOC AWARDS

	<u>2008</u> ⁶⁵	<u>2009</u> ⁶⁶	<u>2010</u> ⁶⁷
Performance Recognition	21	27	9
Beyond Excellence	17	19	58
Professional Excellence	0	9	9
Special Recognition	<u>0</u>	<u>12</u>	<u>11</u>
Total	38	67	87
Total FTE	5167	NR	4853
% Receiving an Award	.74		1.79

There is no disputing the motivational value of awarding excellent performance. But, the DOC seems to apply that concept in a problematic manner. There is no definition nor criteria for what comprises Beyond Excellence, Professional Excellence, or Special Recognition, or what distinguishes one from another. The number of awards has more than doubled since 2008 and increased by nearly 30% from 2009 to 2010 alone. Presenting an ever increasing number of undefined awards, save the titles, should not supplant comparative hard data.

H. DISCUSSION

The DOC spends over \$500,000,000 each year to incarcerate and, presumably, to prepare those leaving prison for reentry into society, criminally sentenced prisoners as well as those under civil commitments and those awaiting trial.⁶⁸ For 2008 through 2010, the DOC admitted 11,646 prisoners, averaging 3,882 per year. For the same period, the DOC released 11,523 criminally sentenced prisoners, averaging 3,841 per year.⁶⁹ In 2010 alone, 1,768 of the criminally sentenced prisoners released by the DOC left from medium or maximum security prisons.⁷⁰ With an overall recidivism rate of 44%,⁷¹ society can expect 5,070 of the criminally sentenced prisoners released from 2008 through 2010 to return to prison. More troubling is that in 2009 and 2010 combined, the DOC released 572 criminally sentenced prisoners from maximum security and 3,028 criminally sentenced prisoners from medium security prisons.⁷² Given the documented recidivism rates from maximum security of 58% and from medium security of 47%,⁷³ society can expect 332 of those released from maximum security and 1,424 of those released from medium security to return to prison. It is not unreasonable to ask: Has the over \$1.5 billion spent by the DOC for

2008, 2009, and 2010 proved to have been a good investment in taxpayers' dollars in terms of increased public safety, particularly in light of the deep cuts made in other departments? The ever increasing recidivism rate and the numbers of prisoners released to the street from maximum and medium security argue that much of the money expended by the DOC could have been much better spent elsewhere. The bottom line is that the recidivism rate has *long been considered the leading statistical indicator of return on correctional investment.*⁷⁴ By that measure, the Massachusetts Department of Correction is a costly, but failing system.

The numbers of prisoners released from higher security directly to the street is a function of the DOC's closing of minimum and pre-release facilities, even though those prisons are more cost effective when fully occupied. This has significantly reduced the opportunities for prisoners to step down on the path to a gradual return to society. The reduction in lower security prisons reflects the correctional philosophy introduced in 1991 with Governor William Weld's desire *to reintroduce our inmates to the joys of busting rocks.*⁷⁵ Concomitant with this movement in correctional philosophy from rehabilitation to retribution came legislation which simply restricted those prisoners who had been convicted of certain categories of crimes from participating in work release programs.⁷⁶ Work release, however, is a privilege offered only at minimum and/or pre-release facilities. The DOC has extrapolated these legislative restrictions to mean that all such prisoners should not be stepped down to minimum or pre-release security. Thereby, the DOC is denying all those affected prisoners from moving to minimum security for their entire sentences. The DOC's rationale seems to have been, and remains, that such prisoners would be prone to escape, an assumption unsupported by evidence based research.

Not only does the DOC need to provide more minimum and pre-release beds, the DOC needs to utilize more efficiently the ones they have. The cost differential for housing one prisoner at a minimum (\$38,000) is significantly lower than that for either a medium (\$42,000) or a maximum (\$53,000).⁷⁹ Thus, better use of minimums and pre-releases by the DOC would result in a reduction not only of recidivism rates, but expenses as well.

