

MASS(achusetts) INCARCERATION

**MASS(achusetts) INCARCERATION:  
How Justified and How Much Public Safety  
Does It Actually Buy?**

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for

Lifers' Group. Inc.

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# MASS(achusetts) INCARCERATION

## SUMMARY OF POTENTIAL FINANCIAL SAVINGS IN MASSACHUSETTS CORRECTIONS

1. Massachusetts corrections costs are unnecessarily draining the Massachusetts budget.
  - a) The MA-DOC has received favored budgetary treatment relative to other state funded agencies over the last 14 years (Table 1 and p. 3).
  - b) While MA crime rates continue to fall, the MA prison population has increased 19% since 2004 and is projected to increase another 28% by 2019 (Table 2 and pgs. 4-6).
  
2. The cost of incarcerating MA drug offenders is in excess of (p. 9) ..... **\$120 million/yr**
  - a) Almost 60% are low level offenders who could easily be diverted to community supervision and treatment (would require changes in judicial guidelines, pgs. 8-9)
 

Potential savings ..... **\$55-\$75 million/yr**
  - b) Over 40% are serving mandatory minimum sentences; at least 10-20% could be diverted safely (would require changes in laws, p. 10)
 

Potential savings: ..... **\$10 million/yr**
  
3. MA-DOC recidivism rates ranged between 39-45% over the last 15 years
  - a) At least 1000-1500 ex-prisoners released from the MA-DOC are re-incarcerated within 3 years of release, pgs. 11-12)
 

Total cost: ..... **\$40-\$80 million/yr**

Potential savings: ..... **\$20-\$40 million/yr**

(would require improved in-prison rehabilitation, transition planning, community resources and neighborhood revitalization, pgs. 13-14)
  - b) Many prisoners are released from high security levels. Step-down to low or pre-release levels before release would reduce recidivism, pgs. 15-16)
 

Potential savings: ..... **\$10 million/yr**
  
4. Parole Department and community resources are inadequate to support parolees, leading to excessive levels of revocations and re-incarceration, (Table 3 and pgs. 17-18, 23-24)
 

Total cost: ..... **\$35 million/yr**

Potential savings: ..... **\$13 million/yr**
  
5. The prison population is aging. There are approximately 1000 prisoners ≥55 years old in the MA-DOC. Cost for each aged prisoner is \$50,000-\$150,000 per year while this group's recidivism rates are very low (Figure 1 and pgs. 24-25)
 

Total cost: ..... **\$50-\$150 million/yr**

Potential savings: ..... **\$5-\$15 million/yr**

This amount would be saved for every 10% of these older prisoners who are released



**PART I**  
**MORAL AND FINANCIAL BANKRUPTCY OF INCARCERATION**

**A. Introduction**

As Massachusetts struggles with the harsh side effects of the economic crisis and budget shortfalls that are forcing agonizing cutbacks in vital and humanitarian services, it is appropriate to ask whether the Massachusetts corrections system is operating in a cost-effective manner and whether it is meeting the critical goal of promoting public safety.

**B. National Trends**

Research at the national level has shown that the increase in prison population over the last 20 years does not correlate with improved public safety.<sup>1,2,3,4,5</sup> In fact, many of the states that have decreased incarceration rates have seen some of the largest drops in violent crime.<sup>1</sup> In addition, only 10% to 25% of the decline in crime during the 1990s has been estimated to have been the result of increased incarceration.<sup>3,4</sup> It is notable that while rates of incarceration increased more rapidly between 1984 and 1991 than they had in the 90s, crime rates also rose dramatically rather than falling.<sup>2</sup><sup>a</sup> Taken as a whole, the dramatic and unprecedented increase in the U.S. incarceration rate does not appear to be responsible for the bulk of the observed decrease in crime rates over the last 20 to 25 years.<sup>1,2,3,4,5</sup> Indeed, during the interval between 1998 and 2007, eight states saw sizable decreases in their crime rates even as their incarceration rates also decreased (MD, MA, NC, NJ, NV, NY, SC, TX).<sup>1</sup> The two states, New York and New Jersey that saw among the most dramatic decreases in their crime rates (lowered by 33% and 30%, respectively) had the largest declines in incarceration rates (reduced by 15% and 11%, respectively). All 19 states that cut their incarceration rates also experienced decreases in their crime rates.<sup>5</sup> Only two states, Arkansas and West

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<sup>a</sup> Canada, whose crime trends have paralleled the United States, experienced a similar drop in crime rates during the 1990s without any increase in incarceration.<sup>2</sup>

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Virginia, saw increases in their crime rates between 1998-2007 (8% and 10%, respectively) and saw their incarceration rates substantially increase as well (21% and 68%, respectively). Overall, the states with the largest increases in incarceration rates ( $\geq 50\%$ ) did not see crime rates decreasing any more than those states with decreased incarceration rates.<sup>1</sup>

### C. Massachusetts Trends

Massachusetts is one of the states where both crime and incarceration rates fell simultaneously between 1998 and 2007. It is estimated that the Massachusetts crime rate fell by 18% and the rate of incarceration decreased by 10% during those years.<sup>1</sup> One independent study<sup>10</sup> found that between 2000 and 2008 the violent crime index in Massachusetts fell 9.4%, the total serious crime<sup>b</sup> rate decreased by 6.7%, and the prison population decreased by 8.7%.<sup>c 6</sup> In short, it appears that, as with the national trends, there is little correlation between incarceration rates and crime rates or public safety (see also 1,2,3,4,5). The prison population in the Massachusetts Department of Correction (MA-DOC), however, has seen significant increases in recent years. And, these increases are projected to escalate sharply in the future. Between 1980 and 1995 the prisoner population in the MA-DOC soared 373%,<sup>7</sup> from 2,867 to 10,694 and had reached 11,158 by 1999.<sup>6</sup> After a brief period of decline, the prison population by 2005 was growing once again, reaching 11,572 by June 30, 2009.<sup>8</sup> A recent 10-year study commissioned by the MA-DOC projects that the prison population will increase to approximately 15,000 by 2019.<sup>10</sup>

Despite the lack of correlation between incarceration rates and public safety, it is clear that, with the four-fold increase in prison population in the United States over the last 25 years, expenditures have also seen a dramatic rise, nationally and

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<sup>b</sup> As defined by the FBI Crime Reports Part I; this is the most serious level of violent and property crime.

<sup>c</sup> There is some difficulty in assessing the changes in the MA prison population as the MA-DOC has intermittently changed the definitions. Consequently, it is prudent to use only individual reports to quantify changes.

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locally. By 2009, federal, state, and local costs of incarceration had escalated to \$68 billion per year<sup>1</sup> and in 2009 Massachusetts spent in excess of \$1.2 billion on corrections (state and local).<sup>7</sup> This is more than Massachusetts spent on Public Health, Higher Education and Social Services or any other state services other than Local Aid and K-12 Education. The favored treatment of corrections in budgets over the last twelve years is summarized in Table 1, which demonstrates the increasing financial burden of corrections, often at the expense of other vital services. These figures, of course, do not reveal the hidden financial drain created by corresponding increases in police and judicial services necessitated by producing and maintaining excessive levels of incarceration. The heavy burden imposed upon all branches by the race to incarcerate is readily apparent when examining the large numbers of new criminally sentenced admissions to the MA-DOC every year (e.g. 3790 in 2008 and 3024 in 2009).<sup>9,11</sup> Table 2 summarizes the net changes in the MA-DOC criminally sentenced population. Between January 1, 2004 and July 1, 2010 Massachusetts experienced a 19.2% increase despite the progressively falling total and violent crime rates. Furthermore, by 2019, it is projected that the population will have increased by 55.7%.

