Prisons and Sentencing in Massachusetts:

WAGING A MORE EFFECTIVE FIGHT AGAINST CRIME

by

Robert Keough

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MassINC
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Safe Communities Initiative

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THE GARDINER HOWLAND SHAW FOUNDATION
A Note from the Publisher:

Dear Friend:

From its founding in 1965, MassINC has believed that how public issues affect the quality of life for the Commonwealth's working and middle-class citizens more than crime—to say nothing of the destructive effects of crime on the economic and social opportunities of our poorest citizens. That's why one of MassINC's first policy reports, entitled Criminal Justice in Massachusetts: Putting Crime Control First, focused on our state's criminal justice system and made a series of recommendations to improve the system at many levels.

MassINC has continued to focus on the critical issues of crime policy through the publication of articles in Commonwealth magazine, the publication of a statewide poll of attitudes on criminal justice issues, and the convening of numerous public events that focus on these important issues. Most recently, MassINC strengthened its commitment to covering these issues with the creation of its Safe Communities Initiative, which is described more fully in the pages of this report.

That's why we are proud to now present to you MassINC's latest effort on this subject, Prisons and Sentencing in Massachusetts: Making a More Effective Fight Against Crime, which seeks to answer a simple question: Does the Commonwealth of Massachusetts need more prison space in order to support effective crime control?

We are very grateful to Robert Koegh for the quality and quantity of work he put into this project in order to make it a success. He is exactly the kind of talented thinker we are eager to attract to work on MassINC projects smart, open-minded, resourceful and fair.

We hope you find this report a provocative and timely resource in our community-wide effort to reduce crime so that every citizen can enjoy the benefits of economic prosperity without fear or concern for their personal safety.

Sincerely,

Tripp Jones
Executive Director
MassINC

Michael R. Grimm
Policy Director
MassINC

A Note from the Sponsor:

The Shaw Foundation is pleased to join MassINC in presenting this report by Robert Koegh. As part of its overall philanthropic mission, the Foundation seeks to stimulate creative thinking and solutions to the problems of crime, delinquency and the administration of justice. We believe that this report, as well as the previous crime policy work completed by MassINC, contributes significantly to the search for answers about effective crime prevention.

We applaud the leadership demonstrated by MassINC and the insightful reporting by Robert Koegh in completing this report. While it is not intended to be the final word on prisons and sentencing in Massachusetts, we hope it serves as an important resource for further discussion, research and policy analysis.

Sincerely,

Thurman E. Court
Executive Director
Cardinal Bernard Shaw Foundation
Acknowledgments

I COME TO THIS REPORT on prisons and sentencing in Massachusetts not as an expert but as an informed observer. From 1986 to 1990 I covered adult and juvenile corrections in Massachusetts as writer and then editor of State House Watch, a bimonthly newsletter that tracked human services budgets and legislation. At State House Watch I tracked the first four years of what was then considered a prison overcrowding "crisis," including prison bond bills and efforts to develop "alternatives to incarceration." In 1990, I wrote an article for the Boston Phoenix headlined "Ratios for the hard time," on sentencing and prison overcrowding that called for, among other things, a Sentencing Commission to sort out the allocation of costly prison beds.

When MassINC asked me to prepare a report on prisons and sentencing in Massachusetts, I welcomed the chance to revisit a set of vital public issues that had been off my radar screen for nearly a decade. Though it's discouraging to see how little has changed, after all these years and all these dollars spent, the prospects for progress have been improved by the declining crime rate—and with it the cooling of the political atmosphere on the crime issue—and by solid work done by thoughtful people in the areas of corrections and sentencing alike.

What understanding I have of the criminal justice system in Massachusetts I credit to the kindness and experience of many practitioners and advocates who wrestle with its realities every day. This is my chance to acknowledge some of the people who satisfied my requests for information and spent hours sharing their thoughts and perspectives with me in the course of researching this report.

At the Department of Correction: Commissioner Michael T. Maloney, his executive assistant Deborah Mendoza, Deputy Commissioner Kathleen M. Denny, Chief of Staff Ernest Vandergriff, and Director of Research Rhiana Kohl. At the Massachusetts Sentencing Commission: Chairman and Superior Court Chief Justice Robert Mulligan and Executive Director Francis J. Carney. In the Massachusetts Judiciary: District Court Justices James Dolan, Robert Rufo, and Robert Kumar; and Joan Kenney and Liz Sullivan of the Public Information Office. At the Hampden County Sheriff's Department: Sheriff Michael J. Ashe, Jr., Superintendent for Human Services Jay Ashe; Rich McCarthy; Major Ed Waldron; records coordinator Stan Ryzczer; Joanne Blakely; Lester Burke; Dan Morrin; Dr. Thomas Lincoln; William Toller; Jen Sordi; Dan O'Malley; James Kelleher. Joseph Nicholas; and Kevin Warwick. At the Suffolk County Sheriff's Department: Sheriff Richard Rousseau; Geri Lydon; Dennis Humphrey; William Querly; Ron Calabrese; and Sergeant Charles Walsh. At the Massachusetts Parole Board: Claire Sheila Hubbard, Executive Director Natalie Hardy; and Public Information Officer Alberta Cook. At the Suffolk County District Attorney's Office: District Attorney Ralph Martin and James Borghesani. Also Plymouth County District Attorney Michael Sullivan and Assistant District Attorney Geline Williams; Barry Barkow of Correctional Legal Services; Commissioner Robert Ginter of the Department of Youth Services; Stephen Hixes and Roseanne Paule of the Division of Capital Asset Management; Stephen Price of the Office of Community Corrections; Mariellen Fidyck of the Massachusetts Sheriffs' Association; and Daniel LeClair of Stonehill College. My apologies to anyone I've forgotten to mention.

My thanks to Thomas Cooney, executive director of the Gardiner Howland Shaw Foundation, for support of this study. At MassINC, I am indebted to Michael Griswold, who entrusted me with this project; to Tripp Jones, for his support and encouragement of all my work for MassINC; and to Dave Denison, who brought me into the MassINC fold as a contributor to CommonWealth magazine two years ago. Thanks as well to the reviewers whose tough questions and pointed observations saved me from myself on countless occasions and improved the final product considerably.

Needless to say, none of these individuals bears any responsibility for any errors of fact or interpretation, nor should they be presumed to share the conclusions of this report.

Robert Keough
June, 1999
Executive Summary

This report seeks to answer a seemingly straightforward question: Does the Commonwealth of Massachusetts need more prison space in order to reduce crime and improve public safety?

To answer that question, we need to consider the following:
1) How much prison space do we have now?
2) How have sentencing practices changed to increase the incarceration rate?
3) Are we filling the prisons with people who don't belong there?

PRISONS: STILL OVERCROWDED AFTER A DECADE OF EXPANSION

In 1985, the state faced a major problem: prison overcrowding. From 1975-1985, the state's inmate population had more than doubled, rising from 2,017 to 5,100—creating major overcrowding problems in facilities designed for 3,560. In county jails and Houses of Correction, the inmate population rose by 89 percent, reaching 3,700 inmates in facilities built to hold 2,700.

Since 1985, the state has invested nearly $1.5 billion into new and replacement facilities, increasing capacity to 8,120 state and 8,356 county inmates. That building boom culminated last November when the Department of Correction opened the Sussex Warrenovski Correctional Center, a new 1,024 bed maximum security prison—the single largest institution the department has ever built and its first new maximum security facility since 1956.

Despite this massive public investment in expanded prison capacity, the overcrowding problem has by no means been solved. As of February, the state Department of Correction had custody of more than 10,000 offenders (in facilities designed for 8,130), while the counties had custody of more than 12,000 inmates (in facilities designed for 8,356). (See chart 1.) Even after the major expansions in the past 14 years, DOC today is operating at 25 percent above capacity, the counties at 30 percent beyond their design limits.

This phenomenon—of major investments in expanded prison facilities matched by equally large increases in inmate populations—has not been unique to Massachusetts. Nationally, state corrections budgets almost tripled—from $7 billion to more than $20 billion—from 1986 to 1996. At the same time, the number of inmates in state and federal prisons quadrupled from 1970 to 1990. In 1983, state, federal and local prisoners numbered 744,000; today, that total is 1.8 million.

Incarceration rates vary too widely across the country to offer much guidance on whether Massachusetts is using its prison resources wisely. Massachusetts has the second-highest incarceration rate in New England (278 adults behind bars per 100,000 population) but falls far behind the average of 506 per 100,000 in southern states. Washington, D.C. imprison over 1,000 residents.

**Chart 1: Prison overcrowding 1985 and Today**

In the last 15 years, Massachusetts, like much of the country, has made a massive commitment to prison expansion. But to answer the question of whether we need still more prison space to serve our crime control goals, we must look more closely at the sentencing policies that are driving so many convicted criminals to serve time behind bars and at what we know about the people already serving time in the state's correctional facilities.

SENTENCING: AN UNFINISHED REVOLUTION

Until the 1970s, sentencing policies in Massachusetts and across the country were based on a retributive model that gave judges wide discretion in setting the length of sentence for almost all crimes. These sentencing policies also offered incentives rewards for good behavior in the PRISONS AND SENTENCING IN MASSACHUSETTS
form of sentence reductions for "good time" (rule-abiding behavior in the prison) and "earned good time" (participation in education, job training or substance-abuse treatment) and the possibility of "early" release on parole. Punishment was indeterminate (largely left to the discretion of the judge) and release was discretionary (subject to reduction for good behavior and parole release).

In Massachusetts, indeterminate sentencing took its most extreme form in the so-called "Concord sentence." A Concord sentence typically consisted of a relatively long nominal sentence, but with parole eligibility at just one-tenth of the stated term. Even the more conventional state-prison sentence contained large elements of indeterminacy and discretion that could substantially reduce the amount of time served by the inmate. A sentence of twenty to thirty years could translate, in practice, to as little as three years in prison and, almost always, no more than seven. Such discrepancies between sentences imposed and time served became a lightning rod for public criticism when crime rates climbed in the 1970s and 1980s.

This led to a push for "mandatory minimums"—sentences that require a certain amount of punishment time to be served by anyone convicted of a crime, with no exceptions. In Massachusetts, the first mandatory minimum was the five-year sentence for the sale or possession of any drug, enacted in 1975. The act required that anyone convicted of such an offense serve at least five years in prison. If that person was previously convicted of a similar offense, the mandatory minimum was increased to ten years. The law was intended to send a message to drug dealers and users, and to deter repeat offenders.

However, the law had unintended consequences. It created a massive increase in the prison population, as more and more people were sentenced to mandatory minimums. The prison population in Massachusetts more than tripled in the 1980s, and the state was forced to build new prisons to accommodate the influx. The cost of housing inmates skyrocketed, and the state's budget was severely strained.

In response, a group of Massachusetts residents established the Massachusetts Sentencing Commission, whose mandate was to develop sentencing guidelines that would make sentencing more consistent and fair. The commission recommended a system of sentencing guidelines that would take into account the severity of the crime, the criminal history of the offender, and the need for public protection.

However, even with the introduction of sentencing guidelines, the problem of overcrowding persisted. The prison population continued to rise, and the state was forced to consider alternative solutions, such as parole and early release programs. These efforts were not always successful, and the prison population remained high.

In conclusion, while mandatory minimums were intended to deter drug dealers and users, they had unintended consequences, resulting in a massive increase in the prison population. The state needs to consider alternative solutions to address the issue of overcrowding, such as parole and early release programs.
Chart 2: MALE COMMITMENTS TO STATE PRISON BY OFFENSE TYPE (percent)

Source: Massachusetts Department of Correction, Court Commitments, 1990 and 1996.

reason to believe that our prisons are full of people who don't belong there.

It's true that imprisonment for drug crimes accounts for substantial growth in both the state and county prison population. But still, the greatest number of inmates are sent to prison for violent crimes.

In 1985, drug offenders made up 16 percent of men sent to state prison. Violent offenders 62 percent; since 1990, drug offenders have represented roughly 30 percent of new commitments, but fully half (49 to 52 percent) remain violent offenders. (See chart 2). At the county level, commitments for violent crimes have been rising nearly as fast as commitments for drug crimes.

Thus, drug offenders are not the primary offenders we are sending away to prison. Violent offenders make up almost a majority of those sent to state prison, and the largest group sent to county facilities. Two violent offenders are sent to state prison for each drug offender.

