

FAILURE TO REHABILITATE: A Systemic Problem
in the Massachusetts Department of Correction

A Lifers' Group Report

Prepared by
Dirk Greineder - Vice-Chairman

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Lifers' Group Inc.
MCI-Norfolk
P.O. Box 43
Norfolk, MA 02056

Assist | Advocate | Inform

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P.O. Box 43, Norfolk, MA 02056
accessible at www.realcostofprisons.org/writing

INTRODUCTION

The U.S. Supreme Court has enumerated a quartet of goals for incarceration: retribution, deterrence, incapacitation, and rehabilitation¹. National policy and actual practice, most recently reaffirmed at the highest level², long have entrenched the first three of these as predominant goals. Apparently, rehabilitation, the briefly elevated ideal of the mid-twentieth century, is once again relegated to no more than the role of an embarrassing illegitimate child. Thus, although the Supreme Court said, in 1976, that "retribution is no longer the dominant objective of criminal law"³, a newly replenished Supreme Court, possibly dismayed by its brief "soft-on-crime" foray, quickly backed away from such a sentiment⁴. Within a few years it, and other courts, averred that a failure to rehabilitate (in the form of work and educational opportunities for prisoners) did not violate the Constitution and that there was no constitutionally protected right to rehabilitation or education⁵. Nevertheless, Massachusetts law requires that among the duties of the Commissioner of Corrections is included the responsibility to educate and rehabilitate prisoners⁶. Even this requirement, however, appears to have been cannibalized by the local and national fervor of the 1970's for waging war on crime and drugs. This attitude resulted in definitively shifting the emphasis to harsh, long and immutable sentences -- with a resultant crisis of overcrowded prisons and ballooning costs for incarceration and law enforcement. Opportunities for education, and job training as well as

behavioral and mental health treatment along with criminogenically targeted rehabilitative programming were largely defunded and finally almost abandoned in the wake of paying for surging security staffing and salaries⁷. Even worse, escalating costs, for burgeoning correctional facilities, parole and probation enforcement, prosecutors, courts and law enforcement in general, diverted money and precious state resources from local aid and education⁸. These measures further devastated and disenfranchised struggling inner city communities already beset by inadequate infrastructure, poor education and limited job opportunities⁹.

This mindset, arguing that attempts to prevent crime by supporting disadvantaged communities and that efforts to rehabilitate those already incarcerated are futile, led to an inexorable erosion of prison rehabilitative programming and treatment. Collaterally, sentences became longer, often life-long. Consequences of these ill-advised decisions by politicians, prosecutors and the Massachusetts Department of Correction (DOC) have persisted to the present and have had lasting, adverse effects for all prisoners.

Prisoner rehabilitative programming, as well as academic and vocational education, have been markedly deemphasized and this has been reflected in the DOC budget. In FY2011 only 3% of the DOC budget was allocated to all prisoner program services¹⁰. This included not only internal programs and staff, but also contracts to outside service vendors, supplies for case management, re-entry support, and behavioral health, substance abuse and violence reduction counseling. As if even this paltry effort might be considered excessive, by FY2016 the percentage had been decreased to only 2.7%¹¹. With close to 90% of state prisoners eligible for eventual release¹², the failure to effectively rehabilitate is economically wasteful, increases crime, and endangers public safety. Meanwhile, the average cost of incarceration for each state prisoner

had increased to \$55,616 per year¹³, a sum sufficient to pay for an Ivy-league education! Recidivism results show that, within 3 years, 57% of prisoners released are rearraigned, 38% are reconvicted and 37% reincarcerated¹⁴. It is likely that such troubling outcomes could have been predicted by the lack of access and participation in program and vocational education by prisoners confined by the DOC.

REHABILITATIVE PROGRAM PARTICIPATION

TABLE 1 summarizes the rate of program enrollment and waitlisting,

TABLE 1
Program Participation by Housing Type¹⁵

Housing Type	Housed	Enrolled	Waitlisted ^a
	#	#	%
Min/Pre-release	1133	395	35%
Medium	5758	1290	22%
Maximum	1789	82	5%
Specialty ^b	1029	306	30%
MASAC & BSH	505	0	0%
MTC	524	306 ^c	58%
TOTAL	9709	2073	21%

^a Prisoners may be on more than one waitlist

^b MASAC = MA Alcohol and Substance Abuse Center; BSH = Bridgewater State Hospital (a DOC medium security mental health facility); MTC = MA Treatment Center (a DOC medium security sex offender treatment facility)

^c Only sex offender treatment programming is available at MTC except for Reentry and Employment Readiness workshop. All 306 prisoners are enrolled in SOTP.

grouped by security level and specialty housing, for prisoners in the 16 DOC institutions (excluding Lemuel Shattuck Hospital and Baystate Correction