The DOC needs to work with the legislature to allow more prisoners to be eligible for work release and, therefore, for lower security. The DOC also needs to increase the number of transfers of prisoners who are already eligible for lower security. In addition, the DOC needs to provide more beds in minimum and pre-release prisons, something argued for as far back as 1999.⁷⁷ A review of the Operational Capacities and the Average Daily Populations of the minimum and pre-release facilities listed in the 2010 DOC Annual Report (See Table 11, page 13.) shows that over 9% of the beds in those facilities are, on average, unoccupied.⁷⁸ In fact, every minimum or pre-release facility averages fewer prisoners than their individual Operational Capacities.

TABLE 11

Facility	Operational Capacity	Average Daily Pop.	Difference
Shirley Minimum	328	304	-24
Northeastern Corr. Ctr.	274	271	- 3
MCI-Plymouth	227	195	-32
Boston Pre-Release	200	191	- 9
MCI-Pondville	200	192	- 8
So. Middlesex Corr. Ctr.	185	122	-63
Alcohol & Sub. Abuse Ctr.	170	154	-16
OCCC Minimum	<u>160</u>	<u>154</u>	<u>- 6</u>
Totals	1774	1611	-163

In Fiscal Year 2004, inmate health care expenses comprised 15% of the DOC budget, inmate food expenses and inmate programs were 2% and 3%.⁸⁰ By comparison, in Fiscal Year 2010, those percentages were 18.4%, 2.8%, and 2.2% respectively.⁸¹ Thus, the only expense category in the DOC budget directly impacting prisoners to be reduced was inmate programs. Yet, it is via inmate programs that prisoners are expected to learn the educational, vocational, and transitional skills needed to succeed as productive citizens once they are released.

The average daily cost of health care for prisoners in 2008 in Massachusetts (\$20.19) was the second highest in the nation, exceeded only by California at \$23.28.⁸² Even given that high cost of medical care per prisoner, per day in 2008, Massachusetts was one of only nine states in the nation without a hospice program for prisoners who are terminally ill and likely to die within a few months.⁸³ The absence of a hospice program for prisoners in Massachusetts continues to the present day. Developing a prisoner hospice care program similar to Oregon, Washington, or Texas would be cost effective while providing services to terminally ill prisoners *designed to allow for patients to be kept comfortable and provided increased access, including relatives and hospice staff.*⁸⁴ The Norfolk Lifers Group has repeatedly, in the past fifteen years, advocated for a hospice care program staffed, in part, with lifers who have been trained to attend to basic care needs. That alone would significantly reduce the health care costs for the terminally ill while providing an improved level of care. That advocacy, however, has fallen on deaf ears. But, the fastest growing age category for prisoners is those 60 and older, a cohort that can cost four times as much as the cost for younger prisoners, primarily due to health care costs. Thus, the number requiring some level of hospice care will only increase as well. The resources are available to implement a cost effective hospice care program which would benefit all concerned. What is needed from the DOC is the will to act, to break through the organizational culture MGT of America Inc. found to be *risk averse, conservative . . . slow to change.*⁸⁵ The day is fast approaching when the DOC can

no longer ignore the obvious—a hospice program for terminally ill prisoners is both necessary and sound management policy.

I. CONCLUSION

This report began by asking how close the Massachusetts DOC is to achieving either of its self-proclaimed Vision or Missions Statements. Both focus on the need to change prisoners' behaviors in order to enhance public safety by the reduction of victimization and recidivism. Given the documented rise in recidivism rates and the DOC's persistent reluctance to utilize minimum and pre-release facilities to the fullest to prepare prisoners for release, the DOC is far from achieving either objective.