Nor is it true that drug offenders alone—by virtue of their long, mandatory sentences—are clogging the Commonwealth's correctional facilities. The percentage of state inmates serving sentences for drug crimes did rise through the 1980s. But since 1990, the proportion of drug offenders in state prisons has remained constant, while the percentage of violent offenders has continued to creep upward. From 1990 to 1996, the number of drug offenders increased from 1,502 to 1,942, but held steady at 20 percent of the state-prison population. In the same period, the number of violent offenders grew from 4,651 to 6,253—from 62 percent of the population to 65 percent.

Nor do inmates serving mandatory-minimum sentences account for more than a portion of prison overcrowding. If every one of the 1,851 mandatory-minimum offenders in state prison were released tomorrow, DOC's population would still be 1,000 inmates above current capacity. Similarly, letting every one of the 282 inmates serving a mandatory minimum at the Suffolk County House of Correction walk out the door tomorrow would leave behind 1,455 men in a building designed for 1,146.

Even the popular characterization of many mandatory-minimum inmates as nonviolent, first-time offenders having their "first run-in" with the law is dubious at best. The Boston Globe, for instance, cites DOC statistics to claim that "more than 84 percent of those [currently] serving mandatory sentences on drug charges in Massachusetts are first-time offenders in the state." But in fact, the DOC figures only show that those drug offenders had served no previous time in state prison; prior county or federal prison terms are no longer compiled in the DOC inmate database, nor are previous periods of probation. By this standard, 84 of all DOC inmates are "first-time offenders"—that is, they're serving their first state prison sentence. In fact, most DOC inmates have extensive criminal records. In 1995, 44 percent of DOC inmates whose criminal history was known had a previous incarceration in a county House of Correction, 19 percent in a state or federal prison.

Data on inmates serving mandatory-minimum sentences, while limited, hardly exonerate these drug offenders. The Criminal History Systems Board checked the records of 1,445 state-prison inmates serving mandatory minimums for drug crimes (out of 1,748 in custody in December, 1997) and found that these inmates had faced an average of 1.5 charges as a juvenile, had been

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arranged on 22.5 charges as an adult, and had been convicted on 10.1 charges.

The Plymouth County District Attorney's office performed a similar review of the records of all 157 drug offenders sentenced to mandatory minimum sentences in that county's Superior Court in 1996 and 1997 and found that they had been arraigned on an average of 20 criminal charges and had been convicted 11 times.

This criminal history does not make drug offenders the most hardened and dangerous of state inmates. The most thorough analysis of drug offender records to date found that more than half of mandatory minimum drug offenders had only "minor" or "moderate" criminal records. But 57 percent of these state inmates had served prison time previously (versus 64 percent of non-drug offenders), and one third had a prior conviction for a violent crime.

None of this settles questions about whether mandatory minimum sentences are too long, too rigid, or applied unfairly. Nor does it certify the wisdom of using drug prosecution as the weapon of choice in a broader anti-crime effort. But it does address the "war on drugs" of self-responsibility for the burgeoning prison population in Massachusetts. And it does suggest the need for more political solutions to drug dealing, by itself, solving the prison overcrowding problem.

The increased incarceration of drug offenders is a significant factor in the rapid growth of prison populations. But at the same time, however, prison populations have never been more full of violent offenders. New evidence, however, may support the claims that current sentencing practices are creating prison cells on inmates who don’t belong there. In fact, if all drug offenders serving time on mandatory minimum sentences were released tomorrow, both state prisons and county facilities would still be well over design capacity—and the expected growth in the prison population over the next five years would still necessitate the building of new facilities. Changes in sentencing practices may reduce this trend toward a higher inmate population, but will not reverse it.

Thus, the time to start thinking about the next capital investment in prisons is now—before overcrowding once again reaches crisis proportions at the state level. Preparation for the next round of constructional expansion should include a number of elements, including:


Given the current level of overcrowding and projections of future prison populations, there can be little doubt about the need for more correctional capacity. But we’re left wondering what kind of prisons to build.

Here’s what we should do:

1) Build state prison beds in a graduated sequence of security levels to prepare inmates for their return to society.

- DOC research has proven that inmates released from minimum-security facilities and pre-release programs are less likely to violate parole or to commit a new crime than those discharged directly from maximum and medium security institutions.

- However, there is a consensus that new capacity we’ve built in the last decades has been medium or maximum security.

- Despite the increased capacity we’ve added at the medium-security level, much of today’s medium-security capacity is not truly secure—at least for the inmates who live there and the corrections officers who work there. Entire prison facilities and institutions in DOC—including the venerable MCI Norfolk, in which 80 percent of inmates are serving time for violent crimes—are nothing more than dormitories surrounded by high fences and razor ribbon.

- Even as the state prison population more than doubled over the last decade, medium security and pre-release capacity has remained flat (see chart 3). In fact, DOC has actually reduced its pre-release capacity by more than half, from 459 beds in 1988 to only 202 today, of which 52 are earmarked for women inmates.

- Even with violent offenders making up 65 percent of state prison inmates, 35 percent are doing time for a non-violent crime.

a few of these inmates, including many of the violent offenders, will eventually be released. Yet DOC places just 16 percent of inmates in lower security settings today, compared to 24 percent less than a decade ago. Only 150 men at a time—out of nearly 10,000—are preparing for life on the outside in pre-release programs.

- In 1995, 2,761 inmates were released from the Department of Correction. That’s more than were in state prisons in 1975.

- Fewer than 300 offenders are released from pre-release programs each year, while more than 1,000 inmates per year are discharged directly from locked cells. Every week, more than twenty felons are put back on the streets with little preparation for a crime-free life.

Recommendations:

- Support the Department of Correction’s next request for a medium-security prison, because the department does need more true medium-security beds.

- As a condition of funding the next high tech-high security institution for medium security custody, insist that DOC convert one bed to a true minimum security bed before the new minimum/medium security facility opens, and with more opportunity for structured, supervised contact with the outside world—for every new medium-security bed built in that facility.

- Require the Department of Correction to expand its pre-release capacity, to at least double its current 150 pre-release beds for men, by building additional pre-release centers or contracting with qualified vendors to provide these beds.

- Expand and develop specialized therapeutic facilities, not just generic secure institutions, for state and county inmates.

- The state’s inmate population has doubled since the creation of specialized facilities like the Longwood Treatment Center in Boston, the Western Massachusetts Correctional Alcohol Center in Springfield, and the Eastern Massachusetts Correctional Alcohol Center in New Bedford, yet these centers have not been substantially expanded or replicated during the latest round of prison building.

- National statistics indicate that three-quarters of inmates are drug or alcohol-involved.


Nineteen percent of state prisoners said they committed their current offense to obtain money for drugs.

Our state and county correctional institutions are also among the largest and costliest providers of adult education and job training in the state. But few institutions offer more extensive training in any skill area, and for inmates who progress through several facilities, programmatic continuity is limited.

Recommendations:

- Develop more and new types of facilities with specialized uses for state and county inmates—not just generic, secure institutions to keep inmates behind bars. The possibilities include free-standing facilities with the same therapeutic focus as programs inside correctional institutions, such as substance abuse treatment and anger management, and a vocational technical center—perhaps located near industry clusters that could provide technical expertise and job opportunities for promising ex-offenders—which could offer more advanced job training to inmates as they approach their release date.

- Add specialized residential facilities to the menu of community corrections options now being developed by the Office of Community Corrections. Strong consideration should be given to developing a Halfway House option.
that could provide a setting akin to pre-release—nighttime custody and daytime monitoring of outside activity—for those who need the round-the-clock accountability but do not present a clear threat to public safety.

3) Improve data collection and analysis, for the purpose of determining the appropriateness of prison facility use and the effectiveness of prison programs.

- Given the enormous and growing expense of incarceration, the data on Massachusetts inmates that are collected routinely, analyzed regularly and readily available for review by policy-makers are woefully inadequate. State and county correctional officials maintain detailed files on individual inmates—their offenses, their criminal histories, and their institutional records—for the purposes of classification, but only the barest outlines of this information are entered into official databases for system-wide reporting and analysis.

- Facility planning and independent policy analysis—including this report—are severely hampered by the lack of available data on who is in prison and why. With millions, even billions, of taxpayer dollars at stake, not even routine public safety today and in the future, the haphazardness of correctional record keeping is simply unacceptable.

- District county inmates—now the largest and fastest-growing population behind bars—are even more scant. Houses of Correction have been keeping computerized records for only four or five years. The counties follow no common protocol for data collection, so information is not compiled on a uniform basis. And with the exception of court-commitment and population-count data—mandated by statute since 1985—no county-level statistics are centrally reported to DOCS or any other authority.

Recommendation

- The Executive Office of Public Safety should establish a uniform reporting program for criminal justice statistics that covers the Department of Correction, the Criminal History Systems Board, the Parole Board and the county sheriffs’ departments. The Secretary of Public Safety should convene a panel of state and county correctional officials and outside experts to determine what data should be routinely compiled and publicly available for the purposes of policy and planning. And the Secretary—and the Governor—should seek adequate funding from the Legislature for the various agencies to compile the data and the Department of Correction to produce reports and analysis on a timely basis. Only in this way can policy-makers make informed decisions about the future of the Commonwealth’s criminal justice system.

II. Completing the Sentencing Revolution

The futile process of transition from the indeterminate sentencing of the past to the truth-in-sentencing of the present has left some important unfinished business. For prison expansion to be done judiciously and responsibly, using imprisonment to its greatest effect in crime control, balance and proportionality has to be built into the much altered Massachusetts Criminal Code. The Governor, the Legislature, and all criminal justice interests should work together to accomplish the following:

1) Adopt sentencing guidelines to ensure that punishment is certain and predictable, proportionate to the crime, applied equally to like offenders, and subject to limited discretion in termination.

- Despite their representation on the Sentencing Commission, prosecutors have slammed the Commission’s proposed sentencing guidelines as insufficiently tough. Their counterproposal includes an across-the-board increase in recommended penalties and an increase in the number of crimes for which incarceration would be presumptive.

- The Sentencing Commission objects that this wholesale escalation of criminal penalties would add 8,500 inmates to the prison population within eight years over and above the growth already anticipated. Of that number, 6,000 would be at the county level, a 50 percent increase in what is already the fastest-growing segment of the correctional system.

- Without the adoption of sentencing guidelines in some form, judges will continue to exercise almost unlimited discretion in most criminal cases.

Recommendation

- Prosecutors need to accept that the guidelines will not be a vehicle for increasing every penalty on the books. And the Sentencing Commission has to be willing to join in a discussion of how the sentencing guidelines could be modified, rather than just protecting its elegant and carefully balanced product from adulteration. Legislative and executive branch leaders with an interest in consistency and proportionality in sentencing—as well as some regard for the cost of an end to the unending prison system—should convene negotiations that bring the Sentencing Commission and the District Attorneys back to the negotiating table to iron out a workable compromise.

2) Revise mandatory-minimum drug sentences to incorporate supervised reinteg ration of offenders.

- Current mandatory-minimum sentences prohibit any reduction in sentence for “earned good time” (participation in education and drug/alcohol treatment programs), despite the proven benefits these programs can produce in reduced criminal recidivism.

- Current mandatory minimums also prohibit any participation in community-based corrections programs (like parole or pre-release) until the minimum term is served. However, because most judges view the minimum sentences as unduly lengthy, many of them do not provide a maximum term that is even lengthier than the minimum. Yet it’s only the establishment of a maximum term that creates eligibility for parole. Consequently, most drug dealers serve their whole terms behind bars, and then are released directly back to the street, rather than being released under the guidance and supervision of parole authorities.

- The Sentencing Commission’s proposal on mandatory minimum drug laws is at once too sweeping and too timid. It would allow judges to “depart” from the mandatory sentence in written (and appealable) rulings enumerating one or more “mitigating circumstances,” giving them overly wide discretion. But it would leave in place the prohibitions on earned good time reductions and supervised community-based corrections programs that can reduce future criminality.

