

# FROM CELL TO STREET

A Plan to Supervise Inmates After Release



**MassINC**

THE MASSACHUSETTS INSTITUTE FOR A NEW COMMONWEALTH  
Publisher of *CommonWealth* magazine

A Project of the Safe Neighborhoods Initiative

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- **Lifelong Learning**—Building a ladder of opportunity through the continuum of learning
- **Safe Neighborhoods**—Creating crime-free communities for all
- **Civic Renewal**—Restoring a sense of “commonwealth”

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THE MASSACHUSETTS INSTITUTE FOR A NEW COMMONWEALTH  
Publisher of *CommonWealth* magazine

18 Tremont Street, Suite 1120  
Boston, Massachusetts 02108

# FROM CELL TO STREET

## A Plan to Supervise Inmates After Release

**ANNE MORRISON PIEHL, PH.D.**

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John F. Kennedy School of Government  
Harvard University

*Research Director:* Dana Ansel, Ph.D.

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January 2002

Dear Friend:

From its founding in 1995, MassINC has believed that few public issues affect the quality of life more than crime. That's why MassINC has invested an extraordinary amount of time and resources to develop its Safe Neighborhoods Initiative. Through research, *CommonWealth* magazine, and public-education events, MassINC has tried to contribute to the public dialogue about how to best foster crime-free neighborhoods for all residents of the Commonwealth.

In this spirit, we are proud to present to you MassINC's latest research effort, *From Cell to Street: A Plan to Supervise Prisoners After Release*. In recent years, Massachusetts has made tremendous improvements in law enforcement and criminal justice, through initiatives such as community policing and sentencing reforms. These reforms have improved the safety of our communities. In this report, we address, what we believe to be, the next major issue of critical importance to the public's safety: the need to supervise all prisoners upon their release from prison.

We are particularly excited to release this research at this time, given the current level of interest in this topic. We applaud the Legislature, the Executive Branch, and nonprofit organizations that have all devoted many hours to this issue. We believe this report complements their hard work, and we hope it will serve as a valuable resource. We hope the current discussions will lead to action, specifically creating a system to supervise all ex-offenders. Such action is critical in our effort to reduce crime so that all citizens can live without fear for their personal safety.

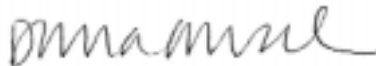
We are especially grateful to Anne Morrison Piehl for the quality and quantity of work she devoted to this project in order to make it a success. She is exactly the kind of talented thinker we try to attract to collaborate with MassINC: smart, experienced, thorough, open-minded, and resourceful. We would also like to thank many informal advisors and reviewers inside and outside of government. MassINC benefits from a special network of people. As always, our work reflects their input, and their critical insights have strengthened this report.

We welcome your feedback and invite you to become more involved in the work of MassINC.

Sincerely,



Tripp Jones  
*Executive Director*  
MassINC



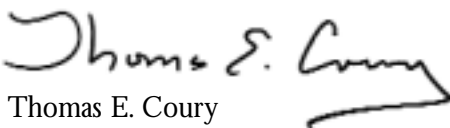
Dana Ansel  
*Research Director*  
MassINC

**A Note From Our Sponsor**

The Shaw Foundation is pleased to join with MassINC in presenting this important report written by Anne Morrison Piehl. As the author demonstrates through her thoughtful research and analysis, the absence of effective community supervision for released inmates poses a serious threat to community safety and significantly increases the likelihood of further criminalization. We hope this report serves as a call to action that will lead policy makers and criminal justice agencies to seek responsible solutions to this problem.

We also wish to thank MassINC for their continued effort to promote healthy communities. Our support for the organization's Safe Neighborhood Initiative has resulted in an outstanding body of work and served to educate many of our citizens and opinion leaders about the need to think differently about crime and its impact on our society.

Sincerely,



Thomas E. Coury  
*Executive Director*  
Gardiner Howland Shaw Foundation

# FROM CELL TO STREET:

## A Plan to Supervise Inmates After Release

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## Executive Summary

This report begins and ends with a concern for the public safety of hard-working, law-abiding citizens of the Commonwealth. Our citizens deserve safe neighborhoods where their children can play on the streets, businesses can thrive, the elderly can walk without fear, and neighbors can congregate at night on their front porches. In recent years, much has been done in Massachusetts to improve the safety of our communities, through initiatives such as community policing and sentencing reforms. Yet a critical weakness in the criminal justice system remains: the failure to adequately supervise prisoners released from prison.

Reasonable people can disagree about priorities within public safety, but all must take into account the following five facts:

- 97 percent of all people sent to prison are eventually released into the community;
- In Massachusetts, 20,000 prisoners are released each year, an increase of 24 percent from 10 years earlier;
- Nationally, 63 percent of offenders released from prison are rearrested for a felony crime or serious misdemeanor within 3 years;
- Compared to many other states, Massachusetts supervises fewer prisoners after release from prison, with many offenders receiving no supervision;
- Many of the most dangerous prisoners in Massachusetts are unsupervised after their release from prison. Of the 2,308 inmates released from maximum and medium security prison in 1999, more than half were released directly to the street at the end of their sentence. (Some may have had supervision under the Probation Department, but how many is unknown because no agency collects such data.)

These facts raise serious concerns about the public's safety. Foremost among these is the adequacy of current approaches to post-incarceration supervision. There is no reason why every person who leaves prison, especially violent offenders, should not be supervised for some period of time. However, before reforming policy, we must first ask: What happens today when an inmate is released from prison into the community? A review of the current policies will highlight both the gaps and the opportunities for change. As striking as the above facts are, the full story is both more complicated and more compelling. We begin then with a closer examination of the facts.

### **Most Prisoners Return to Society**

The fact that most prisoners eventually leave prison and return to the community has largely gone unnoticed in public discourse. Over the last 25 years,

as part of the fight against crime, the federal government and a number of states, including Massachusetts, enacted a number of changes in sentencing laws to make certain that people serve longer sentences behind prison bars. As a result, the rate of imprisonment in the United States is higher than ever. This increased emphasis on incarceration has surely contributed to a reduction in crime. Another consequence, however, is that an increase in the number of people in prison inevitably means an increase in the number of people who will be released from prison. Almost every person sent to prison eventually returns to society. The only prisoners who do not leave prison are those who are executed, those who are sentenced life in prison, and those who die before their sentences expire. The result: About 97 percent of those who enter prison return to the community.

### **More Prisoners Released From Prison**

In 1999, over 20,000 inmates—about 55 a day—were released from Massachusetts state and county facilities. This is a 24 percent increase from a decade ago. Current sentencing practices suggest more of the same in the future. In future years, large numbers of prisoners will leave prison and return to the community. The sheer number of prisoners being released creates a new urgency to reexamine current corrections and sentencing policies to ensure that the public is protected.

### **Rates of Recidivism Remain High**

The chance that a prisoner who is released from prison will commit another crime is high. This fact is best captured through recidivism data. The most comprehensive study on recidivism, done by the Bureau of Justice Statistics, found that within three years, 63 percent of ex-inmates were rearrested for a felony crime or serious misdemeanor, 47 percent were reconvicted, and 41 percent returned to prison. A recent Massachusetts Department of Correction study reports similar outcomes. Of the Massachusetts state prisoners released in 1995, 44 percent were reincarcerated within three years.<sup>1</sup> The data on recidivism are sobering. The reality is that many released ex-offenders will pose a serious and ongoing threat to public safety.

The national study also suggests that the period immediately following a prisoner's release represents the greatest threat to the public. An ex-inmate is most likely to be rearrested during the six months immediately following his release. Again, the Massachusetts data on prisoners released in 1995 are consistent with these national findings. Of the 1,504 ex-inmates who recidivated, almost half (744) recidivated within the first year. The time immediately following release from prison is critical, and the first year is a pivotal time for ex-inmates deciding whether to resort to old habits or to become productive citizens.

It is worth noting that to combat these high rates of recidivism, we must also look to the practices within prison as well. Although many rehabilitative efforts have proved disappointing in their lasting effects, literacy programs are a key exception. While other types of programming—vocational and other

<sup>1</sup> Recidivism data are particularly difficult to compare across states because states vary in their definition of recidivism. Massachusetts counts all parole and probation violators returned to prison as recidivists, while other states, such as Florida, include only ex-inmates who commit new crimes in their recidivism rates. The fact that Massachusetts includes technical violations complicates our ability to assess the efficacy of our criminal justice policies. If someone commits a new crime after having been released from prison, that clearly harms the public. However, interpreting the data for people who commit technical violations is more difficult. Arresting people for technical violations, such as staying out past their curfew, can sometimes be viewed as a positive step for the public's safety, because it indicates we are monitoring people who are out in the street and are sometimes stopping them before they victimize a new person. We need better information about recidivism, and we also need to exercise some caution in interpreting the recidivism rates.

skill-building programming—have potential, the research documenting their success is rarely definitive. But we do know that getting and holding a job—especially a good job—after prison is an effective way to reduce recidivism. Prisoners with stronger skills stand a better chance of finding jobs once they leave prison. Strengthening the skills of prisoners while they are in prison is clearly a worthwhile investment of time, energy, and money because of the effect on prisoners after they return to the community. In this case, what is good for the prisoner will often be good for public safety.

### Supervising Prisoners Released from Prison

There is a growing trend among states to supervise prisoners upon their release from prison. In fact, in some states, virtually no prisoners leave prison without supervision. California, New York, Oregon, and Rhode Island are leaders in this respect; practically all prisoners are supervised upon their release in these states. In sharp contrast, in Massachusetts, only about one-quarter of prisoners released from state prisons in 1999 were supervised by the Parole Board. The number of prisoners who exit state prison without supervision by the Parole Board has increased substantially over the last 20 years. In 1980, almost all state prisoners in Massachusetts were released under the supervision of the Parole Board. The Probation Department also supervises some prisoners upon their release from prison, but neither the Department of Correction nor the Probation Department can say how many state prisoners are released each year to post-incarceration supervision provided by the Probation Department.

County prisoners are also likely to be released with no supervision. About 52 percent of Suffolk County House of Corrections (HOC) prisoners were released with no supervision in January, 2001.<sup>2</sup> It is clear that when it comes to supervising ex-inmates, Massachusetts does much less than most other states.

While this report raises concerns about the widespread lack of supervision from the perspective of the public's safety, it is important to note that a lack of supervision also harms the ex-inmate. After spending time in prison, an ex-inmate must make a transition back to society, when this person has already demonstrated that he has difficulty living within society's rules.<sup>3</sup> Supervision can aid this transition by both monitoring the ex-inmate and requiring him to take advantage of the services he needs. For some ex-inmates, this structured period of transition is likely to increase their chances of a healthy reintegration back into society, which will then help reduce the rates of recidivism.

### The Role of Parole in Supervising Ex-Inmates

A prisoner who is released conditionally is subject to a set of rules and expectations that must be met if the person wishes to remain outside of prison.<sup>4</sup> The conditions can include: taking regular drug tests, meeting a curfew, holding a job, going to AA meetings, not contacting certain old acquaintances, and other conditions. If the person breaks the rules, he can be returned to

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2 Each county is responsible for collecting HOC data, and it is not compiled across the state. In this report, we rely upon data from the Suffolk County House of Correction, which historically has had the greatest number of inmates in the state. These statistics may not be representative of all counties, but they provide a picture of what is happening at the county level, which accounts about half of all inmates.

3 For convenience "he" is used as the pronoun, a usage that is consistent with the fact that male prisoners constitute the vast majority of people incarcerated. In recent years, however, the number of female prisoners has increased substantially, and given that many have children, the issues they face after being released from prison will likely differ from those of male ex-inmates.

4 There are typically two ways that prisoners are released from prison: unconditionally or conditionally. A prisoner who is released unconditionally or who is "discharged to the street" has served his entire sentence. This person walks out the prison door with no conditions on his release. He is not subject to any special rules. Only the usual policing activities will monitor the actions of the ex-inmate.

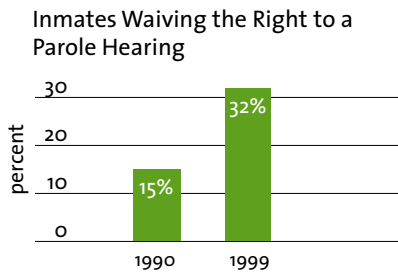
prison for violating the conditions of his release. Traditionally, these prisoners are supervised by parole officers who report to the Parole Board, a department within the Executive Office of Public Safety. Through this supervision, the parole officers have the authority to make life very unpleasant for an ex-offender unless he becomes a law-abiding citizen.

Parole has historically served two different functions: discretionary release and post-incarceration supervision. This report is primarily concerned with the second function. The first function refers to the ability of the Parole Board to create incentives for prisoners to change their patterns of behavior and attitudes by allowing select inmates the opportunity to serve the remainder of their sentences in the community under the supervision of parole officers.

Many crime control experts of varying political persuasions believe that discretionary release helps minimize violence within correctional institutions and provides a critical tool to prod prisoners to take actions and make behavioral changes that will help them and, as a result, will increase the likelihood they become productive members of society. For instance, if inmates are more willing to address their substance-abuse problems while incarcerated, public safety will be improved at the same time their lives will be improved. While some might object to using the possibility of conditional release as an incentive for prisoners to engage in productive behavior, it is important to remember that it is in the public interest to encourage the inmates to do what is also right for them.

This programming is also part of a system of accountability. It helps hold both the prisoners and the correctional institutions accountable for preparing for the prisoner's eventual release, keeping in mind that practically every prisoner will be released. As long as correctional institutions are making an effort to change the lives of those under their supervision, the public can demand that they do this job to the best of their ability and with a reasonable level of success. While behavior modification is not the primary purpose of incarceration, the fact that almost all prisoners return to the community cannot be ignored. Not all prisoners will want to change their behavior, and not all prisoners who try to change their behavior will be successful. However, to the extent that discretionary release can entice some prisoners to change their patterns of behavior, experts believe it is an essential tool within criminal justice policy.

In Massachusetts, prisoners exiting state prison are less likely today to be released conditionally than they were 10 years ago. In addition, prisoners' attitudes toward parole have changed. In 1999, one third of eligible prisoners chose not to be considered for conditional release by waiving their rights to a parole hearing. These prisoners will serve their full sentences and then be released from prison with no supervision. There are two likely explanations for this recent phenomenon. First, the significant reductions in conditional release may cause some prisoners to decline their right to hearing because they are discouraged by the slim likelihood of receiving parole. More importantly, it is also likely that some inmates find community supervision so unpleasant that they would rather serve their full sentences behind bars.



Source: Massachusetts Parole Board.

Either way, these prisoners are released into the community with no supervision. In both scenarios, it is not the criminal justice system that decides the terms of a prisoner's release. Rather, the prisoners who waive their right to a hearing are allowed, in effect, to determine whether they are supervised upon their release.

### **The Role of Probation in Supervising Ex-Inmates**

Increasingly, the courts are playing a larger role in supervising prisoners upon release through probation sentences. The judiciary, in recent years—through its use of split sentences, “from & after,” and dual sentences—has expanded its role beyond the Probation Department's historic mission of supervising low-level offenders who are not sentenced to prison. Although the Probation Department is not the traditional agency that supervises people released from prison, and although these sentences are contrary to the intent of recent sentencing laws, the judiciary has helped to partially fill a critical gap in public safety.

We do not know how many state prisoners are currently being released from prison to the authority of the Probation Department. In January, 2001, 52 percent of Suffolk HOC prisoners were released to the Probation Department. Current sentencing practices, whose effects will be seen in several years, indicate that the number of ex-offenders on probation is projected to increase significantly. In 1999, 40 percent of those sentenced to serve time in both state prison and county facilities were also sentenced to post-incarceration supervision through the Probation Department. These sentencing patterns indicate a significant increase in the role of the Probation Department in providing post-incarceration supervision.

### **Other Efforts to Help Ex-Inmates Re-Enter Society**

Across the state innovative programs are also attending to the issue of prisoners returning to the community. Some of these efforts are mandatory, while others are voluntary. In Springfield, the Hampden County House of Correction tries to prepare prisoners for their return to the community through its pre-release program. In Lowell, a wide range of public and private agencies are working together with prisoners about to be released to deliver the message that the police are serious about crime reduction and that support services are available to those who wish to help themselves. Similar efforts are underway in Boston at the Suffolk County House of Correction.

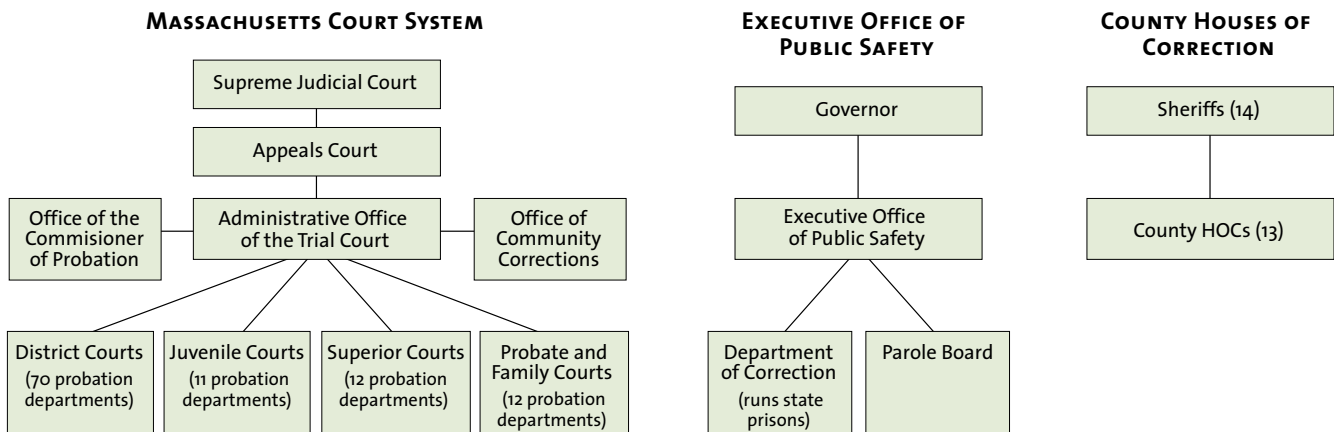
A weekly support group in Springfield helps ex-offenders control drug and alcohol problems, but also helps them find housing, which can be a huge obstacle to settling into a productive lifestyle. Participants credit the group for giving them structure and helping them to learn how to be accountable. Another support group for ex-offenders, run by the Ella J. Baker House in Dorchester, focuses on action. This group has arranged summer basketball and other activities for neighborhood kids, helped newly released prisoners with résumés, and established transitional housing for ex-inmates. Examples of such efforts can be found across the state within and outside of govern-

ment agencies, each aiming to encourage and support ex-inmates who are trying to make a change from their past behavior. As worthwhile as these efforts are, they do not replace the need for a system of post-incarceration supervision for all ex-offenders.

**A Fragmented Criminal Justice System that Undermines Public Safety**

Massachusetts has a fragmented criminal justice system. In many other states, the probation system is the responsibility of the Executive Branch. In Massachusetts, the Probation Department is part of the court system, with the 12 Superior Courts, 70 District Courts, 11 Divisions of Juvenile Courts, and 12 Probate and Family Courts each housing its own Probation Department within each court house. In most states, parole is within the Department of Correction. In Massachusetts, the Parole Board is an independent agency under the Executive Office of Public Safety. Massachusetts is also unusual in the size and composition of its Houses of Correction population. In Massachusetts, convicted offenders with sentences up to 2 ½ years can be sent to county facilities, while in most other states county facilities are used for prisoners sentenced to one year or less. As a consequence, half of the inmates in Massachusetts are in county facilities. The 13 Houses of Correction are managed by 14 different county sheriffs, who are popularly elected. Despite partnerships among different agencies, this fragmentation leads to a duplication of services. It also makes the coordination of programs, responsibilities, and accountability across agencies difficult.

