MassINC wishes to express its gratitude to those individuals and organizations whose financial support makes our work possible. Your generosity is deeply appreciated. Thank you

About MassINC

The Massachusetts Institute for a New Commonwealth (MassINC) is a nonpartisan, independent organization whose mission is to foster the growth of a new commonwealth in Massachusetts in which all citizens can pursue the American Dream. The Institute develops and promotes policy approaches that result in a growing middle class through four principal initiatives focused on:

- Economic Opportunity
- Lifelong Learning
- Safe Communities
- Civic Engagement

MassINC uses research, journalism, and civic education to generate practical and innovative ideas for improving the lives of Massachusetts citizens. By informing and influencing the political process MassINC puts those ideas into action. The measure of our success is the extent to which our efforts affect the direction and development of public policy in Massachusetts.

MassINC's work is published for educational purposes. Views expressed in the Institute's publications are those of the authors and not necessarily those of MassINC's directors, staff or other advisors. The work should not be construed as an attempt to influence any election or legislative action.

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About MassINC's Safe Communities Initiative

MassINC believes that few 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. Despite its obvious importance, however, very little is known or reported about how various crime-fighting and prevention strategies are affecting the crime rate.

Through our Safe Communities Initiative we work to make Massachusetts a place in which every citizen can enjoy the benefits of economic prosperity without fear or concern for their personal safety. With so much of today's crime debate mired in ideological cant and demagoguery, MassINC is dedicated to refocusing our public discussion on simple, but fundamental questions: What crime fighting efforts are actually working? What others are failing, and why? And, are there common sense ways to strengthen our efforts that might not generate banner headlines but that will produce real results?

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Prisons and Sentencing in Massachusetts:

WAGING A MORE EFFECTIVE FIGHT AGAINST CRIME

by

Robert Keough

Published by:

MassINC

The Massachusetts Institute for a New Commonwealth

Safe Communities Initiative

Sponsored by:

THE GARDINER HOWLAND SHAW FOUNDATION

A Note from the Publisher:

Dear Friend:

From its founding in 1995, MassINC has believed that few 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 it at many levels.

MassINC has continued to focus on the critical issues of state 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: Waging 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 Keough 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 B. Gritton
Policy Director
MassINC

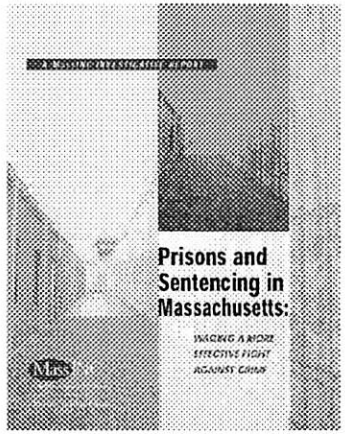
A Note from the Sponsor:

The Shaw Foundation is pleased to join MassINC in presenting this report by Robert Keough. 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 Keough 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 public policy analysis.

Sincerely,

Thomas E. Coury
Executive Director
Gardiner Howland Shaw Foundation



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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 "Rationing 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. Dennehy, 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 Kumor, 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 Weldon, records coordinator Stan Ryczek, Joanne Blakely, Lester Burke, Dan Moran, Dr. Thomas Lincoln, William Toller, Jen Sordi, Dan O'Malley, James Kelleher, Joseph Nicholson, and Kevin Warwick. At the Suffolk County Sheriff's Department: Sheriff Richard Rouse, Gerard Lydon, Dennis Humphrey, William Quealy, Ron Calabrese, and Sergeant Charles Walsh. At the Massachusetts Parole Board: Chair 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 Gittens of the Department of Youth Services; Stephen Hines and Roseanne Pawelec of the Division of Capital Asset Management; Stephen Price of the Office of Community Corrections; Mariellen Fidrych of the Massachusetts Sheriffs' Association; and Daniel LeClair of Stonehill College. My apologies to anyone I've forgotten to mention.

My thanks to Thomas Coury, executive director of the Gardiner Howland Shaw Foundation, for support of this study. At MassINC, I am indebted to Michael Gritton, 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 my 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 three others:

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 inmate population had more than doubled, rising from 2,047 to 5,100—creating major overcrowding problems in facilities designed for 3,500. 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.

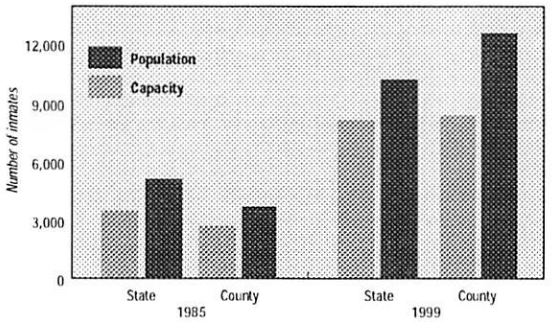
Since 1985, the state has poured nearly $1.5 billion into new and replacement facilities, increasing capacity to 8,130 state and 8,356 county inmates. That building boom culminated last November when the Department of Correction opened the Souza-Baranowski Correctional Center, a new 1,024-bed maximum-security 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 50 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 1985, 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. imprisons a whopping 1,682 per 100,000 residents.

Chart 1: PRISON OVERCROWDING 1985 AND TODAY



Source: "A Balanced Plan to End Prison Overcrowding," 1985; Massachusetts Department of Correction countsheet, February 22, 1999.

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 directing 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 rehabilitative model that gave judges wide discretion in setting the length of sentence for almost all crimes. These sentencing policies also offered inmates rewards for good behavior in the

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 seven to ten years could translate, in practice, to as little as three years in prison, and almost always meant 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 prison time be served by every person convicted of a crime, with no exceptions. In Massachusetts, the first mandatory minimum was the Bartley-Fox gun law, whose passage in 1973 created 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 irreducible but among the most severe in the nation.

More systematic sentencing reform finally came to Massachusetts in 1993, with the passage of the law known as the "Truth in Sentencing Act." That law abolished the Concord sentence (for crimes taking place after July 1, 1994) and eliminated statutory, or automatic good time. The act also eliminated the "early release" aspect of parole, setting parole eligibility at the full minimum sentence, which could be no less than two-thirds of the maximum sentence.

But even after the passage of this sweeping law, the sentencing revolution in Massachusetts remains unfinished. The Truth in Sentencing Act also established the Massachusetts Sentencing Commission, whose mandate was to develop sentencing guidelines that would make sentencing more consistent—so that criminals who committed similar crimes and had similar criminal records would be more likely to receive similar sentences than they are today. Its sentencing guidelines were also designed to set priorities for the use of incarceration to ensure costly prison space would be used to house the most serious and dangerous offenders.

The sentencing 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 while promoting the use of "intermediate sanctions" for lesser lawbreakers. But more than three years later, the commission's sentencing guidelines are still languishing in the legislature, with no discernible political push behind them.

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.

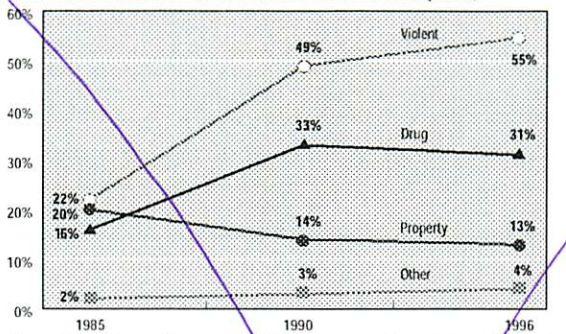
PRISONS ARE NOT FULL OF PEOPLE WHO DON'T BELONG THERE

Over the past 20 years, changes in sentencing practices have combined with rising crime rates and vigorous law 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 998 male inmates to the custody of the state Department of Correction; in 1996, 1,968 men were sent to the state prisons. Annual commitments to county jails and Houses of Correction nearly quadrupled in that period, from 5,441 to 19,482.

Critics of mandatory-minimum drug laws, both state and federal, claim that these draconian penalties are jamming prisons with nonviolent offenders, many of them serving long sentences for a first conviction. Their central contention is that, if only we would stop filling the prisons with inmates serving mandatory minimums, we could alleviate the pressure on our overcrowded prisons.

But for Massachusetts, at least, the available evidence does not support these claims. Simply put, based on the best available data, there is no

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 the pace of imprisonment for violent crimes has risen just as fast.

In 1985, drug offenders made up 16 percent of men sent to state prison, violent offenders 22 percent; since 1990, drug offenders have represented roughly 30 percent of new commitments, while fully half (49 to 55 percent) have been violent offenders. (See chart 2). The pattern is less sharp, but not dissimilar, at the county level.

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.

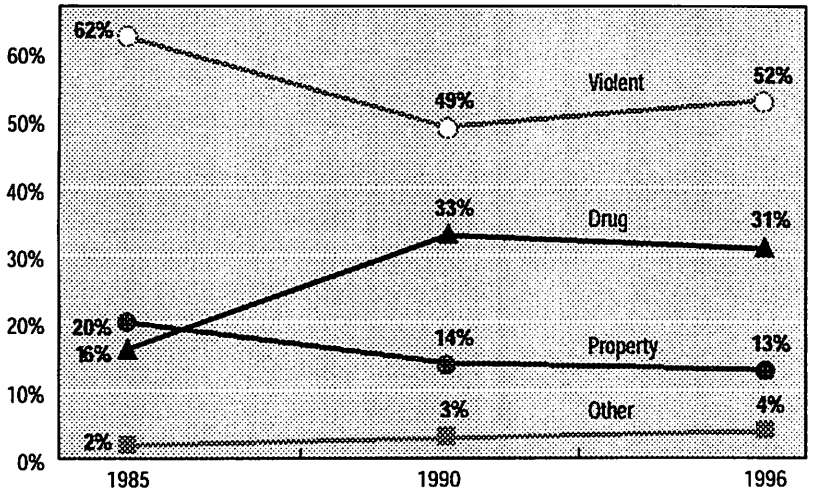
Nor is it true that drug offenders alone—by virtue of their long, mandatory sentences—are clogging the Commonwealth's correctional facilities. The percentage of state inmates serving sentences for drug crimes did rise through the 1980s. But since 1990, the proportion of drug offenders in state prisons 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

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.

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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 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 absolve the "war on drugs" of sole responsibility for the burgeoning prison population in Massachusetts. And it should disprove 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 prisons problem.

WHAT DOES THIS MEAN FOR STATE POLICY IN MASSACHUSETTS?

Prison populations at the state and county level are projected by reputable experts to continue growing in the next five years. While more research is needed, currently available evidence simply does not support the often-repeated claim that current sentencing practices are wasting 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 moderate 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 correctional expansion should include a number of elements, including:

I. Building a New Generation of Correctional Facilities

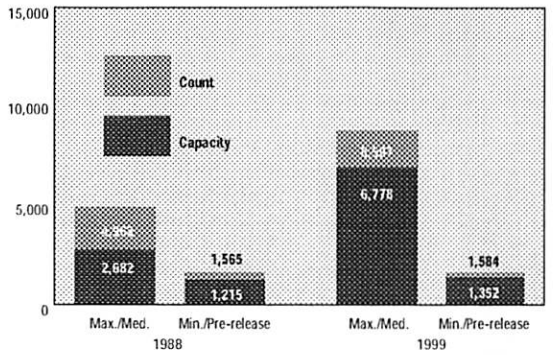
Given the current level of overcrowding and projections of future prison populations, there can be little doubt about the need for more correctional capacity. That leaves the question of what kind of prisons to build.

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 to the streets from maximum- and medium-security institutions.
- However, most of the new capacity we've built in the last decade 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 medium-security 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 20-foot fences and razor-ribbon.
- Even as the state prison population more than doubled over the last decade, minimum-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, 52 of which 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. And all but 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 dozen years 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 street with little preparation for a crime-free life.

Chart 3: STATE PRISON CAPACITY AND UTILIZATION BY SECURITY LEVEL



Source: Massachusetts Department of Correction countsheets, February 23, 1988, and February 22, 1999.

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 true minimum security—without maximum security walls, 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 those beds.

2) 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 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.

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 correctional vocational 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-In House option

that 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.