**TABLE 1**  
**Percent Change in Massachusetts Budgets FY1998-2010**

<u>Agency</u>	<u>FY98 vs FY08*</u>	<u>FY08 vs FY09**</u>	<u>FY09 vs FY10**</u>
MA-DOC	+ 12.4%	+ 11.8%	- 2.0%
Total Corrections***	+ 20.7%	+ 8.3%	- 5.6%
Higher Education	- 7.6%	+ 4.8%	- 17.3%
Public Health	- 3.3%	+ 8.3%	- 13.6%
Local Aid	- 0.9%	+ 0.2%	- 28.4%
K-12 Education	+ 13.9%	+ 6.1%	- 5.5%

\*FY98 adjusted for inflation vs FY08

\*\*FY08, FY09, FY10 not adjusted for inflation

\*\*\*Total Corrections = MA-DOC + Houses of Corr. + Parole + Probation

Sources: MA Budgets and 7.

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TABLE 2  
Massachusetts Criminally Sentenced Population 2004-2010 with 2019 Projection

<u>Date</u>	<u>Population(#)</u>	<u>Change(#)</u>	<u>Change(%)</u>	<u>Cumulative Change(%)</u>
January 1, 2004	8,621	--	--	--
January 1, 2005	8,620	- 1	- 0.0%	- 0.0%
January 1, 2006	9,072	+ 451	+ 5.2%	+ 5.2%
January 1, 2007	9,524	+ 452	+ 5.0%	+ 10.5%
January 1, 2008	9,930	+ 406	+ 4.3%	+ 15.2%
January 1, 2009	10,094	+ 164	+ 1.7%	+ 17.1%
July 1, 2010	10,276	+ 182	+ 1.8%	+ 19.2%
December 31, 2019	13,420	+3,144	+ 30.6%	+ 55.7%

Sources: 9,10,11,16

The present result of this growth in the MA-DOC is severe overcrowding of prison facilities. As of June 28, 2010, the total custody overcrowding rate was 140% and the overcrowding rate for medium security facilities (the largest class of prisoners) equaled 152%.<sup>11</sup> Even more concerning data is contained in the 10-year projection study performed by JFA Institute in October 2009. According to JFA's report, the prison population can *conservatively* be projected to grow by 2.5% per year to 13,420 criminally sentenced and a total jurisdictional population<sup>d</sup> approaching 15,000 prisoners by 2019, a 28% increase.<sup>10</sup> Such growth will require new prison construction as well as significant expansion of the number of correctional officers and administrators. As employee costs consistently constitute 65-70% of the MA-DOC budget,<sup>9</sup> projected increases in prison population will concomitantly greatly increase ongoing operating costs which will be difficult to curtail in subsequent years, no matter what may be done to mitigate increased prisoner populations. The status quo and these projected increases should be unacceptable to the citizens and legislators of Massachusetts because these will not

<sup>d</sup> Total jurisdictional population = criminally sentenced + civil commitments + those awaiting trial in the DOC.

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only unreasonably drain the budget, but also perpetuate the state of social unrest resulting from the racial inequalities in today's criminal justice system. Current laws and practices disproportionately affect inner city, economically disadvantaged, minority populations and destabilize poorer, minority neighborhoods, thereby exacerbating crime rates and threatening public safety for all citizens.

### PART II STRATEGIC INTERVENTIONS TO CORRECT MASSACHUSETTS CORRECTIONS

#### A. There is Hope

If, then, the increased incarceration and "tough-on-crime" policies of the present and recent past, associated with ever more inflexible and harsher sentences, are not the path to improved public safety, what other options are there? How can the unacceptable rates of recidivism and re-offense that threaten our citizenry be reduced? How can the ongoing financial drain on the Commonwealth created by an ever growing and more dysfunctional criminal justice and "corrections" system be mitigated? There is hope. "It is no longer justifiable to say that nothing works. There is scientific evidence that prison and parole progress can reduce recidivism"<sup>4</sup> says Joan Petersilia.<sup>e</sup> In addition, successful programs in multiple states have provided practical guidelines and experience that can lead to improved outcomes.<sup>1,4,12</sup> There is evidence that "reducing prison populations, when done correctly, can result in long-term increases in public safety rather than an increase in crime."<sup>1</sup> Most of the policies implemented by these other states are directly applicable to Massachusetts. Successful implementation here, however, will require a change in thinking at many levels of the criminal justice system (courts, MA-DOC, parole, probation) as well as demand action by the Legislature. The rewards promise to be substantial: saving money, reducing social insecurity

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<sup>e</sup> Petersilia is the Adelbert H. Sweet Professor of Law at Stanford University and co-director of the Stanford Criminal Justice Center

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and hardship, as well as improving public safety and quality of life in all communities of the Commonwealth, be they vulnerable or affluent, wracked by crime, drugs and violence or relatively secure.

### **B. Substance Abuse: A Prescription for Crime and Budget-Busting**

Substance abuse is a major driver of United States and Massachusetts criminal offenses as well as admissions to prison and relapse and recidivism, often after non-productive incarceration.<sup>1,13,14</sup> Between 50-70% of prisoners in state prisons have serious substance abuse problems and satisfy criteria for drug abuse/dependency.<sup>13,14</sup> One-third of prisoners were using drugs at the time of their crime; one-quarter of violent crimes were committed during a time of drug use; almost two-thirds of prisoners committing a property crime used drugs in the month prior to arrest; and one in six prisoners reported committing their crime to pay for drugs.<sup>13</sup>

Reducing substance abuse will reduce crime and incarceration, thereby improving public safety and reducing costs.<sup>1,12</sup> Although incarceration reduces (but does not eliminate) access to drugs, imprisonment, *per se*, is not effective at treating substance abuse. Not only are prison-based drug treatment programs much less effective than community-based treatment programs, but they are also three times less cost-effective.<sup>15</sup> For example, California's Proposition 36, which diverted people from prison into community-based drug treatment (outpatient and/or residential) saved up to \$173 million in the first year and more than \$350 million from 2000 to 2006, without increasing crime.<sup>1</sup> Furthermore, community-based drug treatment programs are notably more effective at reducing recidivism than prison-based programs while returning a greater value for dollars spent (Table 3). One important reason for this difference, no matter how prison-based programs are revised or improved, may stem from the unfortunate and confrontational attitudes typical of the retributive rather than rehabilitative model of today's "correctional" environment in which prisoners are made to feel vulnerable, even hopeless, in the face of arbitrary institutional policies which devalue, depersonalize and even

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dehumanize inmates. As a result, when a prisoner's sense of self-worth and self-effectiveness are compromised, as routinely occurs given the negativistic quality of the prison environment, then his ability to successfully acquire and integrate the critical skills required to achieve self-empowerment, so as to develop control of the addiction, is severely impaired.<sup>f</sup> Furthermore, it is likely that exposure to the more natural experiences provided by community-based living, in conjunction with family and friends' support, during drug treatment provides a more realistic, hence more appropriate and effective setting to help conquer the temptations of addiction.