Each agency within the criminal justice system aims to protect the public from the vantage point of its own jurisdiction. But because each agency focuses on its own grove of trees, we are missing the public safety forest. Consider how this dynamic plays out for a state prisoner’s interaction with the Parole Board. Imagine an inmate who is spending time in prison because he has committed a serious crime. This inmate behaves poorly in prison and shows no remorse or inclination toward leading a productive life outside of prison. Because of this, the Parole Board is likely to turn down his request





for parole (or the inmate can effectively take the decision away from the Parole Board by simply deciding not to apply for a parole hearing). However, at some point, this prisoner will complete his sentence and be released unconditionally. That means that the prisoner who was deemed too dangerous to be granted supervision by parole officers is instead released directly into the community with no supervision.

Consider also the case of an inmate who is serving a minimum mandatory sentence. Post-incarceration supervision is also unlikely to occur in these cases. Minimum sentences for drug crimes are strict enough in Massachusetts that judges are reluctant to sentence offenders to more than the minimum amount of time, which means there is no possibility for post-incarceration supervision. This means that the offender serves his entire sentence and is then released into the community with no supervision. The certainty of mandatory minimum sentences is considered a critical tool by many in the law enforcement community, particularly prosecutors, who see the non-negotiable terms as an effective deterrent. However, prisoners sentenced to mandatory minimum sentences still need post-incarceration supervision. Public safety is threatened because these prisoners are not supervised upon their release.

In sum, one can argue that as each agency pursues its own objectives, the broader public safety goal becomes lost: each year thousands of prisoners are released into the community with no supervision. In fact, many of the most hardened criminals, the ones we might most want to be supervised, are not supervised upon their release: 57 percent of prisoners in maximum and medium security prisons were released directly to the street in 1999.<sup>5</sup> Post-incarceration supervision helps to facilitate the transition back to society through a combination of surveillance and support. Again, there is no reason why every prisoner who leaves prison—especially violent offenders—should not be supervised for some period of time.

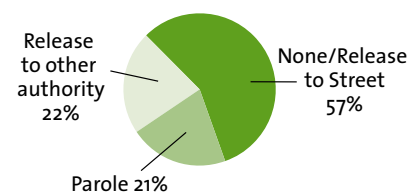
### **Toward an Integrated System of Post-Incarceration Supervision**

A system of mandatory post-incarceration supervision will help protect the public and is far better than the current practice of sporadic and unreliable supervision. As we move toward a universal system of post-incarceration supervision, we must be guided by a realistic set of expectations.

There are two goals to this new system. First, the reality is that we will be supervising people who have a history of criminal activity, and some are likely to violate the conditions of their release or commit new crimes. Because these ex-offenders will be under the authority of the Parole Board, it will be possible to remove them quickly from the streets and punish them. The punishment should be swift and also appropriate to the infraction. If there are subsequent infractions, the sanctions should be graduated. Supervision works best when it helps inmates with future compliance. As law enforcement entities have learned, the use of the stick helps to ensure that the carrot has a chance to work.

The second goal will be harder to measure; the successes of a post-incar-

Terms of Release of Prisoners Exiting Maximum and Medium Prisons, 1999



Source: Massachusetts Dept. of Correction.

<sup>5</sup> Some of these prisoners may have had sentences of post-incarceration supervision through the Probation Department.

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ceration supervision system will not always be easy to identify, because they will take the form of events that do not happen. If the system is successful, the combination of punishment, threat of punishment, and support services will prevent some ex-offenders from committing crimes that they would have committed if no such system existed. This is why it is important to supervise all prisoners, not only the most serious offenders. Otherwise, we miss an opportunity to positively impact the lives of some ex-offenders. Without doubt, post-incarceration supervision will prevent some crimes that would have occurred, but unfortunately, we will have no easy way of measuring these successes. Over the long run, our emphasis on post-incarceration supervision, if implemented effectively, will help reduce recidivism and crime rates.

#### **Who Should Supervise Inmates Released from Prison?**

Currently, two different institutions with different levels of authority and different mandates provide most of the post-incarceration supervision. This is hardly a systematic approach. A single agency should have both the authority for and responsibility of supervising ex-inmates. With one agency in charge, it is more likely that there will be one message, a similar set of expectations, and consistent treatment of ex-inmates. Moreover, if there is only one agency, then that agency can be held accountable for the task.

Paradoxically, the current situation creates both a gap in and duplication of services. A prisoner can be released under both the authority of probation and parole offices, which means there is an overlap of people on both probation and parole. As for how many, no one can say definitively. It is clear, however, that if the Probation Department continues to expand its post-incarceration supervision activity, the overlap will only increase. At the very least, if an individual is on both parole and probation, the two agencies should coordinate rather than replicate each other's efforts. More generally, as the Probation Department has increased the number of ex-inmates it supervises, it has begun to assume more of the functions that the Parole Board has traditionally held. It becomes difficult to understand why a particular ex-inmate ought to be supervised by the Probation Department and not the Parole Board or vice versa.

Given the expanding role of the Probation Department, perhaps it makes sense to assign responsibility for post-incarceration supervision to the Probation Department. Such a move would recognize the current realities and seek to build upon practices that are already in place. Despite the appeal of this idea, we do not recommend this approach. First, because of its heterogeneous caseload, probation already serves a great many different purposes. The vast majority of the approximately 45,000 people on probation are sentenced to probation in lieu of serving time in prison. Traditionally, the purpose of probation has been to offer a "stay of grace" for low-level offenders as an alternative to prison. In recent years, however, the composition has changed to include more serious offenders, and the mission has been amended to include people who have served time in prison, some having been convicted of violent and other serious crimes. If we were to add more serious



offenders to the portfolio of the Probation Department, this would make their already difficult charge even more difficult.

Second, because the parole agency has traditionally handled post-incarceration supervision, it has no competing responsibilities. At its best, supervision is what the Parole Board does. Furthermore, perhaps because of tradition and perhaps because of serendipity, the legal environment for post-incarceration supervision is better suited to parole. Parole officers have a greater ability to respond quickly to violations of the terms of supervision, and they have more discretion in determining an appropriate punishment for a given violation. Because parole officers have the legal authority to put someone who violates his conditions of parole in jail for several days or several months, officers can use reimprisonment for a wider variety of infractions and employ a graduated sanctions approach, increasing the length of time in prison for repeat offenses. Swift and certain punishment is critical in deterring crime, and parole is best able to meet these conditions.

On the other hand, probation, despite some changes in rules, is less flexible. Current law requires that if the original probation sentence is revoked and the person is to be sent to prison, he must be sent for the entire sentence. This limits the ability of probation officers to use a strategy of graduated sanctions and in practice means that probation only sends someone back to prison for substantial probation violations. For these reasons, the Parole Board is the better agency to take responsibility for post-incarceration supervision and the Probation Department should focus, as it has traditionally, on the pre-prison population—those whose offenses do not warrant prison time.

The decision to use parole is certainly not without complications, which must be addressed first in order to build an effective system. Probably the most important consideration is the capacity of the Parole Board. Currently, the Parole Board is responsible for supervising about 4,000 prisoners. About 20,000 prisoners were released from Massachusetts state and county facilities in 1999. In order to supervise all ex-inmates, the capacity of the agency would have to be substantially increased—on the order of quadrupling its capacity. However, there will be a natural phase-in. From the time that we institute a system of mandatory post-incarceration supervision and incorporate the supervision into current sentencing guidelines, it will take a number of years before the system will be fully in effect, because the number of offenders mandated to receive supervision would gradually increase as prisoners are released from prison. The staff expansion at the Parole Board could then rise in tandem to supervise the ex-offenders. In short, the process will only start with the sentencing of new criminals, with the post-incarceration supervision to happen after the term in prison is served, and the terms will obviously vary for different prisoners. This natural period of transition offers the perfect opportunity to build the capacity of the Parole Board, which should be done over a period of five to six years. We assume—as do experts in the field—that each parole officer would supervise approximately 50 people, which is a reasonable caseload for real supervision. On that basis, we would recommend adding 250-300 new parole officers plus the management and

administrative staff needed to support these new officers. This expansion is certainly a major fiscal and organizational challenge, but it is not impossible with the proper planning and investment over time. In addition, this transition will allow the Parole Board to adapt to its expanded role. It will first supervise the low-level offenders, whose sentences are the shortest, and will gradually add more and more serious ex-offenders to its caseload, allowing time to develop the necessary systems. During this transition period, it is incumbent upon the Parole Board to build relationships with others in the criminal justice system, helping to bolster their confidence in the new system. Despite the challenges that will arise in creating this new system, we must stay focused on the need to address the current threat to the public's safety.

While crime control is reemerging at the top of the public's agenda, it is clearly not the only important item on it. And given the current fiscal realities, we must carefully consider the cost of any proposals. However, we have identified a critical weakness in our criminal justice system and are recommending building a substantial system of post-incarceration supervision that has been only spotty to date. This will require an investment of resources over the next five to six years. At the same time, it should also be a priority to look for opportunities to eliminate duplication of services. Over time, this new system should increase public safety while saving money. Moreover, some of the costs are costs we would already have to bear within the current system. To the extent that certain repeat offenders are caught committing crimes, we would have likely spent money imprisoning them. Based on past research, it is likely that the more we watch people, the more criminal behavior we will find. While this is costly, it is also money well spent. To the extent that supervising ex-prisoners helps keep some stay on the straight and narrow, we will succeed in significantly reducing the number of citizens victimized by crime. And, this, in turn, will pay substantial social dividends in terms of safer streets, healthier families, more productive citizens, higher tax receipts, and lower governmental expenditures. To be sure, there are initial costs to implement the system, but the public's safety demands no less.

# Glossary of Terms

**CONDITIONAL RELEASE** The release of an inmate to community supervision with a set of conditions for remaining outside of prison. Conditions can include drug testing, maintaining a curfew, holding a job, staying away from certain acquaintances, and attending AA or other types of meetings. If the conditions are violated, the person can be returned to prison or otherwise punished.

**DEPARTMENT OF CORRECTION (DOC)** The agency in charge of the 28 state prisons that hold inmates who have been convicted of serious crimes and who are sentenced to terms greater than one year. DOC is an executive branch agency, under the authority of the Executive Office of Public Safety.

**DISTRICT COURT** Cases heard in District Court can result in sentences to a county House of Correction.

**FROM & AFTER SENTENCE** Prisoners under these sentences are charged with more than one crime. In these cases, prisoners are sentenced to serve time for one charge and are sentenced to probation (or a separate prison term) for another sentence after completing the first term of incarceration.

**EARNED GOOD TIME** Days subtracted from a prisoner's sentence as a reward for participation in programming at the House of Correction or state prison. In Massachusetts, there used to be "statutory good time" under which all inmates were granted time off their sentences. This practice was stopped by the Truth in Sentencing legislation of 1993.

**HOUSES OF CORRECTION (HOC)** County-run facilities for offenders serving terms up to 2½ years. These 13 facilities are managed by county sheriffs who are popularly elected. In 2000, about half of all inmates were in HOC facilities. The percentage of sentenced prisoners confined by counties in Massachusetts is much higher than in other states.

**JAIL** A colloquial term that, in most states, refers to county facilities that house both those detained for trial and those sentenced to short terms of confinement. In Massachusetts, "jail" generally refers to facilities housing inmates awaiting trial.

**MANDATORY MINIMUM SENTENCES** Certain crimes require a certain minimum amount of time in prison. In Massachusetts, these crimes include possessing a firearm while committing a crime, drunk driving, and drug dealing and trafficking. In these cases, the set minimum term of imprisonment cannot be suspended, replaced by probation, or reduced by parole or good-time credits.

**OFFICE OF COMMUNITY CORRECTIONS (OCC)** This office was established under the jurisdiction of the courts in 1996 to facilitate cross-agency collaboration in the management of offenders in the community. The OCC is mandated to provide a continuum of sanctions and services for people on probation, parole, or in custody of the Department of Correction. Offenders in a number of categories cannot be sentenced to a community corrections center, however. There are currently twenty community corrections centers across the state.

**PAROLE** Refers to two different matters: the discretionary decision made by a Parole Board that an inmate should be released from confinement to serve the remainder of his or her sentence in the community, and the period of post-incarceration supervision following a prison term. Parole officers report to the Parole Board, an independent agency under the Executive Office of Public Safety.

**PRISON** A facility providing secure confinement of sentenced offenders. In Massachusetts, the Department of Correction manages the state prisons.

**PROBATION DEPARTMENT** Enforces conditions of satisfactory behavior set out by the judiciary and provides surveillance of people under its purview. It is part of the court system. Probation has a heterogeneous caseload. The majority of the population received a sentence of probation in lieu of serving time in prison. A small part of the population is on probation after serving time in prison.

**RECIDIVISM** The state's definition includes people who are released from prison and commit new crimes or violate a condition of probation or parole, and as a consequence, are returned to prison.

**SPLIT SENTENCES** In these cases, the sentence is split into two parts. Inmates are sentenced to terms in prison as well as terms of probation to be served following release. Since 1993, split sentences have been eliminated for state prisons but still exist at Houses of Correction.

**SUPERIOR COURT** People tried in Superior Court can be sentenced to state or county prisons. Superior Court hears the more serious criminal cases.

**TRUTH IN SENTENCING** Responding to a trend of indeterminate sentencing, truth-in-sentencing drastically reduces the wide range of actual time served in prison. The term is largely determined by the crime and the criminal record of the defendant. The role of parole is greatly reduced. This 1993 state law eliminated the "Concord" sentence; it eliminated parole eligibility at 1/3 or 2/3 the minimum sentence in cases of state prison sentences; it eliminated statutory good time, in which inmates were granted a certain amount of time off their stated sentences.

**UNCONDITIONAL RELEASE** The release of an offender when his term expires. In such a release, he is not under supervision of any community corrections agency and is not required to abide by special conditions. Only the usual policing activity will monitor the actions of the ex-inmate.

# Recommendations

## 1. Hold Criminal Justice Agencies Accountable for Reducing Recidivism

- Reducing crime among ex-offenders in the community should be an explicit goal of individual criminal justice agencies, including the Department of Correction, Houses of Correction, the Probation Department, and the Board of Parole.
- In order to provide some coordination among the many agencies, the Executive Office of Public Safety (EOPS) in the executive branch should work to ensure that inmate release and post-incarceration supervision are adequately represented in the activities of law enforcement in the Commonwealth. This office should produce an annual report covering the topic of inmate release, post-incarceration supervision, and recidivism.

## 2. Supervise all Offenders after Leaving Secure Confinement

- Institute a system of post-incarceration supervision for all inmates leaving state prison and the county Houses of Correction. This supervision should involve surveillance, mandatory coerced abstinence from alcohol and other drugs, requirements of work and/or other productive activity. This system should include provisions for due process when conditions of supervision are violated.
- Revise criminal sentencing law to incorporate a term of mandatory supervision in the community for all offenders. This period should be no shorter than 6 months for all inmates, and a period of a year or more is preferable.
- Those with long terms of confinement are likely to represent a great threat to the public's safety and have greater needs. Therefore, they may require longer and more intensive supervision following release.
- A period of mandatory supervision is especially important for those currently serving time under mandatory minimum sentencing laws (who typically do not have sentences that allow for any supervision upon release from prison). Mandatory post-incarceration supervision is also particularly necessary for those who choose not to use their time in prison productively and pursue educational opportunities that would improve their prospects for leading a life free of crime.
- However, even those with short terms of confinement must construct a new life on the outside, and supervision and support is necessary for this to happen. If we only focus supervision on the most hardened criminals, we miss opportunities to positively impact some ex-offenders.

## 3. Reinvent the Board of Parole as the Lead Agency Providing Post-Incarceration Supervision

- Allocate responsibility for the supervision of released inmates to a single agency. The Parole Board is the obvious choice for this role as it has no competing mandates. Moreover, its legal authority is best suited for supervising and managing the reentry of inmates to the community.

- The Board of Parole should work closely with the Department of Correction, the county sheriffs, the Office of Community Corrections, the Probation Department, local police departments, and other state, local, and non-profit agencies to take full advantage of their capacities to assist with the reintegration of former inmates.
- Establish a seat on the Board of Parole for a retired member of the Massachusetts judiciary in order to incorporate the knowledge that judges have developed in supervising inmates following periods of incarceration.
- The Board must inspire confidence in its ability to provide appropriate surveillance and also to provide (and enforce participation in) programming to reduce substance abuse, improve employment prospects, etc. The Board's early actions will determine whether the judiciary will willingly alter sentencing practices to permit the Board to energetically implement and expand post-incarceration supervision.
- Enact legislative reform aimed at reducing the availability of post-incarceration probation sentences, if the use of post-incarceration probation does not decline over the next two years (measured by release data regarding post-incarceration probation from HOCs and by sentencing data for DOC inmates). Such a reform measure would be prudent given the scarcity of resources. It is more important to spread law enforcement resources across a wider population than to have some people using double the resources.
- The Governor and the Executive Office of Public Safety should consider changing the name of the Parole Board to reflect its new responsibilities and broader mandate. In recent years, public confidence in the parole system has waned. For right or wrong, "parole" has come to connote a system that is soft on crime and lets dangerous criminals out of jail early without monitoring them. Thus, changing the name of Board of Parole will reinforce its new mission, both within the Board of Parole and outside the agency.

#### **4. Develop a Fiscally Responsible Plan to Build Capacity**

- Given the current fiscal realities, it is important to build this system over a multi-year period of time. Fortunately, this approach matches well with the needs of the new system. From the time we enact a system of post-incarceration supervision, there will be a natural transition period during which the number of those requiring supervision will gradually increase. From the time that we institute such a system, it will take five to seven years for the system to be fully operational. This natural period of transition offers the perfect opportunity to build the fiscal and organizational capacity of the Parole Board.
- Use the Office of Community Corrections to help provide the infrastructure and services needed to make post-incarceration supervision work. The centers are currently being used to serve a variety of constituents, including pre-release inmates, probationers never sentenced to prison, ex-offenders with terms of post-incarceration supervision, and parolees. Because of the previous significant

state investment and the efficiency of using existing facilities, we recommend that the centers increase their capability to serve post-incarceration supervision of ex-offenders under the authority of the Parole Board. The agency and individual centers should be leveraged as part of a system of mandatory post-incarceration supervision.