The DOC is a classic example of bipolarism. The Vision and Mission Statements give lip service to prisoner rehabilitation. But, the DOC's organizational culture, encouraged by media sensationalism and political posturing, continues to be driven by a penchant for retribution. As a result, what the DOC accomplishes is merely to warehouse prisoners until they are released to become someone else's concern. The growth in the number of prisoners housed in maximum security and the concomitant decrease in those housed in minimum or pre-release is ample testimony that the DOC must fundamentally change its direction and practices to achieve society's overriding concern which is to increase public safety. In 1990, 9% of prisoners were housed in maximum and 23% were housed in minimum security.⁸⁶ By contrast, in 2009, 17% of prisoners were housed in maximum and 14% were housed in minimum security.⁸⁷

The DOC has long been immune to altering its approach to corrections based upon evidence-based research, particularly that which does not comport with entrenched beliefs long held to be sacred within the DOC. Instead, the mantle of leadership continues to be passed to those who are thoroughly indoctrinated in the cultural stranglehold of maintaining the status quo. Two salient observations by previous commissioners encapsulate the basic attitudes permeating the DOC, then and now: *Why do we have to publish a recidivism study every year? After all, General Motors does not take out ads bragging about their cars that are recalled.* (Michael V. Fair); and, *Look, we don't run this place based on research findings.* (Michael Maloney).⁸⁸ While the DOC has been forced to publish some recidivism statistics, those results have exerted little or no impact on changing either the department's direction or emphasis.⁸⁹

In 2004, a 25-50% decrease in recidivism was noted for prisoners who had attended education programs.⁹⁰ Yet, the one inmate expense category in the DOC budget that has decreased both in dollars and as a percentage of the total DOC budget is that for inmate programs. In addition, only 1.8% of the Full Time Employees are educators.⁹¹ As long as the DOC continues to spend less and less on inmate programs, particularly vocational, industries, and educational programs, the DOC's vision and mission will never be achieved. One study found a 12.6% reduction in recidivism for those leaving prison with vocational skill training and a 7.8% reduction for those participating in correctional industries.⁹² While both programs are available in the

Massachusetts DOC, opportunities to participate are severely limited, at best, and must be expanded significantly to achieve their potential.

Prisoners who reenter society need to be prepared emotionally, educationally, and vocationally to participate as productive, law-abiding citizens. That should be the essential and functional vision and mission of the DOC, not simply warehousing prisoners behind prison walls and fences as it does now. Without expanding vocational, educational, and industries programs to teach relevant trades, as well as computer and work skills; without progressively stepping down prisoners to decreasing levels of security to prepare them for a gradual reentry into society; and without changing the retributive culture of the DOC, over 1,200 released prisoners each year will continue to return to prison. Additionally, taxpayers will go on spending over \$500 million each year for the DOC simply to warehouse the prisoners under its care and custody. What is the return on that investment? What is obvious is that the return is not an increase in public safety. Do not the citizens of the Commonwealth deserve more for their dollars? Would you buy a car from General Motors if you knew there was nearly a 50% chance you had purchased a lemon?

ENDNOTES

1. Massachusetts Department of Correction 2010 Annual Report, at 5.
2. *Id.*
3. *Comprehensive Operations Assessment of the Massachusetts Department of Correction in 2008*. MGT of America, Inc. 2009, at 11.
4. *Id.* at 12.
5. *Union: Prison officers' risk rises sharply*. Chris Cassidy. *The Boston Herald*. June 12, 2011 at 4.
6. *DOC de-bunks guard union's violence claim*. Laura Crimaldi. *The Boston Herald*. November 21, 2009.
7. *Comprehensive Operations Assessment*, *supra* at 16.
8. Massachusetts Department of Correction Ten-Year Prison Population Projections 2009-2019, at 8, 12, 13.
9. DOC 2010 Annual Report, *supra* at 38.
10. *Id.* at 17.
11. 2010 - 2015 Strategic Plan For The Massachusetts Department of Correction, at 14.
12. *Its About Time*. The Vera Institute. April 2010, at 5.
13. Massachusetts Department of Correction 2009 Annual Report, at 71.
14. DOC 2010 Annual Report, *supra* at 38.
15. DOC 2009 Annual Report, *supra* at 73.
16. DOC 2010 Annual Report, *supra* at 40.
17. DOC 2009 Annual Report, *supra* at 71.
18. DOC 2010 Annual Report, *supra* at 38.
19. DOC 2009 Annual Report, *supra* at 73.
20. DOC 2010 Annual Report, *supra* at 39.
21. *Priorities and Public Safety: Reentry and the Rising Costs of Our Corrections System*. Len Engel. The Boston Foundation and the Crime and Justice Institute. 2009 at 4 and *State correction budget is soaring*. Jonathan Saltzman. *The Boston Globe*. December 3, 2009 at B4.
22. *Senate spending plan hits services*. Michael Levenson and Noah Bierman. *The Boston Globe*. May 19, 2011 at B1.
23. *Id.* at B4.
24. Fiscal Year 2009 Resource Summary, at www.mass.gov/bblh1/fy2009h1/brec2_09/sect09/h800.htm, accessed on 3/12/2008.
25. *State correction budget is soaring . . .* *The Boston Globe*. December 3, 2009. *supra* at B4.
26. Massachusetts Department of Correction 2007 Annual Report, at 52.