Recommendations

- Begin a serious discussion about revising the length and the application of mandatory minimum drug sentencing in a way that preserves what’s most valuable about today’s stiff drug laws—namely, mandatory jail time—in a more finely tuned sanction that also gives society the crime-control benefit of post-release supervision of these offenders. Potential modifications include reducing mandatory sentence lengths, raising the threshold drug weights that trigger these penalties, and limiting “school zones”—now a 1,000 foot radius that takes in the surrounding neighborhood, treating every transaction in the vicinity as if it’s drug peddling to children, subject to a two-year mandatory term—to school property itself.

- Begin the discussion by considering the option of turning the current mandatory minimums into maximums, with parole eligibility coming at the minimum, which is less than 2/3 of the maximum. In that way, the current three-year mandatory minimum would become a sentence of two to three; the current 15 year minimum would become 10 to 15. Offenders would be under sentence for as long as under current mandatory sentences, but eligible for parole during the last third of it.

- Allow downward departures from mandatory minimum sentences only in very limited circumstances and limit the amount a judge can stay from the statutory minimum by requiring the new sentence remain in the sentencing grid for that offense. This will ensure that everyone convicted of a mandatory minimum offense will serve jail time, without exception.

3) Require fiscal truth-in-sentencing for future proposed changes to the state’s sentencing structure.

- The House and Senate Committees on Ways and Means routinely attach fiscal notes to bills that carry direct costs—but not to sentencing bills, since the financial impact is indirect and more difficult to project.

- The research and modeling done by the Sentencing Commission, in cooperation with the Department of Correction, now allows a more precise estimate of the brick and mortar consequences of proposed crime measures.
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Recommendation
• The House and Senate Committees on Ways and Means should calculate the costs of any new sentencing proposal, based on the Sentencing Commission model, and attach it to the bill, so that the fiscal consequences of the proposed change can take their rightful place in the crime debate.

III. Bringing a Community Focus to Corrections
• The more offenders the courts commit to state prisons and Houses of Correction, the more come out each year as ex-cons. The state Department of Correction releases nearly 3,000 inmates each year. County facilities, where shorter sentences make for rapid turnover, create ex-offenders at an even faster rate.

It's especially important to the communities they come from, and will return to, that we focus as much on how these offenders come out of prison as why they went in. Correctional authorities at all levels need to use the time they have offenders in custody to help rebuild the ties to the community in a constructive rather than destructive basis. They can do so in two ways:

1) Forge links to the community for inmates during incarceration and after.
• The Department of Correction is now reaching out to the state Department of Public Health and Department of Mental Health, as well as local shelter providers, as part of inmate discharge planning, helping to smooth the transition to community-based services for offenders with substance abuse and psychological problems.

• Community service work, even that performed under the watchful eyes of uniformed guards, offers an opportunity to make personal connections that improve an offender's sense of civic engagement and community responsibility.

• With the decline of parole planning for discharge—and what comes afterward—is increasingly left to the state and county prisons themselves. Encouraging developments in Hampden and Suffolk County, among others, are providing new ways to smooth the transition to freedom for ex-offenders—and reducing future crime rates in the process.

Recommendation
• Maintain and expand programs that reconnect offenders to their communities on a positive, law-abiding basis, including transitional and post-incarceration support to inmates who complete their terms.

2) Expand the use of community supervision in managing the transition of inmates to society.
• Over the past few years, the Parole Board has exercised increasing restraint in granting release to eligible inmates, reflecting the public consensus that offenders should serve out most, if not all, of their given sentence behind bars. As a result, parole caseloads have fallen even as the prison population has doubled.

• But the role of parole is changing. In the days of indeterminate sentencing, parole meant early release, parole rates were high and parole terms were lengthy. Today, with truth in sentencing, parole is no longer early release and periods of parole supervision are much shorter. Parole is becoming exclusively a short-term period of supervised community reintegration for inmates nearing the end of their sentences.

A period of parole supervision, during which the requirements of living in a free society can still be enforced by a swift return to prison, can impede an offender's drift back toward a life of crime. An effort should be made to provide parole supervision for a greater number of inmates who approach the end of their terms.

Recommendation
• Though control—supported by the authority to return a parolee to prison—will remain a vital part of its responsibility, the Parole Board must shift its emphasis to establishing the greatest number of offenders on a path toward crime-free living. This means developing programs—such as its current intensive parole for sex offenders—to effectively manage higher-risk inmates in a process of transition. After all, it is these offenders who most need control and guidance in learning how to live lawfully in the community.
AN INVESTIGATIVE REPORT
Massachusetts: Sentencing and Prisons
Waging A More Effective Fight Against Crime

THIS REPORT seeks to answer a question:...
crime in an effort to identify measures that could reduce crime and make our communities safer. In October 1996, Professor Mark Kleiman and his colleagues at BOSTIC Analysis Corp. with support from the Gardner Howland Shaw Foundation, produced for MassINC a landmark report entitled Putting Crime Control First. That report laid out an agenda of crime-control measures that MassINC has adopted and promoted in both research and policy:

- Expanding prisons to incarcerate persistent, serious offenders;
- Strengthening community-based corrections to more effectively control the behavior of thousands of offenders out of prison on probation and parole;
- Making punishment more certain and consistent through sentencing guidelines;
- Restoring and enhancing prison-based rehabilitation programs to reduce recidivism; and
- Supporting community policing and other efforts to make communities more crime resistant.

In May 1997, MassINC and the Crime & Justice Foundation joined forces to follow up on Putting Crime Control First by gauging public opinion in Massachusetts on crime. That survey also supported the Shaw Foundation, revealed that the public:

- Continues to be concerned about crime and drugs in their neighborhoods, despite recent declines in crime rates;
- Supports incarceration of violent criminals and drug dealers, even at the price of costly new facilities;
- Has little confidence in the courts when it comes to dispensing swift and appropriate punishment; and
- Endorses a blend of crime-control measures that includes tough laws, enhanced enforcement, tighter supervision of probationers and parolees, and more prevention and rehabilitation efforts.

These views—both expert and citizen—suggested a need to assess sentencing and imprison

ment in Massachusetts. The present is an opportune moment to do so. The Commonwealth is approaching the end of a decade-long capital improvement program that has replaced and expanded prison facilities at both the state and county levels. In that time, the state has more than doubled its correctional capacity. During the same period, criminal sentencing has undergone a fundamental, if largely piecemeal, changeover from indeterminate prison terms—widely varying sentences sharply reduced by "good-time" credits and early release on parole—to a patchwork of "mandatory minimum" penalties and "truth in sentencing" provisions that eliminated most term reductions. For more than a decade, the state has been building new prisons at breakneck speed to accommodate an ever-growing inmate population, while the legislature has been changing the rules of sentencing to put more offenders away for longer and more certain terms of incarceration, thus ensuring that even more prison space will be needed. Prison construction in Massachusetts has become a game of catch-up, one that seems nowhere near over.

Thus, the simplicity of the question we started out with—does Massachusetts need more prison space—is deceptive. Posed that way, the answer can only be yes. The logical corollary to that question, however, is a how much more prison space would be enough?—seems unanswerable. For most county incarceration rates across the country were relatively flat, and the need for prison space grew slowly, in tandem with the population. But after the 1970s, a sharp rise in the number of prison inmates overtook the market for prisons. To date, no number of new prison cells has been enough—not here in Massachusetts, and not elsewhere in the country. State and federal prison capacity has more than tripled since 1980, and still merely every correctional facility in the country is operating at more than 100 percent of its designed limit.

In Massachusetts, at no time in the past decade and a half has the state not needed more prison space. The present is no exception.

So perhaps the more fruitful way to phrase the question is this: Why does Massachusetts need more prison space, even after ten years of constant construction, and even after crime rates seem to have gone into decline? This question leads to others: Is Massachusetts, in its zeal to combat crime, locking up more people, and less dangerous people, than is necessary to protect public safety? Does the state's criminal justice system take sufficiently into account that each new prisoner sent away under strict new laws comes back to our communities as an ex-offender? Should our sentencing and release policies be adjusted to better reserve costly prison space for truly dangerous criminals, and to provide a controlled and structured return to society for inmates who complete their prison terms? And finally: If Massachusetts needs to begin another round of prison construction, what kind of facilities should the state build—the high security, high tech, high-cost structures it's been building for a generation, or prisons of a new type, ones that prepare for the offender's eventual return to society, not just manage his current—and temporary—removal from it?

This report will attempt to answer these questions. It consists of four sections. The first reviews the recent history of prison expansion, both in numbers of inmates and in state investment in new facilities. The second examines the revolution in sentencing laws and practices that has fueled this expansion. The third tries to separate fact from fiction concerning the commonly heard charge that the prisons are now filled by offenders who needed to be there. The final section makes a series of recommendations to improve our state's sentencing and corrections efforts.

PRISONS AND PRISONERS

IN APRIL OF 1985, Governor Michael S. Dukakis presented to the legislature what he called "A Balanced Plan to End Prison Overcrowding." Though the state—and the nation's—prison populations had been relatively stable for much of this century, by the mid-1980s Massachusetts jails, prisons and houses of correction were severely overcrowded. As of 1985, 8,800 inmates statewide were being held in facilities many of them ancient and archaic, designed for 6,200.

Massachusetts, like most states, operates a two-tier system of incarceration, with the responsibility of imprisonment divided between the state and the counties. State prisons, which are operated by the Department of Correction (DOC), hold inmates convicted in Superior Court of serious crimes and ordered to serve relatively long sentences. County sheriffs operate jails and Houses of Correction. Jails hold pretrial detainees—that is, persons accused but not convicted of crimes—in lieu of bail. Houses of Correction are county-run prisons for convicted offenders serving terms, mostly imposed by District Courts, of not more than 2½ years. In most counties, the jail and House of Correction are contained within a single facility, with the two populations managed separately, but Suffolk County has long had separate facilities (in 1985, it was the Charles Street Jail and the Deer Island House of Correction; today, the Suffolk County Jail, on Nantasket Street, and the Suffolk County House of Correction, in South Bay). Middlesex County operates a combined jail and House of Correction in Billerica, and a separate jail in Cambridge.

In the course of ten years, from 1975 to 1985, the state inmate population more than doubled, rising from 2,047 to 5,100 in facilities designed for 3,500.

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INVESTIGATIVE REPORT

The overcrowding problem has
by no means been
"solved."
Massachusetts now
has more than
20,000 adults
behind bars.

Chart 2: TOTAL SPENDING ON DEPARTMENT OF CORRECTION, COUNTY CORRECTIONS, AND PAROLE BOARD


has proposed an operating budget of $1,992 million for the Department of Correction, $323 million for the sheriffs', with costs more than doubled by the state, as part of the phase-out of county government—and $13.4 million for the Parole Board. That's nearly three quarters of a billion dollars for adult corrections, an increase of 21 percent for DCC, 19 percent for the counties, and two percent for the Parole Board, over Fiscal Year 1998, two years before. Spending on corrections now consumes 4 percent of the state budget, or $1 out of every $25 of state spending. See chart 2.

Even after this expenditure and all the buildup of correctional capacity, Massachusetts prisons and Houses of Correction remain overcrowded. DCC is operating at 23 percent above capacity, the counties at 50 percent beyond their design limits.

What has happened is by no means unique to Massachusetts. Prison populations have exploded across the country. The number of inmates in state and federal prisons quadrupled from 1970 to 1999. In 1980, state and federal local prisoners numbered 640,000; today, that total is 1.8 million, and could well reach 2 million by the year 2000.

That explosion has been expensive. State correctional budgets almost tripled nationally—from $7 billion to more than $20 billion—from 1986 to 1996. Despite this substantial investment, as of 1997, 36 states still reported their prison systems as overcrowded.

Across the country, state governments have demonstrated their willingness to invest in costly prison space to support their crime policies. But how much prison space is enough? The trend nationwide of rapidly rising prison populations has been so uniform that the example of other states provides little guidance for Massachusetts policymakers. There is, for example, no way to determine an optimal rate of incarceration. There are no bright lines that distinguish the appropriate use of imprisonment from foolish leniency or senseless severity. Overall, the United States already has the highest incarceration rate in the industrialized world—164 inmates in federal, state and local jail per 100,000 population in 1997—and the inmate population continues to rise, at an average rate of 6.5 percent per year.