- In order to best accommodate the different law enforcement functions of the OCC, it is important that all of the related agencies are treated as equal partners in governing the centers. They should also share the costs of the centers. To accomplish this, it is necessary to change the governance structure of the OCC. We recommend that the professional staff of OCC report to a Board of Directors, which will ultimately report to the Legislature. This Board might include the Commissioner of Probation, the Parole Board Chair, the Commissioner of the Department of Corrections, the Secretary of Public Safety, a representative from the Sheriff's Association, a representative from the District Attorneys Association, the Commissioner of the Department of Youth Services, a representative of the trial courts, and several representatives of the community. With these agencies overseeing and guiding the policy of the centers, the centers' various responsibilities, including post-incarceration supervision, will be better integrated into the missions of the centers.
- We recommend increasing the overall period of supervision (incarceration plus post-incarceration supervision) of offenders but doing so in a pragmatic way that will generate savings. One approach would increase the overall sentence with a period of post-incarceration supervision while marginally reducing the amount of prison time required for certain mandatory minimum sentences. The sentences could still be mandatory. For instance, a 5-year minimum could become a 4+2 sentence, with four years served in prison and two years under mandatory supervision. This change will help supervise ex-inmates who are a serious threat to public safety, who are currently not likely to receive supervision, and it will help provide a mechanism to fund the post-incarceration supervision. Because incarceration is so expensive relative to community supervision, marginally reducing the in-prison time of some offenders' sentences could finance post-release supervision for those offenders and other offenders as well.

#### **5. Support and Encourage Inmate Rehabilitation Programs that Have a Proven Track Record of Reducing Future Crime Rates**

- Rehabilitation, if successful, is our best chance at long-term crime control. Criminal justice experts generally agree that one of the best tools to prod certain inmates to engage in productive behavior is discretionary release. The possibility of discretionary release creates incentives for inmates and makes them accountable for their efforts to reform. It also provides incentives to institutions to help inmates who choose to reform themselves.
- Expanding the scope for discretionary release to provide incentives for inmates and correctional authorities will require some change to existing sentencing law. One could accomplish this by adopting something along the lines of the recommendation of the Massachusetts Sentencing Commission, which builds

scope for discretionary release into the guidelines it proposes. This could also be accomplished without overall reform of sentencing law through changes to a large number of statutes covering individual crimes. At the same time the scope for discretionary release is expanded, it is critical that strict standards are applied to determine whether a particular inmate has earned discretionary release. Expanding the number of inmates eligible for discretionary release does not imply that the number released in this capacity will increase, nor does it mean that standards will be lower. In fact, because all prisoners would have mandatory supervision, the Parole Board should strongly consider increasing its standards for discretionary release.

- Being released under a discretionary decision by the Board of Parole should have no impact on an offender's mandatory term of post-incarceration supervision. If an inmate is offered discretionary release by the Board of Parole, he should have a longer time under community supervision than he would have without discretionary release. The Board of Parole might want to use different categories for these populations. Drawing such a distinction will serve as a reminder that those in the former category have been working hard toward successful reintegration within the larger society.
- Support programming within prisons that are known to help reduce the chances of recidivism. For instance, research finds that if prisoners improve their reading and language skills, they are less likely to be rearrested after they are released from prison. Correctional institutions have a responsibility to allow prisoners to use the time available to engage in productive activity, with the goal of changing their long-term behaviors. At the same time, efforts should be made to eliminate ineffective programming.
- Across the state, there are examples of innovative programs and partnerships across agencies, public and private, that help prisoners successfully reintegrate back into the community. In some cities, such as Lowell and Boston, the correctional facilities, the police department, the prosecutors, community-based organizations (both secular and religious), and other agencies are working together to remind prisoners who are about to be released that the police are serious about crime reduction, and support services are available to those who want to help themselves. While these efforts do not replace the need for a system of mandatory post-incarceration supervision, they are important complementary efforts and should be replicated across the state.
- Encourage the DOC and the HOCs to utilize pre-release programs in order to allow inmates to "practice" living on the outside while at the same time being carefully monitored. These efforts will aid in the preparation of inmate release. At the same time, it is important for these efforts to operate within a system of intensive supervision that protects the public. If pre-release is done in the absence of such supervision, it is a dangerous mistake.

## 6. Establish Systemwide Standards for Accountability Through Research and Reporting

- Along with its coordination activities, the Executive Office of Public Safety should establish a research office. An important early job is to monitor duplication of ex-offenders under the supervision of the Probation Department and the Parole Board. EOPS should also help the two agencies develop a protocol for people on both caseloads to minimize unnecessary administrative costs and requirements.
- This new research office should evaluate the effectiveness of various practices and work with the Board of Parole to improve the supervision and programming. One important element to study is the particular requirements of female ex-offenders and how to best organize post-incarceration supervision to improve their chances of success.
- This office should build upon the work of the Sentencing Commission, which has developed a large amount of research infrastructure (data, computer models) on matters concerning criminal justice in the Commonwealth.
- At the same time, the EOPS should work with institutions to evaluate whether changes to correctional practices (such as programming and classification policies and practices) could provide support for the eventual release of the inmate population. More research using credible evaluation methods should be done in order to refine our efforts. This effort would be greatly improved if outside researchers were encouraged to access and utilize the data.
- The EOPS should begin an effort to collect data for the purposes of understanding criminal justice as a whole in the Commonwealth. Rather than doing this on an agency-by-agency basis, craft research projects that help us understand recidivism, the effectiveness of various forms and lengths of surveillance, and the effectiveness of various programmatic initiatives. Make particular efforts to collect comparable data from the various Houses of Corrections, which hold more than half of those behind bars in the state. This effort will build upon—not duplicate—the research capacities of other criminal justice agencies.







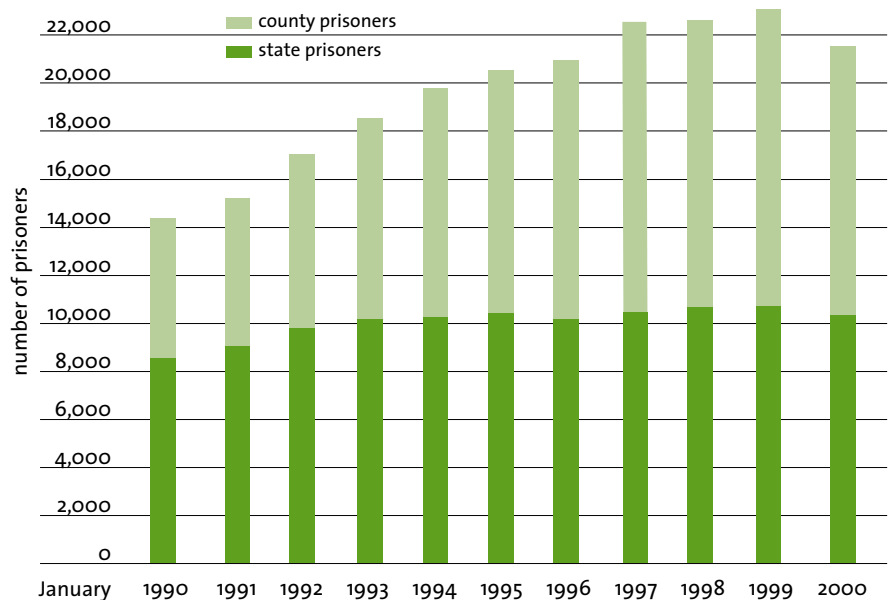
# I. Prison Populations, Release, and Public Safety

Public safety is consistently one of the concerns at the top of the public's agenda. Among the many efforts to minimize crime and ensure public safety - policing, community programs, and efforts of private citizens, to name a few - prisons occupy a central role. The use of incarceration expanded substantially at the end of the past century. Nationally, the number of prisoners held in state or federal prisons rose from 139 people per 100,000 in 1980 to 478 people per 100,000 at the end of 2000, an increase of 244%.<sup>1</sup> After steadily increasing over several decades, the incarceration rate was unchanged from 1999 to 2000. The increased use of incarceration has been attributed to many causes, including increased criminality, more conservative attitudes toward crime, and the effects of the war on drugs. A number of changes in both law and the practice of law enforcement are surely responsible for a large part of the increase.

Massachusetts is no different from the rest of the country in these trends. Yet it is somewhat difficult to compare Massachusetts to nationwide statistics and to other states due to the particularly prominent role of Massachusetts counties in the housing of sentenced criminal offenders. In other states, counties hold only those convicted of misdemeanor (less serious) offenses, generally with sentences of one year or less. But in Massachusetts, criminal sentences requiring terms in secure facilities are served both in state prisons run by the Department of Correction and in Houses of Correction run by the county sheriffs.<sup>2</sup> Because the statistics collected and reported by the fed-

**FIGURE 1**

Population in the State and County Correctional Facilities in Massachusetts



Source: Massachusetts Sentencing Commission.

1 Author's calculations from various spreadsheets, U.S. Department of Justice, Bureau of Justice Statistics, <http://www.ojp.usdoj.gov/bjs/prisons.htm>.

2 Counties also run jails for detainees who have not been sentenced. There are 13 county Houses of Correction. Nantucket County is the only county that does not run any correctional facility. For much more detail on prisons and jails in Massachusetts, including discussions of prison and jail capacity, overcrowding, and correctional budgets, see Robert Keough, *Prisons and Sentencing in Massachusetts: Waging a More Effective Fight Against Crime*, Boston, Mass.: MassINC, 1999.

eral government only include inmates held in state prisons, a far higher proportion of inmates in Massachusetts are excluded than in other states.

Massachusetts has two court systems. Cases heard in district courts can result in sentences to a county House of Correction or to probation. The more serious cases are heard in superior courts and may result in sentences to probation, a House of Correction, or the state prison system. The net result of this is that, as is true in other states, those with longer sentences are sent to the state prisons and those with shorter sentences go to county facilities. The current rule is that convicted offenders sent to county Houses of Correction will have sentences no longer than 2 ½ years, which means that county facilities in Massachusetts hold many inmates who would be sent to state prisons if they had committed the crime in any other state.

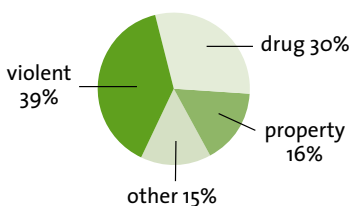
To make comparisons yet more difficult, sometimes there are changes in the rules that determine where particular sentences are to be served. Figure 1 shows that the proportion of inmates held in county Houses of Correction rather than in state prisons has increased substantially over time.<sup>3</sup> In 1990, 40.6% of the inmates of correctional facilities in Massachusetts were in county Houses of Correction, with the remainder in state prisons. By 2000, over 52% were in county facilities.<sup>4</sup> This means that looking at state figures alone is misleading.

When both the county and state systems in Massachusetts are considered together, the patterns generally mimic the national trends. The number of inmates serving time in these two types of facilities has increased over time. The total population in state and county correctional facilities rose by 50% over the past decade, as seen in Figure 1. Inmate populations fell a notable but modest 5% from 1999 to 2000.

Statistics reveal the diversity of the crimes committed by inmates. Among new court commitments to state prison in 1999, 39% were sentenced for violent offenses (including armed and unarmed robbery, assault, homicide, and rape), 16% for property offenses (including burglary, larceny, and motor vehicle theft), 30% for drug offenses (trafficking or possession of various controlled substances), and 15% for “other” offenses such as weapons or Operating Under the Influence offenses (Figure 2).<sup>5</sup> Commitments to county facilities had a somewhat different profile, with roughly equal shares of

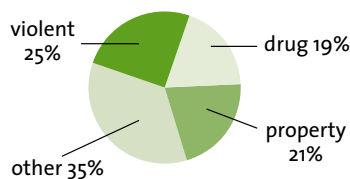
**APPROXIMATELY 1 OUT  
OF 284 MEMBERS OF  
THE STATE’S POPULATION  
HAS BEEN RELEASED  
FROM INCARCERATION  
IN THE PAST YEAR.**

**FIGURE 2**  
Commitments to State Prison by  
Type of Crime, 1999



Source: Massachusetts Dept. of Correction.

**FIGURE 3**  
Commitments to County Facilities by  
Type of Crime, 1999



Source: Massachusetts Dept. of Correction.

3 Detainees awaiting trial are not included in this analysis, as the focus is on convicted offenders serving time in secure confinement.

4 It is worth noting that some of those residing in county facilities were under the jurisdiction of the state, and some of those in Department of Correction facilities were under county jurisdiction. As of January 2000, 456 DOC inmates were held by counties and 220 were in the custody of the state but serving county sentences. Massachusetts Department of Correction, *January 1, 2000 Inmate Statistics*, May 2000.

5 Massachusetts Department of Correction, *1999 Court Commitments to the Massachusetts Department of Correction*, July, 2000.

violent (25%), property (21%), and drug (19%) offenses, with many of the “others” motor vehicle offenses (Figure 3).<sup>6</sup> Thus, when one thinks of the inmate population, one should bear in mind its great variety.

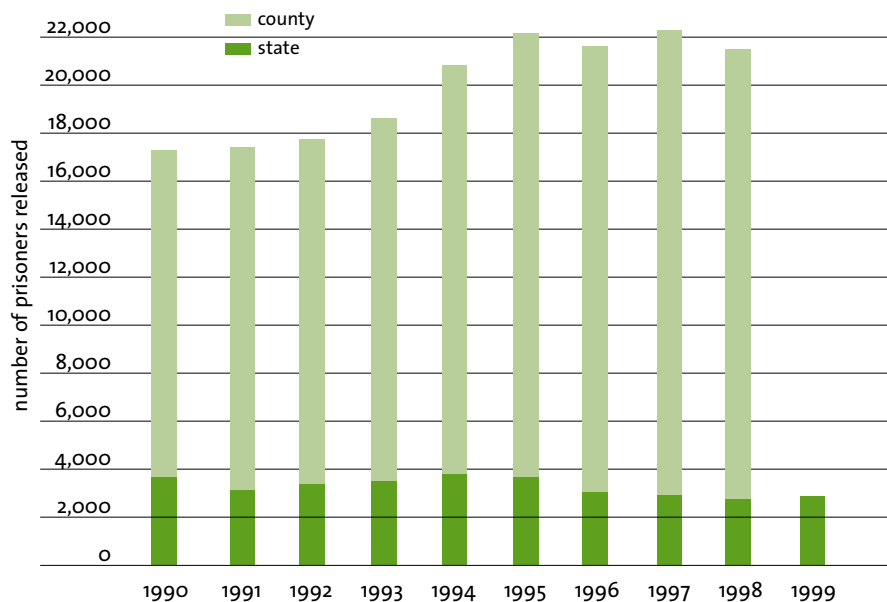
### Inmate Release Statistics

Although there are disagreements about the essential meaning of many statistics in the field of criminal justice, there is no disagreement that large numbers of inmates will eventually translate into large numbers of inmates being released from prisons and jails. Of all those incarcerated in the nation’s state prisons in 1997, 40% were expected to be released within 12 months and 73% in 5 years or less. Only 3.2% had life sentences, suggesting that 97% of inmates expect to be released at some point in the future.<sup>7</sup> Another way to look at the extent to which current inmates will return to the community is to consider that a small minority of inmates will die in prison. In 1998, 3,018 people died in custody.<sup>8</sup> Of the 1,302,019 inmates incarcerated in state and federal prisons at the end of 1998, this represents just two-tenths of one percent.

The large number of prison inmates has translated into large numbers of inmates released from prison. Nationwide, 600,000 inmates will be released from state and federal prisons this year. In the Commonwealth, the current number of prisoners released is on the order of 20,000 per year. Figure 4 reports estimates of the total number of releasees, broken down between the state and counties. The number of inmates released from state and county facilities has increased nearly 25% since 1990.<sup>9</sup> Due to the shorter sentences in the

**FIGURE 4**

Releases from State and County Correctional Facilities in Massachusetts



Source: Matthew N. Clausen, *Prisoner Reintegration in Massachusetts*, Masters' thesis John F. Kennedy School of Government, Harvard University, 2000.

6 Massachusetts Department of Correction, *New Court Commitments to Massachusetts County Correctional Facilities during 1999*, August, 2000.

7 Allen J. Beck, *State and Federal Prisoners Returning to the Community: Findings from the Bureau of Justice Statistics*, presented at the First Reentry Courts Initiative Cluster Meeting, Washington, D.C., April 13, 2000.

8 U.S. Department of Justice, Bureau of Justice Statistics, *Deaths Among Sentenced Prisoners under State or Federal Jurisdiction*, 6/19/2000, corp032.wk1, <http://www.ojp.usdoj.gov/bjs/prisons.htm#selected>. Data source is the BJS National Prisoner Statistics data series (NPS-1).

9 Because the Houses of Correction are run by 13 different sheriffs, data collection efforts are not coordinated. These estimates come from Matthew N. Clausen, *Prisoner Reintegration in Massachusetts*, Masters' thesis, John F. Kennedy School of Government, Harvard University, 2000. The estimates were derived from Department of Correction publications on inmate counts and new commitments. See Clausen's thesis for details on these calculations and a description of available data.

counties, the majority of those released come from the various county facilities. Because the average time served in the county facilities is less than a year, the number of releasees per year is greater than the year-end number of inmates. In 1998, 87% of those released were released from county facilities and 13% came from state prisons. Among state inmates, approximately 25% are released each year.

As noted earlier, the composition of county corrections in Massachusetts is unusual, which complicates the comparison of the Commonwealth to other states (because nationally collected data reflects only prisoners under jurisdiction of state correctional authorities, which generally means serving sentences of one year or longer).<sup>10</sup> For all states, the average number of released state prisoners per 100,000 civilian population in 1998 was 197, up 17% from 169 in 1990.<sup>11</sup> Looking at state inmates, the rate of release from Massachusetts's prisons was 46 people per 100,000 in 1998, down 28% from 1990. However, an additional 304 people per 100,000 were also released from county facilities in 1998.<sup>12</sup> Together, these numbers indicate that approximately 1 out of 284 members of the state's population has been released from incarceration in a state prison or county House of Correction in the past year.

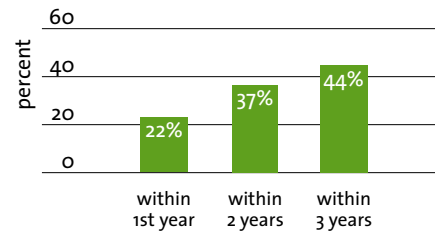
With the policy and political emphasis in past decades on fighting crime and implementing tougher sentencing laws, the topic of prison release has often been overlooked. In fact, as will be discussed later, some of the very actions taken to toughen the treatment of convicted offenders have actually made it harder to manage their eventual release.

### Recidivism

From the standpoint of public safety, is there reason to be concerned about the release of inmates? The answer is a definite yes. Several recent reports indicate that those behind bars tend to be poorly positioned to succeed in conventional society.<sup>13</sup> They tend to have low levels of educational attainment, are quite likely to have substance abuse or mental health problems, generally do not have access to permanent housing, and may or may not have family support to assist them in the transition from life behind bars to civilian life. Their term of confinement may make locating employment and housing more difficult, as some employers and landlords are excluded from hiring or renting to ex-offenders and many others prefer not to interact with this population. Given past criminal behavior and these barriers, it is no surprise that many of those released from prison and jail end up returning, some of them quite soon after release.

The most extensive national study of recidivism of those released from prison found very high rates: over 60% of releasees were rearrested for a serious offense and over 40% were reincarcerated within three years of release. Most of the recidivism occurred within the first year.<sup>14</sup> Recidivism rates of prisoners from the Massachusetts Department of Correction are quite similar. The DOC measures recidivism as reincarceration in a Massachusetts correctional facility for at least 30 days. Of those released from DOC custody in 1995, 44% were reincarcerated within three years (Figure 5). Half of those who were reincarcerated within three years did so in the first year following

**FIGURE 5**  
Recidivism Rates in Massachusetts:  
Percent of Prisoners Who Are  
Reincarcerated



Source: Massachusetts Dept. of Correction.