TABLE 3  
Dollar Value and Recidivism Rates of Drug Treatment Programs

<u>Treatment</u>	<u>Percent Change in Recidivism Rate</u>	<u>Value per \$1.00 Spent</u>
Incarceration	—	\$ 0.37
Prison-based Drug Treatment	- 5.7%	\$ 5.88
Adult Drug Courts	- 8.0%	\$ 2.10
Community-based Drug Treatment	- 9.3%	\$ 18.52
Community-based Drug Treatment with intensive supervision	- 16.7%	—

Sources: 15,22

On a practical note, it is now well established that states which have implemented diversion to community-based treatment for substance abuse and drug-related crimes have seen not only meaningful cost savings, but also important decreases in overall crime rates and improvements in public safety.<sup>1,4,12,15</sup> Thus, California's Proposition 36, as noted above, saved \$350 million through diversion while overall crime rates decreased 18%.<sup>1</sup> Similarly, New York, New Jersey, Michigan, Texas, Maryland and Kansas changed or adjusted their drug laws with dramatic reductions in costs and with reduced overall crime rates and improved public safety (see Appendix A for details). The major changes involved increasing judges' discretion in sentencing for drug offenses, diversion to community-based

<sup>f</sup> Dirk. K. Greineder, personal observation, 2011.

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drug treatment and supervision (loose or intensive, with or without GPS monitoring) as well as accessibility to sentence reductions for successful participation in rehabilitative programs in and out of prison. In short, these states restored "smart on crime" policies rather than "one size fits all" incarceration.

On January 1, 2009 there were 2686 prisoners, constituting 26% of total prisoners, in Massachusetts prisons whose "controlling sentence"<sup>g</sup> was a non-violent drug offense. This reflects a 15.4% increase since 2000.<sup>16</sup> For men criminally sentenced and admitted to the MA-DOC for drug offenses during calendar year 2008, the average sentence was 58.4 months (4.9 yrs.) with an average time to release of 49.5 months (4.1 yrs.), while for women the corresponding values were 21 months (1.75 yrs.) and 16 months (1.3 yrs.).<sup>10</sup> A breakdown of the specific offenses for which the 2686 drug-offender prisoners in the MA-DOC as of January 1, 2009 were incarcerated, reveals that 59% (1585) were convicted for non-violent, first offense drug possession/distribution or trafficking less than 28 grams (less than 1 ounce) of class A or B substances (opiates, cocaine, amphetamines).<sup>16</sup> Although the MA-DOC does not separately publish data on the percentage of drug offenders serving mandatory minimum sentences, 56% of the cohort of drug offenders released in 2004 did NOT have mandatory sentences,<sup>20</sup> which are now routine for all but the lowest level of drug offenders in Massachusetts. From these data, one can confidently conclude that 56-59% of those convicted of controlling drug offenses represent the lowest level of such offenders. If these prisoners had been diverted to community supervision and drug treatment, an average of more than 5300 person-years of prison time could have been avoided. This would have meant a total cost savings to the MA-DOC of a staggering \$250 million over four years.<sup>h</sup> Even if substantial resources would have been needed to provide community-based supervision and treatment, dramatic cost savings would result. Based on 2002

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<sup>g</sup> The offense which is associated with the longest maximum discharge date for which the prisoner is incarcerated.

<sup>h</sup> The first year would see savings of \$75 million, with savings decreasing progressively to \$55 million per year as women, with shorter average sentences, stop factoring in.

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data, non-hospital residential drug treatment is estimated to cost \$3,849<sup>1</sup> rather than the \$47,000 per year it costs to incarcerate a prisoner in the MA-DOC. Only 1-2 years of such intensive intervention is required, as demonstrated, for example, by New York's DTAP program and would realize substantial cost savings with minimal impact on public safety.<sup>12</sup> Furthermore, as noted above, such community-based treatment is more effective and cost-effective than prison-based treatment in virtually every parameter: recidivism, crime reduction, and public safety.<sup>1,12</sup> (See also Table 3).

If such a dramatic shift to diversion seems either too drastic or too sudden for incarceration-minded Massachusetts, one should still consider that for every 10% of this cohort that is diverted, \$5.5-\$7.5 million per year would be saved. Based on the successful experiences in other states (see Appendix A) it is certainly likely that 10, 20 or even 50% of this group can safely be diverted to community-based treatment, not only conserving precious budget resources, but also achieving better outcomes, less recidivism and improved public safety.<sup>1,12</sup>

For the remaining 41-44% of drug offenders with mandatory minimum sentences, many of which are simply the result of an enhancement due to after-hours school-zone possession (almost impossible to avoid in dense urban neighborhoods), experiences in New York, New Jersey and Michigan amply demonstrate that these inflexible mandatory sentence structures, that deny judges any discretion in imposing sentences, are both counterproductive and unnecessarily expensive.<sup>12</sup> Eliminating or modifying such mandatory minimum laws would likely reduce non-productive drug-based incarceration in Massachusetts for 10-20% or even more of such inmates in the system, possibly saving an additional \$10 million per year.

The overall annual cost of incarceration for the almost 2700 drug offenders in the MA-DOC at anyone time exceeds \$120 million per year. Consequently, for every year that prisoners' sentences are reduced, dramatic savings would result. It is not unreasonable to project that even retroactively, with sensible changes in the law, 10-20% of all Massachusetts drug offenders could be successfully released on early

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parole with shortened prison time, especially if much less costly community services are made available. Other states (e.g. Michigan, New Jersey and New York) have found that making such reductions in mandatory minimum and school-zone sentences retroactively applicable to all drug offenders resulted in rapidly accessible and significant reductions in costs of incarceration with no demonstrable adverse consequences to their public safety or crime rates.<sup>12</sup>

### C. High Recidivism = High Crime and Big Budgets

#### 1. Cost of Massachusetts Recidivism

Incarceration serves multiple purposes: punishment or retribution for crimes committed; sequestration to prevent continuing crimes; and deterrence of future crimes. Sequestration has only temporary benefits, separating some offenders from society for a time, but it appears that the United States and Massachusetts have taken such practices to a point of diminishing returns.<sup>4,5</sup> Such sequestration, perforce, is almost always temporary because 97% will eventually be released.<sup>i</sup> Consequently, it is critical to assure that released offenders are not more desperate and anti-social than when they were sent to prison. The public needs to be very concerned that experts feel, at this time, that the United States (and Massachusetts) have a "corrections system that does not correct."<sup>4</sup> When newly released prisoners are more unprepared to function in civil society than when they went in, are left unsupported and marginalized upon re-entry, they effectively are set up to fail, thereby almost compelling them to return to criminal behavior. A critical gauge of the performance of correctional systems, which is appropriately measured by the recidivism rate, is how effectively they prevent future criminal conduct by ex-prisoners.<sup>4</sup> That is to say, how effective, in terms of promoting public safety, is the return on the huge \$68 billion investment that the United States

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<sup>i</sup> It is simply neither practicable nor reasonable to lock all offenders up permanently. Already one in every 100 adults in the U.S. is in prison,<sup>4</sup> but approximately two times that number are on parole or probation, and an unknown number of former offenders are out without supervision. If, hypothetically, all of these are locked up permanently, the cost of incarceration and social disruption would be unimaginable.