Among the 50 states, Massachusetts has long had a reputation as one of the least punitive. The vast expansion of imprisonment here over the

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Figure captions:

1. Governor's Budget Recommendations, Fiscal Year 2000. These proposed appropriations fund only adult corrections. An additional $113 million is recommended for the Department of Youth Services, the Commonwealth's juvenile justice agency. Including juvenile brings the corrections share of next year's proposed budget to 16.41 million.
UNIVERSAL REVOLUTION: An
SentencingPro

The Universal Revolution

The Universal Revolution is a political movement that seeks to
abolish all forms of state power and establish a new social order
based on the principles of freedom, equality, and brotherhood. Its
founders believe that the current system of governance is
incompatible with human dignity and that only through a
decommissioning of the state can true freedom be achieved.

To achieve this goal, the Universal Revolution advocates for
the abolition of all forms of state power, including
judicial, executive, and legislative institutions. It
promises to replace these with a cooperative
framework that empowers all citizens to
participate equally in decision-making.

At its core, the Universal Revolution
promises a society where freedom of
expression is guaranteed, where
people can freely assemble and
engage in political activity without
fear of retribution.

The movement's leaders
are calling for a radical
transformation of societal
structures, challenging the
assumptions that have
formed the basis of
current political systems
for centuries.

The Universal Revolution
is not a call for violence
or chaos; rather, it is a
vision of a better future
where all people are
equally valued and
respected.

The movement
believes that by
abolishing state power
and redistributing
control over society,
true freedom can be
attained.

The Universal
Revolution
promises a
different kind of
society—one
where individual
liberty is protected,
where dissent is
encouraged,
and where the
government is
accountable to
the people.

The movement
believes that only
through a
civilized
approach to
politics can
true democracy
be achieved.

The Universal
Revolution
promises to
transform the
current political
landscape,
challenging
long-held
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and incorporated rewards, in the form of term reductions, for self-improvement. For most crimes, the punishment was indeterminate (largely left to the discretion of judges) and release was discretionary (subject to redaction for good institutional behavior and evidence of reformation).

Typically, the sentence imposed by a judge was defined by a range of prison time—a minimum term ("not less than") and a maximum term ("not more than")—given in months or years. The actual time served on that sentence could be reduced by credits for good behavior ("good time") or participation in rehabilitative programs such as education, job training or substance abuse treatment ("earned good time"). The sentence expired, and the offender went free, at the end of the maximum term, minus these good behavior credits. Sentences also carried with them eligibility for parole after a certain amount of time served, generally set by statute according to sentence length. Release on parole was decided by a parole board, which based its judgment on an inmate's efforts at self-improvement and his prospects for serving out the rest of his maximum sentence back in the community; under the supervision of parole officers, without committing further offenses that might jeopardize parole eligibility.

In Massachusetts, indeterminate sentencing took its most extreme, and controversial, form in the Concord sentence—which a legal term of art meaning the offender was committed to the state "reformatory" at Concord, rather than the state prison at Walpole (now called Cedar Junction), though in fact a state inmate could be placed in any DOC institution, at the department's discretion. A Concord sentence typically consisted of a relatively long nominal sentence but with parole eligibility at just one-tenth of the stated term.

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A hypothetical example: An offender is sentenced to state prison for a term of seven to ten years for a violent crime. Based on the sentence, he's eligible for parole consideration at 7/10 of the minimum, or 56 months. From the first day behind bars, however, good time starts to kick in. If the inmate is able to earn the maximum amount of good time—20 days per month served—he becomes eligible for parole after 39 months behind bars, less than half his nominal maximum sentence. If, on the other hand, the offender receives no earned good time for program participation and is never released on parole, he still "wraps up" his sentence after seven years and two months, meaning he lost none of his statutory good time (12½ days per month) for "bad behavior.

Thus a sentence of seven to ten years could mean, in practice, as little as three years in prison, and rarely more than seven.

Such discrepancies between sentences imposed and time served became a lightning rod when crime rates climbed nationally, beginning in the 1970s. Rates of reported crime more than doubled between 1965 and 1980. The incidence of violent crime tripled in that period, and surged again in the late '80s, peaking in 1991. Arrests for violent crimes jumped from 392,000 nationwide in 1973 to 728,000 in 1991.

Public outcry over crime in general extended to outrage at a system of justice that let serious criminals out of prison long before their sentences were up. A new consensus formed around the idea that punishment ought to be certain and predictable, proportionate to the crime, applied equally to all offenders, and subject to little in the way of discretion in termination. Ultimately, this new consensus gave rise to systems of determinate sentencing—often promot ed under the banner of "truth in sentencing"—across the country, in federal, as well as many state, criminal codes. In the revised codes, which vary widely by jurisdiction, the range of possible sentences was drastically reduced, determined largely by the crime and the criminal record of the defendant, and the role of parole was reduced, if not abolished.

But this new view of crime and punishment infiltrated the criminal justice system slowly and unevenly. In Massachusetts, the wedge that drove determinate sentencing was the mandatory minimum sentence. Though it is the stringent mandatory minimum drug sentences that draw most of the attention—and the controversy—the state's first mandatory minimum sentence to the modern era was the 1973 Berkey-Fox gun law, a mandatory one year of jail time added onto the punishment for any other crime committed while in possession of a firearm. That was followed in the 1980s by mandatory minimums for drunk driving and, finally, a series of penalties for drug dealing that are not only irremovable but among the most severe in the nation.

The mandatory minimum was, and is, a legislative blunder instrument, one that carries a variety of legal and public-policy messages along with its mandatory sentencing mandate. In each instance, the new penalty was a response to crimes that the public and its representatives felt were not taken seriously enough by the criminal justice system of the day. It was intended to combat the rise in urban handgun violence. The Operating Under the Influence (OUI) laws arose from a heightened public awareness of the dangers of drinking and driving, and was a direct response to the perceived reluctance of judges to impose jail time on even repeat drunk drivers.

Similarly, mandatory prison sentences gave drug dealing an elevated status in the priorities of

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15 In fact, it's highly unlikely that any inmate could have served all 2½ days of earned good time each month of his incarceration. Participation in any one program may earn just 2½ days of good time a month, so an inmate would have to be extensively enrolled in three to four good-time eligible programs at a time to reach the theoretical limit.

16 Sourcebook of Criminal Justice Statistics, 1997 Table 3.111, page 261. Based on Uniform Crime Reports for "indices" crimes (murder and nonnegligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny-theft, and motor-vehicle theft) and "violent" crimes (murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault). Rates of index and violent crimes are per 100,000 population. Area refers from Bureau of Justice Statistics' "Four Measures of Serious Violent Crime," http://www.ojp.usdoj.gov/bjs/glance/4msvci.html.

17 See Witherspoon, Simple Theory: Page 41-43 for an overview of state determinate sentencing reforms in the 1970s and 1980s. The federal government encouraged the adoption of strict multi-tier sentencing codes in the 1994 Violent Crime Control and Law Enforcement Act by offering prison-construction subsidies to states that required offenders to serve 85 percent of their sentences behind bars. By 1998, 27 states had met this qualification and another 12 states, including Massachusetts, had adopted some other form of truth-in-sentencing. For the impact of these laws in terms of increased time served and growing prison populations, see Paula M. Dixon and Doris Jonas Wilson, Truth in Sentencing in State Prisons, Bureau of Justice Statistics, Jan. 1999.


19 Strictly speaking, Massachusetts' first "mandatory-minimum" sentence was not a more severe "street" and of a more conventional "street imprisonment", without parole, for five-degree murder. In many other states, even "life" sentences offer parole eligibility after a long period of incarceration 25 years, or longer though some have repealed the parole option to provide a more direct alternative to the death penalty.

PRISONS AND SENTENCING IN MASSACHUSETTS

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16 Massachusetts Institute for a New Commonwealth

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law enforcement. By 1980, drugs had been implicated in many varieties of crime, and particularly in a deteriorating quality of life in urban neighborhoods. Costly drug habits provided motivation for economic crimes such as robbery and breaking and entering, while street-corner dealing and conversion of abandoned buildings to drug dens made city streets treacherous. Finally, the advent of crack cocaine set off a terrifying new round of violence as drug gangs competed for turf with reckless disregard for innocent bystanders.

While drug-related arrests mounted in the early 1980s, sentencing practice was slower to respond. Probation rates swelled with drug offenders, making effective supervision impossible, and even a new offense was often not enough to get probation revoked. The strict drug dealing and trafficking penalties enacted in the 1980s provided police and prosecutors with powerful weapons for cracking down not only on the drug trade itself, but on the violent crime that swirled around it. These laws included mandatory minimum prison terms of up to 15 years, depending on the class of narcotic and weight of drugs on hand for distribution.

In such a case—guns, drugs, driving, and drugs—the ratcheting up of criminal penalties was part of a shift in crime-fighting priorities that reflected a new public attitude toward certain classes of crime. As such, they are part of the natural evolution of the criminal justice system. But, as it happens, these particular adjustments came at a time when public confidence in the reigning sentencing approach—independent, permissive, discretionary sentencing—was at its lowest ebb. Writing heavier nominal sentences into laws that could be nullified by lenient judges or deflated by good-time and parole eligibility rules seemed an exercise in futility. Thus a desire to beef up punishment for selected crimes combined with a mistrust of conventional penalties to create a patchwork of mandatory minimum sentences—terms of imprisonment that could not be suspended, could not be replaced by probation, and could not be reduced by good time or parole. These sentences became the state's first experiment in determinate sentencing—and determine they were.

Attempts to extend determinate sentencing to the rest of the criminal code founded in the 1980s. Governor Dukakis's "presumptive sentencing" bill stalled in the legislature out of concern that the plan would exaggerate a prison overcrowding problem already raging out of control. Even absent overall sentencing reform, however, the criminal justice system moved in the direction of punishment that was more certain and more stringent.

Judges cut back sharply in their use of the Concord sentence, with just 158 male offenders out of 2,204 committed to DOC in 1994, or 5.8 percent, receiving the reformatory sentence, compared to 47 percent in 1980.24 (See chart 4). With new commitments appointed by Governor William Weld, the Parole Board cut back sharply on the granting of parole. The paroling rate—the percentage of eligible inmates granted release at their hearing, whether at initial eligibility or annual review—for state inmates fell from 70 percent in 1990 to 53 percent in 1996 (back up slightly to 37 percent in 1997); for county inmates, the paroling rate dropped from 58 percent in 1990 to 38 percent in 1993, before rebounding to 53 percent in 1996 (50 percent in 1997). (See chart 5). At both levels of corrections, however, would get out that parole is harder to come by: The portion of state and county inmates eligible for parole who waived their right to a release hearing jumped from 15 percent in 1990 to 31 percent in 1996.25

Systematic sentencing reform did come to Massachusetts, in Chapter 432 of the Acts of 1993, known informally as the "Truth in Sentencing Act." The measure abolished the Concord sentence (for crimes taking place after July 1, 1994) and eliminated statutory, or automatic, good time. For state prisoners, parole no longer offered "early" release. The act set parole eligibility at the full minimum sentence, which could be no less than 1/3 of the maximum sentence. The indeterminate and discretion that typified criminal justice in Massachusetts for most of this century became a thing of the past.

But even with passage of this sweeping law, the sentencing revolution in Massachusetts remains unfinished. The 1993 act also established the Massachusetts Sentencing Commission, a body appointed by the governor and consisting of prosecutors, judges and defense attorneys, in equal numbers. The mandate of the commission was to develop sentencing guidelines that would ensure greater consistency in the assessment of criminal penalties. It was also charged with "rational" correctional capacity. The commission's sentencing recommendations were required to have a "neutral" impact on the overall prison population. By setting priorities in the use of incarceration, it was felt, sentencing guidelines would reserve costly prison space for the most serious and dangerous criminals.

The commission made its report to the legislature in April of 1996, recommending a sentencing "grid" that, compared to past practice, would increase prison terms for serious, violent crimes committed by repeat offenders and promote the use of "intermediate sanctions" for lesser law breakers. In response, the legislature established an Office of Community Corrections in the judiciary to provide a menu of alternative sanctions for each district and superior court. With funding of $6 million in the current fiscal year, the Office of Community Corrections has begun the task of developing services and supervision models in each jurisdiction to supplement standard probation. Among these are mandatory drug testing to ensure sobriety, electronic monitoring to verify the probationer's whereabouts, and "day reporting centers," where offenders must appear in person at least once a day and follow a strict and verifiable daily itinerary.