<sup>10</sup> There are several other states that do not conform to the general pattern.

<sup>11</sup> See the Bureau of Justice Statistics, National Prisoner Statistics data series (NPS-1) (6/9/2000). It is difficult to draw direct conclusions comparing Massachusetts to other states using numbers collected by the Bureau of Justice Statistics because Massachusetts sends more serious offenders to county Houses of Correction than do most other states. Because the federally collected statistics refer only to state prisons, the Massachusetts numbers are too low relative to the national average.

<sup>12</sup> These numbers come from dividing the number of inmates released, reported by the Massachusetts Department of Correction, by population estimates from the Bureau of the Census. Note that, until recently, the Massachusetts Department of Correction reported the number of inmates in their facilities. They have switched to reporting the number of inmates under the Department's jurisdiction (regardless of where they resided), which is a more widely used definition. Population numbers were obtained from <http://www.census.gov/population/estimates/state/st-99-3.txt>.

13 Two recent reports look at issues of prisoner re-entry in general (Jeremy Travis, Amy L. Solomon, and Michelle Waul, *From Prison to Home: The Dimensions and Consequences of Prisoner Reentry*, Washington, D.C.: Urban Institute, 2001 and Jeremy Travis, *But They All Come Back: Rethinking Prisoner Reentry*, Research in Brief—Sentencing & Corrections: Issues for the 21st Century, Washington, D.C.: U.S. Department of Justice, National Institute of Justice, May, 2000.) Another good reference about the high level of need among inmates is Stefan LoBuglio, "Time to Reframe Politics and Practices in Correctional Education," in *The Annual Review of Adult Learning and Literacy, Volume II*, National Center for the Study of Adult Learning and Literacy, 2001. Two studies focused on Massachusetts (but drawing largely upon information from other jurisdictions to document barriers faced by inmates) are Clausen, *Prisoner Reintegration in Massachusetts*, and Community Resources for Justice, *Returning Inmates: Closing the Public Safety Gap*. Boston, Mass., 2001.

14 This study followed 16,000 inmates released in 1983 in 11 states. See Allen J. Beck and Bernard Shipley, *Recidivism of Prisoners Released in 1983*, BJS Bulletin, U.S. Department of Justice, NCJ 116261, April, 1989. The Bureau of Justice Statistics is conducting another recidivism study following releases from 1994. Results are due to be released shortly.

15 Massachusetts Department of Correction, *The Background Characteristics and Recidivism Rates of Releases from Massachusetts Correctional Institutions during 1995*, May, 2000.

16 The majority of prisoners are male, although in recent years the number of female inmates has increased substantially. Therefore, this report generally uses the pronoun "he." The issues that women prisoners face upon release from prison differ from male prisoners and deserve additional study.

17 See Marta Nelson, Perry Deess, and Charlotte Allen, *First Month Out: Post-Incarceration Experiences in New York City*, Vera Institute of Justice, monograph, 1999.

release.<sup>15</sup> Reincarceration indicates one of two things: either the releasee was convicted of a new offense or he was returned due to a "technical violation," meaning he violated the terms of parole.<sup>16</sup> Such high rates of reincarceration indicate that reintegration into society after release from confinement is not simple.

Whether the ex-inmates were returned to prison or jail because of new crimes or because of a violation of probation or parole conditions, these statistics indicate that those newly released from confinement are committing a substantial number of crimes, representing a considerable threat to public safety. For example, if 22% of the 22,000 inmates released per year in Massachusetts recidivated by committing just one new crime, that represents nearly 5000 additional crimes. At the same time, reincarcerating those who do re-offend brings with it substantial costs to the taxpayer, on the order of \$30,000–\$50,000 per year. Anything that we can do to improve the rate of successful reintegration of newly released prisoners is likely to pay substantial social dividends in safer streets, healthier families, more productive citizens, higher tax receipts, and lower governmental expenditures.

The national recidivism study shows us who is most likely to recidivate. Younger prisoners had higher rates of recidivism than older prisoners. At the same time, those with more extensive criminal histories were particularly likely to recidivate. Putting these two facts together, the study found that young inmates with extensive criminal histories had extremely high rates of failure. Indeed, 94 percent of prisoners aged 18-24 with 11 or more prior arrests were rearrested within 3 years.

In addition, the period just following release appears to be particularly important in preventing recidivism. Within 3 months of release, 14 percent of state prisoners had been rearrested, and during the subsequent 3 months, an additional 12 percent were rearrested (Table 1). Other research provides descriptions of the time following prison release. This research emphasizes the importance of the period immediately following release, including the first day out.<sup>17</sup> It appears that the time from release through the first year is a pivotal time for ex-offenders, determining whether they resort to old habits or make a fresh start.

**TABLE 1**

**Recidivism Rate of Prisoners by Time Period after Release from Prison, based on National Recidivism Study**

Time period after release (months)	Percent rearrested	Time period after release (months)	Percent rearrested	Time period after release (months)	Percent rearrested
1-3	14.2%	13-15	7.9%	25-27	5.3%
4-6	12.6%	16-18	7.3%	28-30	4.6%
7-9	11.2%	19-21	6.6%	31-33	4.4%
10-12	8.9%	22-24	6.0%	34-36	4.6%

Source: Bureau of Justice Statistics, U.S. Dept. of Justice

Note 1: For each percent the denominator is the number of released prisoners who had not been rearrested before the 3-month period, and the numerator is the number who were rearrested during the period.

Note 2: This table includes any arrest for a felony or serious misdemeanor. It is a broader definition than the one used by the Massachusetts Department of Correction.

## II. What Determines Release from Correctional Institutions?

A combination of sentencing law and correctional practice determines the timing and conditions under which inmates are released. Through most of the century in most states, the management of the release of inmates fell to a Parole Board. Sentences were long and the Parole Board determined when an inmate was to be released, taking into consideration behavior while incarcerated and success at rehabilitation. The board would also determine the “conditions” of release, setting what could be a broad set of requirements for satisfactory behavior. Parole officers would then supervise the ex-offenders in the community, ideally providing a mix of surveillance and services. If a parolee violated the conditions of his or her release, the parole officer could revoke the parole, requiring the parolee to return to secure confinement, perhaps for the remainder of the original sentence.

Traditional parole served two distinct functions: discretionary release and post-release supervision. Discretionary release occurs when a Parole Board determines that an inmate should be released from confinement to serve the remainder of his or her sentence in the community. The second function concerns the supervision of ex-inmates who have been released by the Parole Board.

A variety of legislative and bureaucratic decisions over the past 25 years have changed this picture dramatically.<sup>18</sup> A move to greater predictability in sentencing substantially reduced the discretion of the Parole Board to grant release to inmates. Mandatory sentencing and “truth in sentencing” laws eliminated discretionary release for large numbers of inmates, as these laws specify mandatory release dates. These reforms were, in some cases, motivated by a desire to systematize criminal sentencing and to align actual time served with the nominal sentence meted out by the court and, in some cases, motivated by a desire to increase punitiveness, whether or not the particular policy actually served to improve public safety. Whatever their purpose, however, these changes weakened parole and, as a result, reduced the opportunity for post-incarceration supervision. Although it is possible that this consequence was unforeseen, there were some voices at the time advising against the loss of parole supervision.<sup>19</sup>

It has been argued that keeping parole may be “harder” on criminals than eliminating it. First, inmates dislike supervision in the community and sometimes choose to serve longer in prison to avoid it. Furthermore, studies show that time served grew longer in states that reinstated parole, suggesting that the existence of discretionary parole does not guarantee that many inmates are released “early.”<sup>20</sup>

In recent years, a handful of states abolished discretionary release and several others eliminated it for certain violent or felony offenders.<sup>21</sup> These actions were often part of truth in sentencing laws adopted in response to the incentives provided by the federal government in the 1994 Crime Act.<sup>22</sup> Even in states that did not eliminate discretionary release, parole boards became more hesitant to grant it.<sup>23</sup> In sum, these reforms effectively eliminated discretionary release in many states. At the same time, some states have introduced

**INMATES DISLIKE  
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TO SERVE LONGER IN  
PRISON TO AVOID IT.**

<sup>18</sup> A nice overview of these terms and reforms is provided in Paula M. Ditton and Doris James Wilson, *Truth in Sentencing in State Prisons*, Bureau of Justice Statistics Special Report, NCJ 170032, January, 1999. More detail is provided in Peggy B. Burke, *Abolishing Parole: Why the Emperor has No Clothes*, American Probation and Parole Association, 1995.

<sup>19</sup> See, for example, Robert Martinson and Judith Wilks, “Save Parole Supervision,” *Federal Probation*, 1977, pp. 23-27.

<sup>20</sup> See Burke, *Abolishing Parole*.

<sup>21</sup> See Ditton and Wilson, *Truth in Sentencing in State Prisons*.

<sup>22</sup> This legislation is formally titled the Violent Crime Control and Law Enforcement Act of 1994.

<sup>23</sup> For a nice discussion of changes in the practice of parole, see Joan Petersilia, “Parole and Prisoner Reentry in the United States,” in Michael Tonry & Joan Petersilia (eds.), *Prisons (Crime and Justice: A Review of Research vol. 26)*, Chicago, Ill.: University of Chicago Press, 1999.



programs of mandatory post-incarceration supervision. By 2000, the most common method of release from state prison was mandatory parole. Under mandatory parole (or “mandatory post-release supervision”), the date of release is determined by statute and supervision is provided by the parole agency after release.<sup>24</sup>

### Conditions of Release

The introduction of mandatory post-incarceration supervision notwithstanding, there has also been an increase in the proportion of inmates released with no further supervision. If a prisoner is released under the authority of a Parole Board, the conditions placed can include curfews, drug testing, mandatory programs to manage anger or improve other deficits, requirements of employment, and payment of restitution to victims. These conditions are intended to help former inmates “practice” civilian life, improve their chances of success in civilian life, and reduce their chances of further criminal activity.

Recall that the vast majority of inmates are scheduled to be released at some point in time. If inmates are refused parole by the Parole Board or if they are not allowed to seek discretionary release due to the law under which they were sentenced, prisoners are released at the expiration of their term. If this happens, unless a state requires a period of mandatory supervision, there is no way to impose conditions on an inmate’s behavior following release. As a result, there will be no supervision of the inmate and only usual policing activities will provide a restraint on subsequent criminal activity. States generally release some portion of their inmates with conditions and some without, depending upon state sentencing law, the actions of the Parole Board, and the behavior of the inmate.<sup>25</sup> Nationally, of those released from state prison in 1999, 18% were released at the expiration of their sentence with no conditions placed on the former inmate.<sup>26</sup>

The number of individuals under the supervision of a parole agency at any point in time depends on numerous factors, including the size of the convicted population, rates of discretionary release, and the length of time any individual spends under supervision. Clearly, these factors result from the legal environment, how practitioners operate in this environment, and the behavior of offenders. Massachusetts has a small parole population relative to other states (controlling for the size of the general population). Over the past 10 years, there has been a substantial increase in the number of parolees nationwide while in Massachusetts the parole population has declined (by 23%).<sup>27</sup> As discussed below, changes in both law and practice are responsible for the change in how inmates are released in the Commonwealth.

### Sentencing Reform

Truth in Sentencing reform in 1993,<sup>28</sup> among other things, greatly reduced the scope for supervision of former inmates. The law eliminated the “Concord” sentence, in which offenders were sentenced to terms at a state reformatory with wide latitude for the Parole Board to determine actual time served. The law also eliminated the split sentence to state prison, in

24 U.S. Department of Justice, Bureau of Justice Statistics Special Report, *Trends in State Parole, 1990-2000*, October, 2001.

25 California is a notable exception, having eliminated discretionary parole for all inmates except lifers and established mandatory parole for all others.

26 U.S. Department of Justice, *Trends in State Parole, 1990-2000*, Table 3.

27 U.S. Department of Justice, *Trends in State Parole, 1990-2000*, Table 2.

28 Chapter 432 of the Acts of 1993, “An Act to Promote the Effective Management of the Criminal Justice System through Truth-in-Sentencing.” The act also established the Sentencing Commission.

which inmates were given a term to be served in prison as well as a term of probation to be served following release. The split sentence had been a common avenue through which the Probation Department supervised inmates following release. The Probation Department is part of the court system, and offenders with split sentences were supervised by probation officers upon their release from confinement. Because the Probation Department also establishes conditions of satisfactory behavior and provides surveillance, it functions somewhat like parole supervision. Although Truth in Sentencing removed this sentencing option of a split sentence (prison and probation) for state sentences, we will see below that judges have adapted to this provision, so that probation remains an important avenue under which ex-inmates are supervised.

Truth in Sentencing also eliminated parole eligibility at  $\frac{1}{3}$  or  $\frac{2}{3}$  of the minimum sentence for state prison sentences and it eliminated statutory good time, in which inmates were granted a certain amount of time off their stated sentence. The net result of these changes for release was that the scope for parole was drastically reduced, with the result that more prisoners were released without supervision. Another consequence of this legislation is that it reduced the incentive for inmates to conform to expectations of non-disruptive behavior and rehabilitative efforts while in prison.<sup>29</sup> Because the scope for parole was reduced, inmates had less reason to adapt their behavior to the desires of the Parole Board in anticipation of review of their case for discretionary release.<sup>30</sup>

Mandatory minimum sentencing laws for various crimes<sup>31</sup> further reduced the scope of a variety of mechanisms to aid prisoner reentry. The legislature passed a number of laws in the 1980s and 1990s covering particular offenses that prohibited (for a specified time period) probation, parole, furlough, work release, and earned good time. When these mandatory minimum sentences are long, judges are reluctant to give terms that are longer than the minimum. A consequence is that there is no scope for discretionary release and thus no post-incarceration supervision for those inmates convicted of these offenses, the very ones that were determined to require more stringent punishment.

In practice, sentencing under mandatory minimum laws makes it unlikely that there will be any criminal justice supervision following release, as inmates must be released upon the expiration of the sentenced term of confinement. One way to look at this phenomenon is to compare the minimum sentence to the maximum sentence. If there is a large gap between the two, the Parole Board uses its discretion to determine the actual release date. Among those sentenced to state prison for offenses other than mandatory drug offenses in fiscal year 1999, 31% had minimum and maximum release dates that were less than one month apart. There has been a dramatic increase in this statistic over time—in fiscal year 1994, only 2% of such offenders had such little scope for discretionary release. For those sentenced for drug offenses under mandatory minimum sentencing laws, 57% had less than one month between the minimum and maximum. This proportion has doubled

29 The prospect of earning good time through program participation still provides an incentive for productive use of time. Good time reduces the amount of the sentence served in confinement.

30 It should be noted that some of the move toward more determinate sentences happened before the Truth in Sentencing law. In 1993, at the time of the Truth in Sentencing legislation, for example, 37% of all sentences for males committed to the state Department of Correction were either split or “Concord” (reformatory) sentences, down from 46% in 1984. See Massachusetts Sentencing Commission, *Survey of Sentencing Practices: Truth in Sentencing Reform in Massachusetts*, October, 2000, Table 2.

31 Mandatory minimum sentencing laws cover driving under the influence offenses; offenses with particular classes of victim including the elderly, mentally retarded, and children; murder, possession, trafficking and use of firearms; and distribution and possession of various controlled substances.

IN 1999,  
4,744 INMATES  
CHOSE TO BE  
RELEASED WITH  
NO SUPERVISION.

since 1994.<sup>32</sup> For these offenders, Massachusetts has effectively joined those states that have legislatively eliminated or gutted post-release supervision.

### The Practice of Parole

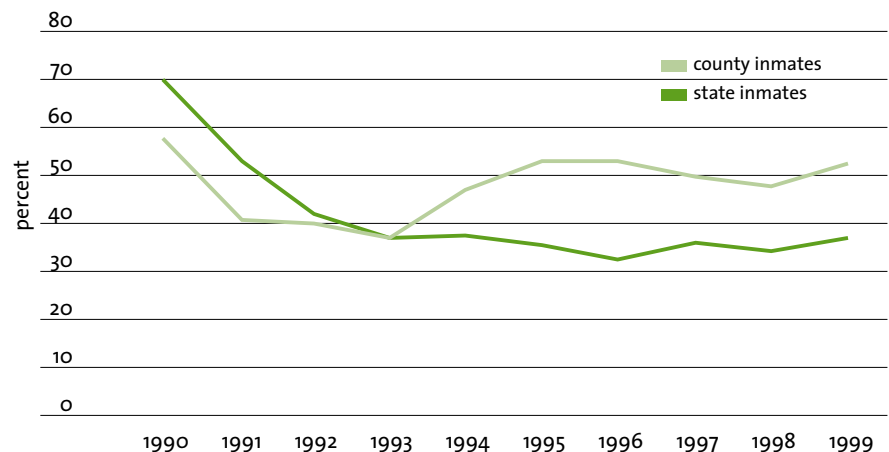
Parole boards have to balance several, sometimes competing, goals. Decisions to grant discretionary release impact the individual inmate, of course, but also the community into which they are released. Parole boards are in the position of deciding whether someone should serve the final part of his sentence in the community under supervision, not whether the person is eventually to be released. Discretionary release allows them to impose particular conditions upon a released offender. If the inmate is released to the street unconditionally at the expiration of his term, the opportunity to craft an individualized program is lost. Finally, the extent to which parole boards grant discretionary release provides incentives to current and future inmates to take full advantage of their time incarcerated to improve their chances of parole release. Thus, the existence and use of paroling authority can have an important impact on the success of rehabilitative programming within correctional facilities, and therefore on the rate of successful inmate reintegration.

The most important element of the charge of the Massachusetts Parole Board governing discretionary release is the criterion to be used. In order to grant conditional release, the Parole Board must judge that “there is a reasonable probability that, if such prisoner is released, he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society.”<sup>33</sup> Given the myriad responsibilities of the Parole Board, it is not surprising that actual practice changes somewhat over time.

During the same period when the number of inmates eligible for parole consideration declined, the Parole Board in Massachusetts, as in other parts

**FIGURE 6**

Paroling Rate for State and County Inmates, 1990-1999



32 Massachusetts Sentencing Commission, *Survey of Sentencing Practices*, FY 1999, January, 2000, Table 23.

33 Massachusetts General Law chapter 127, section 130.

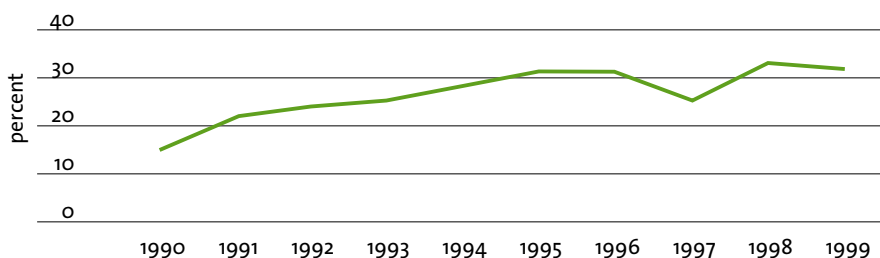
Source: Massachusetts Parole Board, 1999.

of the country, reduced the rate at which it granted discretionary release. This change may reflect a change in public sentiment, a new view of the role of discretionary release within criminal justice, and/or a new fear among public officials of being seen as responsible for the release of criminal offenders. From 1990 to 1999, the likelihood of a state inmate receiving parole at a given hearing dropped by nearly a half (from 70% to 38%). During the same period, the likelihood of receiving parole for county inmates fell much more modestly (from 58% in 1990 to 53% in 1999, Figure 6).<sup>34</sup>

Perhaps an even more telling statistic about the operation of the Parole Board, however, is the impact on the behavior of inmates. Over this same period, an increasing number of inmates declined to have a parole hearing. Of those eligible for a parole hearing 1,719 prisoners (15%) waived their right to a hearing in 1990 and 4,744 prisoners (32%) waived their right in 1999 (Figure 7).<sup>35</sup> In effect, waiving the right to a hearing eliminates the possibility of being granted discretionary release and thus being supervised after release. It is likely that at least some inmates were discouraged by the low rates of parole and decided not to bother seeking a hearing. It is also possible that some inmates decided it was better to finish their sentences in confinement, since the total amount of time available for parole release was not very substantial. And it is possible that some inmates find community supervision sufficiently unpleasant that they prefer institutional confinement.<sup>36</sup> Whatever their reasons, in 1999, 4,744 inmates chose to be released with no supervision. It is an unusual law enforcement policy to give inmates the responsibility for making the determination of how to serve their sentences.