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spends annually on incarceration?<sup>1,4,5</sup> By this standard, United States and Massachusetts prisons miserably fail to deliver: recidivism rates continue to hover at excessive and unchanged levels for decades despite this massive expenditure.<sup>1,4,5</sup> Nationwide 15-20% of all adult arrests are former prisoners.<sup>4</sup> In Massachusetts, recidivism data reveals that, year after year, some 850-1000 former prisoners who were released from state prison within the last 3 years commit new offenses<sup>j</sup> that lead to re-incarceration.<sup>17,18,19,20</sup> These re-offenders represent a significant burden to society, not only decreasing public safety through the commission of new crimes, but also burdening the budget through increased costs for police, district attorneys, and courts for their processing and prosecution. Finally, they, together with those violating parole or probationary technical rules, constitute a recycled population that unnecessarily swells the ranks of the incarcerated in the MA-DOC.

Including technical violators, 3-year re-incarceration rates of MA-DOC releasees have fluctuated between 39% and 45% over the last 15 years, infusing between 1000-1500 additional prisoners into jails and prisons annually,<sup>18,19,20</sup> and imposing a severe financial burden upon the Commonwealth. Furthermore, data from a recent independent study<sup>10</sup> commissioned by the MA-DOC found that the numbers of criminally sentenced inmates released every year from MA-DOC prisons are actually one-third higher than those reported by the MA-DOC itself. These findings, based on DOC data files, suggest that re-offender and re-incarcerated numbers should be similarly increased (i.e. 1150-1300 committing new crimes and 1300-2000 being re-incarcerated annually). Detailed analysis of the 2002 release cohort (the last for which such comprehensive data is published by the MA-DOC) reveals that approximately 53% of the re-incarcerated are returned/committed to state prison and 47% to county jails.<sup>17,18</sup> The annual cost of re-incarcerating these MA-DOC recidivists, therefore, lies between a low of more than \$40 million per year

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<sup>j</sup> A composite value derived from the "stacking" effect of overlapping 3-year recidivism rates. For example, the third year of 2002 + second year of 2003 + first year of 2004 recidivists. Since yearly rates are fairly consistent, each year's total approximates the three year recidivism for any one year's release cohort.

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and a high of \$80 million per year, depending on which numbers are more accurate.<sup>7,10,17,18,20,21</sup> Once again, these sums reflect only the direct costs of reincarceration, not the ancillary costs of increased crime resulting from community destabilization and those incurred by policing, prosecution and judicial costs. For all these reasons, the reduction of recidivism should be a collective goal of the entire criminal justice system, including the MA-DOC, but one that also requires the involvement of the Legislature, Executive Branch and local communities.<sup>7</sup>

Calculated a different way, it becomes clear that approximately 20-25% of each year's admissions of criminally sentenced prisoners into the MA-DOC consist of those who have recidivated within three years of release.<sup>k</sup> This heavy burden of recycled inmates more than validates the criticism that Massachusetts has a "corrections system that does not correct"<sup>4</sup> and that seriously burdens taxpayers and the budget while impairing public safety through the commission of new crimes. Solutions cannot come from longer and harsher sentences because, at best, these would only defer the inevitable, possibly even making things worse, whenever more disheartened, desperate and hardened ex-offenders are finally released back into society, as they unavoidably must be. Sizable reductions in recidivism without negatively affecting public safety are not only possible, but have been achieved in many states<sup>1,4,7,12</sup> and, indeed, even in Massachusetts when, under more effective leadership, recidivism hovered in the mid-20% range instead of the current rate of 40% or greater.<sup>20</sup>

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<sup>k</sup> Between 2004 and 2008 there were an average of 3764 criminally sentenced admissions per year of whom an average of 10.6% were parole and probation violators (technical plus those committing new crimes).<sup>10,17,18</sup> Approximately 35-40% of the more than 60% of recidivists not under supervision (expired sentences) are committed to the DOC for new crimes,<sup>18,19,20</sup> which constitutes an additional 12-15% of those admitted each year, bringing the total to 22-25%. These numbers do not include the 43% of recidivists who are committed to county HOC for new crimes, adding even further costs to the Commonwealth. (See also the footnote on p. 11 for explanation of the "stacking" effect of 3-year recidivism rates).

## 2. Recidivism is Remediable

Research has shown that nihilistic views that “nothing works” are no longer tenable.<sup>1,4,7,12</sup> The excessive level of recidivism by Massachusetts prisoners has two causative components: lack of access to programs of adequate quality that inmates confront during incarceration, as well as the resources and conditions (both supportive and constraining) they will encounter upon re-entry into communities. It has been shown that improving the quality and accessibility of prisoner education and rehabilitative programming during incarceration and providing effective post-release services including: employment, housing support, substance abuse treatment and progressive management of physical and mental health issues will meaningfully reduce recidivism and re-offense rates.<sup>1,2,3,4,5,7,12,14,15,17,22,23</sup> For those released on parole, shifting the emphasis of parole departments from a law-enforcement mentality to one focused on assistance and positive incentives along with graduated sanctions will improve outcomes, save money, and will not jeopardize public safety.<sup>1,4,5,7,12</sup>

Locally in Massachusetts, the Hampden County Sheriff's Department is one example of what can be achieved through an innovative and integrated approach. Instead of the 50% one year recidivism rate typical of most Massachusetts County Houses of Correction, Hampden County achieved a recidivism rate of 23% in 2009<sup>7</sup> by extensively implementing evidence-based, educational, vocational, work and rehabilitative programs at the jail in an environment of mutual respect between staff and inmates.<sup>7,25</sup> This in-house experience is complemented with coordinated community-based re-entry resources, including employment, mental and physical health support, and substance abuse assistance. To maximize the benefits of this resource, half of the inmates are eased back into the community by spending at least some time outside the walls to connect with eventual housing and jobs. Other inmates participate in day-reporting where they sleep at home but participate in intensive supervised programs, dramatically reducing costs though still subject to being returned behind walls if necessary. A key component in this success has been introduction of performance and accountability measures which apply to both

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inmates and correctional staff. Inmates are required to actively participate in rehabilitation and education while staff are expected to assist inmates to successfully prepare for re-entry. Importantly, staff performance is measured and evaluated as a factor for professional advancement.<sup>7,25</sup> Unfortunately, this kind of professional attitude, commitment and, most importantly, accountability is notably absent from the MA-DOC. This must change if improvement in recidivism is to be achieved.

### 3. "Nothing Works" in Massachusetts Recidivism Today

There are no programs that train or direct MA-DOC correctional staff to facilitate inmates' participation in rehabilitation; rather, it is routine practice to expel inmates from educational, vocational and self-improvement programs and jobs for even minimal disciplinary infractions, often for six months at a time, thereby disrupting continuity.<sup>1</sup> MA-DOC inmates are ripe for education (17% have completed no more than eighth grade; 51% do not have a GED or HS diploma<sup>16</sup>) but classes for general and vocational education are full and waiting lists are long even though it is known that education reduces recidivism.<sup>22,23</sup> Self-improvement and volunteer-mentored programs are in short supply, with similar access problems and often poorly supported. There are no incentives nor rewards for inmates who have successfully completed educational, vocational or self-improvement programs, i.e. no enhanced job opportunities or pay incentives based on what has been learned, as would be routine in community settings. "Good time" sentence reductions for education are limited to a simple 2½ day credit at one time<sup>m</sup> and such reductions are of no value to the large numbers of prisoners now serving mandatory sentences or inflexible "truth-in-sentencing" terms. In short, the average offender today leaves prison less prepared and more primed for trouble than even a decade ago,

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<sup>1</sup> It would seem oxymoronic to deny participation in rehabilitative, self-help or self-improvement activities as a punishment for minor or major disciplinary offenses. Common sense would dictate that those who experience difficulty adjusting to rules and regulations are the very ones in need of rehabilitative, self-help and self-improvement programs.

