



Criminal Justice in Massachusetts

Criminal Justice in Massachusetts: Putting Crime Control First October 1996

This report provides a comprehensive description of the state's crime-fighting efforts. The lead author, Professor Mark Kleiman of UCLA, is one of the nation's leading crime-policy experts. The report serves as the single best primer available on the state's criminal justice system, and is loaded with little-known facts that should be shaping today's debate on crime. For example:

- Did you know that at any given time 3 out of every 4 convicted criminals is living *not* behind the walls of a prison, but in our neighborhoods--because they're out on probation?
- Did you know that approximately 60% of all the heroin and cocaine consumed in Massachusetts is consumed by people already within the "control" of the state's criminal justice system--because they're either on probation, parole, or bail?
- Did you know that Massachusetts imprisons only 388 out of 100,000 adults, compared to a national average of 715 out of 100,000 adults--even though our violent crime rate is almost identical to the national average?
- Did you know that the Massachusetts court system is one of the slowest case-processors in the country--ranking 30th out of 36 reporting states in processing felony cases?
- Did you know that the average UPS truck has more computer technology in it than the average police car?
- Did you know that most juvenile crime is committed between 2 and 6 p.m.?

The report also provides a detailed set of policy recommendations that should pique the interest of any candidate for office eager to find substantive approaches to improving the state's crime-fighting efforts.

Executive Summary

Introduction

In Massachusetts, as across the country, crime is at the top of the public agenda. Yet crime control -- how to actually reduce the current and future number of crimes and criminals -- does not receive the level of serious policy attention it deserves.

Opportunities to reduce crime are systematically neglected, as policy making is dominated by the need to appease the public's justifiable fear and anger and by a wide variety of organizational and professional interests and ideological postures. The simple question, "What policies would minimize crime?" is rarely raised, and even more rarely debated on its merits.

There is little careful analysis of which actions by police, courts, prosecutors, and corrections authorities would most reduce crime, and even less serious attention to the contributions of non-criminal justice agencies and policies to crime control.

No reasonable person would assert that crime control is the only important public objective, or that it deserves to override all other societal goals: that, for example, the best schools are the ones that turn out the most law-abiding students rather than the most literate and numerate ones. Even within the criminal justice system, considerations other than crime control -- the demands of retributive justice, the rights of the accused, and concern for the well-being of victims and their families -- all deserve some consideration.

Still, given the enormous burdens crime creates both for actual victims and for those who must shape their day-to-day lives around their fear of crime, it makes sense to step back and ask the question, "How would we act if crime control were the preeminent goal?" Then we would at least be aware when (and what) decisions were made to give up something on the crime-control side in return for a gain elsewhere.

The Three Keys to Crime Control

THE THREE KEYS to better crime control are: 1) reducing the number and severity of offenses committed by serious, high-rate offenders; 2) reducing the number of those hard core offenders in the future; and 3) fostering more crime-resistant communities.

Making progress on these three goals will require that citizens, community leaders, elected officials, and the managers of all the public and private agencies that could potentially contribute to those goals both come to understand their importance and make the personal and organizational commitment to the requisite efforts. This will require the sacrifice of both some organizational and professional interests and some greatly treasured ideological stances, but the potential gains are well worth the costs.

Priority 1: The first priority for any crime-control effort must be to reduce the number of crimes any given hard core offender is able to commit.

If you go duck hunting, you have to go where the ducks are. If you want to reduce serious crime, you have to address the people who commit most of it: persistent, high-rate, serious offenders. If we can reduce the number and severity of offenses committed by current high-rate, serious offenders, and if we can reduce the number of such offenders in the future, we can reduce crime substantially; otherwise, we cannot.

Prisons accomplish the goal of reducing the number and severity of offenses by current hard core offenders by keeping those offenders on one side of prison walls and their potential victims on the other. And even the substantial expense of a prison cell can easily be justified by the amount of crime it can prevent, if it is used to imprison someone who would otherwise be racking up dozens of serious offenses per year.

However, that makes it essential to identify as accurately as possible which offenders are truly persistent, high-rate, and serious, and to reserve most of our

prison cells for them.