**FIGURE 7**

Inmates Waiving their Right to a Parole Hearing, 1990-1999



Source: Massachusetts Parole Board, 1999.

The practice of the Massachusetts Parole Board may be changing, however. Under new leadership, the board has developed a reentry program.<sup>37</sup> One change that has already occurred is how the board conducts hearings. As of November, 2000, the board began conducting all hearings for parole eligible offenders in person. This means that Parole Board members travel to county and state correctional facilities to hear inmates present their cases. It is too soon to tell if this change will impact either the rate at which discretionary release is granted or the rate at which inmates seek parole hear-

34 Massachusetts Parole Board, *10-year Trends, 1990-1999*, 1999.

35 Massachusetts Parole Board, *10-year Trends, 1990-1999*.

36 For evidence that many inmates prefer incarceration to community supervision, see Joan Petersilia and Elizabeth Piper Deschenes, "What Punishes? Inmates Rank the Severity of Prison vs. Intermediate Sanctions," *Federal Probation*, vol. 58, no.1, March, 1994, pp.3-8.

37 Massachusetts Parole Board. *Reentry Program Planning Document*, August 2, 2001.

ings, as statistics are not yet available. But early reports indicate an increase in the proportion of hearings that result in approval of discretionary release. The board is also considering implementing a program of graduated sanctions. While currently in the early stages, the reentry initiative has the potential to change important elements of parole supervision. Nevertheless, these reforms will not change the fundamental problem that those most in need of post-incarceration supervision may not receive it because of current sentencing laws.

### **Pre-Release Practice of Correctional Institutions**

Before release from the jurisdiction of the state Department of Correction or a county House of Correction, inmates may receive some preparation for that release. (See p.32 for a profile of the Springfield release planning process.)

## **PRE-RELEASE PLANNING IN SPRINGFIELD** *by Neil Miller*

At first glance, you might think you were at a revival meeting. But it's a gathering of a very different sort: the initial release planning session at the Hampden County Jail and House of Correction, in Ludlow, Mass., outside Springfield. Nick Albano, release planning coordinator, is pointing to a list of phone numbers on the blackboard: "911: That's a bad outcome," he tells the 26 or so inmates gathered in the jail's resource room. "733-5469: That's Joanne's phone number. That's a good outcome—she's the aftercare support coordinator; she'll help you outside. 746-0202: That's the undertaker!"

None of the inmates, all of whom are scheduled to be released in the next 100 days, laugh.

Earlier, Albano asks the inmates why they are attending the session.

"Not coming back," answers one.

"Be connected," says another.

"Place to live," says a third.

The release planning sessions are part of the jail's After Incarceration Support Systems (AISS) Program, the brainchild of Hampden County Sheriff Michael J. Ashe, Jr., and his brother and jail administrator, Jay. It's an innovative program that stands out in a field where few jails and sheriffs' offices pay much attention to what goes on once prisoners leave their supervision. Founded in 1996, AISS started because the vast majority of inmates at the Springfield jail, like inmates in most places, were being released with no planning whatsoever. "The sheriff thought a piece was missing," says AISS program manager Jen Sordi. Under AISS, inmates are encouraged to attend two release planning sessions and sign on to a release plan before leaving jail. The first meeting is an introductory one; at the second, in smaller groups, each inmate will fill out a personal plan. It's the first stage

of a continuum that will give inmates the tools to function on the outside, linking them up with various agencies and services.

Attending the release planning sessions and filling out a release plan aren't mandatory. But there are incentives. By participating, inmates can gain two and a half days of good time (time off their sentence). On the day of release itself, inmates with a plan get out at 11:30 in the morning, while those without one are not permitted to leave till 4:00 in the afternoon. Albano insists the last incentive has a big impact. "The inmates see other guys getting sent back with their bags on the morning of their release because they don't have a plan," he says. These incentives have boosted participation from 60 to 90 percent, according to Albano.

The release plans themselves are relatively straightforward. They list the services that inmates are expected to use once they get out: a recovery program, a community health center that every inmate gets matched up with, mental health care, if needed. Plans may also include employment agencies or educational services, as well as 12-week aftercare support groups for men and women. "Everyone needs a support system of at least five people or programs," says Sue Bergeron, the aftercare female offender coordinator, who herself spent three different stints in jail some 24 years ago.

The program doesn't just provide inmates with lists of places to go after release. It also tries to make things happen. For example, beds in residential recovery programs are tough to find in the Springfield area; there are waiting lists and jockeying for spots. So AISS has developed various partnerships to find beds for ex-inmates. "We have strong connections to the community, and we utilize them," says Sordi.

Meanwhile, the aftercare coordinator, Joanne, meets with

Some inmates spend a period of time in a halfway house, working during the day, spending evenings in substance abuse recovery meetings, and nights in the halfway house. Some inmates make plans for the release, perhaps initiating relationships in the community to ease their transition. Some inmates have used their time behind bars to develop educational or vocational skills that will improve their employment prospects upon release.<sup>38</sup> Existing evidence suggests that these programs are effective at reducing recidivism. Efforts to prepare inmates for release and supervision of those in halfway houses or other lower-security pre-release settings gives correctional institutions much in common with the Parole Board.

If these kinds of initiatives are universal, the transition from a correctional sentence to the community will not be abrupt. Rather, the transition will largely have occurred prior to release. One way to see how extensive these

38 See Anne Morrison Piehl, "Learning While Doing Time," Kennedy School working paper #R94-25, Harvard University, 1994, and LoBuglio, *Time to Reframe*.

every single inmate before release; last year she met with 1250. Every released inmate gets her phone number. She uses her contacts at the Department of Motor Vehicles to make it easier for ex-inmates to obtain driver's licenses: 87 percent of Hampden inmates don't have a license upon their release, either because it was suspended or they never had one in the first place. (About half don't have identification of any kind). Not being able to drive is obviously a major barrier to finding a job or place to live once out of jail, and a driver's license can be the first step toward other important identification, like a social security card.

In addition to Morales, there are two other mentors who provide assistance on the outside, and the sheriff's office plans to hire more soon. One mentor, Miguel Cruz, an ex-offender, runs a weekly support group for Spanish-speaking men.

Release plans are relatively easy to put together, according to Albano. They are based on the reports of an inmate's counselor; the inmate's skills; and information from whichever of the 30 agencies or so in the Springfield area the inmate has used in the past.

One of the newest aspects of the AISS Program are educational incentives. Education Reintegration Counselor Dan O'Malley, originally hired under a grant from the Soros foundation, meets prisoners individually at the release sessions and again on the outside—usually at Burger King. His job is to connect them with educational programs, ranging from GED and pre-GED to English as a Second Language (ESL) to college. O'Malley notes that it can be difficult for ex-inmates to find programs on their own once they're out of jail, and many programs have waiting lists, which the well-networked O'Malley helps inmates to navigate. He tries to help while ex-inmates are still hopeful and before anything goes wrong. "We have a

small window of opportunity," he says.

Last year O'Malley met with 500 released inmates, referring 425 to various agencies and programs. About 60 to 70 percent were actually placed in programs, according to his figures.

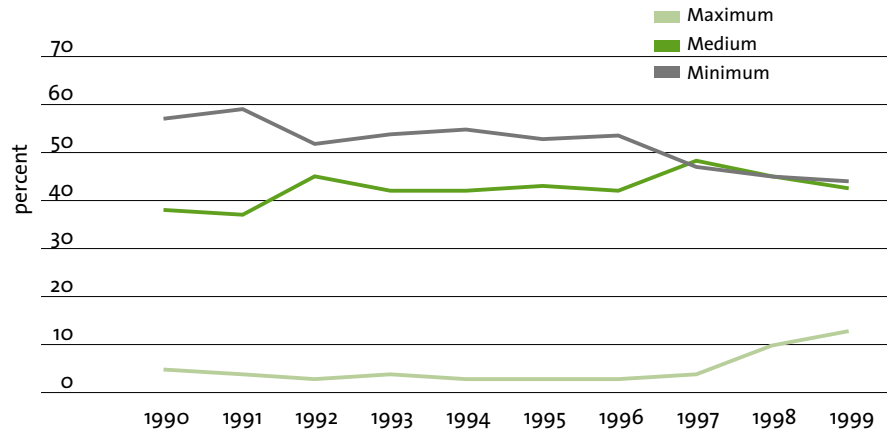
Housing can be tougher to arrange, and halfway houses have waiting lists. "The worst place to go is a shelter," Albano tells those at the initial release plan meeting.

No one contends that these release plans are the answer to an ex-inmate's problems. Following the plans isn't required. (However, inmates may present their plan to the Parole Board in an effort to increase their chances for parole; in that case, their adherence to the plans may be monitored.) Still, AISS staff members insist that the program can at least provide some direction. Release planning is "the beginning of an introduction to a new life," says Bergeron. She points out that it is easy to connect with inmates in prison; they're a captive audience, after all. "But they need connection points outside," she says, and it is often difficult for newly released prisoners to find them. Sometimes, she notes, it can take a while for ex-inmates to use that connection point; for instance, it can take a year or two outside before a woman shows up at My Sister's House, a local recovery program.

Adds Albano, "The main thing the release planning sessions do is to get them to see outside people [like Morales and O'Malley] and to change their thinking. In these sessions, we give them a little hope. If they need Joanne or a mentor to intervene, the mentor can say, 'Remember that plan!'" Albano, for one, is convinced that the newly released inmate will hold onto the plan once he leaves jail even if he doesn't make use of it right away. "I respect them. Joanne respects them. They won't throw it away," he maintains.

**FIGURE 8**

Security Level of Male Inmates Released from Department of Correction, 1990-1999



Source: Massachusetts Dept. of Correction.

initiatives are is to look at the security level from which a prisoner is released. In 1999, of male inmates released from the state Department of Correction, 13% (277 prisoners) came from maximum security institutions, 43% from medium security (934 prisoners), and 44% from lower security (966 prisoners). In the 1990s, there has been a substantial decline in the proportion being released from the lowest levels of security (the rate was 57% in 1990). It is only in the lower-security prisons where there is some chance that inmates have the opportunity to begin to make the transition to living in the community (Figure 8). The high and growing proportion of releasees coming from medium and maximum security indicates that there is more work to be done to help inmates successfully reenter civil society.

The practice of “stepping down” an inmate’s security level as he or she approaches release has been studied extensively in Massachusetts.<sup>39</sup> Inmates who moved down through the security levels and are able to take advantage of pre-release programming had lower recidivism rates than one would have predicted from their risk characteristics. It makes sense that this relationship would occur. Since the strongest results of these studies come from those released in the 1970s, it would be useful to conduct some additional experiments to assess the magnitude of this relationship in the current correctional, economic, and social environment. More generally, finding ways for correctional institutions to support successful inmate release, corresponding with lower rates of recidivism, without compromising the safe functioning of the institutions should be a priority.

39 See Daniel P. LeClair and Susan Guarino-Ghezzi, “Does Incapacitation Guarantee Public Safety? Lessons from the Massachusetts Furlough and Prerelease Programs” *Justice Quarterly*, vol. 8 no. 1, March 1991 and Daniel P. LeClair and Susan Guarino-Ghezzi, “Prison Reintegration Programs: An Evaluation,” *Corrections Management Quarterly*, vol. 1 no. 4, Fall 1997.



### III. What Happens After Release from Incarceration?

Nearly all prisoners are at some point released back to the community. Whether there are conditions placed on them upon release largely depends on the sentencing regime and the actions of the Parole Board. There are also other ways in which inmates are released from prison under the authority of some law enforcement entity. One important reason for this is that inmates have complicated legal histories, some of which require further law enforcement action after the expiration of a given sentence. For example, the Immigration and Naturalization Service (INS) has been actively seeking to deport criminal aliens, particularly following the passage of several laws in the early 1990s that expanded the authority, responsibility, and funding of the INS.<sup>40</sup> In addition, judges have developed sentencing practices that provide for post-incarceration supervision. They have done this primarily by structuring sentences that include terms of probation in addition to the terms of confinement. Therefore, while it is important to consider parole when studying what happens to inmates upon release from state and county correctional facilities, it is insufficient to stop at parole. One must consider other avenues of release.

Table 2 describes categories of release from the Department of Correction in 1999. Given the length of terms served, this release cohort reflects sentencing law and practice from the early to mid-1990s. While only 29% of releasees were paroled, the remainder did not walk out of prison with no further obligation to law enforcement authorities. Fifteen percent were released to other legal authorities: 6% to the INS, 7% to jurisdictions in which there were outstanding warrants for their arrest, and the remaining 2% to another federal or state authority. Of the 56% that were released to the street, some were supervised by the Probation Department. Despite diligent efforts, the author was unable to find any agency with knowledge of the number of inmates released from the DOC who were under probation supervision.<sup>41</sup> Note that for those who were not paroled, the timing of their release was determined by the original sentence (and the earning of good time for participation in productive activities while incarcerated), rather than by a discretionary decision.

**TABLE 2**

Terms of Release from the Department of Correction, 1999

Terms of release	Proportion of releases
None/Release to street <sup>1</sup>	56%
Parole	29%
Release to other authority	15%

Source: Author's calculations from Table 21 of Massachusetts Department of Correction, *A Statistical Description of Releases from Institutions and the Jurisdiction of the Massachusetts Department of Correction During 1999*, September 2000.

Note 1: It is unknown how many prisoners are released to the Probation Department.

Note 2: N=3548. Those released to "from and after" sentences to be served at either the Department of Correction or a House of Correction are excluded, as those inmates did not leave correctional jurisdiction.

40 Two important pieces of federal legislation covering the treatment of non-citizens convicted of crimes are the Anti-Terrorism and Effective Death Penalty Act in 1996 and the 1994 Violent Crime Control and Law Enforcement Act.

41 Although the federal Bureau of Justice Statistics collects data intended to cover those under probation supervision, Massachusetts does not report this number. (Author's communication with BJS and Massachusetts DOC research staff.)



**MORE THAN HALF OF  
THE PRISONERS RELEASED  
FROM MAXIMUM- AND  
MEDIUM-SECURITY  
PRISONS WERE RELEASED  
DIRECTLY TO THE STREET.**

More detail about those released from the DOC is reported in Table 3, in which the terms of release is broken out by the security level of the prison that the inmate was held in at the time of release. The first cell of the table shows that 162 people were released directly to the street from maximum-security prisons in 1999. The majority of people paroled came from medium- and minimum-security prisons. It makes sense from the perspective of the Parole Board that the paroling rate from maximum-security prisons would be low. Nonetheless, from a larger policy perspective, all inmates are released from confinement at the expiration of their sentences and, from these numbers, we see that many are coming from higher levels of security (2308 of the 3548 released from DOC jurisdiction came from medium or maximum security). Figures 9 and 10 indicate that more than half of the prisoners released from maximum- and medium-security prisons were released directly to the street. Among those released directly to the street, 8% came from maximum security while among those paroled (which implies post-incarceration supervision) fewer than 2% were from maximum security. (Recall that it is possible that some of the people released directly to the street are under probation supervision as well, but there is no information about the extent of this phenomenon.)

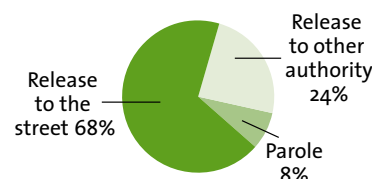
Comparable data is not collected from the various counties. Therefore, to get a sense of the forms of release from county Houses of Correction, information was collected about those released from the custody of the Suffolk County HOC in January, 2001. Suffolk County has historically been the county housing the greatest number of inmates in the Commonwealth<sup>42</sup>

**TABLE 3**  
Terms of Release by Security Level of the Correctional Institution, 1999

Terms of release	Maximum Security	Medium Security	Minimum Security	County Out of State	Total
None/Release to street	162	1,161	608	64	1,995
Parole	19	469	500	33	1,021
Release to other authority	56	441	3	32	532
Total	237	2,071	1,111	129	3,548

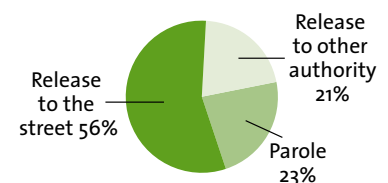
Source: Tabulations performed by the Research Department of the Massachusetts Department of Correction.

**FIGURE 9**  
Terms of Release of Inmates in  
Maximum Security Prisons, 1999



Source: Massachusetts Dept. of Correction.

**FIGURE 10**  
Terms of Release of Inmates in  
Medium Security Prisons, 1999



Source: Massachusetts Dept. of Correction.

<sup>42</sup> Hampden County has recently surpassed Suffolk County in the total number of inmates under correctional jurisdiction.

and is the jurisdiction covering Boston. These numbers may not be representative of the experiences of all counties, but they provide a picture of what is happening at the county level. Table 4 reports the release types for those leaving the Suffolk County HOC in January. Of this group, only 8% were paroled. However, that does not mean that all of the rest were left unsupervised. On the contrary, only 49% were released with no further law enforcement involvement. Twenty-three percent of releasees were on probation following release and the remaining 19% went to other authorities (due to outstanding warrants or immigration problems). While it is important to bear in mind that other counties (or other times of year) may yield somewhat different proportions, these numbers clearly suggest that inmates leave correctional facilities under a variety of forms of supervision. Thus, an analysis of post-incarceration supervision must consider more than simply parole.

**TABLE 4**  
Terms of Release from Suffolk County House of Correction, January 2001

Terms of release	Proportion of releases
None/Release to street	49%
Parole	8%
Release to other authority	19%
Probation	23%

Source: Author's communication with Suffolk County House of Correction, 10/2001.

Note: N=212. Those released to street include two people whose sentences were revoked.

The importance of probation supervision following incarceration, particularly in recent years, can also be seen in sentencing data. In fiscal year 1999, many of those sentenced to serve time in correctional facilities were also sentenced to terms of post-release probation supervision.<sup>43</sup> Some of these sentences result from split sentences, which were ruled out for sentences to state prison by the 1993 reform but are still legal for sentences to HOCs. In some situations, judges sentencing an inmate to state prison can require a term of probation following release by issuing a “from & after” (also known as “on & after”) sentence. In these sentences, a judge can impose a sentence of incarceration for one criminal charge and a sentence of probation (to be served after the term of incarceration) for another criminal charge. Thus, while the split sentence to state prison was eliminated, offenders convicted of multiple charges may be sentenced to prison and probation. We will see the effect of this increase in future years. As current inmates come to the end of their prison terms, this use of post-incarceration probation will affect an increasing percentage of the releasee population, particularly for state prisoners.