<sup>m</sup> Though additional good time blocks can be earned for jobs and select other programs.

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with fewer participating in prison rehabilitation and work programs.<sup>4</sup> Despite a huge surge in prison expenditures in Massachusetts and nationwide, recidivism rates are unchanged over the last 10-15 years.<sup>1,4,5,7,12,26</sup> The recent report "State of Recidivism" by the Pew Center on the States concluded that recidivism rates are likely to "remain steady unless states more deeply embrace programs that better prepare offenders for re-entry and reward prison officials for finding alternatives to prison for many non-violent offenders . . . [and that] agencies need to be rewarded with a share of the savings when they reduce returns to prison."<sup>5,26</sup>

These limitations are in part the result of misguided priorities in the MA-DOC budget in which only 2.4% of annual expenditures are allocated for all inmate programs, including educational, vocational, substance abuse, self-improvement or volunteer-based. This translates to only \$1100 per prisoner per year.<sup>9</sup> By contrast, employee costs for staff account for 68.9% of the budget, equaling \$31,500 per prisoner per year,<sup>9</sup> a sum which is not surprising since MA-DOC officers are the third highest paid and at the second highest staff-to-inmate ratio in the country.<sup>7</sup> A 3% reduction in correctional staff expenditures (likely achievable through tighter management of overtime costs) would provide for a *doubling* of much needed resources for prisoner rehabilitation.

Another area of concern is that prisoners are not appropriately stepped down to pre-release facilities as is necessary for them to ease back into the rush and pressures of society. It is acknowledged that prisoners need progressive step-down from restrictive, high levels of security while they gradually increase their independence and freedom from supervision and develop work experience and opportunities.<sup>4,7,12</sup> However, Massachusetts still releases almost 70% of inmates directly from maximum and medium security where they are under constant surveillance behind walls and barbed wire. This results in recidivism rates of 50-57% and 41-48% for those released from maximum and medium, respectively, whereas those released from lower security recidivate at rates between 27-37%.<sup>18,19,20</sup> Reasonable estimates show that if most prisoners were, in fact, released

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from lower security, the MA-DOC would reduce admissions by approximately 200 per year, saving close to \$10 million annually.<sup>n</sup>

Another measure of the inadequate quality and ultimate failure of in-prison re-entry preparation in the MA-DOC is well exposed in the performance of one of its premier programs, the "Transition Planning Workshop" which is ostensibly designed to prepare inmates for release. During 2002,<sup>o</sup> those who participated in the workshop recidivated at notably higher rates than those who did not (55% vs. 38% for parolees, 38% vs. 34% for those with expired sentences).<sup>17</sup> After this dismal outcome, the workshop was extended from 5 to 10 days, but since then the MA-DOC has chosen not to publish results of any studies designed to measure recidivism rates for participants in *any* of its programs including the Transition Planning Workshop.

#### **4. Inadequate Post-Release Resources Increase Crime and Recidivism**

If recidivism is to be significantly reduced, not only does the prison environment need to change, but the community environment must also change. Research has shown that states that spend more on education have lower crime rates and that investments in housing correlates with lower rates of incarceration.<sup>1</sup> Making funding available for investments in education,<sup>p</sup> employment services, housing and treatment for mental health and substance abuse will reduce crime, recidivism and improve public safety.<sup>1</sup> However, reviewing Massachusetts priorities as voted for in state budget allocations reveals that the so-called "corrections" budget has been funded at the expense of education, public health and even local aid (see Table 1). A reflection of the dearth of community resources available to ex-offenders upon release in Massachusetts is provided in a study conducted between 2004 and 2006.<sup>17</sup>

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<sup>n</sup> It should be noted that the Massachusetts Legislature needs to rescind restrictive prohibitions preventing prisoners serving mandatory minimums from placement below medium security.

<sup>o</sup> The only year for which data is available.

<sup>p</sup> One extra year of high school has been shown to reduce arrest rates for young men by 11%.

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Looking only at ex-offenders who stayed out of prison (i.e. the more “successful” ones), this study documented the paucity of resources available to ex-prisoners. Thus, only two-thirds were able to find permanent housing and one-third could not find work. While two-thirds did find some work, approximately 90% of those earned less than \$500/week, suggesting that almost all worked for minimum wage. This is perhaps not surprising since only 7% participated in pre-release work opportunities and only 2% reported having found jobs facilitated by the MA-DOC. Roughly one-third of those released had no health insurance, limiting regular access to mental health and substance abuse treatment, despite high rates of these conditions among (ex-)prisoners.<sup>¶ 1,13,14</sup>

Among the most devastating problems resulting from these meager resources is the absence of stable housing and employment which cripples successful reintegration into society. In a parallel study<sup>27</sup> of those releases who “failed” and were re-incarcerated, the majority were unable to find stable housing, having to move at least once or even repeatedly within six months (85% lived mostly in group settings). Only 56% had any employment at the time of their re-arrest. 68% of all respondents, even among those who did find work, felt that Massachusetts CORI laws limited their ability to find work.<sup>¶ 17,27</sup>

Finding viable, stable housing and employment continues to be a serious problem for all ex-offenders in Massachusetts, where post-release support is notably inadequate. It is important to be aware that these studies were conducted at a time when the Massachusetts economy was flourishing—a relative boom time—far removed from the difficult conditions prevalent today. One clear example of these limitations can be found in the performance of the Transitional Housing Program (THP) which the Parole Board has overseen since 2006. The stated purpose of THP is to assist ex-offenders upon release in order to reduce recidivism while promoting

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<sup>¶</sup> 25-56% of state prisoners suffer from mental illness and up to 74% of these have concomitant substance abuse disorders. Overall, 50-70% are diagnosed with substance abuse or dependency.<sup>1,13,14</sup>

<sup>¶</sup> It is too early to determine if recent changes in CORI requirements will have any appreciable impact on improving prospects for ex-prisoners to find gainful employment.

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public safety by providing six months of residential support and programming. In most ways, the participants of THP, as exemplified by the 2009 cohort,<sup>28</sup> are typical of average parolees with regard to demographics, education, and underlying offenses (except that no sex offenders are included). Additionally, 83% of THP participants were actively involved with in-prison programming while incarcerated which is greater than average.<sup>8</sup> However, outcomes for THP reveal that even this select group with special residential transitional assistance did not fare better than all others released from their sentences. Upon discharge from THP, only 40% of the 2009 cohort were employed and only 62% had sustainable housing, emphasizing that even with professional support and guidance, these critical resources for ex-offenders are dismally lacking.<sup>28</sup> Looking at the composite of almost 1200 participants in THP between 2006 and 2008 who had been on the street for at least one year, 48% were re-arrested for a new crime, 23% were re-incarcerated for a new crime, and 15% had their parole revoked for technical reasons, yielding a cumulative recidivism rate of 63%. These numbers are either unchanged or worse than the recidivism outcomes of those not participating in any program,<sup>17,18,19,20,28</sup> reflecting that those currently released, even with professional transitional assistance, have great difficulty in successfully reintegrating into communities that provide such meager support and resources. Analysis of overall parole data reinforces these findings. Of 3,365 parolees under supervision on 12/31/2009, only 34% were employed full- or part-time.<sup>28</sup> Under these circumstances there can be little surprise if those released from prison find it extraordinarily difficult to reintegrate into society and to live a productive and law-abiding existence.