The identification of hard core offenders can never be done precisely, because the past is only a partial predictor of the future and because the number and severity of convictions reflects the number and severity of offenses only imperfectly. But doing it as well as possible requires the combined efforts of police, prosecutors, and the courts.

Since criminal careers tend to be relatively short, there is a premium on early identification, which increases the importance of taking juvenile criminal histories into account when making decisions on adult felony sentencing.

By the same token, "career criminal" or "persistent-offender" sentences (of which "Three strikes and you're out" is the currently fashionable variant), based on the aggregate lifetime number of felony convictions, do a poor job of selecting the most active offenders for incarceration. They will, on average, give sentences that are too long to offenders who are too old (and thus, statistically, likely to retire from crime relatively soon).

No matter how well we improve our efforts to identify the serious, high-rate offender and reserve him a cell, the inescapable fact will remain: the majority of all convicted criminals live not behind bars, but in our communities. The vast majority of these offenders are on probation or parole, which means they are nominally within the control of the criminal justice system. But because the vast majority of our corrections resources are swallowed up by the minority of prisoners behind bars, for most of these offenders probation or parole means only the most minimal degree of supervision or control.

A number of new technologies and practices, such as electronic position monitoring, day reporting, and mandatory drug abstinence backed with frequent testing and automatic sanctions, offer important opportunities to extend the capacity of community corrections (probation and parole) officers to control the behavior, and the criminal activities, of these hard core offenders. If in addition to these tools, we give community corrections authorities greater capacity to apprehend those who abscond, and the ability to deliver swift and certain sanctions for violations, we can create a more effective community corrections system that functions as a firm and effective alternative to incarceration both for nonviolent offenders and for violent offenders who have spent as much time in prison as we can afford to give them, providing a large fraction of the deterrence and incapacitation of a prison cell at a small fraction of the cost.

Priority 2: The critical priority for the long-term is to reduce the future number of hard core offenders.

While our efforts to reduce the number of offenses per hard core criminal focus on incapacitation (prisons) and stronger nonresidential control mechanisms (community corrections), our efforts to reduce the number of hard-core offenders must focus primarily on prevention (through a mix of services and deterrence) and rehabilitation.

At least two efforts at broad-based prevention have already demonstrated their ability to produce substantial long-term benefits in reducing criminal behavior. Both efforts are aimed at large numbers of children and their parents who are in some statistical sense at risk of becoming serious offenders before we have any specific information about their behavior. One is to provide young mothers, especially those who are poor and unmarried, training in effective child-rearing. The other is to provide high-quality (and therefore usually expensive) pre-schooling to the three- and four-year-old children of poor families.

A second wave of prevention opportunities present themselves when young people become involved in other elements of our social service system. Most adult hard core offenders had juvenile-court records, and most serious juvenile offenders came to the attention of social service agencies as troubled children long before they were classified as juvenile delinquents.

For example, abused children, children whose mothers are the victims of domestic abuse, and children with poor attendance and behavior in school all are at much higher risk of going on to serious, persistent criminal behavior than their peers. These at-risk children come to our attention long before their behavior becomes criminal. They require special attention to prevent their childhood problems from developing into juvenile, and then adult, criminality.

The third wave of prevention opportunities appears when a child first comes in contact with the juvenile justice system. While most hard-core adult offenders were juvenile delinquents, most juvenile delinquents do not become hard-core adult offenders, or even engage in any serious criminality as adults.

Nothing is more important than giving juvenile offenders the mix of punishments and services that will get them back on the right track before they become serious violent criminals. Neither without the other will be adequate, and it is essential to learn how to administer punishments that will deter both the offender from further misbehavior and others from imitating his example without at the same time badly damaging juvenile delinquents' chances to acquire the schooling and social skills that make a successful adulthood possible.

Finally, the adult justice system can reduce the future number of hard core offenders -- through both deterrence and rehabilitation. While public discussion of deterrence tends to focus on the length or harshness of sentences, research consistently shows that the most important factors in deterring future crime are the swiftness and consistency of punishment, rather than its severity. Longer sentences, especially for persistent, high-rate offenders, play a crucial part in reducing the number of crimes committed by the person incarcerated. But for purposes of deterring criminal acts by others (and thereby reducing the number of high-rate offenders), both court processes and sentencing laws must be changed to reflect the central importance of swiftness and consistency.