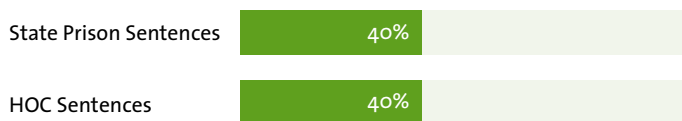
Among those sentenced in 1999, approximately 40% of those sentenced to counties and about 40% of those sentenced to state prison have terms of probation to serve following release (Figure 11).<sup>44</sup> Interestingly, among sentences to the DOC, the proportion of cases with post-release probation

43 The rate of probation was 39% in District Courts and 50% in Superior Court (Massachusetts Sentencing Commission, *Survey of Sentencing Practices: Truth in Sentencing Reform in Massachusetts*, Table 10).

44 Sentencing practices vary across the two court systems. Among those sentenced to HOCs in superior court, nearly 70% had probation for post-release. About one half of these cases were split sentences and one half were “from & after” sentences. Among those sentenced to the DOC in superior court, there was approximately the same rate of “from & after” sentences (37%) and a handful of split sentences (presumably in cases in which the criminal conduct occurred prior to the truth in sentencing legislation). (Massachusetts Sentencing Commission, *Survey of Sentencing Practices: Truth in Sentencing Reform in Massachusetts*, p.30.) In the district courts, which sentence only to Houses of Correction, 38% had post incarceration terms of probation. (Massachusetts Sentencing Commission, *Survey of Sentencing Practices: Truth in Sentencing Reform in Massachusetts*, Table 10.)

**FIGURE 11**

Percent of Prisoners Sentenced to Post-Incarceration Supervision Through the Probation Department, 1998



Source: Massachusetts Sentencing Commission.

## ON THE STREETS OF DORCHESTER *by Neil Miller*

The conventional wisdom is that, once they are released, prison inmates should stay away from old friends and associations that presumably helped land them in jail in the first place. In Boston's Dorchester neighborhood, at the Ella J. Baker House, a group of ex-offenders is taking a different approach. On staff at Baker House is Andre Norman, out of jail since November, 1999. He was at state prison with "Fever," who was released in May, 2000. And Fever had been friendly with Tony, another graduate of the Commonwealth's prisons, before they went inside. All of them grew up just a few blocks from Baker House. Now they are working in the old neighborhood to help other ex-offenders and reduce gang activity.

"These are the people who used to rule these streets," says Andre, who was once one of those people himself and served 14 years in state and federal prison for armed robbery, among other charges. "They led the gangs. They used to shoot at people. Now we send them out for outreach."

At Baker House, Andre runs a Thursday night group for ex-offenders. The group starts with a prayer: it is part of a faith-based organization, after all. (Baker House is headed by prominent Boston minister, the Rev. Eugene Rivers.) It's different from other support groups in another way: it doesn't follow the traditional support group model. "We don't do 'I had a bad week' here," Andre says. "They're not those kinds of prisoners and we're not clinical psychologists." (Of the seven core members in attendance on one Thursday night, four had been locked up on murder or attempted murder charges, according to Andre.) The focus is on action: setting up activities, like summer basketball, for neighborhood kids; arranging to help newly released prisoners with résumés; establishing transitional housing for ex-inmates. The group has taken on less "programmatic" ways of helping ex-inmates adapt to life outside, including taking them for meals at Indian and Moroccan restaurants—an alternative to the fast food that is the staple of many a former

inmate's diet. Group members are also planning a social trip to the West Coast.

The outreach team in particular relies on the commitment and charisma of former gang and prison leaders. Their reputations—once for ill and now for good—encourage other former offenders and young people in the community to gravitate toward them.

Some of the leaders turned themselves around in prison, and some outside. Take Fever, for example. Now 30, he spent 10½ years at Norfolk and Walpole state prisons, having been convicted on a variety of charges, including attempted murder. He was a tough guy: while in prison, he spent five years in isolation for assaults on guards and other inmates. There, he began to read books on science and theology and magazines like the *New Yorker*. "I got a different perspective on the outside world," he says. He also kept seeing the same people leave and come back to jail; he kept hearing the same stories. He became determined not to be one of them.

In the Department of Corrections facilities, there is almost no preparation for life outside, Fever says. The only thing that offers support and supervision outside is parole, which requires getting a job outside and a place to stay. Fever himself was paroled into the custody of his mother, but that was the exception rather than the rule. The standards for parole are so high, he says, that few can get it; without it, "They were releasing you to go home and hustle," with no support at all, he says.

When he was released, Fever had several hundred dollars in savings, earned from jobs in jail. During his first month out of prison—a period of "mad energy," he says—he had some 20 jobs, working for moving and painting and construction companies, often lying about his prison record to get hired. He then settled into a carpentry job that he held for six months and left to work at Baker House.

If Fever reformed himself in jail, that wasn't the case with

supervision fell from 1994 to 1996, before increasing again toward the earlier level.<sup>45</sup> This pattern suggests that courts were adapting to the change in sentencing law in 1993, perhaps to ensure some post-incarceration supervision. The pattern also suggests that, over time, those released from state prison will become more likely to be under the authority of law enforcement than the numbers reported in Table 2 suggest. This will happen as those sentenced in recent years are released several years down the road.

The individuals on probation following a term of incarceration constitute a small part of the Probation Department's workload, however. The majority of probationers are sentenced directly to probation. Among all

45 Massachusetts Sentencing Commission, *Survey of Sentencing Practices: Truth in Sentencing Reform in Massachusetts*, p.30.

Tony, 40, who had served five years for a string of armed robberies. While in jail, he says, "my mindset was to do time and get out. I didn't care about any programs or anything." He came out and was "drifting and keeping the hustle on" until he hooked up with Norman, Fever and especially the Rev. Rivers, whom he credits with his transformation. He is impressed with all the programs and talents around him at Baker House. "A year ago I didn't see myself being around all that talent," he says. "Now I read the Bible. Now I am trying to reach the next person."

All these ex-offenders insist that parole and parole officers were not particularly helpful to them. "They give you a cup to piss in every couple of weeks, that's all," says Andre. Although Fever says that parole will get the credit for his rehabilitation, "They haven't done anything," he says. "No one showed me how to get back into society." Fever is now serving as a mentor to residents of Brook House, a Boston halfway house, helping them with their re-entry. "Parole should be doing this," he maintains.

The ex-offenders identify housing as the critical issue for inmates returning to society. "You come out of jail, and you're sleeping on someone's couch," says Andre. "Your clothes are in a trash bag behind the dresser. Everything is someone else's. You hook up with some girl. It goes from bad to worse. You never make it to your own place. You get stuck."

With this in mind, Baker House in early summer opened its transitional housing on Dorchester's Columbia Road for ex-inmates. Funded primarily through the Rev. Rivers' church, the idea is for people to stay there for six months or even longer, while trying to arrange for more permanent housing. It now counts Andre and Tony among its residents. (Fever lives with his girlfriend.) Tony, for one, hopes it will be truly transitional. He has three children and has had the same girlfriend for 23 years and is hoping to be married next year. The fact that Andre and Tony need transitional housing underscores the depth of the

problem. If these "leaders" don't have a place to live, what about the "average" ex-inmate who may not have the jobs or support systems that these two have?

In contrast to housing, jobs are plentiful, they contend. "There are plenty of \$15-an-hour construction jobs," says Fever. "All you have to do is pass a drug test." In many cases, this may only be a short-term situation, however. The trouble, says Andre, is that people can wind up losing jobs once the results of a criminal background check come in. This is particularly true in cases of ex-offenders who committed serious, violent crimes.

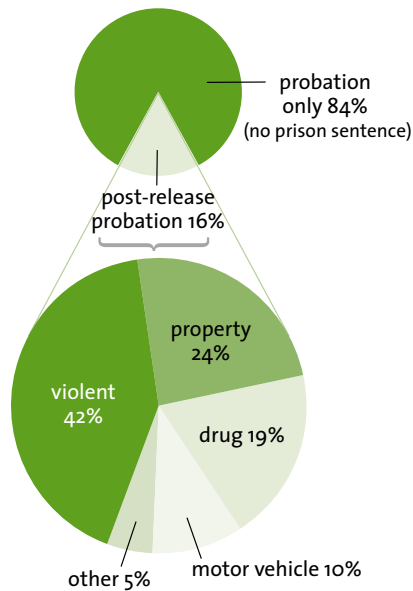
Because of his leadership abilities, Andre has had other opportunities. He says he was offered a \$62,000-a-year job working for an insurance company but turned it down because it would take him away from Dorchester. "I looked good in a suit," he says. "But I made the promise while in prison that I would help my brothers."

One potential drawback of the Ella Baker approach is its reliance on the dynamic personalities of people like Andre (a self-described "stand-up guy" in prison) and Fever (whom his friend Tony refers to as a "magnet" for others). And behind them is the respect that the Rev. Rivers brings to Baker House's efforts. Without the reputation of these individuals, the effort might well falter.

Keeping all this in mind, back in the old neighborhood, the three are trying to put their street credentials to use, talking to young people, trying to persuade them that having a job is a good thing, and in Fever's case, serving as a halfway house mentor. "People see that I am looking good and I survived it," says Fever. "I have disassociated myself from certain dudes. I am not ashamed of the Bible." And he adds, "Our experiences make it real to kids who were 8 and 9 when we went away and who are now 19 and 20. Now we are the models. They say, 'If you can change your life, I can!'"

**FIGURE 12**

Probation Caseload, 1999



Source: Massachusetts Sentencing Commission.

probation sentences imposed, 16% are for post-release probation while the remainder is for community supervision and, perhaps, fines for less serious offenders.<sup>46</sup> Those who are sentenced to post-release probation supervision are a heterogeneous population. Of this group, 42% were convicted of violent offenses, 24% property offenses, 19% drug offenses, 10% motor vehicle offenses, and 5% “other” offenses (Figure 12).<sup>47</sup>

It is clear that sentencing plays a large part in how the process of release unfolds. Currently, only if there is scope for the Parole Board to act and the Board chooses to approve discretionary release does post-release parole supervision happen. At the same time, a large proportion of inmates are under the supervision of the Probation Department following release. (Some inmates are even on probation and parole simultaneously. Because no agency keeps track of this information, nobody knows how many. Of those released from Suffolk County HOC in January, 2001, 6 of the 18 paroled inmates were on probation, too.) The remainder walk out the door without anyone checking up on them or offering support.<sup>48</sup>

While judges and the Parole Board play central roles, there are a number of other entities concerned with the reentry into the community. Because over 95% of inmates are expected to return to the community, some view preparation for release as a critical function of correctional institutions.

## A WEEKLY SUPPORT GROUP *by Neil Miller*

In a bright, carpeted meeting room at Springfield’s YMCA, some 25 veterans of the Hampden County Jail and House of Correction sit around long tables, swapping stories of life after incarceration. “I’m lost,” confesses one 20-something ex-inmate in a U. Mass sweatshirt. “I don’t know where to go to get a job.”

Aftercare Support Coordinator Joanne Morales, who leads the group, recommends he take morning classes through the life skills program. “By the fifth week you’ll get a job,” she tells him.

The man in the sweatshirt isn’t impressed. “I’m talking about money!” he says. “I’m talking about gas in my car. I don’t have time to hang around in the morning at any program.”

Someone in the group suggests a local engineering firm. “Go there and explain your situation and you’ll get a job for \$8 an hour,” he says. “I guarantee you can walk in and get a job.”

Most everyone in the room agrees that it isn’t hard to find a job; virtually everyone here has one. “Employment is the easiest thing to find,” Morales notes. “But retaining a job is another matter. People keep messing up.”

The men are participants in a weekly Thursday evening “aftercare” support group that is part of the Hampden County jail’s After Incarceration Support Services (AISS). They’re out from behind the walls now, but 70 percent of those present are mandated to attend group meetings for 12 weeks as part of parole or probation. (One recent participant was just released

after a 7- year stint in state prison; he’s required to attend the group as well). Some continue to show up even after their 12 weeks are up; others were never required to attend in the first place but find it helpful to come around. After each 12-week period, there are graduation ceremonies, with Hampden County Sheriff Michael Ashe as the honored guest.

Each week, the first part of the session is devoted to free-flowing conversation and problem-solving, as with the case of the jobless young man. The second hour is more structured. This Thursday night Morales asks everyone to write down three things they must to do remain out of jail and three ways in which they intend to accomplish these goals. Similar themes repeat themselves: attend Alcoholics or Narcotics Anonymous meetings; stay away from old friends and associates; maintain a job; stay focused; go to church. All this is fodder for more discussion.

The men represent a mix of races and socio-economic levels. (There is also a weekly Spanish-language support group for ex-inmates, so the number of Latinos at this meeting is relatively small.) Some are middle-class and relatively educated: a human relations consultant; a young man who wants to become an architect; another who wants to start his own business. Stereotypes of ex-inmates break down quickly here.

One group member whom we’ll call Mark is a 30-year-old African American man who has been out of jail on parole for two

All correctional facilities have some programming for inmates and many have initiatives that prepare inmates for release. There are some obstacles often faced by institutions, including the difficulty of providing a secure facility, uncertainty about the timing of release, and restrictions on movement placed by sentencing law. Nonetheless, both the state and the counties provide a variety of voluntary and mandatory initiatives whose purpose is to increase the chance that offenders succeed once they are released. A variety of governmental agencies reach out to the ex-inmate population to provide employment and other services. At the same time, there are non-profit and other initiatives that seek to assist ex-inmates with the transition. (See pages 38 and 40 on the Ella J. Baker House and Hampden County weekly support group as examples.) However, few correctional institutions take full advantage of the time inmates have available therefore missing critical opportunities to improve prospects for successful reintegration to society.<sup>49</sup>

Recently, in some locations, agencies are working together in innovative ways to provide incentives to released inmates to reduce criminal recidivism. Hampden County House of Correction in Massachusetts won an Innovations in American Government Award for its program linking inmates with health care providers near their future homes to create continuity of care. In Lowell, the Department of Correction, police department, and other agen-

months. He has been in jail on several occasions, starting at age 17. His family is in Springfield, but he was concerned that returning to his family would cause him to fall back into his old ways, so he applied to live at Honor Court, a halfway house. There he is required to have a job and pay part of his salary in rent money. Mark is working for a company that makes custom vinyl windows.

Mark is convinced that this time around, he's going to make it on the outside. "I'm taking in all the things I've learned and am trying to apply them," he says. It's not easy. Because he's lived in Springfield almost all his life, his old life and associations constantly beckon. "Every street I turn down there is someone I know," he says. Now, he says, he is at a crossroads of sorts—he can go to meetings like AA, NA, and this one, or he can go back to "being f--ed up."

Another man, Jack, seems to be establishing a stronger foundation. He is 50 now, having spent his life "ripping and roaring on drugs" and in and out of jail—some 15 to 25 stints. But something changed during his last 2½ year sentence for domestic violence. He came out determined to turn his life around.

Paroled ten months ago to Honor Court, where he is still living, he got a job at the halfway house as a chef and assistant manager. The structure of Honor Court has been helpful, he maintains. "You have to get a job and be accountable," he says. "You have to pay rent and go to work. I wasn't used to that!" Determined

to find a job, he went to a seminar where he learned to write a resume. He applied to Mass. Rehab. to be retrained in asbestos and lead removal. Now, he's doing just that at \$30 an hour.

Currently, his biggest frustration is finding an apartment, a barrier didn't expect when he got out of prison. Landlords are reluctant to take a chance on previous felons, he notes. Despite his salary and the fact that he has done everything right since his release, he keeps getting turned down. "They are gun-shy," he says.

Housing has been a problem for other members of the group, too. Another man describes how he wound up living in a homeless shelter after leaving jail ready to conquer the world. Only Morales's intervention saved him. Eventually he got a rent subsidy from a home assistance program, and now he has his own apartment. But it took a year and a half. Jack is hoping something like that will work out for him, too.

What happened to make Jack change? "The pain of alcohol and drugs became too great," he says. In jail, he became a mentor and found AA. He came out with a plan of his own: go to Honor Court, step out slowly, get a job, get an apartment.

And he has followed this plan almost to the letter. "I have a strong church family and a strong AA family," he says. "I try to keep around positive people. I'm rebuilding bridges with my family." And even though his required 12 weeks at the Thursday night support group ended a long time ago, he still keeps coming.

46 Massachusetts Sentencing Commission, *Survey of Sentencing Practices FY1999*, Table 27.

47 Author's calculations from Table 28 of Massachusetts Sentencing Commission, *Survey of Sentencing Practices FY1999*.

48 This level of fragmentation is not unusual in criminal justice in Massachusetts. For a discussion, see Mark A. R. Kleiman et al., *Criminal Justice in Massachusetts: Putting Crime Control First*, Boston, Mass.: MassINC, 1996. Depending on how agencies coordinate, fragmentation could mean that agencies complement each other well. However, when agencies do not coordinate, fragmentation of responsibility can result in fragmentation of activities.

49 For a general discussion of the needs of inmates and the opportunities for correction, see LoBuglio, *Time to Reframe*.

cies are working together to deliver a message to those about to be released to the community that the police are serious about crime reduction and that support services are available to those who desire help. A new program in Boston shares this spirit. Each month, those inmates considered by police as being at highest risk of recidivism are gathered for a discussion of law enforcement and social services. Representatives of a number of secular and religious organizations offer to serve as mentors and liaisons. In some cases, these initiatives assign someone to meet prisoners at the moment of release to help them navigate the critical first hours. As promising and admirable as these efforts are, none of them is systematically in place across the state.

The Office of Community Corrections (OCC) was established in 1996 in the Administrative Office of the Trial Court to facilitate cross-agency collaboration in the management of offenders in the community. The OCC has worked to open community corrections centers, which serve as “one-stop centers” to help inmates re-establish links to the community both before and after their release from correctional authority. The OCC is mandated to provide a continuum of sanctions and services for offenders on probation, in custody of the Sheriff, on parole, or in custody of the Department of Correction.<sup>50</sup> These intermediate sanctions programs are designed to provide sanctions and services at one location. Each community correction center provides sanctions such as drug testing, electronic monitoring and community service as well as services such as drug treatment, GED preparation and life skills, including job training and placement. There are currently twenty community corrections centers operating statewide.<sup>51</sup> More are scheduled to open in the next several years.

The efforts and money of the OCC have certainly pushed forward the provision of supervision and services to offenders living in the community. These are welcome improvements. The OCC’s philosophy is that offenders progress through decreasing levels of surveillance and program requirements. This gradual reduction in oversight has the potential to help a number of offenders gain their footing.

However, there are three cautionary notes about the prospect of OCC to solve all of the problems associated with the release of large numbers of prisoners. (To be fair, this was not the goal of the OCC.) First, the issue of multiple agencies being responsible for inmates is not resolved by creating a new agency. This would change the fact that inmates move between the courts, corrections, and the Parole Board. And shifting between institutions with different lines of authority can be deleterious to the provision of services and programming.<sup>52</sup> It can be difficult to align incentives across agencies, and offenders may be able to locate holes in the “system” if the level of coordination is insufficient.