Center which was closed in 2015; MCI Shirley-Medium and -Minimum are reported separately)¹⁵. What is most notable is that, at any given time, only 21% of prisoners are enrolled in departmental program services while 55% are waitlisted¹⁶. Participation appears sensitive to prisoners' security level with enrollment decreasing as security level increases while waitlists swell. Not apparent from these data is that access to program types is markedly restricted in minimum/pre-release. Because of the paucity of options, 53% of the 35% enrolled, i.e. 19% of those in minimum/PR, are participating only in the Graduate Maintenance Program (GMP) for substance abuse. An additional 14% of those in minimum are enrolled only in CRA (Correctional Recovery Academy), the precursor substance abuse program. Only a handful of prisoners have access to other programs while at that security level.

Available programs and their enrollments are summarized in TABLE 2. It is apparent that CRA and CRA-maintenance (GMP) represent more than half of those enrolled at any one time. This is not inappropriate because substance abuse is a prevalent issue for prisoner populations regardless of their "governing offense" (i.e. the offense resulting in the most serious sentence for each

TABLE 2
Program Services Enrollment¹⁵

Program	# enrolled	% of enrollees	% of prisoners
CRA (Substance Abuse)	482	23%	5%
CRA-Maintenance (GMP)	590	28%	6%
Sex Offender	478	23%	5%
Cognitive Behavioral	182	9%	2%
Violence Reduction	178	9%	2%
Violence Red. Maintenance	90	4%	1%
Reentry Workshop	52	3%	<1%
Miscellaneous	21	1%	<1%
Total	2073	100%	21%

prisoner). Nevertheless, when the numbers enrolled are viewed in terms of the percent of prisoners participating, they appear less appropriate. Even the two maintenance programs combined (substance abuse and violence reduction) have an enrollment only 7% of the prison population in spite of requiring a commitment for ongoing participation. A possible reason for low levels of participation is the policy that most programs are allocated based on a prisoner's ERD (earliest release date). Those with the earliest date of release are preferentially enrolled, while those with longer sentences and later release dates are waitlisted, most commonly until they are within a few years of expected release. This policy, combined with long waitlists, has the unfortunate aspect of delaying structured rehabilitation during the first part of a prisoner's incarceration, the very time when many are most motivated to seek change. Instead, frustrated deferred prisoners settle in to prison life with few targeted activities, developing habits and attitudes that often make later engagement with rehabilitation more difficult.

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TABLE 3 reveals another undesirable consequence: many prisoners are never able to complete the recommended programming that their needs assessments required. Thus, for substance abuse, violence and sex offenses, the three largest categories of program needs, not even half of the prisoners released during a representative time period completed their recommended programs before being released¹⁷. Since independent data establishes that only 10-15% of prisoners refuse to participate in recommended programming¹⁸, these findings demonstrate a serious systemic problem in the administration of rehabilitative programs by the DOC. That these deficits are likely to have

structural omission appears to be an indefensible lapse.

VOCATIONAL EDUCATION RESULTS

Two of the most important factors in predicting prisoners' success after release are adequate housing and employment²⁵. Additionally, many, if not most, prisoners have only low levels of education and little meaningful work experience or training at the time of incarceration²⁶. Consequently, providing robust vocational training would seem to be a priority for any correctional department. As we have seen, however, the DOC allocates only 2.7% of its budget to all prisoner programs, including vocational education. As a result, it may not surprise that vocational training is not emphasized. TABLE 4 summarizes the number of prisoners that have completed the vocational programs offered. It is apparent that both numbers and percent of those who have completed training are very low. As of October 20, 2016, only 486 (5.0%) of the 9709 custody prisoners incarcerated in DOC prisons had completed vocational training. The total number is the sum of the 2016 average daily population at the 16 prisons²⁷. An additional 1228 (12.2%) of prisoners had completed three short-term "skills" classes. These are a 80-hour basic computer skills class, a 10-hour OSHA safety training class, and a 3-month ServSave® certification program. These skills, while not vocational training, are designed to facilitate a prisoner's ability to qualify for entry-level jobs in various settings. Prisoners report that waitlists for vocational training, like those for programs, are long and slow. Access is also adjudicated by ERD, excluding many with longer sentences until their release is imminent. While the DOC does not track or document prisoner pre-incarceration work experience, history and data in other states suggest that prisoners have a great need for vocational education²⁸. A vocational training