The "dirty little secret" of the criminal justice system is that even after recent efforts to toughen sentences, more than 90 percent of all prison inmates will eventually be released back into our communities. This makes it imperative that prisoners be encouraged, and where possible required, to undergo processes of personal change that will lead them to reduced criminality in the future. Rehabilitation efforts, from prison education to job training to drug treatment programs, can demonstrably reduce the future crime rate of current prisoners and ought to be an integral part of every prisoner's incarceration experience.

Even the best rehabilitation efforts in prison can do only so much to influence the behavior of offenders once they are back on the street. Therefore, probation and parole authorities must be given the powers and tools they need to follow up on whatever rehabilitative efforts were made in prison, delivering a mix of coercion and services that will reduce the number of ex-offenders who choose to return to a life of crime. That same combination of coercion and services needs to be applied to the even larger population of offenders who go directly from conviction to community supervision without spending time behind bars.

Priority 3: The Third Key to Crime Control is Creating And Fostering More Crime-Resistant Neighborhoods.

Some neighborhoods are less able than others to resist crime. Both their physical appearance and the ways that law-abiding citizens within them feel powerless to assert limits on disorderly behavior make them more hospitable to criminal offenders.

Piles of trash, broken windows, groups of juveniles harassing passersby without being rebuked, all signal to potential offenders a place where the rules can safely be broken. Toleration of minor offenses can thereby increase the rate of serious offenses, and, equally important, the sense among potential victims

that they are in a dangerous place.

Conversely, signs of physical and social order serve as warnings that, "We don't tolerate that here." Orderly conditions create diffidence among potential offenders and confidence among ordinary citizens.

But creating orderly conditions is a challenge. It demands the work of public agencies -- not merely the police, but also, for example, the sanitation and building-inspection departments. And it also demands the work of local businesses, of community organizations, and of individual citizens. It cannot be done effectively if simply left to government.

The rediscovery of the importance of informal neighborhood social order in controlling crime has led to a major rethinking of the role of the police. For two generations, American policing has been dominated by command-and-control management and by the tasks of preventive patrol and rapid response to calls for service, in the name of "crime fighting." However, the results of this approach, especially after the introduction and rapid adoption of the 911 emergency telephone number, did not match expectations. That model of police work neglected the need to identify and address problem situations and the task of strengthening neighborhood order and crime resistance.

Community policing represents a new commitment of police resources to helping neighborhoods make themselves more crime-resistant. Its success demands not merely a basic reformation of police departments, but also the willingness of other public and private agencies and of informal groups to come together and address the problem situations out of which criminal incidents arise.

Prosecutors, the courts, and corrections agencies have been slower than the police in addressing the question of how they can strengthen neighborhoods against the threat of crime. Public and private agencies and organizations not explicitly devoted to crime control have been even slower to step up to the plate. That must change.

What does that mean for Massachusetts?

Massachusetts Should Build More Prison Space for Violent Adults and Juveniles.

Crime trends in Massachusetts mirror those of the nation. The good news is that the reported crime rate has dropped for several years in a row. The bad news is that the crime rate remains much higher today than it was a generation ago, violent crime has grown at a faster rate than property crime, and juvenile violent crime has risen sharply.

In Massachusetts and across the nation, corrections expenditures have roughly tripled since the early 1980s. Yet at under \$100 per citizen per year, corrections expenditures are actually rather modest, given the centrality of crime as a public concern and the centrality of corrections to crime control.

Massachusetts imprisons only 388 out of 100,000 adults, compared to a national average of 715 out of 100,000 adults. This lower rate of imprisonment is at least partly accounted for by our lower rate of violent crime; Massachusetts, for example, has about half the national homicide rate.

But the Massachusetts ratio of prisoners to serious crimes remains low enough that there exists a strong case for raising it by adding cells. Some of the offenders not behind bars commit so many serious offenses that it would be well worth it, from the perspective of those who are both taxpayers and potential victims, to incarcerate them.