But the commission's sentencing guidelines are still pending in the Legislature, with no discernible political push behind them. The requirement of a neutral impact on the prison population, though it forced thoughtfully considered trade-offs in sentence length, left the commission vulnerable to charges of being "soft" on whatever crimes on which it did not ratchet up punishment. And any criminal justice legislation that lacks the label of "tough" finds itself an orphan on Beacon Hill. Thus the "truth in sentencing" measures designed to lengthen prison terms— with the effect of driving up prison populations—have gone into full effect, while measures intended to make punishment more consistent and more targeted to serious offenders languish in political limbo.

24 Lisa Lovar-Cimpian and Ramon Borges, Mass. Dep't of Correction, 1984 Court Commitments to the Massachusetts Department of Correction Table 1, page 5.
25 Massachusetts Parole Board statistics.
INVESTIGATIVE REPORT

Who's In Prison?

OVER THE PAST 20 YEARS, changes in sentencing practice combined with rising crime rates and vigorous enforcement to send unprecedented numbers of Massachusetts residents to prison, where they will serve terms that are longer than ever. In 1980, the courts committed 3,938 male inmates to the custody of the state Department of Correction; in 1996, 1,904 men were sent to the state prisons. Annual commitments to county jails and Houses of Correction nearly quadrupled in that period, from 3,441 to 13,482.26

Not surprisingly, public safety officials credit the recent drop in urban crime to taking so many of society's predators off the street. Skeptics point to other factors, especially demographics: the declining numbers of young people in the crime-prone years of 16 to 20. That demographic effect was delayed, they say, by the crack cocaine crime wave, which was extraordinarily violent. As law enforcement effectively targeted crime hot spots and, for a variety of reasons, the crack craze faded, the crime rate fell sharply. But even those who doubt the wisdom of the big lock-up guilefully admit that it likely had some impact. "When you lock up an extra million people, it's got to have some effect on the crime rate," said liberal criminologist Franklin Zimring, quoted in U.S. News & World Report.27 In Massachusetts, put it this way: How can locking up more than 20,000 men in a single year for criminal offenses not have some impact on crime?

But the numbers by themselves are not enough to justify the prison boom. Sheer volume does not prove that the right people are behind bars, nor that a continued expansion of prison populations—the costs to society needed to contain them—are justified. If prison populations swell with petty criminals who pose no real threat to society, then the prison building boom is a public policy blunder.

That is just what critics of mandatory minimum drug laws, both state and federal, claim. They charge that those laws use the book as a weapon to keep prison populations up to sustain the prison system. A growing body of research and thoughtful legislative reforms raises questions about the fairness and effectiveness of "on drugs" as a cornerstone of the war on crime.28

Ironically, the sheer numbers lend some weight to these arguments. With the escalation of incarceration so rapid, it's hard to not think that the war on crime'scomponent has simply been decreed. And if the argument is correct, it offers a tantalizingly simple solution to prison overload: Were incarceration imposed more judiciously, the prisons we have today might well be sufficient.

But for Massachusetts, at least, the case is overstated at best. Drug offenders do not, by themselves, account for the prison population growth in the last two decades; even their release, ex masse, would not solve the prison space short age. Nor would their wholesale release, even on alternative forms of supervision, be prudent. Based on the criminal histories of these inmates and the public's interest in punishing drug trafficking, drug offenders do not represent a population for whom some form of incapacitation seems obviously inappropriate. Simply put, based on the data that's available, there is no reason to believe that our prisons are full of people who don't belong there.

It's true that imprisonment for drug crimes accounts for substantial growth in both the state and county prison populations. In state prisons, commitments of men for drug offenses jumped from 263 in 1983 to 892 in 1996. The number of drug offenders sent to state prison each year has tapered off since 1990–575 in 1995, 668 in 1996. The last year for which numbers are available—but remains more than double the 1985 rate.29 (See chart 6.)

But the price of imprisonment for violent crimes has risen just as fast. In 1985, 355 men were committed to state prison for crimes against the person, including sex offenses; in 1990, commitments for those violent crimes numbered 1,137. (See chart 7.) In 1985, drug offenders made up 16 percent of men sent to state prison; violent offenders 22 percent; in 1996, drug offenders had represented roughly 80 percent of new commitments, while fully half (49 to 55 percent) had been violent offenders. The only category of offense to drop in this period, in both numbers and percentage, is property crime, falling from 318 (20 percent) in 1985 to 252 (13 percent) in 1996. (See chart 8.)

This trend—more drug offenders behind bars, but even greater numbers of violent criminals—mirrors the national experience. In state prisons across the nation, the number of drug offenders has risen more than tenfold, from 19,000 in 1980 to 225,160 in 1996. The leap was particularly dramatic in the late 1980s: from fewer than 40,000 inmates in 1985 to 148,000 in 1990. But the number of violent offenders has grown at a rapid pace, from 5,800 in 1985 to 487,300 in 1995. Since 1990, the proportion of violent and drug offenders in state prisons has remained steady at 46 percent of incarcerated violent crimes, 23 percent of drug crimes. For every drug offend

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26 Massachusetts Department of Correction, 1990 Commitments to the Massachusetts Department of Correction, Figure 1. page 1, 1980. Commitments to the Massachusetts Department of Correction, 1990.
27 Mass. Dept. of Correction, 1990 Commitments to the Massachusetts Department of Correction, Table 1. page 1.
29 The figures are for drug convictions for drug crimes, and whether the trend will continue, are unclear. It could be a function of the drug market, largely moving "below the surface," or a boom in sales, or a challenge to law enforcement. Also, since commitments to county correctional facilities continued to rise (see below), it could also indicate an increased willingness on the part of district attorneys to make plea agreements for county time instead of prosecuting some cases under minimum mandatory for state-prison time.

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20 Massachusetts Institute for a New Commonwealth
21 PRISONS AND SENTENCING IN MASSACHUSETTS
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But the pace of imprisonment for violent crimes has risen as well. In 1985, 995 men were committed to state prison for crimes against the person, including sex offenses; in 1990, commitments for these violent crimes numbered 1,317. (See chart 7.) In 1985, drug offenders made up 16 percent of men sent to state prison, violent offenders 62 percent; since 1990, drug offenders have represented roughly 30 percent of new commitments, while fully half (49 to 52 percent) have been violent offenders. The only category of offense to drop in this period, in both numbers and percentage, is property crime, falling from 318 (20 percent) in 1985 to 252 (13 percent) in 1996.31 (See chart 8.)

This trend—more drug offenders behind bars, but even greater numbers of violent criminals—mirrors the national experience. In state prisons across the nation, the number of drug offenders has risen more than ten-fold, from 19,000 in 1980 to 234,100 in 1996. The leap was particularly dra-

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30 The reasons for the drop-off in state-prison commitments for drug crimes, and whether the trend will continue, are unclear. It could be a function of the drug market largely moving "indoors," a boon to safety on the streets but a challenge to law enforcement. Also, since commitments to county corrections for drug crimes continued to rise (see below), it could also indicate an increased willingness on the part of district attorneys to make plea agreements for county time instead of prosecuting some cases under minimum mandatory for state prison time.

31 Mass. Dept. of Correction Commitment reports, 1990 and 1996.
INVESTIGATIVE REPORT

Charts 5 & 6: Male Commitments to County Corrections by Offense Type (percent)

Chart 7: State Prison Population by Offense Type (percent)

Charts 8 & 9: Mandatory-Minimum Drug Offenders and Prison Overcrowding

The argument that many, if not most, mandatory minimum inmates do not belong behind bars at all is more difficult to assess. Data on the criminal backgrounds and profiles of state inmates are extremely limited; for county inmates, they are nonexistent. Such information on individual inmates is used daily for the purposes of classification, but is not currently entered into DOC or county sheriffs' databases. DOC used to include prior incarcerations in its annual statistical profile of state inmates, but has not done so since 1995.

The Massachusetts Department of Correction, at a cost of $19,900 per inmate per year, has built a new jail in Cambridge. The cost to the state of keeping an inmate in prison for one year is $47,000. In order to cut billions of dollars in health care costs, the state will have to release inmates—because they serve more time than the average county inmate, in part because of mandatory minimum sentences. In that sense, drug-related sentencing does materially contribute to county level overcrowding. But still, letting every one of the 282 Suffolk County inmates serving a mandatory minimum sentence walk out the door would save 4,755 men behind in a building designed for 1,146.

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Data on inmates serving mandatory minimum sentences, while limited, hardly exonerate these drug offenders. The Criminal History Systems Board calculated the records of 145 state prison inmates serving mandatory minimums for drug crimes (out of 1,748 in custody in December, 1997) and found that these inmates had on average faced 1.5 charges as a juvenile, had been arraigned on 22.5 charges as an adult, and had been convicted on 10.1 charges. The Plymouth County District Attorney's office performed a similar review of the records of all 157 drug offenders sentenced to mandatory-minimum sentences in that county's Superior Court in 1996 and 1997 and found that they had been tried on an average of 20 criminal charges and convicted 11 times.

This criminal history does not make drug offenders the most hardened and dangerous of state inmates. Indeed, the most detailed analysis of drug offender records to date, performed by former assistant attorney general William Brownlie, found that more than half of mandatory minimum drug offenders had only "minor" or "moderate" criminal records, and only one in 12 had been convicted of a "serious" violent crime. From this, Brownlie concludes, convincingly, that "we cannot say that the heavy mandatory penalties for drug offenses are usually operating to incapacitate individuals who are dangerous apart from their drug dealing"—that is, "generally dangerous individuals." But it is by no means obvious that drug dealing, with a mirror to moderate criminal record, is insufficient on its own to merit any term of incarceration at all.

In addition, not all offenders sentenced under mandatory minimum drug laws had a trivial criminal record: 57 percent of these inmates had served a prior term of incarceration (versus 64 percent of non-drug offenders), and one third had a prior conviction for some crime against the person.

None of this settles questions about whether mandatory minimum sentences are too lengthy, too rigid, or applied unfairly. Nor does it certify the wisdom of using drug prosecution as the weapon of choice in a broader anti-crime effort. But it does all but an "academic" bar of responsibility for the burgeoning prison population in Massachusetts. And it should dispel the assumption that abandoning mandatory minimum penalties for drug dealers would, by itself, solve the prison overcrowding problem.

The increased incarceration of drug offenders is a significant factor in the rapid growth of prison populations. At the same time, however, our prisons have never been more full of violent criminals. Even a dramatic change of course with regard to drug prosecution and sentencing will not, by itself, solve the prison problem.

Planning for the Future of Prisons

THE RESEARCH FOR THIS REPORT included tours of three correctional facilities: the Suffolk County House of Correction in Boston; the Hampden County House of Correction in Ludlow; and the Essex-Baranowski Correctional Center, in Shirley. Each is symbolic, in its own way, of the recent past, the present and, perhaps, the future of criminal justice in Massachusetts.

The two county facilities were among the first built in the wave of prison expansion and modernization that has seen a number of new facilities in Massachusetts. Both are relatively small by Massachusetts standards, and both are designed to accommodate a relatively small number of inmates.

At the Hampden County House of Correction, the overcrowding—39 percent above capacity—does not yet constitute a crisis. With an average not an issue, cells were built oversized, to allow double and triple bunking. And Sheriff Aske has developed the state's most extensive system of community corrections—pre-release, day reporting, electronic monitoring, etc.—to reduce the population behind the walls and to better prepare offenders for parole or discharge. But the sheriff has had to cut back on the number of Department of Correction inmates he helps prepare for a return to their Hampden County homes. Given a sparsely new facility by the state, Aske was taking more than 150 state inmates from western Massachusetts at a time, relieving state prison overcrowding and managing the supervised reintegrations of these offenders into society—Thus Aske believes reduces future criminality. But as even this vast new space has gotten tight, Aske can find room for only half that number of state inmates. As a result, more state prison inmates from western Massachusetts are going home without the controlled transition Sheriff Aske can give them. In the Suffolk County House of Correction, where space is at a premium, occupancy of 159 percent of capacity means the hulking block shelves ("desks") on windowsills have been

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42 "Convictions" here include cases "continued without a finding," an informal probation mechanism that avoids entering a conviction on the record as long as the accused stays out of trouble. This categorization is not universally accepted. The Massachusetts Data Office of Public Safety, for which the study was performed, has been unable to produce a copy of the report for review.