TABLE 4

Prisoners That Have Completed Vocational and Skills Programs¹⁵

Programs	Prisons Offering	Prisoners Completing	%	Description
Auto Body Repair	1	9	0.1%	Autobody, airbag, mobile HVAC maintenance and repair
Automotive	1	0	0%	Fundamentals of auto mechanics
Barber Training	4	68	0.7%	1000 hours; male barbering; prepares for apprentice & licensing
Building Trades	3	86	0.9%	Carpentry, sheetrock; eligible for certification?
Cosmetology	1	13	0.1%	1000 hours; hair, skin, nail care; prepares for apprentice & licensing
Culinary Arts I	7	105	1.1%	9 months; ServSafe exam (\$40); restaurant sanitation & cooking skills
Culinary Arts II	7	15	0.1%	Restaurant management and marketing
Horticulture	-	47	0.5%	Horticulture practice; garden and landscape maintenance
IT Essentials	-	25	0.3%	Operation and repair; IT trends and fundamentals; Cisco certificate prep.
Small Engine Repair	1	38	0.4%	Outdoor power equipment repair; 2 and 4 stroke exam; certification prep.
Welding	2	79	0.8%	9 month; 200 hours; basic skills and safety; certificate, no license
Wheels for the World	-	1	0.01%	Employment skills; business simulation
SUBTOTAL		486	5.0% of 9709 eligible prisoners	
Computer Skills	9	772	8.0%	Basic skills; Windows & MS Office
OSHA	9	237	2.4%	2 day; 10 hours; OSHA certificate
ServSafe	9	219	2.3%	3 months; ServSafe exam (\$40)
TOTAL		1714	17.7% of 9709 eligible prisoners	

completion rate of only 5% is clearly marginal, at best. Along with the other collateral consequences facing ex-prisoners, not having a marketable job-skill upon release is a major factor in keeping recidivism rates as high as they are²⁹.

CONCLUSION

Although the DOC's Vision and Mission statements profess to "effect positive behavioral change to eliminate violence" and "provid[e] care and appropriate programming for successful reentry"³⁰, the evidence reviewed above makes clear that neither the structure nor intent of the actual process is

IN SHORT, THE DOC HAS REDIRECTED ALL OF THE SAVINGS FROM FEWER PRISONERS INTO HIGHER STAFF SALARIES

designed to achieve those goals.

The data presented about program participation and completion rates is current as of late 2016, a time when the prison population had

decreased by approximately 2050 prisoners or 16-17% from its high point in 2011³¹. The associated decreased costs offered an important opportunity for the DOC to redirect resources to rehabilitation, but this was not done. Instead, while the number of DOC personnel did decrease, salaries increased 22% to push the DOC budget up 12%, by \$62 million, from \$532 to \$594 million³². The overall annual expenditure per prisoner in 2011 was calculated to be \$45,500³³ of which the annual variable costs for supervision, clothing, food, health care and other services were estimated at \$6000 per prisoner³⁴. With fewer prisoners, this saved up to \$12 million per year in variable costs, totalling nearly \$18 million when adjusted for inflation³⁵. These savings alone would have been enough to more than double spending on inmate program services had the DOC taken advantage of this trend. This missed opportunity is

still ongoing because prisoner numbers continue to fall, but neither the DOC nor the Executive Office of Public Safety and Security are acting on this information. Between FY2014 and FY2016, prisoner numbers decreased by 11% and staffing levels decreased by 8% while the budget increased by 2%³⁶. Correspondingly, overall expenditures per prisoner rose by 15% to \$60,990 annually³⁷. In short, the DOC has redirected all of the savings from fewer prisoners into higher staff salaries. Therefore, despite the closure of a prison, the falling prisoner population, and, to a lesser degree, decreased staffing, none of the savings have been utilized to enhance resources for some of the DOC's most critical missions: prisoner rehabilitation and education. To the contrary, education staff, already the least numerous, was reduced a further 18% between FY2014 and FY2016, more severely than any other category. Additionally, overall expenditures for prisoner programs, which are funded at the lowest level in the DOC budget³⁸, have remained stable at approximately 2% since at least 2011.

The DOC's lofty Mission and Vision statements and the Commissioner's legal responsibility notwithstanding, it does not appear that prisoner rehabilitation or education are priorities for the DOC, based either on budget allocations or staffing levels. With 90% of state prisoners due to be released, and currently being rearraigned at 57% and reincarcerated at 37% rates within 3 years, Massachusetts public safety and economic considerations would greatly benefit from more vigorous efforts at rehabilitation. Additionally, the DOC's squandering of the structural and economic opportunities offered by the falling prison population might well be characterized as a dereliction of duty and a failed mission. One can only hope for better results and a sharper vision in the future.