27. DOC 2009 Annual Report, *supra* at 78. While the percentages do not add up to 100%, the percentages and expense figures are listed as presented in the annual report.

28. DOC 2010 Annual Report, *supra* at 44. While the percentages do not add up to 100%, the percentages and expense figures are listed as presented in the annual report.

29. For Inmate Programs \$1,215 was calculated by: \$13,409,837 / 11,040; \$1,100 was calculated by: \$11,308,339/ 10,276. For Inmate Health Care: \$8,739 was calculated by: \$96,482,199/ 11,040; \$9,191 was calculated by: \$94,444,002/ 10,276. For Food Expenses: \$1,016 was calculated by: \$11,215,739/ 11,040; \$1,403 was calculated by: \$14,418,2431/ 10,276. It should be noted that a portion of the Food Expense Category is spent for institutional Culinary Arts programs which prepare and serve meals for staff, who are charged a nominal amount per meal. The DOC does not publish how much of the Food Expense is spent to provide meals for staff, nor how much, if any, is offset by the amounts paid by staff.

30. *Adult Correctional Budgets—2009–2010*. Corrections Compendium, Spring 2011, at 18–20, Table 1.

31. *Id.* The states with lower Institutional Services were: VT (4.5%), W.Va. (4.3%), MS (4.0%), KY (3%), Mont. (2.8%), NH (2.3%), ME and Ok (0%).

32. *Payroll swells in face of deficit*. Joe Dwinell. *The Boston Herald*. August 25, 2008, at 4.

33. *Prison guards doing (sick) time . . . and lots of it*. Maggie Mulvihill. *The Boston Herald*. March 20, 2006. at 4.

34. *Mass. guards out sick 4 times more than you*. Maggie Mulvihill. *The Boston Herald*. March 21, 2006.

35. *Prison guards doing (sick) time . . .*, *supra* at 4.

36. *State of Recidivism: The Revolving Door of America's Prisons*. The PEW CENTER on the STATES, April 2011. Exhibit 2 at 14. The states with reported higher recidivism rates were: Alaska (45%), Arkansas (44%), North Carolina (40%), Connecticut (39%), and Minnesota (36%).

37. *Id.* at 14.

38. *Id.*

39. *Recidivism of 1998 Released Department of Correction Inmates*. June 2004. Rhiana Kohl, Hollie A. Mathews, et al. at 11 (Table 4).

40. *Massachusetts Recidivism Study: A Closer Look at Releases and Returns to Prison*. April 2008. Rhiana Kohl, Hollie Mathews Hoover, Susan M. McDonald, Amy L Solomon, et al. at 25 (Table 15).

41. *Prison Population Trends 2009*. June 2010. Linda Griffin, Hollie Mathews, Susan McDonald, et al. at 39.

42. *Prison Population Trends 2010*. Linda Griffin, Hollie Mathews, Susan McDonald, et al. August 2011 at 45. Publication No. 12-220-DOC-D1. www.mass.gov/doc.

43. *Massachusetts Recidivism Study*, *supra* at 27 (Table 16).

44. *Recidivism of 1998 . . .*, *supra* at 11 (Table 4).

45. *Massachusetts Recidivism Study*, *supra* at 25 (Table 15).

46. *Massachusetts Department of Correction Annual Report 2008*. at 64.