43 These figures are quoted from a presentation prepared by the Massachusetts District Attorney's Association and confirmed by former assistant attorney general William Brownlie. Convictions include "continued without a finding." See footnote 41, above.

44 Brownlie, Profile of Anti-Marijuana Law Enforcement, pages 21, 35 and 40. Definitions of "minor" and "moderate" criminal records are those of the Massachusetts Sentencing Commission.
turned into bunks for a third of them. Some offices and meeting rooms have been converted to dormitory space. A new building is under construction and tenants will move into the new building next year. Ten years ago, the facility was closed down, and Sheriff Richard Rouse is building an addition. It's not foreseen that these that 1980s liberals had in mind when they asserted, in the catchphrase of the time, "You can't build your way out of overcrowding." More than a decade later, they've been proved right, but only in part. By building almost nonstop since the late 1980s—at a cost of roughly $100,000 per new bed for construction

50 Mass. Dept of Correction, Quarterly Report on the Status of Prison Overcrowding, Third Quarter of 1998. The Suffolk County Jail is a separate facility, on多数 of your space. Not even ten years old, the facility has been almost nonstop since the late 1980s—at a cost of

51 The NCCD's low estimate is based on "model" increases in commitment rates and an increase in time served only by the old sentencing laws. The high estimate assumes that growth in the prison population is not as great as it is. The same calculation is done for the state.
The opportunity to take on more responsibility, to live in less restrictive (though still guarded) environments, and to be reintroduced into society on a gradual, supervised basis improves the chances that an offender will remain an ex-offender. Public safety demands no less.

Officially, the state Department of Correction remains committed to the gradual movement of inmates through the system, to the extent possible, by security considerations. But most of the new capacity the department has built to accommodate its growing inmate population has been medium security, and the rest of it maximum (Souza-Baranowski). Even as the state prison population more than doubled, minimum security and pre-release capacity remained flat. In 1988, DOC had capacity of 2,082 beds in medium and maximum security, 1,215 in minimum and pre-release—a ratio of 2.2 to 1. In 1999, capacity of close security beds totals 6,779—more than a two-fold increase with only 1,452 beds of minimum and pre-release space—a ratio of five high security beds for every low security placement. (See chart 1.) Astonishingly, DOC has reduced its pre-release capacity by more than half, even with multi-celled cells. Today, DOC now operates just 202 pre-release beds, compared to 439 in 1988, and a quarter of those (52) are for women, who make up only 5% of the overall population.

Critics have long claimed, based on the department's own research, that DOC is overly conser-

That’s more than were in state prisons in 1975. With DOC so restrictive in its classification deci-
sions, few offenders go through a complete sequence of low, medium, and pre-release, and a full program of community re-integration prior to release. Fewer than 500 offenders are released from pre-release programs each year. Meanwhile, more than 1,100 inmates per year are discharged directly from locked cells to the street.

But if DOC needs—and needs to make use of—more minimum security and pre-release space, it is also true that much of today's medium security capacity is not truly secure. DOC officials worry that too many of their medium security beds are in dormitory-style facilities, rather than cellblocks. Zurer medium security institu-
tions in DOC—including the vulnerable MCI-Norfolk, in which 80 percent of inmates are serv-
ing time for violent crimes—are dormitories sur-
rounded by 20-foot fences and razor ribbons. The North Central Correctional Center in Gardner is a former state hospital with a fence around it. Bay State Correctional Center would be a minimum security facility, but for its secure perimeter. Modular housing units provide extra space in many facilities, without the unit or individual cell security favored in medium prisons. These facili-
ties are secure from the public safety standpoint, but are not necessarily safe for staff or inmates.

So, despite the vast expansion of medium security capacity during the past building boom, the next facility DOC requests will be another medium security prison. That request should be supported. The department does need more true medium security beds. But that does not mean DOC needs more beds for medium security purposes.

DOC officials say that having more truly secure medium security beds would make prison dormitories now being used as medium-security facilities available for lower-security use, should that be warranted. As a condition of funding

32 DOC Commissioners Michael E. Maloney says that he is "satisfied with the way we manage our population." He maintains that the department moves every-
time into lower security as soon as it is ready to. But DOC has published no follow-up study that compares its current classification to national stan-
dards, as the 1989 study did. Interview with Commissioner Maloney, May 1, 1999.
33 Max. Dept. of Correction, Releases from Massachusetts Correctional Institutions During 1985
34 Max. Dept. of Correction, A Statistical Description of Releasess from Massachusetts Correctional Institutions During 1985
35 Interview with Commissioner Maloney, May 1, 1999.
36 Interview with Commissioner Maloney, May 1, 1999. PRISONS AND SENTENCING IN MASSACHUSETTS
the next high tech, high security institution for medium security custody, the Legislature should insist that it is not even a county jail. For each new bed of high tech, high security prison space, DOC should be required to convert one bed to true minimum security—without maximum security walls, and with more opportunity for structured, supervised contact with the outside world. DOC must also expand its pre-release capacity, to at least double its current 150 pre-release beds for men, by building new community centers or contracting with qualified vendors. These are the least expensive beds in the state-prison system, and they are of vital importance in returning inmates to society in a controlled and supervised fashion. They should not be the department's most scarce resource.

There is no question that the intrinsic causation of correctional officials comes from their public safety mandate. After all, DOC officials—and their political masters—are far more sensitive about escapes (or “walkaways,” as they’re more accurately termed) than about missed opportunities for community reintegration. No commissioner of correction has ever been fired, even if called on the public carpet, for not taking enough risks in placing inmates. But in the long run, public safety depends as much on how an inmate comes out of prison as how securely he is kept in. For the purpose of preventing recidivism, a reintegration plan after they complete their terms, inmates need to be moved through a graduated sequence of security levels and a structured and controlled process of community reintegration. The facilities we build should serve that purpose.

• Expand and develop specialized, therapeutic facilities, not just secure genuine institutions, for state and county inmates. For different reasons—the antique nature of most jails and Houses of Correction, for one—the construction agenda of county sheriffs has been, like the DOC’s, large, primarily close-security institutions. But both state prisons and county houses of correction filling as soon as they open, the question now becomes whether to spawn more clones, or develop new types of facilities with more specialized use.

Currently, both state prisons and Houses of Correction operate drug abuse and anger management programs in dedicated cellblocks that are no different in terms of cell and tier configuration than general-population units. Some counties, such as Hampden, run on site “boot camps” the same way. As the need for these units—and for prison beds in general—continues to rise, the possibility of free-standing facilities with the same therapeutic focus should be explored. They could serve as “step down” units that continue treatment in a lower security setting as inmates get closer to release. And separate facilities, as opposed to separate units in larger institutions, will enhance the therapeutic atmosphere and sense of community that supports 12-step recovery efforts. Such programs would also mesh neatly with the “coerced abstinence” approach to parole supervision for drug offenders, preparing offenders for regular drug testing in the community.

Successful examples of such dedicated facilities are close at hand. The state’s three correctional alcohol centers (Longwood Treatment Center in Boston, Western Massachusetts Correctional Center in Springfield, and Eastern Massachusetts Correctional Alcohol Center in New Bedford) are regarded as effective programs and are models for future expansion. Other states have demonstrated that several existing facilities can be converted or repurposed to create more specialized programs. For example, a converted work camp or minimum security unit could provide the needed specialized services for addicted inmates.

With new state and county prisons filling as soon as they open, the question now becomes whether to spawn more clones, or develop new types of facilities with more specialized use.

Alcoholics Anonymous meetings daily in an environment of therapeutic community. "Sponsors" from outside the facility provide offenders with post-discharge support.

Even as the inmate population has doubled since their creation in the mid-1960s, however, the CACs have not been substantially expanded or replicated elsewhere in the state. Both Longwood and WMCC, which is now building an addition of 50 beds, have begun to treat drug and multi-substance abusers with nonviolent backgrounds alongside alcoholic repeat drunk drivers, with considerable success. With national statistics on state prisoners characterizing three-quarters of inmates as drug or alcohol "involved,"" more could be done with additional facilities.

Other types of specialized facilities are also worthy of consideration. Our state and county correctional institutions are among the largest and busiest providers of adult education and job training in the state. But few institutions can offer advanced training in any skill area, and for inmates who progress through several facilities, programmatic continuity is limited. In the state-prison system, one or more correctional vocational centers—perhaps located in the major correctional “clusters” that could provide technical expertise and job opportunities for promising ex-offenders—could offer more advanced job training.

Specialized residential facilities should be added to the menu of community corrections as well. There remains a yawning gap between living at home monitored electronically and living behind bars, and that gap creates thorny offender-management dilemmas. Whether to imprison a repeat, but petty, offender who is the sole financial support of his family is often the toughest sentencing decision facing a District Court judge. Similar situations arise when a probationer violates his conditions of probation, such as failing mandatory drug tests. To refrain from incarceration—not for the first time, in most cases—would make a mockery of the criminal justice system. But a prison commitment would severely disrupt an entire family on grounds that may be less than compelling in terms of public safety. It could also sever ties to home, work and family that offer the only hope of an offender ever straightening out his life.

In situations such as these—and they are commonplace in District Court, in particular, which is responsible for more than 90 percent of county commitments—a “halfway house” in residential option might prove an attractive, as well as effective, addition to the menu of intermediate sanctions. A Halfway House could provide a setting akin to pre-release—nighttime custody and daytime monitoring of outside activity—for those who need around-the-clock accountability but do not present a clear threat to public safety. Indeed, pre-release providers such as Massachusetts Halfway Houses and the Salvation Army would be logical vendors, perhaps in existing facilities. These residences could be principally therapeutic in nature—drug treatment, anger management, etc.—providing intensive treatment and oversight support. Or they could principally provide transitional supervision, providing a sanction for technical violations of probation (or parole) short of imprisonment. Either way, residential placement could avoid the kind of institutionalization which presents its own temptations in the form of drug contacts, neighborhood running buddies, etc.—without sacrificing his firmest footings in mainstream society; his job and his family responsibilities.

These few suggestions hardly exhaust the possibilities. The point is that, in terms of facility planning, the state has become expert at building generic, secure prison space: wings and towers of self-contained cellblocks, double-tiered, shared cells of every sharp edge or readable handle (potentially weapons), centrally controlled and electronically monitored. The state even knows what colors to paint the walls to have a soothing effect on inmates’ moods. What is needed now is to put the same effort into creating additional kinds of environments that make the education and treatment programs inmates are already offered more effective.
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tive—environments that not only control inmates, but help them develop self control and responsibility as well.

The next generation of prison expansion—and a new generation of expansion in order—should make our correctional system better as well as bigger. It should recognize that if we want offenders to remain crime free when they return to society, environment matters in the correctional process. This means graduated movement to lower security levels rather than small, specialized facilities of a therapeutic nature, not just the endless addition of cellblocks.

- Improve data collection and analysis, for the purpose of determining the appropriateness of prison use and the effectiveness of prison programs. Given the enormous and growing expense of incarceration, the data on Massachusetts inmates are collected routinely, analyzed regularly and readily available for review by policy makers. The results are woefully inadequate. State and county correctional officials maintain detailed files on individual inmates—their offenses, their criminal histories, and their institutional records—for the purposes of classification, but only the barest outlines of this information are entered into official databases for system wide reporting and analysis. Facility planning and independent policy analysis—including this report—are severely hampered by the lack of available data on who is in prison and why. With millions, even billions, of taxpayer dollars at stake, to not mention public safety today and in the future, the haphazardness of correctional record-keeping is simply unacceptable.

The state Department of Correction's unproven research department, now in the process of rebuilding under a new director after several years of retirement, has fallen behind in reporting of basic inmate statistics: its earliest published statistical analysis of the inmate population is for January 1, 1996; of inmates released, 1995; of recidivism after one year, 1994. Reports on court commitments to state and county correctional facilities, which were once published six to nine months after the close of each year now lag two years behind; the latest available are for 1995. In some cases, the quality of the data has deteriorated. The inmate population report for 1994 is far less detailed than for 1995, and information on prior prison records of state inmates has not been included since 1994. DCC has not published an in-house evaluation of any of its programs for quality or effectiveness since 1994.43

Data on county inmates—now the largest and fastest-growing population behind bars—are even more scant. Houses of Correction have kept computerized records for only four or five years. The counties follow no common protocol for data collection, so information is not compiled on a uniform basis. And with the exception of court commitment and population-count data mandated by statute since 1985—no county-level statistics are centrally reported to DCC or any other authority.