Some states, including New York, New Jersey, Michigan and Kansas, have seen notable reductions in recidivism as well as fewer parole and probation revocations after developing community-based alternatives to incarceration along with enhanced resources for ex-offenders and low level offenders.<sup>12</sup> Oregon has

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<sup>8</sup> The MA-DOC does not separately publish data on participation with in-prison programs, but those eligible for parole are more active program participants than those not eligible as aspiring parolees seek to optimize their chances for parole.

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achieved the lowest recidivism rate in the nation, a three year rate of 22.8%, for the 2004 release cohort. Oregon attributes this success to comprehensive reforms both in prison, with detailed inmate assessment and rehabilitation along with transitional planning, followed by extensive use of community resources and graduated sanctions by parole officers which prevent new crime and technical violations.<sup>5</sup> Missouri, which had the third highest recidivism rate in the country (54.4%) in 2004, extensively revised its parole program, using "evidence-based" supervision and flexible parole policies to substantially reduce technical violations, achieving an overall re-incarceration rate of 36.4% by 2009.<sup>5</sup>

These various measures have helped free prison beds, preventing the need for new prison construction and resulting in substantial cost savings. In New York and Michigan entire prisons have been closed. While it is difficult to quantify how much such initiatives would benefit Massachusetts, similar results are likely. As noted above, two major areas needing improvement are access to stable housing and employment. These two resources, already scarce during good economic times, are even more critical now that public health, welfare and community resources have been strained by both state and federal budget cuts. The penalties, however, for not intervening have proven to be high levels of recidivism, diminished public safety, and exorbitant costs for incarceration.

### **5. Neighborhood Revitalization: A Critical Need**

Lasting reductions in recidivism and crime require distressed neighborhood restoration and revitalization.<sup>1,4,7,12</sup> In Massachusetts, as in other states, specific neighborhoods and counties are disproportionately affected by crime and incarceration.<sup>4,12,16,24</sup> In some communities as many as 20% of the adult male population may be in prison at anyone time.<sup>4</sup> Their absence weakens the very family and social networks ex-offenders need to rely upon for successful re-entry, a situation made even more dire when the distressed, disheartened sons and brothers they have left behind follow their elders on the path to crime and incarceration.<sup>4,12</sup>

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An important intervention to begin reversing the trend of family and community devastation is the promotion and support of education. Currently, Massachusetts law allows students to drop out of high school at 16, well before attaining a diploma. As noted earlier, 51% of Massachusetts state prisoners do not have a GED or high school diploma. Independent study shows that for every extra year of high school completed, arrest rates decrease by 11%.<sup>2</sup> Although high school dropout rates in Massachusetts have leveled off at 2.9%, some districts that also have some of the highest densities of crime such as Springfield, Lawrence and Holyoke, have dropout rates more than three times the state average<sup>30</sup>. Proving that remediation is achievable is neighboring New Hampshire, which had state average dropout rates exceeding 5% only a few years ago. New Hampshire reversed this trend in 2007 by legislatively requiring school attendance until age 18 and providing supports to local school districts to retain and encourage successful school participation and graduation.<sup>30</sup> A similar intervention in Massachusetts, raising the mandatory school age to 18 and supporting local schools in troubled districts is likely to reap significant benefits in terms of crime prevention and savings on incarceration. Further evidence for such a strategy comes from the fact that a disproportionate amount of crime and incarceration emanates from relatively few, well-defined areas of Massachusetts which are typically the same areas with high dropout rates.<sup>24,30</sup>

In Massachusetts prisoners originating from only three counties account for approximately 50% of the prison population while over 70% come from only five counties (out of a total of 14).<sup>16,24</sup> In a similar vein, three cities are the destination for 36% of those released from prison in 2009 and only 10 cities/towns (out of a total of 341) account for the destination of 54% of those released.<sup>24</sup> In 2009, Springfield, Framingham and Worcester received the highest per capita level of returning prisoners per 100,000 residents, 145, 141, and 127, respectively. Thus, it may be appropriate to argue that between 3 and 5 counties are sources for \$255-\$364 million of the MA-DOC's annual expenditures and only 10 cities/towns account for \$281 million of the costs. Such concentrations of problem areas should call for

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proactive remedies, which have, to date, fallen on deaf ears in Massachusetts. By contrast, in 2005, District 1 in Wichita, Kansas was confronted with the highest rate of incarceration in that state, accounting for \$11.4 million in prison commitments for one year while those returning to prison after parole/probation revocations from that district added another \$5.5 million. Kansas authorities decided to act. They initiated neighborhood revitalization plans in District 1 and other blighted sites through investment in those communities. The result was almost immediate, reducing parole revocations and new felony crimes committed by parolees by half within only two years.<sup>12,29</sup> Probation violations also dropped from 54% to 39%. Overall, through increased local community investments including expanded community-based supervision and drug treatment capacity as well as drug offender diversion programs and reductions in parole/probation revocations, Kansas closed prison beds, avoided an impending \$14 million in new prison construction and now has excess prison capacity.<sup>12 t</sup>

Similarly, the Michigan Prisoner Reentry Initiative (MPRI) developed local community-based resources in 16 service areas that included housing, employment, substance abuse, mental health, victim services, faith-based institutions and law enforcement that increased success for former prisoners within the context of comprehensive service delivery.<sup>12</sup> After MPRI implementation, technical parole violations decreased 22-42% despite a 40% increase in the parole population,<sup>u</sup> drastically reducing the prison population and closing 9 prisons.

Similar initiatives are sorely needed in many, mostly minority, areas such as Boston, Springfield, Worcester, Lawrence and Framingham that are densely affected by crime and whose communities have been severely impacted by the large

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<sup>t</sup> Recent reports<sup>4,29</sup> suggest that ill-advised cost cutting due to the economic downturn has led to loss of funding for these successful programs, causing these improvements to be lost and prison costs to rise once again.

<sup>u</sup> Other simultaneous initiatives included paroling many more prisoners at first eligibility, which increased the number of parolees, without an increase in crime.<sup>12,31</sup>

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number of incarcerated residents and decimated families.<sup>v</sup> Currently, these neighborhoods are not equipped to receive the large numbers of returning ex-offenders or help support them during their re-entry and reintegration. As in Kansas and Michigan, such intervention has a high likelihood of yielding a substantial return on investment.