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 to mention public safety today and in the future, the haphazardness of correctional record-keeping is simply unacceptable.
- Data on 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 DOC 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 fitful 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 endlessly expanding 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 reintegration 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 mandated 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 threshhold 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 not 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 mandatories, 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 stray 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.

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 came 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 and under supervision to rebuild their ties to the community on 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.

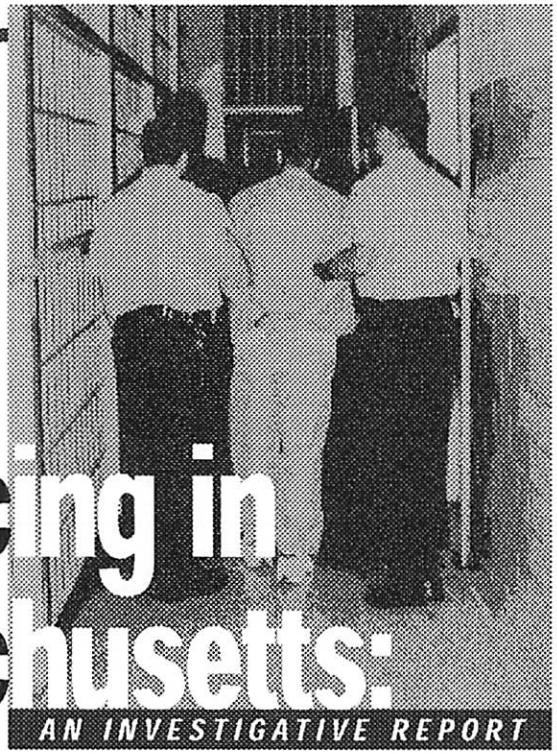
2) Expand the use of community supervision in managing the transition of inmates to society.

- 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.

Prisons and Sentencing in Massachusetts:



AN INVESTIGATIVE REPORT

WAGING A MORE EFFECTIVE FIGHT AGAINST CRIME

THIS REPORT seeks to answer a seemingly straightforward question: Does the Commonwealth of Massachusetts need more prison space in order to support effective crime control?

The question is posed in the context of MassINC's Safe Communities Initiative. In the late 1980s and early '90s, crime dominated the public agenda and the public mind in Massachusetts as elsewhere. Urban neighborhoods, in particular, were torn apart by a sense of insecurity arising from house breaks, car thefts, open-air drug dealing, robberies on the street. Most frightening of all was the heightened risk of random murder, peaking with the advent of "drive-by" shootings. Fear of crime also fueled racial tensions in changing neighborhoods, linking diversity to decline instead of renewal. Outside the cities, violence was seen as a sign of social decay, a cancer that was spreading outward from our urban centers. Above all, lawlessness stood as an indictment of political ineffectiveness at all levels: if government couldn't keep us safe, just what good was it?

For these reasons and others, MassINC has made crime control one of its core issues. In reports and surveys, MassINC has explored the issue of crime as it relates to the safety and well-being of the communities—middle-class and working-class, urban and suburban—that are the wellspring of civic life in Massachusetts. Since its founding in 1995, MassINC has sponsored research and journalism into the problem of

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 BOTEC Analysis Corp., with support from the Gardiner 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 by 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 law enforcement, tighter supervision of probationers and parolees, and more prevention and rehabilitation efforts.

These views—both expert and citizen—suggest a need to assess sentencing and imprisonment 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.

State and federal prison capacity has more than tripled since 1980, and still nearly every correctional facility in the country is operating at more than 100 percent of its designed limit.

Thus the simplicity of the question we started out with—does Massachusetts need more prisons?—is deceptive. Posed that way, the answer can only be yes. The logical corollary to that question, however—how much more prison space would be enough?—seems unanswerable. For most of this century, 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 crime rates set off a booming 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 nearly every correctional facility in the country is operating at more than 100 percent of its designed limit.[1] 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.[2] 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 needn't 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's—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 overtaxed. As of 1985, 8,800 inmates statewide were being held in facilities, many of them ancient and archaic, designed for 6,200.

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.

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 Nashua 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. In county jails and Houses of Correction, the population behind bars had risen 89 percent in a decade, reaching 3,700 in institu-

[1] There are local gluts in the prison market, which has created opportunities like the one the Massachusetts Department of Correction has capitalized on for the last four years, boarding up to 300 prisoners in the Dallas (Texas) County Jail at a cut-rate price. But overall, the trend line in the demand for prison beds across the country has been so strong that a market for private investment in facilities and management has been created in a "public good" that has long been society's most reluctant investment. The resulting "prison-industrial complex," as it's been called, is not so much a capitalistic conspiracy to expand prisons for the purpose of creating private profits but private capital responding to the profit-making opportunities presented by apparently insatiable public demand. See Eric Schlosser, "The Prison-Industrial Complex," *The Atlantic Monthly*; December 1998, pp. 51-77.

[2] This report focuses on prison facilities for male offenders only. Women inmates represent a very different population with very different issues issues that deserve more thorough treatment than could be given in this report, where they would necessarily be a sidelight to the far more numerous male population. Also, when it comes to crime control, it is crimes disproportionately committed by men that present the greater danger to public safety and that are the primary target of sentencing reforms that increase criminal penalties. Statistics on male offenders only have been used when available and noted as such to avoid mingling the two populations for analysis.

tions built for 2,700. Conditions created by the rapidly rising inmate census were presented as a problem of crisis proportions.

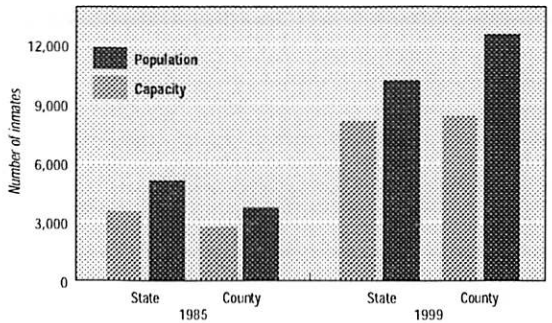
"Temporary beds have been placed in every available space within our prisons. Inmates are housed in industrial buildings, recreational space, program space, office space and hospital space," the governor's report to the legislature explained. "Many prison cells are double-bunked; some are triple-bunked." Programs to prepare offenders for lower levels of security and, ultimately, their return to society were being squeezed out by mattresses. The vital management task of classification—deciding what level of security is appropriate for each prisoner—had broken down into a search for beds. The concentration of inmates in increasingly close quarters had created a tinderbox atmosphere. "Overcrowding has made the always difficult task of running a safe and humane prison system almost impossible," the report concluded.

Unspoken in the report, though lurking in the political background, were problems that went beyond those of "running a safe and humane prison system." If overcrowding is not relieved, the prison system becomes vulnerable to lawsuits on the grounds of constitutionally impermissible conditions. When such lawsuits are successful—as they were across the country and in many Massachusetts counties in the 1980s—the consequences include a judicially imposed "cap" on population and the wholesale release of inmates.

At the time, prison populations were expected to "peak" in 1988, at 5,340 state inmates and 3,800 county, then decline. The Dukakis administration proposed to "solve" the overcrowding crisis through capacity expansion, state grants to county sheriffs, and a "special commission on correction alternatives," chaired by Superior Court Justice Paul A. Chernoff, to develop measures that would prevent unnecessary admissions to prison. The cost: $128 million in capital funds, $7.7 million in operating expenses that year.

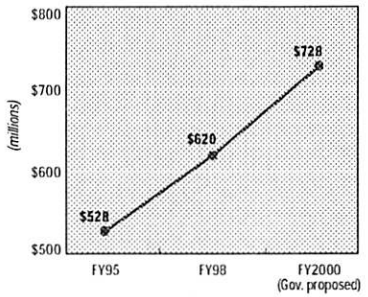
The overcrowding problem has by no means been "solved." Massachusetts now has more than 20,000 adults behind bars.

Chart 1: PRISON OVERCROWDING 1985 AND TODAY



Source: "A Balanced Plan to End Prison Overcrowding," 1985; Massachusetts Department of Correction countsheet, February 22, 1999.

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



Source: Government Budget Recommendation, Fiscal Year 1996 and 2000; Commonwealth of Massachusetts, Fiscal Year 1998 Budget.

Nearly 15 years later, the Commonwealth has poured nearly $1.5 billion into new and replacement facilities, increasing capacity to 8,130 state and 8,356 county inmates. Last November, the Department of Correction opened the Souza-Baranowski 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 Walpole/Cedar Junction, which opened in 1956. The new prison more than doubled DOC capacity at the highest security level, and it completes a 2,500-bed maximum-to-minimum correctional campus in Shirley that did not exist 25 years ago.

But the overcrowding problem has by no means been "solved." Massachusetts now has more than 20,000 adults behind bars. As of February, the state Department of Correction had custody of more than 10,000 offenders. The counties, which traditionally lagged behind the state in inmate population, had surged into the lead, with more than 12,000 inmates. (See chart 1).

For fiscal year 2000, Governor A. Paul Cellucci has proposed an operating budget of $392 million for the Department of Correction, $323 million for the sheriffs—whose costs are now shouldered entirely 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 DOC, 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.[3] (See chart 2).

Even after all this expenditure and all this buildup of correctional capacity, Massachusetts prisons and Houses of Correction remain overcrowded. DOC is operating at 25 percent above capacity, the counties at 50 percent beyond their design limits.

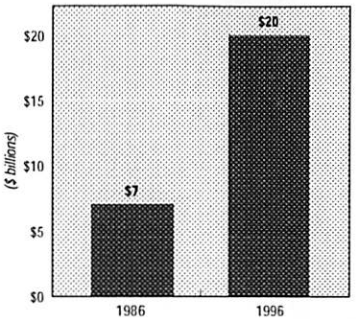
What has happened is by no means unique to Massachusetts. Prison populations have exploded across the country. The number of inmates in state and federal prisons quadrupled from 1970 to 1990. In 1985, state, federal and local prisoners numbered 744,000; today, that total is 1.8 million, and could well reach 2 million by the year 2000.[4]

That explosion has been expensive. State corrections budgets almost tripled nationally—from $7 billion to more than $20 billion—from 1986 to 1996. (See chart 3). During that period, the cost of incarceration grew from three percent of state spending to six percent. Critics in some states have begun to draw unflattering comparisons between state spending on prisons (up) and higher education (down), some going so far as to suggest a causal relationship: Investment in higher education has been squeezed out in favor of investment in cells.[5] Despite this substantial investment, as of 1997, 36 states still reported their prison systems as overcrowded.[6]

State corrections 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.

Chart 3: TOTAL SPENDING BY STATES ON CORRECTIONS



Source: Corina Eckl, "The Cost of Corrections," State Legislatures, February, 1998.

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 policy-makers. 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—645 inmates in federal, state and local jails per 100,000 of population in 1997—and the inmate population continues to rise, at an average rate of 6.5 percent per year.[7]

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

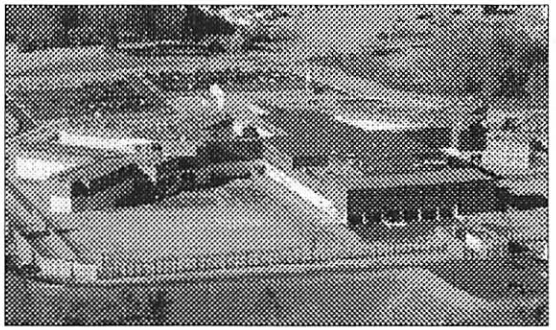
[3] *Governor's Budget Recommendations*, Fiscal Year 2000. These proposed appropriations fund only adult corrections. An additional $113 million is recommended for the Department of Youth Services, the Commonwealth's juvenile justice agency. Including juveniles brings the corrections share of next year's proposed budget to $841 million.

[4] Darrell K. Gilliard, *Prison and Jail Inmates at Midyear 1998*, Bureau of Justice Statistics, March 1999.

[5] Note the study by the Washington-based Justice Policy Institute and the Correctional Association of New York on what columnist Derrick Z. Jackson called the "dollar-for-dollar tradeoff" between prison spending and higher education. "New York State is starving schools to build prisons," *The Boston Globe*, Dec. 2, 1998. And not only in higher education: In 1994, Texas voters approved a $1 billion bond issue for new prisons at the same time they rejected $750 million in spending for new schools. "Mandatory Sentencing: Do tough sentencing laws reduce crime?" Margaret Edwards, *CQ Researcher*, May 26, 1995, page 469.