FAILURE TO REHABILITATE

Endnotes

1. Graham v Florida, 560 U.S. 48 (2010).
2. Ruiz RR. "US pursues more severe sentencing" (Boston Globe, A6, May 13, 2017); Orkand SB and Siddall MA. "Federal Prosecutorial Policy a Step Backward" (MA Lawyers Weekly, 38, May 29, 2017).
3. Gregg v Georgia, 428 U.S. 153 (1976).
4. Atiyeh v Capps, 449 U.S. 1312 (1981).
5. Rhodes v Chapman, 452 U.S. 337 (1981); Argue v Hofmeyer, 80 F. App'x 427 (6th Cir. 2003); Coakley v Murphy, 884 F.2d 1218 (9th Cir. 1989); Baumann v Arizona, 754 F.2d 841 (9th Cir. 1985).
6. Massachusetts General Laws c. 124 §1(e) states that the Commissioner of Correction is to "establish, maintain and administer programs of rehabilitation, including but not limited to education, training and employment... to prepare and assist such person to assume the responsibility and exercise the rights of a citizen of the Commonwealth".
7. Forman B and Larivee J. "Crime, Cost and Consequences: Is It Time to Get Smart on Crime" (Boston, MA: MassINC, March 2013); Forman B and Widmer M. "Getting Tough on Spending: An Examination of Correctional Expenditures in Massachusetts" (Boston, MA: MassINC, May 2017).
8. Engel L and Atkisson J. "Priorities and Public Safety: Reentry and the Rising Costs of Our Correctional System" (Boston, MA: The Boston Foundation, 2009); Forman and Widmer, 6-10.
9. Forman B et al. "The Geography of Incarceration" (Boston, MA: The Boston Foundation, 2016); Gottschalk M. "Caught: The Prison State and the Lockdown of American Politics" (Princeton University Press, 2015); Greineder D. "MASS(achusetts) Incarceration of the Elderly: Morally Questionable, Costly and Unnecessary for Public Safety" (Norfolk, MA: Lifers' Group Inc. April 2016); see also note 7.
10. Forman and Widmer, 11.
11. Ibid.
12. Council on State Governments Justice Center. "Massachusetts Criminal Justice Review, Working Group Meeting 4 Interim Report (New York, NY: Council on State Governments, October 2016).
13. Forman and Widmer, 7.
14. Council on State Governments Justice Center, 7-8.
15. Hopkins J. Public records request response of October 20, 2016. The data for program enrollment and waitlists is a snapshot view of ongoing participation as of October 17, 2016. By contrast, data for vocational education is the number of current prisoners who had completed each training activity as of October 20, 2016 (Milford, MA: MA Department of Correction, October 2016); Massachusetts Department of Correction. "Fact Cards" (Milford, MA: MA Department of Correction, July 2016).
16. Ibid.

17. Council on State Governments, 22-23.
18. Id. 24.
19. MA Department of Correction. "Fact Cards" (July 2016).
20. Ibid.
21. Council on State Governments, 22-23.
22. MA Department of Correction. "Fact Cards" (July 2016).
23. Ibid.
24. Durose MR, Cooper AD and Snyder HN. "Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010" (Washington, DC, Bureau of Justice Statistics, April 2014), 8-9 and Table 9.
25. Kohl R, Hoover HM, McDonald S, and Solomon AL. "Massachusetts Recidivism Study: A Closer Look at Releases and Returns to Prison (Washington, DC, Urban Institute, April 2008); Brooks LE, Solomon AL, Kohl R, Osborne JW, Reid J, McDonald AM and Hoover HM. "Reincarcerated: The Experiences of Men Returning to Massachusetts Prisons" (Washington DC, Urban Institute, April 2008).
26. Gottschalk, "Caught", 81-83.
27. MA Department of Correction. "Fact Cards" (July 2016).
28. Gottschalk, chapter 4.
29. Ibid. and see note 25.
30. MA Department of Correction. "Program Description Booklet" (Milford, MA, MA Department of Correction, October 2016), 3: "The Massachusetts Department of Correction's mission is to promote public safety by managing offenders while providing care and appropriate programming in preparation for successful reentry into the community" and "The Massachusetts Department of Correction's vision is to effect positive behavioral change in order to eliminate violence, victimization and recidivism".
31. MA Department of Correction. "Fact Cards" (July 2011 and July 2016). On 7/1/2011 the custody population was 11,891 and on 7/1/2016 it was 9,843, 17% lower. On 7/1/2011 the criminally sentenced population was 10,619 and by 7/1/2016 that had been reduced to 8959, 16% lower.
32. Forman and Widmer, 7-10.
33. Forman and Larivee.
34. Forman and Widmer, 8.
35. Ibid.
36. Haas G. "DOC Expenditures and Staffing Levels for FY2016" (Norfolk, MA, Lifers' Group Inc., March 2017). Minor differences in budgets and expenditures between different reports are because of varying definitions in categories and, in some instances, differences between budgets and actual spending. The trends and relative values are, however, consistent.
37. Ibid.
38. Ibid.