An additional benefit of strengthening local community resources is that the same systems that are helpful to returning ex-offenders can also, with minimal modifications, serve as destinations for diversion of low level offenders who would otherwise be sent to prison because, currently, there are few, if any, effective alternatives. Many other states have found that such programs have improved outcomes while saving money, reducing overall crime, and improving public safety.<sup>1,7,12</sup>

### **D. Parole and Early Release: Vehicles for Reform and Reduced Costs**

During the 1990s both Michigan and New Jersey experienced substantial delays in the timely release of prisoners who were eligible for parole due to politicization of the Parole Board and inefficient processing. Subsequent reforms in both states during the last decade have seen marked increases in paroling rates, decreases in crime rates and decreased technical and new-arrest parole revocations which have significantly reduced prison populations and costs.<sup>12,31</sup> In addition, Michigan and New Jersey also abolished or substantially modified mandatory sentences for drug offenses, while New York made drug offenders retroactively eligible for "good-time" and "merit-time," making them eligible for earlier parole.<sup>1,12</sup> Similarly, many states<sup>w</sup> have implemented initiatives to help parolees and probationers succeed with the help of proactive community resources and initiatives

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<sup>v</sup> Other towns that also have high densities of returning prisoners are Lynn, Brockton, New Bedford, Quincy and Lowell.<sup>24</sup>

<sup>w</sup> Michigan, Texas, New Jersey, Georgia, Maryland, Ohio, Illinois, Oregon and Missouri, among others.<sup>1,5,7,12</sup>

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as well as improved assessment tools and treatment.<sup>1,4,12</sup> Texas, for example, established 3,800 beds for community drug treatment, decreased parole officers' caseloads, and enacted progressive parole sanctioning models. These policies have saved over \$200 million and are slated to save another \$233 million.<sup>1</sup> Other states have implemented Risk-Needs-Responsivity (RNR) models that use risk assessment tools to match people to the right programs and use behavioral techniques (cognitive and social learning) to wean ex-offenders away from negative attitudes and behaviors, successfully reducing recidivism and re-offense rates.<sup>4</sup>

Massachusetts parole rates have not benefited from similar progressive reforms. There has been no legislative movement on abolishing or modifying mandatory minimum drug sentences or instituting diversionary sentences for low level offenders, yielding a glut of mostly non-violent drug offenders in prison (see section 2.B above). Implementation of a validated risk assessment tool has only recently been rolled out by the MA-DOC<sup>28</sup>; it will be interesting to see how objectively the new, politically appointed Parole Board makes use of this information. The current Parole Board situation in Massachusetts closely mimics that of Michigan in 1992 where, after an unfortunate incident, politics dominated parole decisions, decimating parole rates, essentially retrying prisoners for their underlying offenses rather than appropriately assessing risks of re-offending.<sup>12,31</sup> While it is too early to judge, a similar outcome may result here.

New Jersey, Michigan, Kansas, Texas and other states that have released prisoners at their earliest parole eligibility, as well as New York and Michigan which retroactively made previously sentenced prisoners eligible for early parole, have seen decreases in crime and recidivism.<sup>1,12</sup> In addition, these measures contributed to substantial reductions in their prison populations, need for new prison construction, and overall costs.<sup>x 1,12</sup>

Adding to the limitations imposed by mandatory minimum laws, Massachusetts "truth-in-sentencing" laws, in effect since 1994, have sharply curtailed early or any

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<sup>x</sup> For example, NY, MI, and NJ reduced prison populations by 20%, 12%, and 19%, respectively, during the past decade while crime rates and recidivism decreased.<sup>12</sup>

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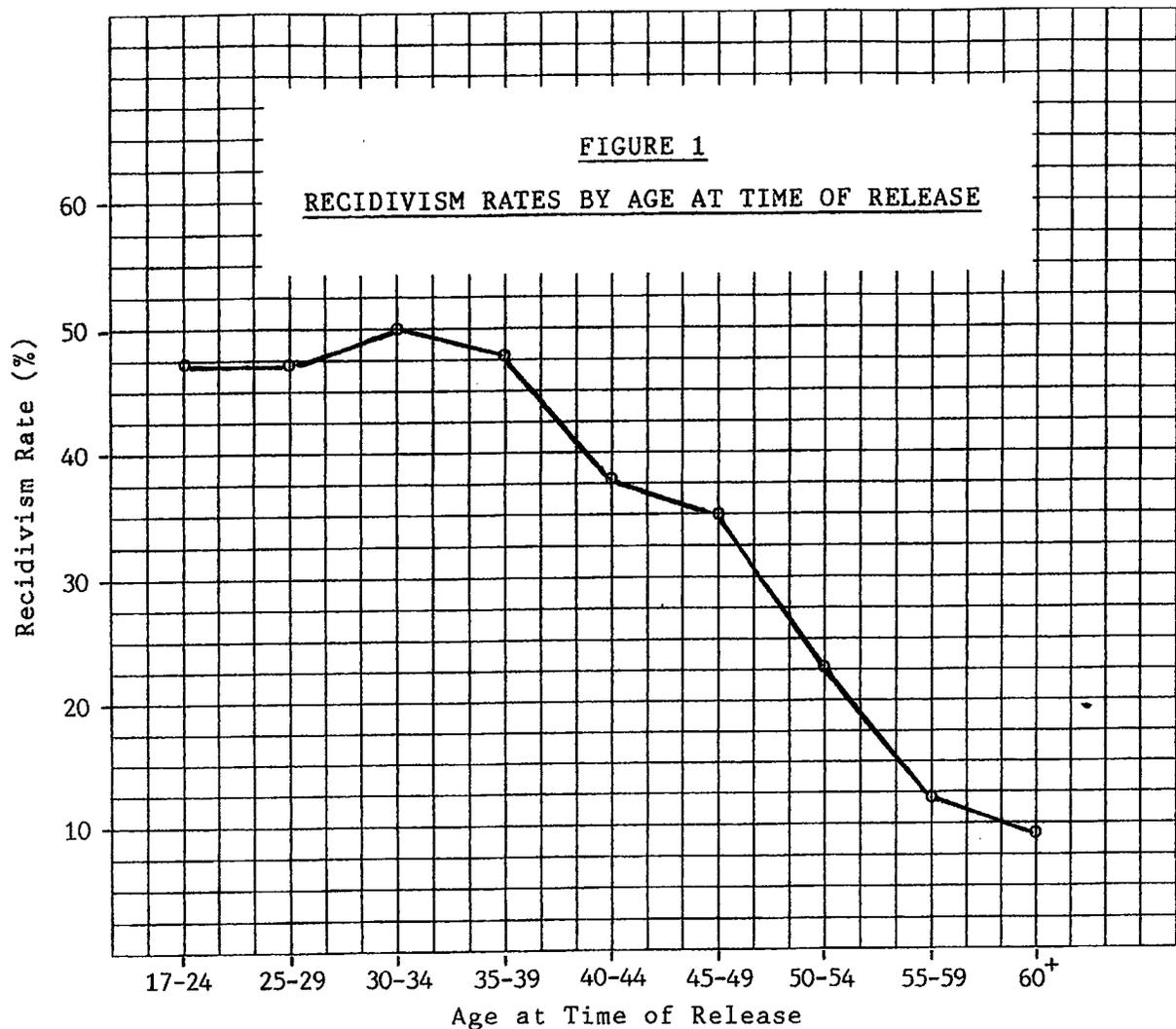
parole eligibility for a large number of offenders. The result is that up to two-thirds of the prisoners released from the MA-DOC each year have “wrapped up” their sentences and are released without any supervision. However, except for technical parole violations, paroled and unsupervised ex-prisoners recidivate at similar rates in Massachusetts,<sup>18,19,20</sup> suggesting that the quality of current parole supervision in Massachusetts does not add meaningful assistance or crime prevention benefits for ex-offenders.

Of the total caseload of the Massachusetts Parole Department, 900 and 877 parolees had their parole revoked in 2008 and 2009, respectively, representing 11% of those on parole during those years.<sup>28</sup> These revocations added approximately \$35 million per year to Massachusetts correctional budgets (\$21 million per year to MA-DOC and \$14 million to counties). 73% of these revocations were technical, i.e. not new crime related. Other states have drastically reduced technical violations by adding community supports, changing the focus of parole departments from a law-enforcement mentality to one providing assistance to parolees, as well as robust use of graduated sanctions.<sup>1,5,12</sup> Even if only half of Massachusetts technical violations were not re-incarcerated, \$12-\$13 million per year could be saved.