[6] Corina Eckl, "The Cost of Corrections," *State Legislatures*, Feb. 1998. Pages 30-34; Darrell K. Gilliard and Allen J. Beck, Bureau of Justice Statistics, *Prisoners in 1997*, page 9.

[7] *Sourcebook of Criminal Justice Statistics 1997*, Bureau of Justice Statistics, Table 6.21, page 480.



The new Souza-Baranowski Correctional Center in Shirley.

past two decades might have changed that, except that nationally the punishment bar also kept rising. Every state in the nation has toughened its law-enforcement policies in the last decade. Between 1990 and 1997, the incarceration rate rose by 40 percent nationally. Still, thanks in part to a stable population, Massachusetts outpaced the nation in its expanded use of prisons during this period, raising its incarceration rate by 60 percent simply by virtue of locking more people up.

It's not always easy to compare Massachusetts to other states on the use of incarceration, let alone decide what those comparisons mean. The available data are inconsistent and not entirely reliable. In most states, offenders serving a sentence of more than one year are incarcerated in state prisons; local or county jails hold only defendants awaiting trial and offenders serving terms of less than a year. Our state's more extensive county system contains a larger share of the inmate population, those serving sentences of up to two-and-a-half years. Thus Massachusetts prisoners are generally undercounted in state-to-state comparisons.

In 1995, for example, the reported rate of state imprisonment in Massachusetts was 192 per 100,000 population—lower than all but seven states, and less than half the states' average of 389.[8] But when those incarcerated at all levels are combined, the incarceration rate for that year was 364 per 100,000, or 61 percent of the national rate of 601 per 100,000.[9] The most direct comparison—incarceration rate of prisoners serving sentences of more than one year—shows Massachusetts in 1997 with the 16th lowest incarceration rate in the country, 278 inmates per 100,000 compared to the national average of 445 (62 percent of the national average). But that ranking rests on an "estimate" of 6,200 county inmates serving terms longer than one year, rather than an actual count.[10] All these rankings place Massachusetts at the less punitive end of the state scale, but well within the range of U.S. penal practice.

A high prison rate is no guarantee of effective crime control. Of the ten states with the highest incarceration rates, eight are in the top 20 for violent crime overall, six in the top 10 for murder and manslaughter.

Nor are state-to-state comparisons all that instructive. Incarceration rates vary too widely according to local culture and mores to treat any rate as prescriptive. In 1997, North Dakota imprisoned 112 adults per 100,000 population, while Texas locked up 717. In the District of Columbia, a whopping 1,682 per 100,000 were behind bars. On a regional basis, Massachusetts does not stand out as particularly reluctant to lock up criminals. Of the six New England states, only Connecticut had a higher incarceration rate than Massachusetts. And the Massachusetts incarceration rate of 278 per 100,000 is just below the northeast average of 317.[11] In contrast, the average incarceration rate in the south is 506 per 100,000. Finally, a high prison rate is, by itself, no guarantee of effective crime control. Of the ten states with the highest incarceration rates, eight are in the top 20 for violent crime overall, six in the top 10 for murder and manslaughter.[12]

Massachusetts, like much of the country, has made a massive commitment to prison expansion over the past decade and a half. Prison populations have swelled, and the state has struggled to catch up, building costly facilities in order to preserve, if not restore, professional and constitutional standards of custody. What's not clear is whether there is any end in sight to prison expansion—or whether there ought to be. That's because imprisonment is not a social-policy end in itself but rather the fulfillment of other criminal-justice policies. These policies—especially sentencing and release—have undergone a fundamental shift during this same period, driving the expansion of prison populations and, therefore, of prisons. It is to these causes, rather than their brick-and-mortar consequences, that we now turn our attention.

[8] *Sourcebook of Criminal Justice Statistics 1997*, Table 6.41, page 495.

[9] Massachusetts Department of Correction, *Quarterly Report on the Status of Prison Overcrowding, First Quarter of 1996*, March 1996, Tables 2 and 4, pages 4 and 5; estimated 1994 Massachusetts population of 6 million.

[10] *Prisoners in 1997*, Table 3, page 3.

[11] *Prisoners in 1997*, Table 3, page 3.

[12] *Prisoners in 1997*, Table 5, page 5, and *Sourcebook of Criminal Justice Statistics 1997*, Table 3.115, page 273.

Sentencing: An Unfinished Revolution

CRITICS OF THE incarceration boom—principally, but not exclusively, those on the political left—have generally slammed prisons as a wrong-headed approach to crime control and, beyond that, social policy. "Over the past 20 years, there has been a terrible propensity on the part of politicians to deal with difficult economic, social, family and personal problems with a meat ax—the criminal justice system," says Jerome Miller, president of the National Center on Institutions and Alternatives, in Arlington, Virginia, and a former Massachusetts commissioner of youth services.[13] In response, defenders of imprisonment have advanced methodologically sophisticated arguments to defend prisons as a social "bargain" that pay for themselves many times over in crimes not committed by those locked up in cells.[14]

But there's something a bit backwards in the way both sides in this polemic present the crime-prisons conundrum. Expanding prison populations are not the product of a single policy edict: to control crime, build more prisons and fill them. Rather, they are the result of a complex mix of decisions—some thoughtful and precise, others less so—that take place in arenas ranging from the State House to the courtroom. Legislative changes in criminal laws have a direct impact on assessed penalties, but they are not the only factor. In the end, prison populations reflect the sum total of individual sentences handed down to thousands of offenders on a literally case-by-base basis. The decision to build more prison space—or not to—comes, for the most part, after the fact. The prisoners are already there, or on their way.

Thus the question of prison space is in large measure derivative of others. Factors governing arrest—the efficacy and efficiency of law enforcement—are beyond the scope of this report. But matters of sentencing and release are central to it. Decisions regarding whether to commit offenders to prison, the length of sentences imposed, and how much of the sentences must be served behind bars are key determinants of prison occupancy. To a large extent, the need for prison space is a function of the rules governing incarceration—namely, sentencing and parole. Whether the expense involved in building and operating more and ever-larger prisons is justified depends on whether people are being sent there, and allowed out, on appropriate terms.

Those terms have been changing. Nationwide, the philosophy and practice of criminal sentencing have undergone a revolutionary change over the past 20 years. Until recently, criminal sentencing in the United States has been based on a "rehabilitative" model that dates back to the 1870s. At that time, "flat" sentences—fixed terms for specific offenses, regardless of circumstances—gave way to punishments that were custom-tailored to the offense and which offered the offender incentives to reform himself. The concept of "time off for good behavior" was the first of these "reformatory" incentives—one that, not coincidentally, also rewarded institutional conformity. In 1877, the Elmira Reformatory in New York State pioneered the use of parole—conditional release in advance of the maximum sentence, earned by efforts at rehabilitation. By the 1920s, most states had adopted criminal codes that gave judges wide discretion in length of sentence, up to a statutory maximum for each crime,

[13] Quoted in Louise D. Palmer, "Number of blacks in prison soars," *Boston Sunday Globe*, Feb. 28, 1999, page A14.

[14] See John J. DiIulio, Jr., and Anne Morrison Piehl, "Does Prison Pay?," *The Brookings Review*, Fall 1991.

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 reduction for good institutional behavior and evidence of reform).

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 infractions.[15]

In Massachusetts, indeterminate sentencing took its most extreme, and controversial, form in the Concord sentence—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. The idea was to give certain offenders, notably young and presumably "reformable" ones, a short term of incarceration, followed by a long period of parole supervision in the community. Though it came under heavy attack in the 1980s as an emblem of soft sentencing, the Concord sentence was perfectly consistent with the rehabilitative approach. It was also, in its heyday, used liberally: In 1980, nearly half (47 percent) of court commitments of male offenders to the Department of Correction were on Concord sentences.[16]

In Massachusetts, indeterminate sentencing took its most extreme, and controversial, form in the Concord sentence which typically consisted of a relatively long nominal sentence but with parole eligibility at just one-tenth of the stated term.

Even conventional state prison sentences (to Walpole/Cedar Junction) contained large elements of indeterminacy and discretion. Automatic, or "statutory," good time—credits that were awarded automatically, but could be withdrawn as punishment for prison rule violations—reduced sentences by as much as 12 1/2 days per month.[17] A maximum of 7 1/2 additional days per month more could be gained through program participation ("earned" good time). Thus, time served could be reduced, by good-time credits alone, up to 20 days for every 30 days served. Inmates sentenced to a county House of Correction were also eligible for statutory good time of up to 7 1/2 days per month, plus earned good time.

For state inmates, parole eligibility was set at 2/3 of the minimum sentence for those convicted of violent crimes, 1/3 of the minimum sentence for nonviolent offenders. For county inmates serving sentences longer than 60 days, parole eligibility was set at one-half the term. Since good-time applied to the minimum as well as the maximum term, parole eligibility was accelerated by good-time credits as well. And while never automatic, parole was granted routinely, if not always at first eligibility. In the latter half of the 1980s, release was granted in two-thirds of parole hearings for state inmates.[18]

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 2/3 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[19]—he becomes eligible for parole after 39 months behind bars, less than half his nominal minimum 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, assuming he lost none of his statutory good time (12 1/2 days per month) for "bad behavior." Thus a sentence of seven-to-ten 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 738,000 in 1991.[20]

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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 like offenders, and subject to little in the way of discretion in termination.

Ultimately, this new consensus gave rise to systems of determinate sentencing—often promoted 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.[21]

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[22]—the state's first mandatory-minimum sentence in the modern age[23] was the 1973 Bartley-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 irreducible but among the most severe in the nation.

The mandatory minimum was, and is, a legislative blunt instrument, one that carries a variety of legal and public-policy messages along with its specific 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. Bartley-Fox 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

[15] See Tamasak Wicharaya, *Simple Theory, Hard Reality: The Impact of Sentencing Reforms on Courts, Prisons, and Crime*, State University of New York Press, 1995, pages 23-40.

[16] Mass. Dept. of Correction, *1990 Court Commitments to the Massachusetts Department of Correction*, June 1991, Figure 1, page 2.

[17] Statutory good time varied according to sentence length: none for sentences of less than four months; four months to one year, 2 1/2 days per month; one to two years, 5 days per month; two to three years, 7 1/2 days per months; three to four years, 10 days per month; for more than four years, 12 1/2 days per month.

[18] Massachusetts Parole Board, *1994 Annual Report*, page 46. Inmates eligible for parole are entitled to a hearing annually. Not all those granted parole were given approval at their first hearing.

[19] In fact, it's highly unlikely that any inmate could have tallied all 7 1/2 days of earned good time each month of his incarceration. Participation in any one program earns just 2 1/2 days of good time, so an inmate would have to be enrolled continuously in three good-time eligible programs at a time to reach the theoretical limit.

[20] *Sourcebook of Criminal Justice Statistics, 1997*, Table 3.111, page 261. Based on Uniform Crime Reports for "index" 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. Arrest figures from Bureau of Justice Statistics, "Four Measures of Serious Violent Crime," http://www.ojp.usdoj.gov/bjs/ glance/4measbl.txt.

[21] See Wicharaya, *Simple Theory*, pages 41-63, for an overview of state determinate-sentencing reforms in the 1970s and 80s. The federal government encouraged the adoption of strict truth-in-sentencing codes in the 1994 Violent Crime Control and Law Enforcement Act by offering prison-construction subsidies to states that require offenders to serve 85 percent of their sentences behind bars. By 1998, 27 states had met this qualification, and another 13 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. Ditton and Doris James Wilson, *Truth in Sentencing in State Prisons*, Bureau of Justice Statistics, Jan. 1999.

[22] See *The Boston Globe*'s "Spotlight" series on mandatory-minimum drug sentences, Sept. 24-27, 1995, as well as Matthew Brelis, "A big-time bust," *The Boston Globe*, Nov. 8, 1998.