The recommendations of the Sentencing Commission (discussed further below), even as they focus the use of prison capacity on serious and persistent offenders, will also increase the overall number of offenders behind bars. Moreover, Massachusetts ranks third worst in the nation in the level of prison overcrowding in its state and county prisons. These facilities have been filled to capacity every year for the last decade, and often operate at over 140% of capacity.

Therefore, in order to incarcerate more of the high-rate, serious offenders currently on our streets, Massachusetts will have to build more prisons to hold them.

Massachusetts Should Strengthen its Community Corrections Capacity to More Effectively Control the Behavior of Criminals on Probation and Parole.

As important as prison-building is, the biggest opportunity for crime control in Massachusetts is in the area of community corrections: probation and parole.

Seventy-three percent of all convicted criminals currently under the supervision of the criminal justice system live in our neighborhoods on probation or parole, not behind prison walls. Yet for the vast majority of these convicted criminals, probation or parole translates into only the most minimal level of supervision and control. Indeed, only 16 percent of our corrections resources are used to control this huge group of offenders, while the 27 percent who are behind bars consume 84 percent of the corrections dollars.

For the price of a small increase in the number of prisoners, we could achieve a large increase in the capacity of community corrections to monitor and control this much larger number of offenders, and to divert some of them back toward law-abiding lives before they become part of the criminal hard core. That is why expanding the capacity of community corrections ranks ahead even of expanding prison capacity on the list of crime control priorities.

Strengthening probation and parole enough to effectively control the criminal behavior of convicted criminals living outside prison walls cannot be done just by adding resources. Community corrections officers will need new powers and new technologies to monitor and control offenders effectively enough to reduce their criminal behavior -- and to penalize them for unsanctioned conduct.

For example, convicted criminals on bail, probation, or parole account for about 60% of all the heroin and cocaine sold, and therefore about the same proportion of the dollars flowing through the drug-dealing system that creates so much disorder and violence. Frequent drug testing of these convicted criminals, already nominally within the control of the corrections system, with automatic and gradually escalating sanctions for continued drug use, could make a substantial impact on this problem. Yet we have nothing in place today to control the conduct of these criminals in this way.

Similarly, most probation offices nationwide function as largely 9-to-5 operations. For those probationers so inclined, this creates a virtual green light for illegal activity after dark. New efforts in Boston, Springfield and elsewhere pair probation officers in the evening with police officers to keep a closer watch on the activities of current probationers. Such a common sense innovation, called Operation Night Light, is an example of exactly the kind of new powers and tools we need to toughen our efforts at control in this area.

One potentially valuable technology that is now underutilized is electronic position monitoring by means of ankle-mounted radio transmitters. These

devices, under the melodramatic label "electronic handcuffs," can be used to enforce house arrest or curfews, or to restrict offenders to be in, or away from specific places at specific times. Now used only in unusual cases and only for nonviolent offenders, position monitoring has enormous potential if it can be integrated into the routine of community corrections.

Massachusetts Should Adopt the Recently Proposed Guidelines of the Sentencing Commission to Toughen Sentences for Violent, Hard Core Criminals While Utilizing Strengthened Community Corrections Measures to Control and Punish Others.

Adding more prison cells is a necessary investment, but still an expensive one. Such a move would constitute sheer folly if Massachusetts, like many other states, were to waste those new cells on those whose criminal behavior could be adequately controlled without paying their room and board bills.

The Massachusetts Sentencing Commission, formed at the recommendation of a blue ribbon panel to study current sentencing patterns and recommend changes, has put together a painstakingly detailed set of recommendations. Their thrust will ensure longer and more consistent sentencing of serious, violent offenders, as well as substantially beefing up current efforts to control the criminal behavior of those released on probation or parole.

Massachusetts Should Restore and Expand the Prison-Based Rehabilitation Efforts that Have Established a Proven Track Record of Reducing Future Crime Rates.

As the Sentencing Commission discovered, crime control efforts in Massachusetts, as in most other states, have been harmed in recent years by the elimination or dramatic reduction of almost every prison-based effort with a proven track record for reducing future crime rates.