Second, a number of categories of offenders cannot be sentenced to a community corrections center. Exclusions include anyone who is: “(1) convicted of a crime that results in serious bodily harm or death to another person, excluding offenses in which negligence was the primary element, (2) convicted of rape, attempted rape, or sexual assault, or (3) convicted of a crime

50 See Massachusetts General Laws chapter 211F.

51 These community corrections centers are operated under contract by their respective county sheriffs, except in Suffolk County where the centers are operated jointly by the sheriff and OCC. For more details, see <http://www.state.ma.us/courts/admin/occ/occoverview.html>.

52 See LoBuglio, *Time to Reframe*, and Kleiman et al., *Criminal Justice in Massachusetts*.

involving the use of a firearm.”<sup>53</sup> Furthermore, while some inmates can be paroled to a community corrections center and some can be sent to them in advance of release while still under the custody of the state or county correctional agency, some offenders are prohibited from both routes by mandatory sentencing laws. Due to a concern for public safety, some of those who pose the greatest risk to public safety are left out of these promising initiatives.

Finally, although the OCC has a broad mandate, it is limited relative to the broader goal of inmate reentry to the community. Administratively, the OCC falls under the Probation Department. For the institutional structure to best support the critical law enforcement effort to reduce recidivism, the structure must incorporate the other relevant agencies, including Department of Correction, sheriffs departments, and the Parole Board.

<sup>53</sup> See Massachusetts General Law chapter 211f.



## IV. Toward a More Systematic Approach

Currently, some inmates leave a state prison or a county House of Correction at a predetermined date (at the expiration of their sentence), and some leave when a Parole Board determines public safety would be best served. Upon release, some transfer to another law enforcement or correctional authority, some are supervised by the Probation Department, and some are supervised by the Parole Board. Others walk out the door with no surveillance or support.

There are three main reasons an inmate might complete his or her sentence behind bars and thus have no subsequent supervision. (1) The sentence could be a mandatory one with no room for discretionary release. (2) The inmate might have been rejected by the Parole Board. (3) The inmate might have decided not to apply for a parole hearing, because of poor behavior while in the facility, or because the prospects of discretionary release in general are low, or because the inmate prefers to complete the entire obligation to the Commonwealth behind bars. In all of these cases, the public might want the person to be supervised following release.<sup>54</sup> In fact, it is in precisely these cases that the public might most want supervision following release from a correctional institution.

There is no reason that every person who leaves prison should not be supervised for some period of time. A more systematic approach to post-incarceration supervision would ensure supervision for all released inmates. To be sure, extending supervision to some who currently do not receive it might bring in some inmates who do not need it—people who will be able to productively reintegrate themselves into the community with or without help. However, it is more likely that making supervision uniform will bring in a set of inmates for whom the benefits of supervision will be high, both for the community and (perhaps) for the person. Furthermore, as long as there is some discretion provided to the agency doing the supervising, inmates with low risk of recidivating will require few resources.

It is generally true that inmates who are released unconditionally (with no supervision) are either those considered the most worthy of punishment (and therefore the subject of mandatory sentences) or those least active in earning release by appropriate and productive behavior or both.<sup>55</sup> If we are concerned with reintegrating ex-offenders and punishing them, we must address the current tradeoff between holding more incorrigible offenders behind bars longer and releasing them at the end of their sentence with no supervision and releasing inmates to serve the final part of their sentence in the community with supervision. This tension could be lessened by requiring a mandatory period of supervision after release (which is not related to discretionary release), having a well-functioning Parole Board, or by placing more responsibility for reintegration services on correctional institutions. All should be done.

Inmates need incentives to use their time wisely while in prison. Correctional institutions need incentives to provide appropriate programming to allow inmates to improve their skills. A well-functioning system of discretionary release provides both of these types of incentives. Under such

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<sup>54</sup> It is possible that some of the inmates in these categories are released to the supervision of the Probation Department.

<sup>55</sup> There are exceptions to this generalization. North Carolina and Ohio release the lower risk inmates unconditionally and supervise all those of high risk.

a system, both inmates and institutions are held accountable. At the same time, those inmates who do not succeed under this discretionary system should certainly not be released unsupervised. Equally important, institutions need to maintain the authority to keep inmates in high-security facilities (without much opportunity to prepare for release) if they are a threat to staff members and other inmates. This safety concern must not be sacrificed for other goals.

If most inmates cannot aspire to be released through the discretion of a Parole Board or a similar entity, the functioning of the correctional facilities is harmed because there are low rewards for good behavior. The lack of incentives may lead to more violence and may make general management of the institutions more difficult. On the other hand, if discretionary release is a strong component of a state's criminal justice policy, efforts by correctional institutions to provide rehabilitative programming will be reinforced by the release process. While one might object to the need to provide prison inmates with incentives to engage in productive behavior, it is important to remember that it is in the public interest to encourage inmates to do what is right for them. If inmates can address some of their educational and skill deficits and some of their substance abuse problems, public safety will be improved at the same time their own lives improve. Relative to the general population, criminal offenders, on average, have greater need for small rewards and punishments to encourage socially appropriate behavior.<sup>56</sup>

The policies and practices of the correctional institutions should be evaluated to assess the extent to which they support the ability of prisoners to engage in productive behaviors. Once an inmate has the incentive of discretionary release to prod him or her to use time productively to improve skills, frustration will set in if it not possible to do so. Therefore, program offerings, waiting lists, protocols for determining program placement, and classification procedures must be evaluated to see that the resources and policies exist to allow inmates to take steps to rehabilitate themselves. While the primary goal of classification is the safe operation of the facility, any conflicts between security and productive activity should be considered. Once problems are identified, it may be possible to design solutions. The experience of other jurisdictions may be instructive. For example, as a result of a 1994 referendum, Oregon is re-embracing rehabilitation, requiring 40 hours per week of productive activity. And the California Youth Authority has emphasized education as the route to eventual reintegration. They have both found ways to provide education without compromising security, including having inmates do homework in their cells and providing instruction to those in administrative detention.

Whether those being supervised in the community after a period of incarceration have been released due to the discretion of a Parole Board or upon the expiration of their sentence, one has to have reasonable expectations of what supervision can accomplish. Some people will try hard to reform themselves but may not succeed. Others may not be inspired to conform to the expectations of civil society. We need a policy that can reach both of these groups. It would be a lost opportunity if we do not use post-

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<sup>56</sup> For both the argument and evidence on this proposition, see Mark A.R. Kleiman, "Community Corrections as the Front Line in Crime Control," *UCLA Law Review*, vol.46, 1999, pp.1909-1925.

incarceration supervision to help the well-meaning but weak-willed ex-offenders reform their ways. Thus, the enforcement of conditions of supervised release can be a support to those who are trying to turn themselves around, and at the same time, the supervision can be a real hassle and possibly a deterrent to those ex-offenders intent on continuing to misbehave.

Unfortunately, knowledge upon which to develop the optimal systems is limited. A long-time observer of probation and parole argues that parole has long been underfunded. The increased funding to corrections budgets in past years has gone primarily to building and running new secure facilities, not to supervising the growing number of inmates in the community.<sup>57</sup> In recent years, parole has been so weak as an institution that researchers have rarely bothered to study it. A review of a comprehensive report on crime prevention programs turns up just one evaluation of parole among the hundreds of studies examined.<sup>58</sup> The lack of research about effective functioning of post-incarceration supervision makes it difficult at best to come to an informed judgment about the prospects for reintegration of released inmates, since parole has traditionally been the primary method of supervision for newly released inmates.

Nationwide, parole provides few services, poor monitoring (due to high caseloads), and parole officers who focus on surveillance rather than treatment.<sup>59</sup> Furthermore, recent improvements in the technology for detecting violations of parole conditions (i.e. drug testing and electronic monitoring) mean that it has gotten better and cheaper. As a result, when tolerance for parole failure erodes, more revocations follow.<sup>60</sup> A number of commentators have raised concerns about the extent to which parole revocations fuel admissions to prison without making the streets any safer.<sup>61</sup>

The national experience provides an important caution for the design of supervision of ex-offenders in the community. First, one has to expect some failures. These failures may involve new crimes or they may involve violations of the conditions of supervision, a failed drug test, for example. Policies must be designed with these failures in mind. Also, if there are no services to support successful reentry, a system of supervision will be a system of surveillance, and heightened surveillance will inevitably reveal additional infractions. Therefore, a poorly designed system of supervision could yield very little in terms of either public safety or cost savings resulting from lower recidivism rates. If all a system of surveillance does is catch people quickly following a criminal act, there will be little or no improvements in public safety.

In contrast, a successful program design would expect failures, and in those cases punish violations of the terms of release at a scale appropriate to the infraction. A failed drug test or missed appointment means something different when an ex-offender is maintaining employment and re-establishing family relationships than when he is losing employment and alienating those around him. Similarly, one missed appointment means something different than a pattern of such behavior. Furthermore, supervision works best when the punishment for an infraction can be appropriately scaled, but also when the punishment can help the ex-inmate with future compliance. For

57 Joan Petersilia, "Probation and Parole," in Michael Tonry (ed.), *Handbook on Crime and Punishment*, Oxford University Press, 1998, pp. 563-588.

58 Joan Petersilia, *When Prisoners Return to the Community: Political, Economic, and Social Consequences*, Research in Brief—Sentencing & Corrections: Issues for the 21st Century, Washington, DC: U.S. Department of Justice, National Institute of Justice, November, 2000.

59 For a review of the results of 14 experiments with intensive supervision probation and/or parole, see Joan Petersilia and Susan Turner, "Intensive Probation and Parole," in Michael Tonry (ed.), *Crime and Justice: An Annual Review of Research*. Chicago, Ill.: University of Chicago Press, 1993, pp. 281-335.

60 See Petersilia, *When Prisoners Return to the Community*, and Petersilia, "Parole and Prisoner Reentry in the United States." These articles contain general statements about the functioning of parole, yet there are sure to be some exceptions. It is worth noting that her most in-depth experience has been in the state of California, which released 23% of the nations releasees in 1998, only 2% of them without conditions.

61 See Petersilia, *When Prisoners Return to the Community*, and Travis, *But They All Come Back*.

example, one form of sanction for missed activities or a failed drug test is to require yet more participation in programming (such as “life skills” or AA). An analogy is the question of how to best respond when a student misbehaves in school. One option is to expel the student. An alternative would be to send him or her to a more intensive educational setting. Given that ex-inmates will at times fail to comply with some terms of their supervision, a set of graduated sanctions which can be scaled in line with the severity of the infraction is essential.<sup>62</sup> This requires a flexible and responsive institution.

At the same time it must be recognized that surveillance alone cannot satisfy all of our public safety goals. The circumstances most related to an inmate’s anti-social behavior can vary significantly. If a newly released inmate has a history of drug dependency, close surveillance is likely to catch him sooner, but not necessarily reduce his use of illegal drugs. The same goes for offenders with mental health problems or with educational skill deficits. As law enforcement entities have learned, the use of the stick helps to ensure that the carrot has a chance to work. That is, the surveillance function ensures compliance with programmatic activities. Simultaneously, the programmatic activities offering the opportunity for real change often makes surveillance easier and cheaper. When there is greater compliance with the terms of supervision, fewer resources need to be expended on surveillance and punishment.

#### **Who Should Supervise Inmates After Release from Incarceration?**

If one is committed to supervising inmates after release from incarceration, one must decide how to implement this idea. Does it matter where this authority and responsibility is housed? Currently, ex-inmates who are supervised generally fall under 1) the Probation Department, under the authority of the courts, or 2) the Parole Board, an executive branch agency. While one could imagine both agencies continuing to provide supervision for subsets of the releasee population, this is hardly a systematic approach, especially when one considers that if an individual is on the caseload of both agencies, there is duplication of effort and expense.

Given that 40% of those sentenced to terms of incarceration also have sentences to probation to be served following release, perhaps it makes sense to give the Probation Department the general responsibility for reintegrating ex-inmates. Such a move would recognize current realities and would involve a significant increase in responsibility. However, several factors argue against this idea. First, the Probation Department already has a very large and heterogeneous caseload. As noted earlier, among those sentenced to probation, 16% were for a period following confinement. And, recall, some of these offenders had been convicted of very serious crimes. The remainder of the probation population received their sentences because it was determined that their crimes were not serious enough to warrant a period of confinement. (The Probation Department also oversees those paying child support and is responsible for thousands of children under Department of Social Services custody.) If one were to add more serious offenders to the portfolio of the Probation Department, this would serve to only make more difficult their

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62 There is a useful discussion of the importance of swift and certain punishment in Kleiman., *Criminal Justice in Massachusetts: Putting Crime Control First*.

already difficult charge.

In contrast, the Parole Board is the agency that has traditionally handled this function, and it has no competing responsibilities. Parole officers are present in the correctional facilities in order to better carry out the agency's responsibilities; the agency is in contact with many prisoners at the time of release. Perhaps as a result of this traditional role and perhaps as a result of serendipity, the legal environment favors the placement of ex-inmates under the Parole Board rather than under the Probation Department. Because of the greater judicial review of the actions of probation officers, traditionally parole officers have had a greater ability to respond quickly to violations of the terms of supervision.<sup>63</sup>

More importantly, parole officers have more discretion in determining an appropriate punishment for a given infraction. Current law requires that if the original probation sentence is revoked, the original suspended sentence must be imposed.<sup>64</sup> This means that probation officers can only utilize re-imprisonment for rather substantial infractions. The Parole Board, on the other hand, has the legal authority to require ex-inmates who violate their conditions of supervision to serve stays of several days or several months, allowing them to use re-imprisonment as a punishment for a wider variety of infractions. Whether ex-inmates are under the authority of the Probation Department or the Parole Board, the facilities and programming of the OCC's community corrections centers would be available to support both the surveillance and support functions of supervision.

One could consider building a new agency to take over the responsibility of supervising released inmates. However, it makes more sense to work with the extant multiple agencies (Probation Department, Parole Board, Office of Community Corrections, Department of Correction, Houses of Correction) to produce a systematic approach to making ex-offenders accountable while improving their prospects for successful reentry. Given the range of agencies, a new agency might only contribute to fragmentation, solving nothing.

Regardless of the approach, one must recognize the impact that the long tradition of patronage in Massachusetts has had on these organizations. There may be some resistance to changing agency structures and work arrangements, particular among those policymakers who have placed their supporters in civil service jobs. A common theme heard during interviews for this report is that, while patronage is a problem in the Commonwealth generally, it is particularly problematic in the Probation Department. Respondents from a variety of law enforcement, court, and legislative positions suggested that, for example, the effects of patronage have led to resistance working evenings and weekends. Although the Probation Department has instituted recent reforms, the broad view still holds that many in the department may be resistant to more far-reaching changes.

63 Note that there are some new rules in probation allowing immediate detention and warrant apprehension. These new procedures may reduce the difference between probation and parole supervision.

64 Massachusetts General Law chapter 279 section III, as interpreted in *Commonwealth v. Holmgren* (1995) 421 Mass 224, 656 NE2d 577.

### **Transition to a New System**

Obviously, criminal justice in Massachusetts operates through the actions of a large number of important agencies. As a result, moving to a new system

of supervision would require careful planning and would take some time to achieve. The first step is to make a commitment to universal supervision following a term of confinement. The period immediately following release is the most important, particularly the first six months. After the first year, most of the potential benefits of supervision will be achieved. Therefore, if cost tradeoffs must be made, shorter periods of supervision for a larger number of offenders are preferred to longer periods of supervision that are not universally applied. However, while most of the benefits accrue in the first year, so do most of the costs.

Post-incarceration supervision involves surveillance of activities and prodding ex-inmates to behave in ways that conform to community values. In order to maintain clarity of purpose, it would be useful to separate the two traditional functions of parole: determination of the time of release and post-release supervision. Thus, “discretionary release supervision” could be determined by the Parole Board while “mandatory community supervision” is incorporated into all criminal sentences. Such a division would help end the current situation where the Parole Board must weigh the desire to supervise an inmate upon his release against the desire to keep an inmate in prison for his full term. Making this distinction between discretionary and mandatory supervision would not require a change to the legislative mandate of the Parole Board with regard to discretionary release, as the board would still be expected to consider public safety when making release decisions. In fact, adding mandatory post-incarceration supervision will allow the Parole Board to be even more judicious about approving discretionary release (as the Board will know that supervision and services will be provided to those denied parole).

Changes in sentencing law would be required both to provide for a term of mandatory community supervision following release and to provide “room” in the incarcerative sentence for the possibility of discretionary release. As judges became comfortable with the new sentencing regime, it is likely that the use of the split and “from & after” sentences to probation would decline dramatically. If not, there will be duplication that should be addressed by the legislature (to conserve resources and ensure that inmates are held accountable to a single standard). For those crimes with mandatory minimum sentencing laws, the criminal code must be adapted to allow for mandatory post-incarceration supervision. This point is essential to bear in mind when considering the various sentencing proposals currently before the Legislature, as some of them exempt mandatory minimum laws, which then exempts those offenders from any post-incarceration supervision.

If these principles were to be adopted, there would be a transition period during which some offenders being released would have been sentenced under the old regime and some under the new. This period would be challenging. At the same time, the fact that the transition would be gradual might afford welcome opportunity to adapt. At first there might be an increase in the number of inmates who are on both parole and probation supervision. Those two agencies would have to work together to avoid duplication of effort, expense, and requirements on the ex-inmate.

Over time, as more released inmates were sentenced to terms that require mandatory community supervision and allow for discretionary release supervision, the Parole Board would require additional resources to go with the added responsibility. (Because of the shorter sentence lengths, the increase would arrive first at the county level.) Some of the resources could come, over time, from the reduced caseloads of probation. If the new supervision works as hoped, in a short time savings will appear in the form of reduced need for prison space. Since it is much cheaper to supervise an offender on the street than to house him or her in a prison or jail, these resources will be

## Current Legislative Developments

### Report of the Massachusetts Sentencing Commission

The Massachusetts Sentencing Commission was established in the spring of 1994 as result of the 1993 Truth-in-Sentencing legislation. The Commission was created to review current sentencing practices in order to devise a comprehensive set of sentencing policies that would ensure consistency, predictability, proportionality, and accountability in criminal sentences. The Commission includes three judges, three prosecutors, three defense attorneys, and other non-voting representatives of the criminal justice community.

In 1996, following public hearings, research, and focus groups, the Commission issued the *Report to the General Court*, which became the foundation of subsequent legislation submitted to the Legislature. The legislation was guided by several principles. In particular, it took into account the capacity of the state's prisons.

The guidelines set forth in the legislation are based on a grid of sentence ranges that vary by seriousness of the crime and the criminal history of the offender. The type of offense is listed from the most serious crime, murder (Level 9), to the least serious crimes (Level 1) along the vertical axis. All 1,800 types of crimes are classified into these nine levels. Across the horizontal axis is the offender's criminal history, ranging from no criminal history to a serious and violent criminal history. At the intersection of a person's criminal history and the level of crime is a set range for the sentence. The judge would select a sentence somewhere between the minimum and maximum sentence. Judges could choose not to adhere to the range, only if he or she explained in writing the reason for the departure.

The legislation also provides for moderate reform for some of the mandatory minimum sentences. Drug offenses with mandatory minimum terms are integrated into the sentencing guidelines so that a judge may impose a sentence less than the minimum term for these offenses. In these cases, the judge is required

to provide a written reason and may not sentence below the minimum if the defendant has a prior conviction for a serious drug trafficking offense.