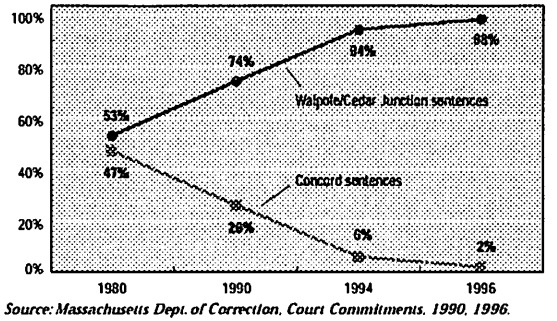
[23] Strictly speaking, Massachusetts' first "mandatory-minimum" sentence was of a more ancient vintage, and of a more conventional nature: life imprisonment without parole, the penalty for first-degree murder. In many other states, even "life" sentences offer parole eligibility after a long period of incarceration—25 years, or longer—though some have repealed the parole option to provide a more direct alternative to the death penalty.

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 caseloads 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 penalties 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 each case—guns, drunk 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 were 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—indeterminate, 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 determinate they were.

Chart 4: COURT COMMITMENTS TO STATE PRISON *(percent). MALE OFFENDERS ONLY*



Source: Massachusetts Dept. of Correction, Court Commitments, 1990, 1996.

Attempts to extend determinate sentencing to the rest of the criminal code foundered in the 1980s. Governor Dukakis's "presumptive sentencing" bill stalled in the legislature out of concern that the plan would exacerbate 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.[21] (See chart 4). With new members 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 33 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, word got 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]

[24] Lisa Lorant Sampson and Ramon Raagas, Mass. Dept. of Correction, *1994 Court Commitments to the Massachusetts Department of Correction*, Table 1, page 5.

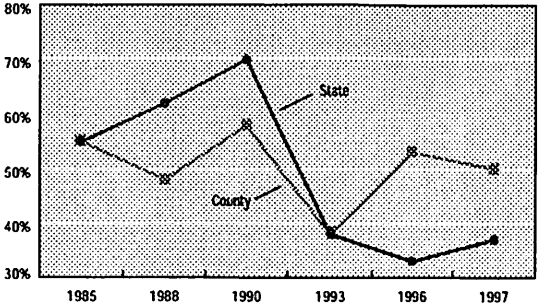
[25] Massachusetts Parole Board statistics.

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 2/3 of the maximum sentence. The indeterminacy 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 "rationing" 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 lawbreakers. 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.

Chart 5: PERCENTAGE OF PAROLES GRANTED



Source: Massachusetts Parole Board.

The "truth in sentencing" measures designed to lengthen prison terms have gone into full effect, while measures intended to make punishment more consistent and more targeted to serious offenders languish in political limbo.

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 lengths, 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.

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 998 male inmates to the custody of the state Department of Correction; in 1996, 1,968 men were sent to the state prisons.[26] Annual commitments to county jails and Houses of Correction nearly quadrupled in that period, from 5,441 to 19,482.[27]

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 30. 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 grudgingly 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*.[28] 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?

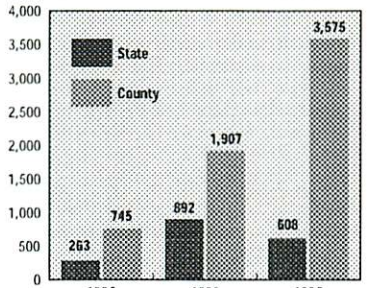
But the numbers by themselves are not enough to justify the prison boom. Sheer volume does not prove that the right people are behind bars, nor that a continued expansion of prison populations—and the costly facilities needed to contain them—is equally justified. If prison populations are swollen with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

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.

That is just what critics of mandatory-minimum drug laws, both state and federal, claim. They charge that draconian drug penalties are jamming prisons with nonviolent offenders, many of them serving long sentences for a first conviction. A growing body of journalistic and think-tank literature raises questions about the fairness and the cost-effectiveness of the "war on drugs" as a cornerstone of the war on crime.[29]

Ironically, the sheer numbers lend some weight to these arguments. With the escalation of incarceration so rapid, it's hard not to think that the coin of imprisonment has simply been devalued. 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.

Chart 6: MALE COMMITMENTS FOR DRUG OFFENSES



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

[26] Mass. Dept. of Correction, *1990 Commitments to the Massachusetts Department of Correction*, Figure 1, page 2; *1996 Court Commitments to the Massachusetts Department of Correction*, Table 1, page 1.

[27] Mass. Dept. of Correction, *Court Commitments to Massachusetts County Facilities During 1990*, May 1992, Figure 1, page 4; *New Court Commitments to Massachusetts County Correctional Facilities During 1996*, Sept. 1998, Table 1, page 2. County commitments in 1980 were nearly all men, since women prisoners pre-trial as well as sentenced were at that time nearly all committed to the state's women's facility, MCI Framingham. In recent years, more counties have developed some capacity to hold women inmates, totaling 1,043 in 1996, or five percent of commitments that year.

[28] Gordon Witkin, "The Crime Bust," *U.S. News & World Report*, May 25, 1998, page 31.

[29] See Eric Schlosser, "The Prison-Industrial Complex," *The Atlantic Monthly*, Dec. 1998; Matthew Brelis, "A big-time bust," *The Boston Globe*, Nov. 8, 1998; Timothy Egan, "Less Crime, More Time," *The New York Times*, Mar. 7, 1999; Jonathan P. Caulkins, et al., *Mandatory Minimum Drug Sentences: Throwing Away the Key or the Taxpayers' Money?*, Rand, 1997; and William N. Brownsberger, *Profile of Anti-Drug Law Enforcement in Urban Poverty Areas in Massachusetts*, Nov. 1997.

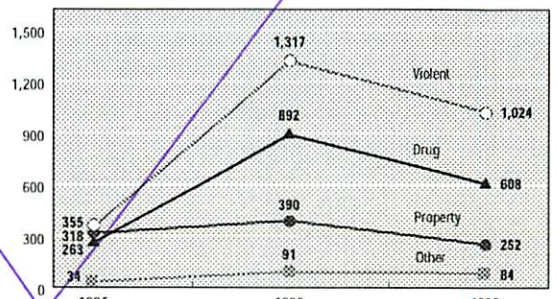
But for Massachusetts, at least, the case is overstated at best. Drug offenders do not, by themselves, account for the prison population growth in the last two decades; even their release, *en masse*, would not solve the prison-space shortage. Nor would their wholesale release, even on alternative forms of supervision, be prudent. Based on the criminal history of these inmates and the public's interest in punishing drug trafficking, drug offenders do not represent a population for whom some term of incarceration 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 population. In state prisons, commitments of men for drug offenses jumped from 263 in 1985 to 892 in 1990. The number of drug offenders sent to state prison each year has tapered off some since 1990—575 in 1995, 608 in 1996, the latest year for which numbers are available—but remains more than double the 1985 rate.[30] (See chart 6).

But the pace 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 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 22 percent; since 1990, drug offenders have represented roughly 30 percent of new commitments, while fully half (49 to 55 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).

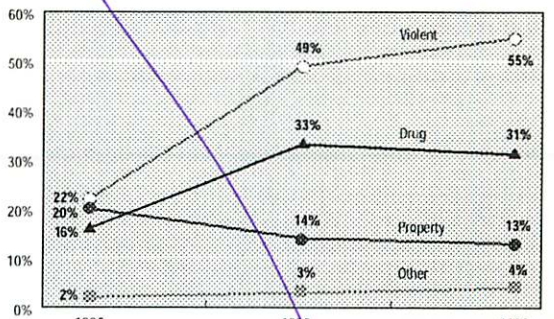
This trend—more drug offenders behind bars, but even greater numbers of violent criminals—mirrors the national experience. In state prisons across the nation, the number of drug offenders has risen more than ten-fold, from 19,000 in 1980 to 234,100 in 1996. The leap was particularly dramatic in the late 1980s: from fewer than 40,000 inmates in 1985 to 148,000 in 1990. But the number of violent offenders behind bars has risen rapidly as well, from 173,300 in 1980 to 487,900 in 1996. Since 1990, the proportion of violent and drug offenders in state prisons has remained steady, at 46 percent convicted of violent crimes, 23 percent of drug crimes. For every drug offend-

Chart 7: MALE COMMITMENTS TO STATE PRISON BY OFFENSE TYPE *(number)*



Source: Massachusetts Department of Correction, Court Commitments, 1985-1996.

Chart 8: MALE COMMITMENTS TO STATE PRISON BY OFFENSE TYPE *(percent)*



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

[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 mandatories for state-prison time.

[31] Mass. Dept. of Correction *Commitment* reports, 1990 and 1996.

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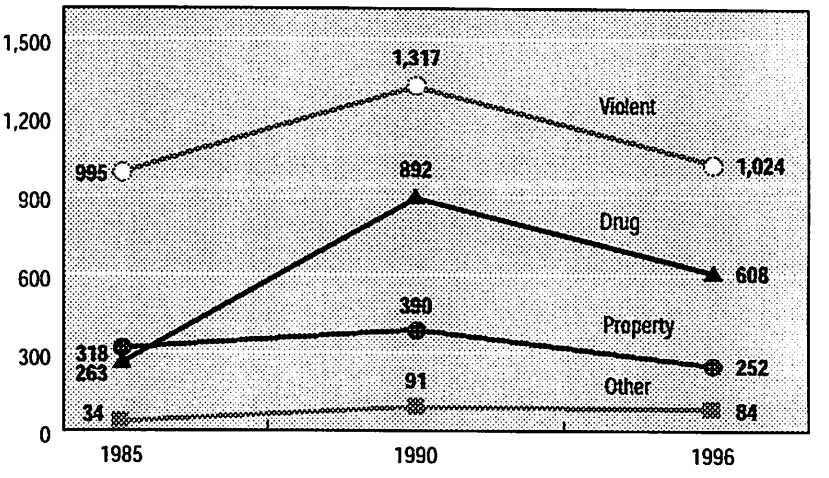
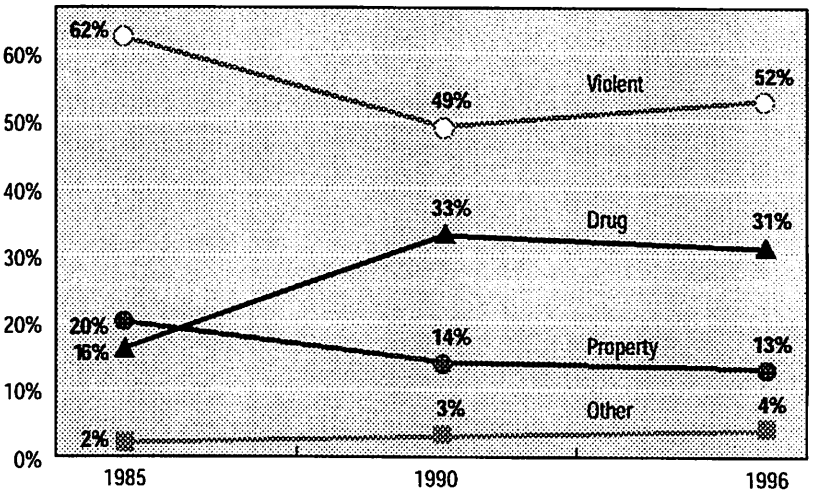


Source: Massachusetts Department of Correction, Court Commitments, 1985-1996.

Chart 8: **MALE COMMITMENTS TO STATE PRISON BY OFFENSE TYPE** ***(percent)***



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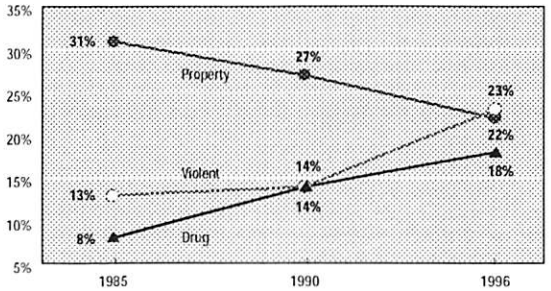
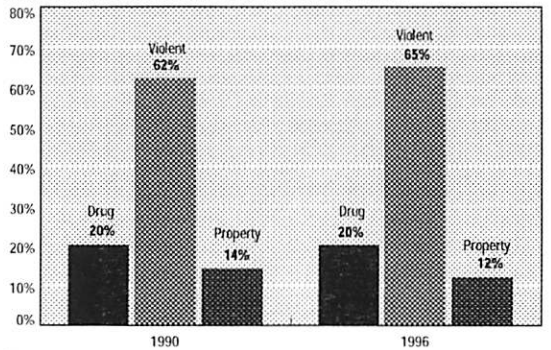
[31] Mass. Dept. of Correction *Commitment* reports, 1990 and 1996.