47. DOC Annual Report 2009, *supra* at 77.
48. DOC Annual Report 2010, *supra* at 42.
49. *Massachusetts Recidivism Study . . . supra* at 33.
50. *Comprehensive Operations Assessment–2008 . . . supra* at 186.
51. *Id.* at 187.
52. *Id.* at 188.
53. *Id.* at 109.
54. *Id.* at 186.
55. *Id.* at 188.
56. DOC 2007 Annual Report, *supra* at 52.
57. DOC 2008 Annual Report, *supra* at 67.
58. DOC 2010 Annual Report, *supra* at 44.
59. *State’s toughen crime policy has downside.* Stephen Kurkjian. *The Boston Globe*. January 25,2004.
60. *Prison Population Trends 2010, supra* at 10.
61. DOC Annual Report–2010, *supra* at 27.
62. *DOC de-bunks guard union’s violence claim, supra.*
63. *Comprehensive Operations Assessment, supra* at 32.
64. *Workplace Violence, 1993-2009.* Erika Harrell, Ph.D., Bureau of Justice Statistics (NCJ 233231), March 2011. p. 4, Table 2.
65. DOC 2008 Annual Report, *supra* at 70.
66. DOC 2009 Annual Report, *supra* at 80–81.
67. DOC 2010 Annual Report, *supra* at 45–54
68. As of January 2, 2011 criminally sentenced prisoners (11,162) comprised 89.5% of those under DOC custody, those under civil commitments in DOC custody (620) comprised 5.5%, and those awaiting trial in DOC custody (557) 5.0%. *Massachusetts Department of Correction Population Trends 2010, supra* at 12.
69. *Id.* at 28.
70. DOC Annual Report 2010, *supra* at 42.
71. *Prison Population Trends 2010, supra* at 45.
72. *Prison Population Trends 2010, supra* at 37 and *Prison Population Trends 2009, supra* at 35.
73. *Prison Population Trends 2010, supra* at 45.
74. *State of Recidivism . . . , supra* at 6.

75. *Strengthening Public Safety, Increasing Accountability, and Instituting Fiscal Responsibility in the Department of Correction*. Governor's Commission on Corrections Reform. Final Report. June 2004 at 6.
76. *Statutory Restrictions on Inmate Placement And Other Sentencing Related Statistics*. Massachusetts Department of Correction. Rhiana Kohl, Ph.D. April 2007, at 3, 9–15.
77. *Prisons and Sentencing in Massachusetts: Waging A More Effective Fight Against Crime*. Robert Keough. MassINC. 1999 at 4.
78. DOC Annual Report 2010, *supra* at 3–35.
79. *Minimum Security, High Concerns*. David Abel. *The Boston Globe*. November 14, 2011 at A8.
80. *Strengthening Public Safety . . . supra* at 22.
81. DOC Annual Report 2010, *supra* at 44.
82. *Comprehensive Operations Assessment . . . supra* at 148.
83. *Id.* at 153.
84. *Id.*
85. *Id.* at 11.
86. *DOC Stats: The MA Department of Correction (DOC) by the Number*. Angela Antoniewicz. August 2004. p. www.cjpc.org/doc_doc_stats.htm (accessed 2/14/06).
87. *Prison Population Trends 2009. supra* at 9.
88. Testimony of Dr. Michael W. Forcier Regarding the Need For A Department of Correction Advisory Board. March 15, 2001.
89. The last extensive review of recidivism rates in Massachusetts published by the DOC was for prisoners who had been released in 2004. *Recidivism Rates 2004 Release Cohort*. Ashley Montgomery and Hollie Mathews. September 2010. www.mass.gov/doc Previous recidivism reviews studied prisoner released in 1999, 2000, and 2002.
90. *DOC Stats . . . supra* at 3.
91. See Table 8 *infra* and *DOC 2010 Annual Report. supra* at 44.
92. *Evidence-Based Adult Corrections Programs: What Works and What Does Not*. Steve Aos, Marna Miller, and Elizabeth Drake. Washington State Institute for Public Policy. January 2006. at 3, Exhibit 1. www+.wsipp.wa.gov