**STATUS AS OF DECEMBER, 2001:** Legislation was filed in 1996 and 1997. In each year, public hearings were held, but the legislation did not go anywhere. Most recently, the Commission's recommendations were refiled as Senate No. 1004.

### An Act to Establish Sentencing Guidelines (Senate No. 1004)

This legislation mirrors the recommendations of the Sentencing Commission, as described above. This bill does not include any provisions for mandatory post-incarceration supervision. It allows for parole eligibility after the minimum sentence has been served, and the minimum sentence is set at two-thirds of the maximum sentence.

**STATUS AS OF DECEMBER, 2001:** Public hearings were held in April, 2001. As of July, 2001, the bill was sent to study, as ordered in Senate 2065.

### An Act to Establish Sentencing Guidelines and Mandate Post-Release Supervision for Criminal Offenders (The Governor's Sentencing Guidelines (H. 4136))

This legislation proposed by the Governor uses the sentencing guidelines grid proposed by the Sentencing Commission as a framework, but it also includes several different provisions. In terms of the sentencing guidelines, the provisions in H. 4136 call for an across-the-board increase of 25–35 percent in the length of sentences relative to the Commission's guidelines. The legislation would also increase the seriousness of 27 offenses. There are some additional changes in some of the criminal history provisions that would result in a general shift of defendants to more serious criminal history groups. Together, these provisions would lead to substantially longer prison terms and would therefore expand the prison and HOC populations.



available to cover the expanding numbers of releasees under the supervision of the Parole Board. The only threat to this plan would be if post-release supervision consists of nothing more than surveillance—as surveillance alone actually increases costs due to high revocation rates.

One important consideration is the capacity of the Parole Board to take on this increased responsibility. Currently, the Parole Board is responsible for supervising about 4,000 prisoners. About 20,000 prisoners were released from Massachusetts state and county correctional facilities in 1999. For the Parole Board to supervise all inmates would require substantially increasing

The Governor's legislation would also eliminate discretionary parole. It would establish that all offenders sentenced to incarceration would receive a fixed (determinate) sentence with a period of mandatory post-release supervision. The Parole Board would be responsible for the post-release supervision. A violation of any condition of the post-release supervision would subject an offender to reincarceration for the remaining period of his post-release supervision.

The legislation maintains the existing mandatory minimum sentences, and judges would not have the discretion to sentence below the mandatory minimum terms and within the guideline ranges.

**STATUS AS OF DECEMBER, 2001:** The Governor filed the bill in May, 2001, which was submitted to the Criminal Justice Committee for consideration. In October, 2001, the Committee on Criminal Justice later reported out as House No. 4596. House No. 4596 was taken up by the House, amended and renumbered as House 4642.

#### **An Act to Establish New Sentencing Guidelines (House 4642)**

This legislation also uses the sentencing guidelines grid as its framework, while including several different provisions. It calls for increasing some of the sentence ranges for more serious crimes and expanding the incarceration zone. In addition, it also increases the seriousness of 48 offenses.

This legislation maintains discretionary parole and also provides for a period of post-incarceration supervision by the Parole Board for all offenders sentenced to incarceration for a term of 12 months or longer. For all sentences greater than or equal to 12 months but less than 30 months, the period of post-incarceration supervision is 6 months. For sentences with a maximum term greater than or equal to 30 months but less than 60 months, the period of post-incarceration supervision is 12 months. The provision for a 24-month period of post-incarceration supervi-

tion for those with a sentence of 60 months or longer appears to have inadvertently been left out of the legislation (but would be consistent with the Massachusetts Bar Association's proposal, which is the basis for this part of the legislation).

The total term of incarceration for the offense plus any additional commitments due to violations of a condition of post-incarceration supervision (that does not otherwise constitute a new offense) would not be greater than the maximum term fixed by statute for the original offense.

Any individual who violates a condition of post-incarceration supervision would be subject to the following punishments if the violation does not otherwise constitute a criminal offense:

- Upon a first violation, the prisoner may be incarcerated for a period of no greater than 2 months or the maximum remaining period of post-incarceration supervision, whichever is less.
- Upon a second violation, the prisoner may be incarcerated for a period no greater than 6 months or the maximum remaining period of post-incarceration supervision, whichever is less.
- Upon a third or subsequent violation, the prisoner may be incarcerated for a period no greater than 12 months or the maximum remaining period of post-incarceration supervision, whichever is less.

This legislation maintains mandatory minimum sentences but allows for some exceptions for certain drug crimes. This bill places more constraints on judges who want to depart from the mandatory minimum sentences than does Senate No. 1004.

Because the post-incarceration supervision is imposed through the sentencing guidelines, post-incarceration supervision does not appear to apply to offenders sentenced to mandatory minimum sentences, which occur outside the sentencing grid.

**STATUS OF DECEMBER, 2001:** In October, 2001, the bill was passed by the House of Representatives. In late October, it was referred to the Senate Committee on Ways and Means.



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VICTIMIZED BY CRIME  
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COMMUNITIES PROSPER.**

the capacity of the agency—on the order of quadrupling its capacity. If we assume that public safety officers are responsible for supervising an average of around 50 people, which is an acceptable, though perhaps still too large, case-load (small enough to include real supervision rather than what had sometimes become the practice: supervising in name only) providing post-incarceration supervision to all released would require hiring 250-300 parole officers plus the management and administrative staff needed to support these new officers. This is certainly a major challenge that would require a certain transition time, but it is not impossible.

Moreover, building a substantial system of post-release supervision will require an investment of resources. Over time, this system should save money while increasing public safety at the same time. To the extent that increased supervision means that certain repeat offenders are caught committing new crimes, we would have likely spent money imprisoning them anyway. Based on past research, it is likely that the more we watch people, the more criminal behavior we will find. While this is costly, it is also money well spent. To the extent that supervising ex-prisoners changes behavior in a positive way, we will prevent more people from becoming victimized by crime and we will help communities prosper. In addition, we will save the costs of prosecuting these people and potentially putting them in jail. To be sure, there are initial costs to implement the system, but if it is implemented effectively, criminal justice expenditures will be lower in the future.

The most important determinant of the success of this proposal will be the confidence judges and prosecutors have in the Parole Board. At the time of sentencing, judges and prosecutors must feel that the Parole Board will provide sufficient supervision, will make appropriate decisions regarding discretionary release, and will require and provide the necessary services (such as drug treatment and mental health services). If judges do not have confidence, then they will continue to impose sentences with probation supervision as an integral component. As discussed earlier, this duplication sends a mixed message to ex-inmates, sometimes gives them conflicting obligations, and entails duplication of expenditure.

There are several steps one could take to coordinate the sentencing of offenders with the process of release. For example, naming a retired judge to the Parole Board would provide an important link between the two “ends” of the criminal justice system. Given the fragmented nature of criminal justice in Massachusetts, it is helpful to institutionalize links among the various agencies of government. Such a link would help the Parole Board to take advantage of the experience the judiciary has developed over time in managing the releasee population. For the Parole Board to gain the confidence of the judiciary, it must be able to assure judges and prosecutors that it could and would implement the particular conditions of supervision required in a particular case. Only if this happens will those in charge of sentencing allow the discretion necessary for discretionary release to become fully functional.

A reformed Parole Board would be responsible both for the determination of discretionary release and for the supervision of those on either dis-

cretionary or mandatory post-incarceration supervision. Under these circumstances, board members would no longer have to weigh the benefits of increased time behind bars against the benefits of post-release supervision. For those who have clearly demonstrated reform and a strong chance of remaining free of crime, discretionary release can be approved. For the others, the board would be secure in knowing a period of supervision will follow. For both types of release, the board would oversee the conditions of release and monitor compliance. Violations of either discretionary or mandatory release would be met with an appropriate (graduated) punishment. For minor infractions, the punishment would be minor, allowing for subsequent supervision during the original term. For new crimes, a new prosecution would be initiated and a new sentence given, which itself would have a term of post-release supervision attached.

It might also be helpful to consider changing the name of the Parole Board to reflect a broader set of responsibilities. In recent years, public confidence in the parole system has waned (and even more generally, for some in the criminal justice system). For right or wrong, “parole” has come to connote a system that is soft on crime and lets dangerous criminals out of jail early without supervision. Thus, changing the name of the Parole Board to the Prisoner Reentry Board (or name with similar broader mandate) will support the reform effort. It would also be useful to have different names for mandatory supervision and discretionary release, so that the public can be informed about whether an ex-inmate met the standards for discretionary release or not.

Once the transition is complete, the Commonwealth will have developed a system of inmate release that is uniformly applied, provides incentives to inmates for pro-social and productive behavior in prison, and helps with the transition to community life both for those inmates who work toward their own rehabilitation and those who do not. This would rationalize a release process in Massachusetts that currently is anything but systematic. Most professionals and observers would agree that over the past two decades Massachusetts has made tremendous improvements in law enforcement and in the provision of criminal justice. Filling the post-incarceration supervision gap is the next logical step in the effort to protect the public from criminal victimization.

## V. Recommendations

### 1. Hold Criminal Justice Agencies Accountable for Reducing Recidivism

- Reducing crime among ex-offenders in the community should be an explicit goal of individual criminal justice agencies, including the Department of Correction, Houses of Correction, the Probation Department, and the Board of Parole.
- In order to provide some coordination among the many agencies, the Executive Office of Public Safety (EOPS) in the executive branch should work to ensure that inmate release and post-incarceration supervision are adequately represented in the activities of law enforcement in the Commonwealth. This office should produce an annual report covering the topic of inmate release, post-incarceration supervision, and recidivism.

### 2. Supervise all Offenders after Leaving Secure Confinement

- Institute a system of post-incarceration supervision for all inmates leaving state prison and the county Houses of Correction. This supervision should involve surveillance, mandatory coerced abstinence from alcohol and other drugs, requirements of work and/or other productive activity. This system should include provisions for due process when conditions of supervision are violated.
- Revise criminal sentencing law to incorporate a term of mandatory supervision in the community for all offenders. This period should be no shorter than 6 months for all inmates, and a period of a year or more is preferable.
- Those with long terms of confinement are likely to represent a great threat to the public's safety and have greater needs. Therefore, they may require longer and more intensive supervision following release.
- A period of mandatory supervision is especially important for those currently serving time under mandatory minimum sentencing laws (who typically do not have sentences that allow for any supervision upon release from prison). Mandatory post-incarceration supervision is also particularly necessary for those who choose not to use their time in prison productively and pursue educational opportunities that would improve their prospects for leading a life free of crime.
- However, even those with short terms of confinement must construct a new life on the outside, and supervision and support is necessary for this to happen. If we only focus supervision on the most hardened criminals, we miss opportunities to positively impact some ex-offenders.

### 3. Reinvent the Board of Parole as the Lead Agency Providing Post-Incarceration Supervision

- Allocate responsibility for the supervision of released inmates to a single agency. The Parole Board is the obvious choice for this role, as it has no competing mandates. Moreover, its legal authority is best suited for supervising and managing the reentry of inmates to the community.

- The Board of Parole should work closely with the Department of Correction, the county sheriffs, the Office of Community Corrections, the Probation Department, local police departments, and other state, local, and non-profit agencies to take full advantage of their capacities to assist with the reintegration of former inmates.
- Establish a seat on the Board of Parole for a retired member of the Massachusetts judiciary in order to incorporate the knowledge that judges have developed in supervising inmates following periods of incarceration.
- The Board must inspire confidence in its ability to provide appropriate surveillance and also to provide (and enforce participation in) programming to reduce substance abuse, improve employment prospects, etc. The Board's early actions will determine whether the judiciary will willingly alter sentencing practices to permit the Board to energetically implement and expand post-incarceration supervision.
- Enact legislative reform aimed at reducing the availability of post-incarceration probation sentences, if the use of post-incarceration probation does not decline over the next two years (measured by release data regarding post-incarceration probation from HOCs and by sentencing data for DOC inmates). Such a reform measure would be prudent given the scarcity of resources. It is more important to spread law enforcement resources across a wider population than to have some people using double the resources.
- The Governor and the Executive Office of Public Safety should consider changing the name of the Parole Board to reflect its new responsibilities and broader mandate. In recent years, public confidence in the parole system has waned. For right or wrong, "parole" has come to connote a system that is soft on crime and lets dangerous criminals out of jail early without monitoring them. Thus, changing the name of Board of Parole will reinforce its new mission, both within the Board of Parole and outside the agency.

#### **4. Develop a Fiscally Responsible Plan to Build Capacity**

- Given the current fiscal realities, it is important to build this system over a multi-year period of time. Fortunately, this approach matches well with the needs of the new system. From the time we enact a system of post-incarceration supervision, there will be a natural transition period during which the number of those requiring supervision will gradually increase. From the time that we institute such a system, it will take five to seven years for the system to be fully operational. This natural period of transition offers the perfect opportunity to build the fiscal and organizational capacity of the Parole Board.
- Use the Office of Community Corrections to help provide the infrastructure and services needed to make post-incarceration supervision work. The centers are currently being used to serve a variety of constituents, including pre-release inmates, probationers never sentenced to prison, ex-offenders with terms of post-incarceration supervision, and parolees. Because of the previous significant

state investment and the efficiency of using existing facilities, we recommend that the centers increase their capability to serve post-incarceration supervision of ex-offenders under the authority of the Parole Board. The agency and individual centers should be leveraged as part of a system of mandatory post-incarceration supervision.

- In order to best accommodate the different law enforcement functions of the OCC, it is important that all of the related agencies are treated as equal partners in governing the centers. They should also share the costs of the centers. To accomplish this, it is necessary to change the governance structure of the OCC. We recommend that the professional staff of OCC report to a Board of Directors, which will ultimately report to the Legislature. This Board might include the Commissioner of Probation, the Parole Board Chair, the Commissioner of the Department of Corrections, the Secretary of Public Safety, a representative from the Sheriff's Association, a representative from the District Attorneys Association, the Commissioner of the Department of Youth Services, a representative of the trial courts, and several representatives of the community. With these agencies overseeing and guiding the policy of the centers, the centers' various responsibilities including post-incarceration supervision, will be better integrated into the missions of the centers.
- We recommend increasing the overall period of supervision (incarceration plus post-incarceration supervision) of offenders but doing so in a pragmatic way that will generate savings. One approach would increase the overall sentence with a period of post-incarceration supervision while marginally reducing the amount of prison time required for certain mandatory minimum sentences. The sentences could still be mandatory. For instance, a 5-year minimum could become a 4+2 sentence, with four years served in prison and two years under mandatory supervision. This change will help supervise ex-inmates who are a serious threat to public safety, who are currently not likely to receive supervision, and it will help provide a mechanism to fund the post-incarceration supervision. Because incarceration is so expensive relative to community supervision, marginally reducing the in-prison time of some offenders' sentences could finance post-release supervision for those offenders and other offenders as well.

#### **5. Support and Encourage Inmate Rehabilitation Programs that Have a Proven Track Record of Reducing Future Crime Rates**

- Rehabilitation, if successful, is our best chance at long-term crime control. Criminal justice experts generally agree that one of the best tools to prod certain inmates to engage in productive behavior is discretionary release. The possibility of discretionary release creates incentives for inmates and makes them accountable for their efforts to reform. It also provides incentives to institutions to help inmates who choose to reform themselves.
- Expanding the scope for discretionary release to provide incentives for inmates and correctional authorities will require some change to existing sentencing law. One could accomplish this by adopting something along the lines of the recommendation of the Massachusetts Sentencing Commission, which builds

scope for discretionary release into the guidelines it proposes. This could also be accomplished without overall reform of sentencing law through changes to a large number of statutes covering individual crimes. At the same time the scope for discretionary release is expanded, it is critical that strict standards are applied to determine whether a particular inmate has earned discretionary release. Expanding the number of inmates eligible for discretionary release does not imply that the number released in this capacity will increase, nor does it mean that standards will be lower. In fact, because all prisoners would have mandatory supervision, the Parole Board should strongly consider increasing its standards for discretionary release.

- Being released under a discretionary decision by the Board of Parole should have no impact on an offender's mandatory term of post-incarceration supervision. If an inmate is offered discretionary release by the Board of Parole, he should have a longer time under community supervision than he would have without discretionary release. The Board of Parole might want to use different categories for these populations. Drawing such a distinction will serve as a reminder that those in the former category have been working hard toward successful reintegration within the larger society.
- Support programming within prisons that are known to help reduce the chances of recidivism. For instance, research finds that if prisoners improve their reading and language skills, they are less likely to be rearrested after they are released from prison. Correctional institutions have a responsibility to allow prisoners to use the time available to engage in productive activity, with the goal of changing their long-term behaviors. At the same time, efforts should be made to eliminate ineffective programming.
- Across the state, there are examples of innovative programs and partnerships across agencies, public and private, that help prisoners successfully reintegrate back into the community. In some cities, such as Lowell and Boston, the correctional facilities, the police department, the prosecutors, community-based organizations (both secular and religious), and other agencies are working together to remind prisoners who are about to be released that the police are serious about crime reduction, and support services are available to those who want to help themselves. While these efforts do not replace the need for a system of mandatory post-incarceration supervision, they are important complementary efforts and should be replicated across the state.
- Encourage the DOC and the HOCs to utilize pre-release programs in order to allow inmates to "practice" living on the outside while at the same time being carefully monitored. These efforts will aid in the preparation of inmate release. At the same time, it is important for these efforts to operate within a system of intensive supervision that protects the public. If pre-release is done in the absence of such supervision, it is a dangerous mistake.

## 6. Establish Systemwide Standards for Accountability Through Research and Reporting

- Along with its coordination activities, the Executive Office of Public Safety should establish a research office. An important early job is to monitor duplication of ex-offenders under the supervision of the Probation Department and the Parole Board. EOPS should also help the two agencies develop a protocol for people on both caseloads to minimize unnecessary administrative costs and requirements.
- This new research office should evaluate the effectiveness of various practices and work with the Board of Parole to improve the supervision and programming. One important element to study is the particular requirements of female ex-offenders and how to best organize post-incarceration supervision to improve their chances of success.
- This office should build upon the work of the Sentencing Commission, which has developed a large amount of research infrastructure (data, computer models) on matters concerning criminal justice in the Commonwealth.
- At the same time, the EOPS should work with institutions to evaluate whether changes to correctional practices (such as programming and classification policies and practices) could provide support for the eventual release of the inmate population. More research using credible evaluation methods should be done in order to refine our efforts. This effort would be greatly improved if outside researchers were encouraged to access and utilize the data.
- The EOPS should begin an effort to collect data for the purposes of understanding criminal justice as a whole in the Commonwealth. Rather than doing this on an agency-by-agency basis, craft research projects that help us understand recidivism, the effectiveness of various forms and lengths of surveillance, and the effectiveness of various programmatic initiatives. Make particular efforts to collect comparable data from the various Houses of Corrections, which hold more than half of those behind bars in the state. This effort will build upon—not duplicate—the research capacities of other criminal justice agencies.

## About the Author

Anne Morrison Piehl is Associate Professor of Public Policy, John F. Kennedy School of Government, Harvard University. She studies the economics of crime and criminal justice policy. Her research has covered the behavior of prosecutors, the dynamics of youth violence, the effect of criminal justice policy on immigrants (and vice versa), and the relationship between economic opportunity and criminal behavior. She is also interested in the statistical methods used to evaluate social policies. Piehl is currently analyzing the determinants of criminal sentencing and studying the policies that govern the release of inmates from prisons and jails. She received her BA from Harvard University and her PhD from Princeton University, both in economics.











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