Chart 9: MALE COMMITMENTS TO COUNTY CORRECTIONS BY OFFENSE TYPE *(percent)*



Source: Massachusetts Department of Correction, Court Commitments to County Correctional Facilities, 1990 and 1996.

Chart 10: STATE PRISON POPULATION BY OFFENSE TYPE *(percent)*



Source: Massachusetts Department of Correction, Statistical Description, January 1, 1995 and January 1, 1996.

er behind bars, there are two who committed violent crimes.[32]

In county corrections, the pattern is less sharp, but not dissimilar. The rise in county drug commitments has been unrelenting, resulting in a five-fold increase in just over a decade: from 745 in 1985 to 3,537 in 1996. But like the state level, commitments for violent offenders (again defined here as crimes against the person and sex offenses) and drug offenders have been growing in tandem, rather than commitments for drug offenders alone driving the incarceration boom. In 1985, county commitments included 745 drug offenders (8 percent of commitments) and 1,266 violent offenders (13 percent). In 1996, 3,537 persons were sent to Houses of Correction for drug crimes (18 percent of commitments) and 4,472 (23 percent) for violent crimes. Commitments for property crime also rose during this period, from 2,960 to 4,344. But as a percentage of commitments, property offenses fell sharply (31 percent to 22 percent).[33] (See chart 9).

Of course, drug offenders might still be responsible for clogging the Commonwealth's ever-growing correctional facilities by virtue of their long, mandatory-minimum sentences: Though fewer drug offenders are sent to prison, they stay there longer. And 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 held steady, while the percentage of violent offenders has continued to creep upward. From 1990 to 1996—the latest year for which the Department of Correction has reported inmate statistics—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.[34] (See chart 10).

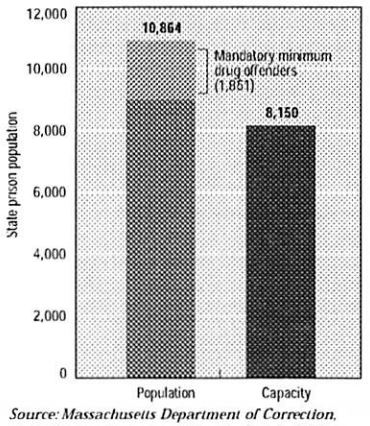
Comparable breakdowns for the overall county inmate population are not readily available. But we can take a closer look at one county. In Suffolk County, commitments for drug offenses fluctuated between 27 and 29 percent, from 1992 to 1997, while those for violent crimes (defined here as crimes against the person, plus domestic violence such as the violation of a restraining order or stalking) rose from 26 percent to 30 percent. There, the proportions of drug offenders and violent offenders among male inmates stood roughly equal, 34 percent and 35 percent, respectively, at the end of 1998.[35]

[32] *Correctional Populations in the United States, 1996*, Bureau of Justice Statistics, table 1.11.

[33] *Court Commitments to Massachusetts County Facilities*, 1990 and 1996. This analysis is limited, however, by a lack of detail on how offenses are categorized. Particularly in county commitments, it's difficult to judge how serious particular crimes are simply by virtue of the category they are put into. For instance, 63 percent of 1996 county commitments for crimes against the person are for unarmed assault, a category that covers a wide range of acts, all of them violent in nature but not all necessarily serious.

[34] Mass. Dept. of Correction, *A Statistical Description of the Sentenced Population of Massachusetts Correctional Institutions on January 1, 1995*, and *A Statistical Description of the Sentenced Population of Massachusetts Correctional Institutions on January 1, 1996.*

Chart 11: MANDATORY-MINIMUM DRUG OFFENDERS AND PRISON OVERCROWDING



Source: Massachusetts Department of Correction, statistics on prison population for Sept. 9, 1998; current capacity from February 22, 1999 count sheets.

Nor do inmates serving mandatory-minimum sentences account for more than a portion of prison overcrowding. Most drug offenders doing time in state prison for drug offenses are serving mandatory-minimum sentences. These offenders make up 17 percent of the 10,864 inmates in Department of Correction jurisdiction (including those held out of state), a substantial portion. But still, if every one of the 1,851 mandatory-minimum offenders were released tomorrow, DOC's population would still be 1,000 inmates above current capacity.[36] (See chart 11). In Suffolk County, drug offenders are somewhat disproportionately represented in the population—29 percent of annual commitments, but 34 percent of 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 leave 1,455 men behind, in a building designed for 1,146.[37]

If every one of the 1,851 mandatory-minimum offenders were released tomorrow, DOC's population would still be 1,000 inmates above current capacity.

The argument that many, if not most, mandatory-minimum inmates do not belong behind bars at all is more difficult to assess.[38] Data on the criminal backgrounds and profiles of state inmates are extremely limited; for county inmates, they are non-existent. 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.

But the characterization of mandatory-minimum drug offenders 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."[39] 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 percent of *all* DOC inmates are "first-time offenders"—that is, they're serving their first state prison sentence. But 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.[40]

[35] Suffolk County Sheriff's Dept., *Booking Statistics*, 1992-97; and *Active Population Report: Profile*, Dec. 10, 1998.

[36] Mass. Dept. of Correction, Research Dept. statistics for Sept. 9, 1998.

[37] Suffolk County Sheriff, *Active Population Report: Profile*, Dec. 10, 1998.

[38] Given the relevance of dangerousness and criminal history for judging and planning the appropriate use of prison facilities, it's vital for correctional officials to begin compiling such data.

[39] Matthew Brelis, "A big-time bust," *The Boston Globe*, Nov. 8, 1998.

[40] Mass. Dept. of Correction, Research Dept. statistics. In its *Statistical Description* for Jan. 1, 1995, the record of past incarcerations for 29 percent of state inmates is categorized as "not available."

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 on average faced 1.5 charges as a juvenile, had been arraigned on 22.5 charges as an adult, and had been convicted[41] on 10.1 charges.[42] 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 convicted 11 times.[43]

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 Brownsberger, 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, Brownsberger concludes, convincingly, that "we cannot say that our 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 minor-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.[44]

State-prison inmates serving mandatory minimums for drug crimes 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.

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 absolve the "war on drugs" of sole responsibility for the burgeoning prison population in Massachusetts. And it should disprove 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 prisons problem.

[41] "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 Sentencing Commission, for instance, does not count a "CWOF" as it's called in courthouses, as a conviction for determining seriousness of criminal history. It's also worth noting that 22 arraignments does not mean 22 separate arrests or accusation of 22 separate crimes. Suspects are routinely arraigned on multiple charges in connection with a single criminal act. Despite these caveats, it is reasonable to assume, based on these data, that these inmates did not, on average, receive mandatory-minimum sentences in their "first run-in" with the law.

[42] These figures are quoted from a presentation prepared by the Massachusetts District Attorneys Association and confirmed by the author of the Criminal History Systems Board study. What else this study may reveal is not known, however. Neither the District Attorneys Association nor the state Executive Office of Public Safety, for which the study was performed, has been able to produce a copy of the report for review.

[43] Research by the office of Plymouth County District Attorney Michael Sullivan. Convictions include "continued without a finding." See footnote 41, above.

[44] Brownsberger, *Profile of Anti-Drug Law Enforcement*, pages 31, 35 and 40. Definitions of "minor" and "moderate" criminal records are those of the Mass. Sentencing Commission.

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 Souza-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.

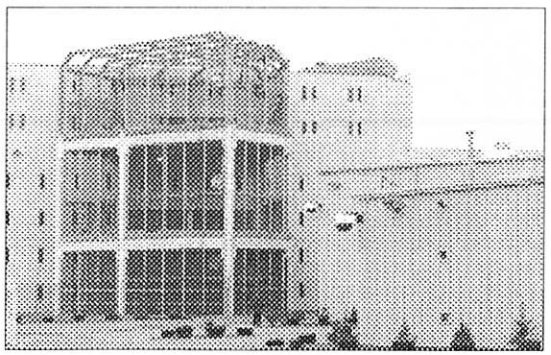
The two county facilities were among the first built in the wave of prison expansion and modernization that Souza-Baranowski brings nearly to a close.[45] A decade ago, both counties were under court orders limiting the populations of antiquated and overpopulated facilities for both pretrial detainees and sentenced county offenders. Hampden County Sheriff Michael J. Ashe Jr.—then and now one of the most humane and innovative jailers in the Commonwealth, if not the country—earned an ill-fitting blood-and-guts reputation nationally when he commandeered the Springfield Armory in 1990 in order to prevent the forced release of prisoners. In 1992, Ashe moved out of the dungeon-like York Street Jail and into the Hampden County Correctional Center, a sprawling complex of buildings on a corner of what was formerly Westover Air Field. That same year, Suffolk County's Deer Island House of Correction was mothballed, replaced by the new facility in Boston's South Bay, with its 11-story tower.

The gleam of newness barely dulled in these new buildings---prisons are built to last---each is already filled beyond the occupancy it was designed for.

The new facilities were supposed to provide the "solution" to overcrowding. After all, the relics they replaced, which had half their capacity, were adequate for more than a century before they were outgrown and worn out. But with the gleam of newness barely dulled in these new buildings—prisons *are* built to last—each is already filled beyond the occupancy it was designed for.

At the Hampden County House of Correction, the overcrowding—39 percent above capacity—does not yet constitute a crisis. With acreage not an issue, cells were built oversized, to allow double and triple-bunking. And Sheriff Ashe 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 spacious new facility by the state, Ashe was taking more than 150 state inmates from western Massachusetts at a time, relieving state-prison overcrowding and managing the supervised re-integration of these offenders into society—an approach Ashe believes reduces future criminality. But as even this vast new space has gotten tight, Ashe 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 Ashe can give them.

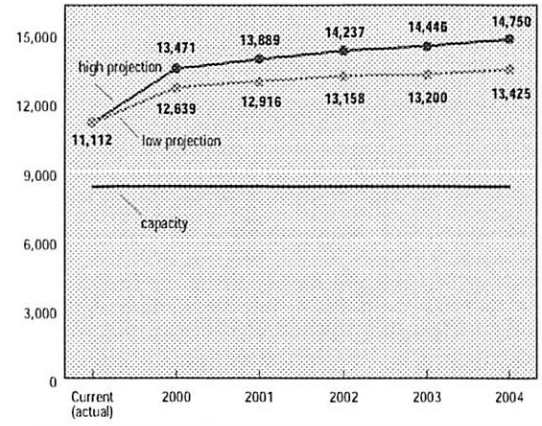
In the Suffolk County House of Correction, where space is at a premium, occupancy of 159 percent of capacity means the butcher-block shelves ("desks") on windowsills have been



Hampden County House of Correction.

[45] Projects funded but still in the planning-and-construction pipeline include a new $20-million Barnstable County Jail and House of Correction; a $28-million Berkshire County Jail and House of Correction; a $15-million women's housing unit at the Hampden County Jail and House of Correction; and renovation of portions of MCI Cedar Junction.

Chart 12: PROJECTED STATE PRISON POPULATION



Source: National Council on Crime and Delinquency, Projecting the Future: Ten Year Adult Inmate Population Projections, 1995-2005; February 22, 1999 DOC countsheet. Population and projections include state inmates housed in state, federal and out-of-state facilities.

turned into bunks for a third cellmate.[16] Some offices and meeting rooms have been converted to dormitory space. This summer, ground will be broken for a 300-bed "modular" unit of inmate housing. Not even ten years old, the facility has been outgrown, and Sheriff Richard Rouse is building an addition.