The influence of the Willie Horton example, and the political vulnerability it demonstrated for any political figure thought to be "soft" on crime, has in some ways improved the criminal justice system, leading to extensive efforts to make it more responsive to the needs of victims, as well as making the system tougher on convicted criminals.

However, in the post-Willie Horton era, at least some of the moves that make for good politics make horrendous crime control policy, since they virtually guarantee higher crime rates from current prisoners in the future. Being serious about crime control means generating the public understanding and community will to reinstate some of these proven crime reducers.

It bears repeating that more than 90 percent of all prisoners will eventually be released back into the community -- many of them after serving only a few months or years behind bars. This fact will remain true even with the truth-in-sentencing changes recently adopted, as well as the proposed sentencing guidelines that will further toughen sentences for the most violent offenders.

Therefore rehabilitation is essential to crime control. Corrections officials have many tools at their disposal with proven track records for reducing the future crime rate of prisoners. Since almost half of all state prisoners are functionally illiterate, it should come as no surprise that prison education programs greatly reduce recidivism rates.

Similarly, studies consistently show that almost 2 out of every 3 offenders test positive for illegal drugs at the time of their arrest. (This figure omits alcohol, by far the most commonly used intoxicant among offenders as among the rest of the population.) Drug treatment produces a substantial immediate reduction in criminal activity by those engaged in it, and has demonstrated a significant though smaller impact for years thereafter. In addition to reducing the chances of seeing that user/offender back in prison, treatment helps shrink the drug markets and thus tends to reduce the violence and disorder that accompany them.

Almost any prison-based rehabilitation effort will lose much of its potential effectiveness unless it is followed up after the prisoner's release. The most consistent finding in the literature on rehabilitative programs is that post-release follow-through is essential to the success of virtually any program.

The demand for "truth in sentencing" and the abolition of parole have combined to mean more violent criminals now serve their full sentence in high-security prisons, then are unceremoniously dumped at the prison gate with a bus ticket. While the image of this may satisfy the public demand that wrongdoers be made to suffer, such a policy translates into a dramatically higher probability that the released prisoner will return to his life of crime, creating more victims and more troubled neighborhoods in the future.

The transition from the life of a prisoner to the life of a free citizen needs to be carefully managed, ideally through a process of lower and lower levels of security within prison, then furloughs or work release, then a halfway house, then close monitoring on parole, then decreasing levels of monitoring as the offender demonstrates the ability to stay out of trouble. Whether that period of post-release supervision comes out of the nominal prison term (the parole concept) or is built in to the initial sentence (what in some states is called "mandatory supervised release") is of minor importance. But having such a period, and using it to reduce future criminal activity by prisoners being released, is essential.

Massachusetts Should Step Up its Prevention Effort Now to Head Off a Coming Juvenile Crime Wave.

Perhaps our most daunting challenge is to reduce the number of future serious offenders before they become menaces to our communities. Massachusetts' population of teenagers will expand sharply over the next decade, as the children of baby boom parents reach puberty. If age-specific crime rates remain at current levels -- if a fifteen-year-old in the year 2000 commits, on average, the same number and severity of crime as the average fifteen-year-old of 1996 -- we face a very sharp rise in serious criminal activity. Even worse, if today's fifteen-year-old offenders act as badly at age twenty as their current behavior seems to predict, we will see an explosion in adult crime rates as well.

Now is the time to take action to head off this coming crime wave. Our first step should be a broad-based prevention effort aimed at families whose kids are in some way statistically "at risk." Giving young mothers, especially those who are poor and unmarried, training in effective child-rearing has demonstrated a clear benefit in reducing the future criminal activity of their children. High-quality early childhood education for preschoolers has also demonstrated such salutary benefits.

Secondly, most serious juvenile offenders come to the attention of other agencies, such as the Department of Social Services, the Department of Public Health, or the schools, as abused, neglected, or problem children long before they come to the attention of the police and the juvenile justice authorities. Those early encounters ought to be treated as opportunities for early intervention, and we should be aggressive in trying to intervene in the lives of these troubled children before they embark on a life of crime.