The Executive Office of Public Safety should establish a uniform reporting program for criminal justice statistics that covers the Department of Correction, the Criminal History Systems Board, the Parole Board and the county sheriffs' departments. The Secretary of Public Safety should convene a panel of state and county correctional officials and outside experts to determine what data should be routinely compiled and publicly available for the purpose of policy and planning. Any recommendations the Governor—should seek adequate funding from the Legislature for the various agencies to compile the data and the Department of Correction to produce reports and analysis on a timely basis. Only in this way can policy makers make informed decisions about the future of the Commonwealth's criminal justice system.

2) Completing the sentencing revolution

The full process of transition from the indeterminate sentencing of the past to the truth-in-sentencing of the present has left some important unfinished business. For prison expansion to be done judiciously and responsibly, ensuring imprisonment to its greatest effect in crime control, balance and proportionality has to be built into the much-altered Massachusetts criminal code. The Governor, the Legislature, and all criminal justice interests should work together to accomplish the following:

- Adopt sentencing guidelines. Setbacks in the consensus-building process have left the Massachusetts Sentencing Commission's proposed sentencing guidelines languishing in the Legislature. Chief among these is the defection of prosecutors who, despite their representation on the commission, have slammed the guidelines as insufficiently tough. This occurred, in part, because of a political miscalculation: it was thought to be easier for the entire commission, rather than the elected DAs themselves, who were appointed to the commission. Then there was considerable turnover even among these subordinate members. By the time the guidelines were released, the state's prosecutors—the only officials accountable to the public exclusively for matters of public safety—felt no ownership of the product, and no conviction about adopting it down. And when it comes to a detailed set of counterproposals to the Sentencing Commission guidelines developed by the Massachusetts District Attorneys Association. These offerings include an across-the-board increase in recommended prison sentences by up to 35 percent: a substantial increase in the number of crimes for which incarceration would be presumptive, rather than discretionary; and a modification of the criminal history categories to make more defendants subject to more severe penalties for their crime. The DAs have keyed in on certain offenses, including breaking and entering and domestic violence (violation of a restraining order), for which they claim the sentencing guidelines are too lenient. And, unconstrained by the Sentencing Commission's legislative mandate of "neutral impact" on prison populations, the prosecutors did not hesitate to propose stiffer penalties for nearly all offenses.

In its various particulars, the DAs' case needs to be taken seriously, and it will be once the sentencing guideline discussion begins in earnest in the State House. After all, the Legislature, like the DAs, is not bound by the neutral impact requirement that forced the Sentencing Commission to make some hard choices. In writing the guidelines into law, the Legislature could choose to make some penalties more stringent even if that means further increases in prison populations. But hard choices still remain, as the consequences of the DAs' alternative guidelines make clear. The Sentencing Commission has calculated that the prosecutors' proposals would add nearly 8,500 inmates to the prison population within eight years—eight more Souza Baranovski—over and above the growth already projected based on current sentencing practices. Of that number, 6,000 would be at the county level, a 50 percent increase in what is already the fastest-growing segment of the correctional system, and where the commission's guidelines were designed to give some relief through intermediate sanctions. Thus, the DAs' proposals are not only tougher than the commission's guidelines, but far tougher than current sentencing practice for a wide range of crimes and offenders.44

43 Research publications listing: DCC Website: http://www.magnet.state.ma.us/doc/research/1996b.htm

32 Massachusetts Institute for a New Commonwealth

44 Two examples from the Sentencing Commission analysis for manslaughter: current inmates are serving 7.8 years in prison prior to release. The Sentencing Commission's proposed range for manslaughter (four of the sixteen offenders on the commission singled out an increased penalty) would result in average time served of 9.5 years. Average time to serve for manslaughter under the DAs' proposal is 12.1 years. A 52 percent increase over current practice. The DA's proposal to shift the crime of Indecent Assault and Battery on a Child under 14 to the next highest level of seriousness in the sentencing grid would put the sentence range (50 months to 162 months, depending on criminal record) beyond the sentencing authority of the District Court (30 months), which currently hears many such cases. In 1998, 71 percent of convictions for this charge took place in District Court which is where significantly, prosecutions

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The Southeastern Correctional Center in Bridgewater, Mass.
In order for a serious discussion about how, if at all, the Sentencing Commission's sentencing grid ought to be modified, both sides will need to show a flexibility and political maturity so far lacking from the sentencing debate. Prosecutors need to accept the reality that the guidelines will not be a vehicle for increasing every penalty on the books. The toughness inherent in sentencing guidelines lies in the certainty and predictability of punishment—opposed to the wildly varying sentences handed down by judges who now exercise almost unlimited discretion in most criminal cases. Surely law enforcement has an interest in that. For its part, the Sentencing Commission has to be willing to join in the discussion, not just protect its elegant and carefully balanced product from adulteration. This means engaging in the gritty negotiating and horse-trading necessary to make sentencing guidelines politically viable. Legislative and executive branch leaders with an interest in consistency and proportionality in sentencing—as well as some regard for the cost of an endlessly expanding prison system—would do well to convene such negotiations, and shepherd the sentencing grid into law.

Mandatory minimums are powerful tools for combating not only drug dealing but the street violence and neighborhood degradation that accompany the drug trade.

We have already considered—and rejected—the oft repeated charge that mandatory minimum drug laws have inflated the prison system by cramming it with offenders who pose little threat of serious crime. Drug offenders do represent a substantial portion of inmate population growth over the past 20 years, but so do violent offenders. And those inmates serving mandatory minimums in state prisons—the most serious drug dealing sentences—have sufficient criminal records to cast doubt upon their incarceration as frivolous. There is nothing intrinsically senseless or intemperate about sentencing drug dealers to jail. But the specifics of these sentences are another matter. What we refer to as mandatory-minimum sentences actually consist of three distinct elements, each of which is at variance with conventional sentencing:

- mandatory incarceration
- specific length of sentence that are long in comparison to those dispensed for other crimes
- no "good-time" reductions in time served, no participation in programs outside the institution, and no parole before the mandatory minimum term.

In contrast, conventional sentences give judges the option of ordering a period of probation, rather than imprisonment. If they choose incarceration, judges can assess any term up to the statutory maximum for the offense. Conventional prison terms can be reduced for program participation (earned good time) and the last part of the term may, with Parole Board approval, be served on parole.

In combination, these restrictive elements of mandatory minimums add up to sentences of particular power, giving drug dealing a kind of "super crime" status in the courts. Prosecutors love these sanctions. Not only do they send serious drug dealers to prison for long and irreducible sentences, they encourage plea bargains from lesser offenders who dare not risk conviction on such a severe and inflexible penalty. Mandatory minimums are powerful tools for combating not only drug dealing but the street violence and neighborhood degradation that accompany the drug trade.

Judges have been reluctant to tack on an even longer maximum sentence to what they already consider a lengthy prison term, so they often treat the mandatory minimum as the maximum as well.

The length of these sentences also affects the third element of mandatory minimums: the prohibition of sentence reductions and participation in community corrections of any kind. These restrictions were written into law as part of the simple message of mandatory minimums: that the full term was to be served behind bars, not a day less. But the practical consequence has been to remove incentives for inmate self-improvement during incarceration and to prevent supervised community reintegration, even though program participation and community reintegration can reduce criminal recidivism.

The mandatory minimum statute only bars participation in community corrections until the minimum has been served, but that is where the length of the mandated sentence comes in. Judges have been reluctant to tack on an even longer maximum sentence to what they already consider a lengthy prison term, so they often treat the mandatory minimum as the maximum as well. They are unwilling, in many cases, to impose a three-year mandatory minimum sentence as, say, three years to four and a half, because it could very well result in a much longer term of imprisonment if parole is not granted. As a result, many sentences imposed under mandatory minimum laws provide for no parole, or an inadequate period of parole. In 1997, for 50 percent of mandatory minimum drug sentences, the difference between the maximum and minimum was less than two years. In 1995, the mandatory minimum sentence of three years is imposed as a sentence of three years to three years and one month, making the offender eligible for parole for just 30 days. No parole for drug dealers, even more than other offenders, tend to wrap up their terms behind bars. They return to the street as free men, rather than under the guidance and supervision of parole authorities.

With the passage of the Truth in Sentencing Act, however, the rationale for these sweeping prison rules falls. With automatic sentence reductions for "good behavior" abolished, the earned good-time exclusion for inmates serving mandatory minimums only removes a modest incentive for inmates to participate in education and treatment programs. And inmates serving maximum sentence minimums are now eligible for parole at the same point as other state prison inmates at completion of the minimum term. But the parole prohibition continues to hinder any...
preparation for parole or discharge, in the form of pre-release and work release experience. The good now ought to be including drug offenders in a sensible and controlled program of community reintegration, rather than excluding them.

Some revision of the mandatory minimum drug laws is clearly now in order. Unfortunately, the Sentencing Commission has proposed an approach to mandatory minimum drug laws that is at once too timid and too sweeping. The Sentencing Commission's proposal, if implemented, would convert all of the penalties to six separate, indeterminate terms of imprisonment. The list of mitigating factors a judge may use to justify a lower sentence is long and "non-exclusive"—that is, the judge could cite any factor he or she considers to be mitigating as sufficient to alter the sentence.

The Sentencing Commission's proposal would be allowed to depart from the guidelines in other sentences. This approach addresses the "misconception of justice" objection to mandatory minimums by giving the judge the authority to impose lesser sentences in extraordinary cases. But it does so by giving too much discretion to the judge. At the same time, it does nothing to address the immediate need for the statutory sentences for drug crimes. Nor does it make any effort to build supervised reintegration into drug crime punishment.

Prosecutors object that the freedom to "depart" from the mandatory minimum would give judges—whom they see as inherently hostile to mandates—the authority to nullify the drug laws on a daily basis with their discretion. This complaint seems to imply an inordinate amount of bad faith on the part of judges, who are portrayed as being too ready to nullify substantial constitutional and statutory mandates. But the prosecutors' objection is not entirely unreasonable:

Such wide latitude to override clear legislative intent—particularly a mandatory period of incarceration—is in the kind of judicial discretion that mandatory minimums were written to prevent. In proposing it, the commission goes too far.

Still, the misconception of justice is a real one, and some sort of safety valve for mandatory minimum sentences would be appropriate. The Sentencing Commission did place some additional restrictions on when a judge could depart from the statutory minimum, and by how much, in the case of mandatory minimum drug offenses. But to maintain the integrity of these sanctions, the standard for allowing downward departures from these sentences should be even more stringent. Under the Sentencing Commission proposal, the list of mitigating factors a judge may use to justify a lower sentence is long and "non-exclusive"—that is, the judge could cite any factor he or she considers to be mitigating as sufficient to alter the sentence.

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maximum, with parole eligibility coming at the minimum, which is not less than 1/3 of the maximum. In that way, the current three-year mandatory minimum would become a sentence of two to three; the current 15 year minimum, 10 to 15. Offenders would be under sentence for as long as under the current mandates, but eligible for parole during the last third of it.

In any case, this is a discussion that's broader than the Sentencing Commission, which had the entire sentencing structure to consider, which was willing to broach. It's also one in which the district attorneys, at least publicly, may be quick to declare there's nothing to talk about. But by insisting that mandatory minimum sentences, as they are currently written, remain inivable, prosecutors are refighting a battle they have already won—establishing drug dealing as a serious crime that deserves punishment behind bars. They would do better to engage in a dialogue, as some prosecutors see privately wanting to do, with legislators about how to preserve what's most valuable about society's stiff drug laws—namely, mandatory jail time—in a more finely tuned sanction that also gives society the crime-control benefit of post-release supervision.

One in six young adult minority men will go to state prison before the age of 40, as many as half may do time in a House of Correction.