It's scenarios like these that 1980s liberals had in mind when they asserted, in the catch phrase of the time, "You can't build your way out of overcrowding." More than a decade later, they've been proven 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 and $30,000 per bed per year in staff and operating expenses—Massachusetts has been able to catch up a bit. Six brand-new county correctional facilities have been built in the past 10 years, and several others improved and expanded. Three new state prisons have been built—MCI Shirley, Old Colony Correctional Center in Bridgewater, and Souza-Baranowski, also in Shirley—and many others enlarged. But as soon as each new facility opened its doors, the beds were all spoken for, and planning was underway for still more. So it is today, or soon will be.

Predictions of future prison-bed needs are, by definition, speculative. But a sophisticated projection model developed for the state by the National Council on Crime and Delinquency that, back in 1990, projected a state-prison population of a seemingly unfathomable 11,300 by 1998—overshooting the mark by just a few hundred—was updated in 1996, adjusted according to assumptions about the effect of "truth in sentencing" and the drop in paroling rates, and extended to the county population.

The NCCD projections are sobering: 13,425 state-prison inmates by 2004 is the low estimate; its high estimate is 14,750 within five years.[17] (See Chart 12). To meet this need, the state would need to build a new facility the size of Souza-Baranowski—at a cost of nearly $100 million—every year until 2004.

NCCD's less methodologically sophisticated estimate for the counties is striking for a different reason. Its high-end projection for the year 2004 has already been exceeded: a prediction of 11,019, whereas the county population had already reached 12,500 by the third quarter of 1998. Providing space to serve just today's county population, without further growth, would take four more Souza-Baranowskis.

No one, these days, expects prison-bed "needs" to be fully satisfied.[18] Except in the highest-security settings, the days of one man, one cell, are over. But since it takes at least four years, from legislative approval to ribbon-cutting, to build one new facility, 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, and before the specter of court intervention obscures questions about purposes and uses of the new capacity at every level. It is only prudent to use the current lull in prison construction to make judgments about what kinds of facilities to build—and how to use these costly facilities most effectively for crime control. Preparation for the next round of correctional expansion should include a number of elements:

Given the current level of overcrowding and projections of future prison populations, there can be little doubt about the need for more correctional capacity.

1) Building a new generation of correctional facilities

Given the current level of overcrowding and projections of future prison populations, there can be little doubt about the need for more correctional capacity. Despite the vast increase in the inmate population, there is scant evidence that imprisonment is being used inappropriately in Massachusetts. Changes in sentencing laws and practices may moderate the trend toward larger prison populations, but will not obviate the need for more prison space. That leaves the question of what kind of prisons to build.

Over the past 15 years, prison bond bills have become almost a matter of state-government routine, a few hundred million dollars every few years, and so has the correctional wish-list. When it comes to capital dollars for new facilities, what every jailer from county sheriff to state Commissioner of Correction wants is a large, secure institution with high-tech equipment. Not since the Massachusetts Boot Camp opened on the campus of MCI Bridgewater in 1992 has the state built, or proposed to build, any substantial facility for a lower-security or specialized use. The state has spent nearly all its prison construction dollars on the most costly end of the correctional-facility spectrum. Meanwhile, the possibilities offered by new and expanded specialized-treatment facilities—the kind of facilities that the scale of a growing prison system makes cost-effective—have gone unexplored. The time has come to rethink the proliferation of generic, close-security prison cells from the standpoint of both cost and crime control.

• **Build state prison beds in a graduated sequence of security levels to prepare inmates for their return to society.** In a series of studies in the 1970s and '80s, DOC researchers documented the crime-control benefits of moving inmates through a progression of lower-security placements prior to discharge. In maximum- and medium-security prisons, where offenders are imprisoned upon commitment, inmates typically live some or most of the day in locked cells and locked cellblocks, the entire facility surrounded by double fences and razor ribbon. In minimum-security facilities, to which inmates can be transferred as they get closer to release and prove their willingness to observe institutional rules, supervision and self-control replace physical barriers. In this less-confined, but still closely supervised setting, offenders can regain, if not gain for the first time, the sense of

[16] 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 Nashua Street, which is running at 40 percent over capacity.

[17] The NCCD's low estimate is based on "modest" increases in commitment rates and an increase in time served only by loss of statutory good time. This estimate assumes that judges will adjust their sentences to reflect "truth-in-sentencing" changes in parole eligibility – that is, making their new "truthful" sentences amount to the same jail time, for a similar crime, as under the old rules. The high estimate assumes that nominal sentences remain at pre-"truth-in-sentencing" lengths despite the changes in parole eligibility and good-time deductions. How much judges have adjusted their sentencing habits to date is unclear. Recent data from the Mass. Sentencing Commission (*Survey of Sentencing Practices FY1997*, Dec. 1998, page 26) would seem to indicate a dramatic reduction in nominal sentences: In 1997, the average state-prison maximum sentence given under the Truth-in-Sentencing law was 68.5 months, compared to an average of 95 months given to those convicted under the old sentencing law. But that difference may be inflated. Only 126 offenders were sentenced under the old law that year, versus 1,715 under the new law. These few holdovers – their crimes had to have taken place prior to July 1, 1994, to qualify for the old sentencing rules – were likely very serious matters, to have taken so long to reach disposition. DOC inmates released during 1992 and 1993 had had an average maximum sentence of 113 months (Mass. Sentencing Comm., Report to the General Court, April 1996, Table 22, pages D-2 and D-3). But that number is likely inflated by the 1,753 Concord sentences (out of 7,023 total) that ended in release that year.

[18] Indeed, just what those "needs" are for a given population is not as clear as it might seem. In the early 1980s, when overcrowding first became an issue, prison utilization was reported based on "rated" capacity, or 90 percent of design capacity, which was the professional standard of the day. That's because, from a management perspective, there should always be beds available to accommodate new admissions as well as to be able to separate enemies, isolate troublemakers, etc. So early overcrowding figures inflated bed needs to some extent by using an artificially low capacity figure. Some skeptics today see other reasons to doubt even "design capacity" figures, given the assumption these days that new facilities will one day be at least double-bunked. So it may not be necessary to bring occupancy down to, or under, 100 percent of design capacity in order to provide adequate bed-space for inmates.

personal responsibility they will need upon return to free society. Educational and self-help programs (Alcoholics Anonymous, etc.) are oriented more toward life in the community than life in the institution. As they near their parole eligibility date, offenders can prepare for—and demonstrate their suitability for—parole in pre-release centers, where they reside under correctional supervision but work or study in the community, on their own recognizance ("work release" and "education release").

The DOC studies established that inmates released from minimum-security facilities and pre-release programs are less likely to violate parole or commit a new crime than those discharged from maximum- and medium-security institutions.[49] The recidivism rate (percentage of those returned to prison within one year of release) of offenders discharged from maximum security in 1987 was 50 percent, versus 29 percent from minimum security and 19 percent from pre-release centers. In part, this is to be expected. Offenders dangerous enough to be held in maximum security until their term expired would seem more likely to commit new crimes than inmates prison officials could trust in less-secure settings. But at least one DOC study controlled for different risks of repeat criminality. This study found that the rate of recidivism of offenders released from lower security was half their "expected" rate, based on criminal history and other predictive factors, whereas those released from maximum and medium security matched their "expected" rate. 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.

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 graduated movement of inmates through the system, to the extent allowed by security considerations. But most of the new capacity the department has built to accommodate its growing inmate population has been medium security,[50] 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.[51] In 1988, DOC had capacity of 2,682 beds in medium and maximum security, 1,215 in minimum and pre-release—a ratio of 2.2 to 1. In 1999, design capacity of close-security beds totals 6,778—a more than two-fold increase—with only 1,352 beds of minimum and pre-release space—a ratio of five high-security beds for every low-security placement. (See chart 13). Astonishingly, DOC has reduced its pre-release capacity by more than half, even as its inmate population multiplied. DOC now operates just 202 pre-release beds, compared to 459 in 1988, and a quarter of those (52) are for women, who make up just six percent of the inmate population.[52]

Critics have long claimed, based on the department's own research, that DOC is overly conservative in its assignment of inmates to security levels.[53] DOC officials dismiss these criticisms as based on an old study and defend their classification policies as appropriate for the more dangerous, more violent, more drug-involved inmate population of today.[54] Still, even with violent offenders making up 65 percent of state-prison inmates, 35 percent are doing time for non-violent crimes. And all but a few of the violent offenders will eventually be released. It's critical from a purely public-safety standpoint that these offenders learn to live peaceably somewhere other than a locked cell. Yet DOC places just 16 percent of inmates in lower-security settings, compared to 24 percent less than a dozen years ago. Only 150 men at a time—out of nearly 10,000—are preparing for life on the outside in pre-release programs.

However dangerous state prisoners are upon entry, most of them will one day return to society as free men. In 1995, 2,761 inmates were released from the Department of Correction. That's more than were *in* state prisons in 1975.[55] With DOC so restrictive in its classification decisions, few offenders go through a complete sequence of lower-security placements and a full program of community re-integration prior to release. Fewer than 300 offenders are released from pre-release programs each year. Meanwhile, more than 1,000 inmates per year are discharged directly from locked cells to the street.[56]

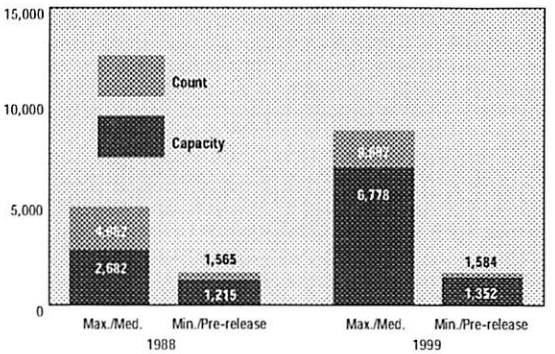
In 1995, 2,761 inmates were released from the Department of Correction. That's more than were in state prisons in 1975.

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.[57] Entire medium-security institutions in DOC—including the venerable MCI Norfolk, in which 80 percent of inmates are serving time for violent crimes—are dormitories surrounded by 20-foot fences and razor-ribbon. 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 modern prisons. These facilities 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.[58] As a condition of funding

Chart 13: STATE PRISON CAPACITY AND UTILIZATION BY SECURITY LEVEL



Source: Massachusetts Department of Correction countsheets, February 23, 1988, and February 22, 1999.

[49] Daniel P. LeClair, Mass. Dept. of Correction, *The Effect of Community Re-Integration on Rates of Recidivism*, July 1990, reviews annual recidivism data from 1971 to 1987 and summarizes studies that control for the "selection bias" of lower-risk offenders being released from lower-security. "Expected" rates of recidivism are based on factors known, based on prior research, to predict subsequent criminality.

[50] DOC actually categorizes facility security according to six "levels." Level 6 is maximum (Cedar Junction, Souza-Baranowski), meaning "maximum external and internal control and supervision of inmates" by "high security parameters and . . . internal physical barriers and check points." Level 5, a designation reserved for the state's "high-tech medium security" facility, Old Colony Correctional Center, is just slightly less-tightly controlled. Level 4 is what is generally referred to as medium security: "high security parameters and limited use of internal physical barriers" reflecting "the need for some control and for segregation from the community." Level 3 is minimum security, in which "program participation is mandated and geared toward . . . potential re-integration into the community" but "access to the community is limited and under constant direct staff supervision." Level 2 is state-operated pre-release, which allows some "unescorted" access to the community for work release and education release. Level 1 includes the state's only contracted pre-release programs Charlotte House and Neil J. Houston House, both programs for women and PPREP, DOC's electronic monitoring program for select inmates awaiting parole release. Mass. Dept. of Correction, "Facility Security Levels" (http://www.magnet.state.ma.us/doc/ levels.htm) and "Facilities and Centers" (http://www.magnet.state.ma.us/doc/facility.htm).

[51] Utilization of lower-security capacity has remained flat, as well, rarely exceeding 100 percent despite high levels of overcrowding in medium. That's because correction officials have always considered medium security the safest, most manageable level to pack like sardines. Maximum security is reserved for offenders dangerous enough by virtue of their crimes or their institutional behavior to manage one by one, in single-man cells. Minimum security facilities have no escape-proof perimeter, so filling them to a level that staff alone cannot control is a prescription for mass prison-break. So medium security has been every commissoner's safety valve. Currently, DOC occupancy is running at more than 140 percent in medium security, compared to 125 percent systemwide.