A third set of opportunities arises when juvenile offenders first enter the juvenile justice system. Some of our current efforts at finding the proper balance of punishment and rehabilitation of juvenile offenders must already be working, because while most serious adult offenders were juvenile delinquents, most juvenile delinquents -- even those who commit serious crimes -- go straight as adults. However, as more juvenile offenders commit serious, violent crime, our system will face severe strains in meting out punishments to the worst offenders while continuing to steer less violent offenders away from a life of crime. Meeting this challenge will have a large impact on whether we achieve our crime control aims.

Massachusetts Should Continue to Support Community Policing and Other Efforts that are Helping to Build Crime-Resistant Communities.

The maintenance of community order and the strengthening of local informal social controls helps create and foster crime-resistant neighborhoods. Police agencies have begun to reorganize themselves around that insight via community policing, and these changes appears to be contributing to the decline in reported crime rates over the last few years in Massachusetts and around the country.

At first, Massachusetts lagged the national movement toward community policing, but recently we've made great strides and now feature several cutting-edge programs. Much of this change has been financed by the flow of federal funds under the 1994 Federal Crime Law, and there is an urgent need to plan for how to continue those efforts given the uncertainty of future federal support.

Another promising development is that the level of collaboration among criminal justice agencies in Massachusetts is dramatically better than it used to be. Federal, state and local law enforcement professionals are working together to share resources and maximize their combined impact in ways that would have seemed unimaginable a generation ago. Collaboration with community groups has also improved, though it has some distance to go. Unfortunately, collaboration with other public agencies -- schools, welfare, housing, health care -- is still inadequate.

Massachusetts Must Take Better Advantage of the Central Role Information and Information Technology Play in Crime Control.

The central industrial fact of the second half of the twentieth century has been the consistent fall in the cost of processing and transmitting information. The amount of computer power available for a dollar has doubled every three years since 1945 -- an aggregate change of more than 100,000-fold -- and there is no end in sight.

Though the images that dominate thinking about crime control are those of force, in policing and corrections, and legal power, in the courts, the work of the criminal justice agencies at all levels is largely processing information. Yet a comparison of a typical police cruiser with a FedEx delivery truck, or a probation officer's desk with a stockbroker's, shows how greatly the criminal justice system has lagged in taking advantage of the possibilities created by cheaper and cheaper information power.

Catching up will require making massive organizational investments, not merely in hardware, software and training, but in rethinking the organization of work and the roles of workers and managers at every level. It will also require -- and this may be the greater challenge -- the willingness to share data among the separate organizations that handle offenders and potential offenders at various points in the process. This is no mere technical or even managerial problem: data is power, and the problem of sharing it is fundamentally a political one, which will require the resolution of a wide range of operational, legal and even philosophical issues.

Conclusion

A public frightened and enraged by crime, a political elite either eager to pander to the public fears or afraid to face the public wrath, and a legal and academic community still, in large part, suspecting that the crime issue is some sort of scare tactic designed to weaken civil liberty and justify further oppressing the poor: this is not a favorable constellation of forces for those who hope to make reforms that will actually reduce the costs of victimization and crime avoidance. Crime is a real problem, and it will not be solved by chanting legalistic pieties or crafting ever more elaborate theories to prove that crime is the fault of everyone but the criminal. But neither will fear and rage, useful as they may have been in driving out complacency, be sufficient of themselves to generate truly useful policies. Unless brought under control, they can even make such policies impossible.

The challenge, for elected officials, opinion leaders, and citizens, is to bring about a new understanding that crime control, whatever its moral overlay, remains a profoundly practical problem and demands serious and practical solutions. Slogans are not enough. Now that we are agreed that we are against crime, it remains to agree on what we can actually do to reduce it.

About the Author

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BOTEC Analysis Corporation of Cambridge conducts policy analysis and policy-relevant research for public and private organizations. It focuses on policies toward drug abuse, crime, health care, and housing. BOTEC applies techniques and concepts from a wide range of disciplines to produce results that are both technically rigorous and practicable.

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