That process began with the Sentencing Commission, which was charged with creating sentencing guidelines that would have a net effect on overall prison populations. In amending those guidelines—or in any other attempt to stiffen penalties for select violations—legislators and the governor face no similar requirement of zero impact on prison populations. But some acknowledgment of the cost-benefit tradeoff in crime legislation ought to be built into the legal process. If nothing else, recognition of the cost lurking behind crime control measures should impose a degree of discipline on the deliberation, discouraging gimmickry and demanding evidence of effectiveness, as well as toughness. The House and Senate Committees on Ways and Means routinely attach fiscal notes to bills that carry direct costs, but not on sentencing bills, since the financial impact is indirect and more difficult to project. But the research and modeling done by the Sentencing Commission, in cooperation with the Department of Correction, now allows a more precise estimate of the brick and mortar consequences of crime measures. Before any sentencing bill is reported out of a Committee on Ways and Means, its costs should be calculated the same way for sentencing models, and attached to the bill, so that the fiscal consequences can take their rightful place in the crime debate.

Bringing a community focus to corrections.

As noted before, no matter how many law-breakers we lock up in Massachusetts, most of them will come out again. The more offenders the courts commit to state prisons and Houses of Correction, the more come out each year as ex-cons. The state Department of Correction releases nearly 3,000 inmates each year. County facilities, where short sentences make for rapid turnover, create ex-offenders at an even faster rate. In 1997, the Suffolk County House of Correction averaged a daily prisoner count of 1,888, but released 3,094 offenders to the streets. The Hampden County House of Correction housed an average of 1,109 inmates last year, but released 2,603. Once again, how they come out is just as important to future crime control as why they went in.

It's especially important to the communities they come from, and will return to. Brownberger found that the homes of state and county inmates are heavily concentrated in urban poverty neighborhoods. One in six young adult minority men will go to prison before the age of 40; not as many as half may do time in a House of Correction. To their home neighborhoods, in particular—and they are the Commonwealth's most vulnerable—whether the young men sent behind bars come back as solid citizens or prison-hardened predators is a critical issue of public safety. Today, it's more important than ever that prisons not become, in Hampden County Sheriff Ashe's words, "a fortress in the woods." Correctional authorities at all levels need to use the time they have in custody and under supervision to rebuild their ties to the community on a constructive rather than destructive basis. They can do so in two ways:

- Focusing links to the community for inmates during incarceration and after. State and county prisons provide a range of treatment and education programs. But in most cases, these programs are institutionally based, provided by prison staff or specialty vendors, and build few links to the communities that offenders come from and will be returning to. This has to change.

- The Department of Correction is now reaching out to the state Public Health Department and Mental Health Commission, as well as local shelter providers, as part of inmate discharge planning, helping to smooth the transition to community-based services for inmates with substance-abuse and psychological problems. But it's difficult for the state to corrections agency, which holds inmates in facilities scattered across eastern and central Massachusetts, often far from the offender's home, to foster meaningful relationships between offenders and their home communities. In county corrections, however, there is an opportunity to forge closer links between institutional corrections and community institutions—and very little excuse for not doing so.

Community work programs, like Suffolk County Sheriff Richard House's "Rouse 'em about," have become increasingly common on the county level. To be more modern day chain gangs, however, they need to be targeted to terms of both community reintegration and long term relationship building. In many counties, the bulk of inmates come from the largest cities, and often from a handful of neighborhoods. Park improvements and neighborhood clean-up projects—just not litter pickup but permanent improvements—should be sought out in the home neighborhoods of inmate work crews, as they have been in Springfield by Hampden County corrections officials, so that offenders are giving back to the community in a very direct sense and performing work they can take pride in when they return home.

Projects must also forge links for inmates with neighborhood groups and local agencies in their home communities. Care should be taken that inmate workers not be treated as anonymous, jump-suit laborers, but that they get to know, and be known by the staff and members of community groups they perform service for. Offenders often have personal ties to mainstream institutions of community betterment, whether social service agencies or churches. Community-service work, even that performed under the watchful eyes of uniformed guards, offers an opportunity to make personal connections that improve an offender's sense of civic engagement and community responsibility. Hampden County has also developed what Sheriff Ashe calls a "public health approach" to inmate medical services. Rather than contract with a specialty provider of prison health services—Sheriff Ashe's Community Health Authority, in partnership with Springfield Community health centers, assigning inmates to doctors and nurse practitioners from their home agency, who rotate through the prison infirmary. This approach maintains continuity of care from House of Correction to home for offenders with chronic health problems (HIV, diabetes, etc.) and makes them clients of their home neighborhood's principal service agency—providing treatment or referral for substance abuse, mental health care, etc.—from the day they leave custody. In addition, with the decline in the use of parole, planning for discharge—and what comes afterward—is increasingly left to the state and county prisons themselves. Once again Hampden County is a leader in meeting this challenge, establishing an After Incarceration Support Services program, funded mostly out of the sheriff's department budget (a job-coordinator position is supported by a foundation grant). AISS helps the inmate who's reaching the end of his
In a less tangible, but just as critical way, AISS aids ex-offenders by hosting two weekly support groups where those without parole or any form of legal supervision can talk about the problems of life on the outside—whether staying sober or finding work—and get on-the-spot help from AISS counselors. Also in the works is a mentor pro gram, which pairs inmates approaching discharge with House of Correction "alumni" who have demonstrably turned their lives around.

In Suffolk County, Sheriff Rose is devoting the county's first staff-run residential facility (to complement contracted pre-release beds) to parolee support. The county is in the planning stages for a "three-quarter-way" house to provide short-term housing for inmates who have jobs or go to school and who perform community service during their stay. For the many inmates who wrap up their sentences in one place to go, such a residence can smooth the transition to freedom.

Programs that reconnect offenders to their community on a positive, law-abiding basis, can pay big dividends in crime control. It is efforts like these that have given the Hampden County House of Correction an enviable two-year re-incarceration rate of just four percent, compared to one year re-incarceration rate of 22 percent reported by the state Department of Correction, and typical three year reincarceration rates of 41 percent nationally.34

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34 Jones E. Voisin. Redistributing and Problem-solving Efforts within Hampden County Correctional Facilities: A Preliminary Investigation Sept. 1998. Other statistics cited by Voisin state DOC re-incarceration rate for life from The Background Characteristics and Bereithton Rates of Reoffenders from Massachusetts Correctional Institutions During 1993 Mass. Dept. of Correction, 1997, national figure is based on a 1989 Bureau of Justice Statistics study of recidivism in eleven states. Voisin notes that because measures of recidivism rates of appointment and conviction on new charges outcomes in Hampden County are less impressive: within two years, 23 percent of inmates released have been convicted on a new charge, and 47 percent have faced charges. Still most of these new charges and convictions are minor in nature and do not affect their new status inside the prison. Voisin states as significant: "Even Hampden County recidivism broadly defined don't appear to represent the kind of threat to the wider community that is typically found among a group released from a correctional institution." (Page 25)

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**Chart 14: INMATE POPULATION VERSUS PAROLEE CAPACITY**

<table>
<thead>
<tr>
<th>Year</th>
<th>Inmates</th>
<th>Parolees</th>
</tr>
</thead>
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<tr>
<td>1998</td>
<td>12,000</td>
<td>5,000</td>
</tr>
<tr>
<td>1999</td>
<td>15,000</td>
<td>7,000</td>
</tr>
<tr>
<td>2000</td>
<td>18,000</td>
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<tr>
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<td>21,000</td>
<td>11,000</td>
</tr>
<tr>
<td>2002</td>
<td>24,000</td>
<td>13,000</td>
</tr>
</tbody>
</table>

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**Programs that reconnect offenders to their communities on a positive, law-abiding basis, can pay big dividends in crime control.**

- Expanding the use of community supervision in managing the transition of inmates to society. In the past six years, the Massachusetts Parole Board has exercised increased restraint in granting release to eligible inmates. The result is a striking disjunction between a parolee caseload that has fallen to 1985 levels even as the inmate population statewide has doubled. (See chart 14). The drop in the paroling rate has been a key factor in the growth of state and county inmate populations. It has also reflected the growing consensus that offenders should serve out most if not all of their given sentence behind bars. Early release, the public and the Parole Board have come to agree, should be a privilege, not an entitlement, and a rare privilege at that.

As offenders sentenced under the provisions of the Truth in Sentencing law reach the end of their terms, however, the rate of parole release and supervision is changing. Parole is no longer "early release" at all. No state inmate convicted of a crime committed after July 1, 1994, is eligible for parole before completing his full minimum sentence. And with minimum sentences not less than 2/3 of the maximum sentence, parole is becoming strictly a transitional mechanism: no more Correctional sentences, parole supervision extending for years as a semipermanent condition of existence. On a state parole sentence of seven to ten years, for instance, the maximum period possible of parole supervision (this is the maximum period of parole supervision, during which the requirements of living in a free society can still be enforced by a swift return to prison, can impede the drift back toward a life of crime.

Some states now require a transitional period of parole—so-called mandatory parole—at the end of sentences for all convicted criminals. Such a blanket requirement of parole may be unwise, however. The authority to deny parole remains powerful leverage on inmates to control their behavior inside and outside correctional institutions. And holding the Parole Board accountable for the behavior of inmates it would never, in its own judgment, have placed in the community would force the agency to devote inordinate resources to supervising offenders who are demonstrably bad risks. There are some criminals who show no signs of benefiting from community reintegration, and should simply be held in prison for as long as legally permissible.

But for most inmates, some period of supervision in the community, even if that period does not begin at first eligibility, is preferable to none at all. Better that the board wields its supervisory net over by developing specialized programs to effective manage high-risk inmates in a process of transition than having hundreds of inmates released yearly directly from maximum and medium security institutions to the street—as we are doing today. After all, it is those offenders who must need supervision and guidance in learning how to live lawfully in the community.

The Parole Board has experience in doing just this. Its intensive parole program for sex offend ers, which provides supervision in teams, has not had a single failure in its three years of operation. Not a single parolee, out of 84 to date, in this high-risk group has had to be returned to prison for a new crime or even a technical violation of parole conditions. The board also piloted a program of intensive parole for drug offenders, but abandoned it when federal grant money ran out.75

The Parole Board needs to be doing more of this specialized supervision, not less. With parole no longer "early release" but an opportunity to reintegrate offenders in the community on a controlled, supervised basis after completion of the minimum sentence, the goal of public safety is now inadequately served by simply denying it to two-thirds of the state inmates who seek it.

Effective supervision of higher-risk parolees need not be the Parole Board's responsibility alone, however. The Office of Community Corrections needs to find ways to bolster parole just as it is doing for probation. Currently, OCC plans to provide drug-testing services to the Parole Board through its Community Corrections Centers, helping to enforce abstinence among parolees. OCC needs to work with the Parole Board to devise additional ways to make parole effective for a wider variety of offenders. The halfway house/residential programs discussed above might be one way, offering overnight supervision at the beginning of parole, perhaps, or a sanction for technical violations short of returning the parolee to prison.

Every criminal offender starts out with a relationship to his home community that is negative in nature—that of victimizer. If he is to return to that community—and he will return, sooner or later, and in most cases sooner—as a law-abiding citizen, it is the responsibility of all correctional agencies, not just the "community corrections" agencies, to rebuild and redefine that relationship.
between offender and his home. To fulfill that responsibility—through control, accountability,
supervision, and links with institutions of mainstream life such as work, family and neighbor-
hood—the state needs its correctional institutions to become community-minded as well as
security-minded. And it needs a wide range of supervision options so that more offenders rejoin
society in a controlled and structured manner, rather than turned loose at the end of their sen-
tences, free to victimize again.

It would seem that there is indeed, in John
Dilido's words, "no escape" from the dilemmas
inherent in crime and punishment. There is no
ready solution to the increasingly costly and
socially worrisome prospect of burgeoning prison
populations. But after two decades of getting
tough, it's time to get sensible, as well as smart.
Before selling the next hundreds of millions of
dollars' worth of bonds to build the next high-
security prison, Massachusetts needs to rationalize
its sentencing laws, expand its conception of
community corrections, and rethink the kind of
correctional facilities it needs to build. The cor-
rections end of crime control is never going to be
cheap, but it's important to all citizens that we get
our money's worth.

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individual contributions, large and small, help make
our work possible.
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We also want to say a special word of thanks to the Shaw Foundation's Executive Director, Thomas E. Coury. We will always owe him an immense debt of gratitude for the early and consistent support he has offered for our work. Words cannot express how much we appreciate his commitment to creative thinking in this important area of public policy.