[52] Mass. Dept. of Correction, daily count sheets for Feb. 22, 1999, and Feb. 23, 1988.

[53] Michael W. Forcier and Michael White, Mass. Dept. of Correction, *Testing the Implementation of a Point-Based Classification System*, Mar. 1989.

[54] DOC Commissioner Michael T. Maloney says that he is "satisfied with the way we manage our population." He maintains that the department moves every inmate into lower security as soon as he is ready for it. But DOC has published no follow-up study that compares its current classification to national standards, as the 1989 study did. Interview with Commissioner Maloney, Mar. 2, 1999.

[55] Mass. Dept. of Correction, *Releases from Massachusetts Correctional Institutions During 1995.*

[56] Mass. Dept. of Correction, *A Statistical Description of Releases from Massachusetts Correctional Institutions During 1995.*

[57] Interview with Commissioner Maloney, Mar. 2, 1999.

[58] Interview with Commissioner Maloney, Mar. 2, 1999.

the next high-tech, high-security institution for medium-security custody, the Legislature should insist that it is warranted. 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 additional pre-release 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 instinctive caution 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 called in pre-release settings) than about missed opportunities for community re-integration. No commissioner of correction has ever been fired, or even called on the political 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 crime by offenders 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 re-integration. The facilities we build should serve that purpose.

• **Expand and develop specialized, therapeutic facilities, not just generic secure 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 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 uses.[59]

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 uses.

Currently, both state prisons and Houses of Correction operate drug abuse and anger management programs in dedicated cell-blocks 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-style 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 specialized facilities are close at hand. The state's three correctional alcohol centers (Longwood Treatment Center in Boston, Western Massachusetts Correctional Alcohol Center in Springfield, and Eastern Massachusetts Correctional Alcohol Center in New Bedford) are regarded as effective program models.[60] These centers are correctional institutions, rather than "alternatives" to incarceration, per se. Inmates are not committed to the alcohol centers directly, but transferred from a county house of correction, based on an eligibility screening. Thus every offender gets a salutary taste of life behind bars. But CACs provide intensive substance-abuse counseling and multiple Alcoholics Anonymous meetings daily in an environment of therapeutic community. "Sponsors" from outside AA groups provide offenders with post-discharge support.

Even as the inmate population has doubled since their creation in the mid-1980s, however, the CACs have not been substantially expanded or replicated elsewhere in the state. Both Longwood and WMCAC, 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,"[61] 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 near industry "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.

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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[62]—a "halfway-in" residential option might prove an attractive, as well as effective, addition to the menu of intermediate sanctions. A Halfway-In 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 overnight support. Or they could principally tighten supervision, providing a sanction for technical violations of probation (or parole) short of imprisonment. Either way, residential placement could get an offender out of the home—a location 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, shorn of every sharp edge or removable handle (potential weapons), centrally controlled and electronically monitored. The state even knows what colors to paint the walls to have a soothing effect on inmate 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 effec-

[59] The most obvious and pressing need (though not detailed in this report) is improved correctional facilities for women. Second on the DOC wish-list, after medium-security capacity for men, is a new women's facility to replace or supplement MCI Framingham, the state's only women's prison. With more counties trying to keep their women offenders at home for trial and for imprisonment—women defendants from all over the state, held in lieu of bail, are sent to Framingham's Awaiting Trial Unit—sheriffs are also looking for ways to better accommodate women inmates in institutions not designed with them in mind. Suffolk County's new modular housing will, in part, serve women inmates, and Hampden County is now planning a $15 million stand-alone facility for women. What remains to be seen is whether correction officials, state and county, take the opportunity to develop new designs for female offenders, who are typically less dangerous than men and whose criminal conduct is deeply rooted in substance abuse and prior victimization, or build mini-institutions based on the men's-prison model.

[60] Julie M. Nardone and Michael W. Forcier, Mass. Dept. of Correction. *Correctional Alcohol Treatment Centers: An Impact Evaluation*, December, 1989. This study found a significantly lower recidivism rate for drunk drivers treated at Longwood compared to a similar population of offenders serving OUI sentences at the Middlesex County House of Correction in Billerica.

[61] According to the Bureau of Justice Statistics, 76 percent of state inmates fall into one or more of the following categories: serving a drug offense; serving an OUI offense; under the influence of drugs or alcohol at the time of the offense; had used drugs in the month prior to the offense; three or more positive responses to the CAGE alcohol-dependency screening questionnaire. Nineteen percent of state prisoners said they committed their current offense to obtain money for drugs. Christopher J. Mumola, *Substance Abuse and Treatment, State and Federal Prisoners, 1997*, Bureau of Justice Statistics, January 1999.

[62] In 1996, 94 percent of commitments to county houses of correction came from the lower courts of each court, rather than Superior Court. Mass. Dept. of Correction, *Court Commitments to Massachusetts County Facilities, 1996*.

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 next generation of expansion is 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. And it means smaller, 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-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 to mention public safety today and in the future, the haphazardness of correctional record-keeping is simply unacceptable.

The state Department of Correction's once-proud research department, now in the process of rebuilding under a new research director after several years of retrenchment, has fallen far behind on reporting of basic inmate statistics: its latest 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 1996. In some cases, the quality of the data has deteriorated: The inmate-population report for 1996 is far less detailed than for 1995, and information on prior prison records of state inmates has not been included since 1994. DOC has not published an in-house evaluation of any of its programs for quality or effectiveness since 1994.[63]

With millions, even billions, of taxpayer dollars at stake, the haphazardness of correctional record-keeping is simply unacceptable.

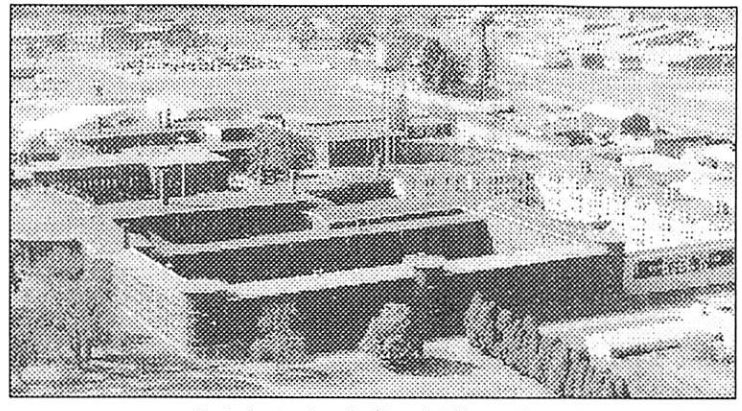
Data on county inmates—now the largest and fastest-growing population behind bars—are even more scant. Houses of Correction have been keeping computerized records for only four or five years. The counties follow no common protocol for data collection, so information is not compiled on a uniform basis.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

2) Completing the sentencing revolution

The fitful 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:

• **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 assistant district attorneys, 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 compunction about shooting it down.



The Southeastern Correctional Center in Bridgewater, Mass.

And shoot it down they did, in 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 penalties by 25 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.

Setbacks in the consensus-building process have left the Massachusetts Sentencing Commission's proposed sentencing guidelines languishing in the Legislature.

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-Baranowskis—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.[64]

[63] Research publications listing, DOC Website: http://www.magnet.state.ma.us/doc/research/respub.htm.

[64] 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 (one of the violent offenses the commission singled out for increased penalties) 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 55-percent increase over current practice. The DAs' proposal to shift the crime of Indecent Assault and Battery on a Child under 14 to the next higher 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 1994, 71 percent of convictions for this charge took place in District Court which is where, significantly, prosecutors

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, as 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 nitty-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.

• **Revise mandatory-minimum drug sentences to incorporate supervised re-integration of offenders.** Mandatory-minimum sentences for drug dealing and trafficking have been the advance guard of the sentencing revolution in Massachusetts. In three crucial respects, they have fulfilled their purpose: they established a beachhead of truth in sentencing in the unfriendly waters of Massachusetts criminal law; they sent the social and law-enforcement message that drug trafficking is a serious crime that, left unchecked, could destroy our most vulnerable communities; and they attached serious sanctions to a crime previously treated almost casually. The question now is whether, in light of the broader victory of truth-in-sentencing—in the Truth in Sentencing Act of 1993 and, once enacted, in statutory sentencing guidelines—these specific mandatory sanctions have, at least in their current form, outlived their purpose.

Mandatory minimums are powerful tools for combatting 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 overloaded 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 sending 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 lengths 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 serving 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 combatting not only drug dealing but the street violence and neighborhood degradation that accompany the drug trade.

But judges, as well as defense attorneys, hate these laws, at least on the occasions that they force jurists to pronounce a sentence they consider disproportionate to the offense and unjust to the offender. The anecdotes are legion: A relatively uninvolved person rides along on a drug deal, gets busted, and then, unwilling to plead to a lesser charge, risks all at trial and loses. The irreducible outcome is a three-year, five-year, even 15-year state-prison sentence, with every day required to be served behind bars.[65] Or, a small-time dealer sells a bag of marijuana from his car on a Boston street at 2 a.m. and gets busted. Four blocks away is an elementary school. Suddenly, he faces a two-year mandatory minimum for dealing drugs in a "school zone"—a 1,000-foot radius from the school house—not because he was peddling dope to children, but because he was careless about where he parked his car.

Even when the conviction is fully deserved, the time served under mandatory minimums is disproportionate to sentences imposed for other crimes. Former assistant attorney general William Brownsberger, in his detailed study of drug-crime enforcement, found that drug dealers and traffickers were serving terms equivalent to those for major crimes of violence. Since most drug offenders in state prison had only minor-to-moderate criminal records, those convicted of the sale of smaller amounts of cocaine would have had to commit armed robbery or involuntary manslaughter in order to receive a similar minimum sentence. Ironically, those convicted of trafficking (distributing 14 grams or more of cocaine or heroin) tended to have less serious criminal records on average than street-level dealers. To receive an equivalent minimum sentence for a non-drug crime, these offenders would have had to commit voluntary manslaughter, or rape of a child with force.[66]

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 re-integration, even though program participation and community re-integration can reduce criminal recidivism.

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 mandatory-minimum statutes only ban 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 period, or an inadequate period, of eligibility for parole. In 1997, for 50 percent of mandatory-minimum drug sentences, the difference between the maximum and minimum was less than one month.[67] That is, a 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. For this reason, 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 prohibitions crumbles. 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 mandatory-minimum sentences 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

opted to file the charges. Only for 29 percent of these convictions did prosecutors seek indictment in Superior Court in order to pursue longer prison terms (for those incarcerated, an average of 30.6 months in Superior Court, compared to 10.8 months in District Court). Massachusetts Sentencing Commission, *A Review of the MDAA's Proposed Changes to the Sentencing Guidelines Legislation*, Sept. 23, 1997.

[65] *The Boston Globe's* Spotlight series of Sept. 23-27, 1995, is replete with such examples.

[66] William N. Brownsberger, *Profile of Anti-Drug Law Enforcement in Urban Poverty Areas in Massachusetts*, November, 1997, pages 37-40.

[67] Compared to 18 percent for non-drug offenses. Mass. Sentencing Commission, *Survey of Sentencing Practices FY1997*, Dec. 1998, pages 27-28.

preparation for parole or discharge, in the form of pre-release and work-release experience. The goal now ought to be including drug offenders in a sensible and controlled program of community re-integration, 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 would leave these penalties intact, but give judges the latitude to "depart" from the mandated sentence in written (and appealable) rulings enumerating one or more "mitigating circumstances," much as the judge would be allowed to depart from the guidelines in other sentences. This approach addresses the "miscarriage of justice" objection to mandatory minimums by giving judges the authority to impose lesser sentences in extraordinary cases. But it does so by giving too much discretion to the judiciary. At the same time, it does nothing to address the inordinate length of the statutory sentences for drug crimes. Nor does it make any effort to build supervised re-integration 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 mandatories—the authority to nullify the drug laws on a daily basis with the stroke of a pen. This complaint seems to imply an inordinate amount of bad faith on the part of judges, who are portrayed as itching to ride roughshod over strongly presumptive 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 just the kind of judicial discretion that mandatory-minimums were written to prevent. In proposing it, the commission goes too far.