A separate issue of concern is that the MA-DOC prison population continues to age with increasing costs for overall care (requiring assisted living and geriatric settings) as well as the sharp increases for necessary medical costs typical of the elderly.<sup>32,33</sup> It has been estimated that caring for elderly inmates raises overall costs approximately three-fold, which might bring costs in Massachusetts to almost \$150,000 per year per elderly inmate.<sup>32,33</sup> At present, however, there are no practicable provisions for allowing early release for older prisoners in Massachusetts, despite the reduced risk of re-offense by this population. Figure 1 graphically shows the dramatic decrease in recidivism rates as prisoners age above 54 years. As of January 1, 2009, there were 988 prisoners older than 54 (a number that surely has already increased). At such ages, the overall recidivism rate is only 10%. For every 10% of these older inmates who might be released on parole one year early, the MA-DOC would save between \$5-\$15 million per year. The risk of

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recidivism for this group would be very low, especially after appropriate screening by the Parole Board. It is likely that a very sizable fraction of these approximately 1000 prisoners could be released early, either through parole, sentence modification or both, if the Parole Board and Legislature were willing to collaborate and act on these data. It is likely that significant savings can be achieved at minimal risk to public safety.



CONCLUSION

It is clear that Massachusetts "corrections" is not adequately correcting and that costs have escalated out of control due to the combination of inept and unimaginative management, lack of systematic and adequate programs, unduly restrictive laws and regulations as well as the failure of proactive and creative interventions at all levels of the criminal justice system. This monograph has attempted to highlight a number of the problem areas and at least some potential solutions. To be effective, these will need to be addressed by the MA-DOC in collaboration with the Legislature, the Executive Branch and the Criminal Justice System. This will require empowered leadership and energy, something not seen recently in Massachusetts corrections which has been dominated by business-as-usual and recalcitrant unions. If, however, realistic reforms are implemented, costs can be contained even while improving public safety, decreasing crime and revitalizing depressed neighborhoods and those living in them. Other states are leading the way—it is time to join them.

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APPENDIX A

Many states have discovered that the exclusive use of harsh mandatory minimum laws and restrictive regulations are counterproductive especially when applied to low-level drug offenders. As a result, a number of these have made adjustments.

New York state implemented its Drug Treatment Alternative to Prison program (DTAP) which demonstrated that those offenders diverted to 1-2 years of residential community-based drug treatment were far less likely to be re-arrested or re-incarcerated than a matched control group that was imprisoned (26% less arrested, 36% less re-convicted, 67% less re-incarcerated).<sup>12</sup> Additionally, systematic policy decisions implemented to trim expenses following September 11, 2001, along with progressive dismantling of the harsh Rockefeller Drug Laws saw the number of admissions to prison for drug violations fall from 8227 in 2000 to 5190 in 2008. At the same time, the percent of the prison population convicted of drug offenses dropped from 31% to just 21%, reducing the number of people in New York prisons by 8000 (over 10%).<sup>12</sup> In other initiatives, New York strove to shorten sentences and time in prison for drug offenders. "Shock", established in 1987, was the earliest program and was expanded in the 1990s. This is a six month program enrolling younger prisoners in need of substance abuse treatment and rehabilitation. Successful completion is typically followed by parole release. By 2006, over 35,000 prisoners had completed the Shock program, shaving an average of 11.3 months off the *minimum* court sentence and saving an estimated \$1.2 billion (including averting new prison construction).<sup>12</sup> Other legislation passed in 2004 raised the weight thresholds for class A1 drug felonies from 4 ounces to 8 ounces and replaced class A1 indeterminate 15-to-life sentences with determinate 8-20 year sentences. Additionally, new laws permitted significant "good time" (one seventh off terms), "merit time" (another seventh off) and "supplemental merit time" (one sixth off) for drug offenders. These latter changes were estimated to create total savings of \$372 million between 1997 and 2006.<sup>12</sup> Nevertheless, during those same years

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New York also saw overall crime rates decrease by 33%.<sup>1</sup> Between 2000 and 2008, violent felony arrests decreased from 53,000 to 45,000 and drug felony arrests went from 49,000 to 40,000.<sup>12</sup> Finally, in April 2009, New York state validated its positive experience with these reforms by providing “real reform” of the outdated Rockefeller Drug Laws with extensive new legislation supporting the above and additional changes that are expected to provide further savings.

Michigan abolished some of the harshest mandatory minimum drug laws in the nation in 2002, replacing them with drug sentencing guidelines that restored judicial discretion in sentencing. This resulted in the percentage of offenders convicted of drug crimes being reduced from 18% in 2002 to 11% in 2008, an absolute reduction of 1735 prisoners<sup>12</sup>; yet, during the interval from 1998-2007, Michigan’s overall crime rates also decreased by 23%.<sup>1</sup> Between 2006 and 2009, as a result of its revised drug laws and an emphasis on granting timely parole to prisoners at the earliest eligibility for parole, Michigan reduced its prison population by 12%, from 51,577 to 45,478. This allowed Michigan to close nine prisons.<sup>12,31</sup>

New Jersey began revising guidelines and modifying implementation its strict CDRA drug laws, that were enacted in 1986, during the middle of the last decade. This gave prosecutors and judges greater discretion in drug cases including changes in the way they charged and enforced “drug-free-zone” laws. These changes resulted in a steady decline in prisoners serving time for drug crimes (from 9,177 or 35% of the prison population in 2004 to 7,377 or 29% in 2009).<sup>12</sup> Concomitantly, between 1997 and 2007, the overall crime rate in New Jersey decreased by 30% while the incarceration rate also decreased by 11%.<sup>1</sup> Violent crime fell 21% and property crime fell 23% between 1999 and 2008, permitting New Jersey to close one 1000-bed prison (with an operating budget of \$42 million per year) in 2009.<sup>12</sup>

Under pressure from a severe budget crisis in 2003, Kansas implemented a drug diversion proposal with authorization for significantly expanded community supervision and drug treatment capacity. As a result, the numbers of drug

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offenders sentenced to prison was reduced by 23% between 2004-2008. At the same time, there has been a steady decrease of offenders that were originally sentenced to diversion who needed to be revoked to prison. This has allowed Kansas to close some prison units, saving \$34 million and averting the need for \$80 million in new prison construction.<sup>7</sup> Despite sharply increased costs for community supervision and treatment, Kansas saw savings from diversion reaching nearly \$7.5 million by the end of 2008.<sup>12</sup> Concomitantly, between 1997 and 2007, the crime rate in Kansas decreased by 15%.<sup>1</sup>

Many other states have implemented related programs. Texas has opened 3,800 beds for drug-offender diversion.<sup>1</sup> Maryland restored parole eligibility for those with mandatory minimum sentences.<sup>7</sup> Nevada has repealed sentencing enhancements for certain drug offenses.<sup>7</sup> Colorado has increased the amount of good time for certain offenders.<sup>7</sup> In general, states are beginning to transition from harsh, inflexible policies that lead to excessively long and costly prison sentences towards community-based supervision and drug treatment (instead of or after shortened prison time). These changes have been shown to be fiscally advantageous while also improving public safety. In short, states are discovering that “smart-on-drugs” outperforms “tough-on-drugs.”