Still, the miscarriage-of-justice issue 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.[68] 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 abrogate a mandatory minimum. The Legislature should limit these factors to a short and exclusive list, perhaps to just two:

Some revision of the mandatory-minimum drug laws is clearly now in order.

- the defendant was a minor participant in the criminal conduct, or
- the sentence was imposed in accordance with a jointly agreed recommendation.[69]

Other mitigating factors might be appropriate. But they should be specific, narrowly drawn, and directly related to circumstances which, however rarely, make mandatory-minimum sentences manifestly unjust, not simply an excuse for a judge to be lenient.

How far the judge can stray from the statutory minimum should be limited as well. The guideline range the particular drug offense falls into in the Sentencing Commission's sentencing grid should provide sufficient latitude for such reduced sentences, without any further departure allowed, as the commission would provide for in extraordinary circumstances. Thus a defendant convicted of drug trafficking under a 15-year mandatory minimum and a minor criminal record could, if the specific mitigating factors apply, receive a sentence of five-and-a-third to eight years—a substantial reduction, but the sentence still respects the legislative intent that someone convicted of this crime serve serious prison time. At the lower end of the spectrum, mandatory-minimum sentences of two and three years would fall into a guideline range of one to three years maximum sentence; the minimum for an offender with a minor record could be as little as eight months. These lower sentencing guidelines fall in the "discretionary zone"—that is, the judge could presumably choose probation or another intermediate sanction instead of incarceration. But for these mandatory-minimum drug sentences, even a "departing" sentence should require a prison term of some length—again, reflecting the legislative intent of these laws to mandate imprisonment. It is hard to imagine that a judge, faced with a defendant convicted of drug dealing on a mandatory-minimum charge, even with mitigating circumstances, would need wider latitude than that in order to do justice.

But this safety valve, which should be strictly limited, does not get at the issue of community re-integration. First of all, the prohibition on good-time sentence reductions and supervised community-based correction programs should simply be repealed—all except the ban on probation, which is what keeps incarceration mandatory. Earned good time does not reduce prison terms nearly as much as the old "automatic" good time, and the program participation it encourages pays benefits in reduced recidivism. The parole prohibition no longer applies, now that parole eligibility occurs at completion of the minimum term for all state-prison sentences, not just mandatory-minimum sentences. This makes the current ban on pre-release and other re-integrative programs self-defeating because it acts to exclude drug offenders from a range of programs for which they might, as individuals, be good candidates, and which can improve their chances of succeeding—that is, committing no new crime—on parole and after their eventual release.

It is for the purpose of providing community supervision of drug offenders after their incarceration, more than any other reason, that the terms of mandatory-minimum sentences—the lengths of the sentences, and the offenders to whom they apply—should be moderated. To provide effective controlled re-integration, there must be a period of parole eligibility—the period between the minimum sentence and maximum sentence. The need to earn parole provides a strong incentive for offenders to learn how to function in a free society without committing further crimes. And it is in preparation for parole that pre-release and other re-integrative programs are most effective. But even after a decade of experience with these penalties, many judges cannot bring themselves to impose maximum sentences that are substantially longer than the mandated minimum. Unless the terms of mandatory-minimum sentences are reduced or otherwise modified, drug offenders will continue to be released to the street, rather than under parole supervision.

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Prosecutors are, quite naturally, loathe to give up as powerful a prosecutorial tool as the mandatory-minimum drug law. And there is no need to give it up, just refine it. After all, it is mandatory incarceration, not the specific length of sentence, that gives these laws their power.[70] There is nothing magical, nor sacrosanct, about the specific two-year, three-year, five-year, ten-year, or fifteen-year minimums, nor the amount of drugs that marks the threshold of each penalty. Nor is targeting a mandatory-minimum sentence to drug sales in "school zones," no matter how heavily symbolic it is, beyond reconsideration. Some prosecutors admit that the school-zone law—a two-year mandatory-minimum tacked onto the sentence for the underlying offense—is rarely used against its apparent target of schoolyard drug pushers. Rather, in densely built cities like Boston and Springfield, the statute makes for a "gotcha" style of law enforcement, snaring dealers unsophisticated enough to avoid the 1,000-foot radius. This law sends dozens of offenders to the Hampden and Suffolk County Houses of Correction each year, where they sit for years with no incentive to straighten out their lives and then are let out the door to return, unsupervised and unchanged, to their old street corners.

It is time to begin a serious discussion about mandatory-minimum sentences for drug dealing—not the principle, but the specifics, the terms and the parameters of these particular sentences. The discussion ought to revolve around the question: How can mandatory-minimum sentences be tempered to allow for structured and supervised re-integration of drug offenders into society at the end of their prison terms? It may be as simple as rewriting these penalties as sentences with mandatory minimums and mandatory maximums—though there will be nothing simple about setting those minimum-to-maximum ranges. A starting place for that discussion would be to turn the current mandatory minimums into

[68] No departure below the mandatory for defendants with a prior conviction of a serious drug trafficking offense; no departure below the guideline range for these offenses unless the defendant has no more than a moderate criminal record and there is a "compelling reason" for a lower sentence. Mass. Sentencing Commission, *Report to the General Court*, April 10, 1996, pages 22-24.

[69] This second provision would allow for sentence-bargaining in these offenses, to the extent that local prosecutors wish to engage in it. Currently, the prosecutor has to offer a lesser charge in exchange for a guilty plea in order for a defendant to get a lower sentence.

[70] In plea bargaining, some prosecutors say, jail time is the toughest threshhold to cross. Defendants are extremely reluctant to take a plea if it requires time behind bars. They would rather take their chances in court where they could be acquitted, or even if convicted might get probation. The certainty of incarceration that accompanies a mandatory-minimum conviction changes those odds considerably, increasing the prosecutor's leverage.

maximums, with parole eligibility coming at the minimum, which is not 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, 10-to-15. Offenders would be under sentence for as long as under the current mandatories, 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 contend with, 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 inviolable, prosecutors are re-fighting 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 seem privately willing to do, with legislators about how to preserve 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.

• **Practice fiscal truth-in-sentencing.** Calling for tougher criminal penalties has never hurt any politician's public image, and the temptation to continually ratchet up prescribed sentences remains great. But symbolic salvos against crime carry a tangible price tag, in the construction and operation of our most costly public institutions. As we have seen, prison populations will continue to soar well into the next decade even without dramatically increasing penalties. Measures that accelerate the need for more prisons must be considered in the cold light of fiscal reality.

The Commonwealth has not hesitated to fund prison expansion to date, and the state's currently flush coffers may fool us into thinking we can afford to build prisons forever. But there is no free lunch in criminal justice, any more than anywhere else. There is no better time than the present—when, for the first time in a generation, crime is at least relatively on the wane—to begin to temper the lure of "get-tough" measures with a dose of financial realism.

Measures that accelerate the need for more prisons must be considered in the cold light of fiscal reality.

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 neutral 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 legislative 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, based on Sentencing Commission models, and attached to the bill, so that the fiscal consequences can take their rightful place in the crime debate.

3) Bringing a community focus to corrections

As noted before, no matter how many lawbreakers 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 street.[71] The Hampden County House of Correction housed an average of 1,109 inmates last year, but released 2,603.[72] Once again, how they come out is as important to future crime control as why they went in.

It's especially important to the communities they came from, and will return to. Brownsberger 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 state prison before the age of 40; as many as half may do time in a House of Correction.[73] 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 offenders 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:

• **Forging 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. That has to change.

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. But it's difficult for the state 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 Rouse's "Rouse-t'abouts," have become increasingly common on the county level. To be more than modern-day chain gangs, however, they need to be targeted in terms of both community restitution 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 improvement and neighborhood clean-up projects—not just 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.

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.

These 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-suited 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 few 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 has forged a 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

[71] Suffolk County House of Correction statistics.

[72] Hampden County House of Correction statistics.

[73] Brownsberger, *Profile of Anti-Drug Law Enforcement*, page vii.

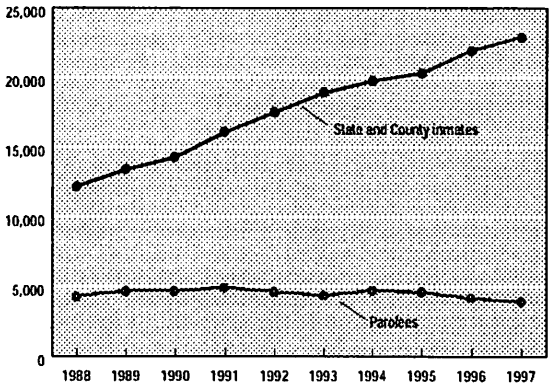
sentence make contact with community programs in substance abuse, job training, and education, among other needs. Through AISS and a Life Skills and Employment Collaborative program, which is funded by a federal grant, some 500 ex-inmates were placed in jobs with the help of the Hampden County sheriff's department last year. It should surprise no one that local employers are more willing to take a chance on an ex-con if they've got someone to call for advice—though House of Correction officials have no legal authority over the offender after he's completed his sentence—when it looks like he's starting to screw up.

In a less tangible, but just as critical, way, AISS aids ex-offenders by hosting two weekly support groups where they can talk through the problems of life on the outside—whether staying sober or paying rent—and get on-the-spot help from AISS counselors. Also in the works is a mentor program, which pairs inmates approaching discharge with House of Correction "alumni" who have demonstrably turned their lives around.

In Suffolk County, Sheriff Rouse is devoting the county's first staff-run residential facility (to complement contracted pre-release beds) to post-release support. The county is in the planning stages for a "three-quarter-way house" to provide short-term housing for ex-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 with no place to go, such a residence can smooth the transition to freedom.

Programs that reconnect offenders to their communities 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 a one-year re-incarceration rate of 22 percent reported by the state Department of Correction, and typical three-year re-incarceration rates of 41 percent nationally.[74]

Chart 14: **INMATE POPULATION VERSUS PAROLE CASELOAD**



Source: Mass. DOC, Quarterly Reports on Prison Overcrowding; Mass. Parole Board. Inmate population and parolee counts are for end of each calendar year.

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 increasing 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 role 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 Concord sentences, with parole supervision extending for years as a semi-permanent condition of existence. On a state-prison sentence of seven-to-ten years, for instance, the maximum possible period of parole supervision (first eligibility to the end of the maximum term) is three years, coming at the end of nearly six years behind bars (assuming considerable—five days per month—earned good time). For county inmates, parole rarely lasts more than a few months. Thus parole is becoming exclusively a short-term period of supervised community re-integration for inmates nearing the end of their sentence.

While control will remain a vital part of the Parole Board's responsibility—supported by the authority to return a parolee to prison—the agency's emphasis must increasingly shift to establishing offenders on a path toward crime-free living. Just as graduated movement through lower-security settings reduces the risk of recidivism, 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 the drift back toward a life of crime.

While control will remain a vital part of the Parole Board's responsibility, the agency's emphasis must increasingly shift to establishing offenders on a path toward crime-free living.

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 application 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 benefitting from community re-integration, 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 widen its supervisory net by developing specialized programs to effectively manage higher-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 these offenders who most need control 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 offenders, 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 not adequately 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-in 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 "community corrections" agencies, to rebuild and redefine that relationship

[74] James E. Vivian, *Recidivism and Programming Effects within Hampden County Correctional Facilities: A Preliminary Investigation*, Sept. 1998. Other statistics cited by Vivian: state DOC recidivism rate is from *The Background Characteristics and Recidivism Rates of Releases from Massachusetts Correctional Institutions During 1993*, Mass. Dept. of Correction, 1997; national figure is from a 1989 Bureau of Justice Statistics study of recidivism in eleven states. Vivian notes that on broader measures of recidivism—rates of arraignment 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 the fact that they so rarely result in re-incarceration Vivian takes as significant: "Even [Hampden County] recidivists (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)

[75] Interview with Sheila Hubbard, chair of the Parole Board, March 12, 1999.

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 neighborhood—the state needs its correctional institutions to become community-minded as well as security-minded. And it needs a wider 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 sentences, free to victimize again.

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It would seem that there is indeed, in John DiIulio'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 corrections end of crime control is never going to be cheap, but it's important to all citizens that we get our money's worth.

We at MassINC wish to express our gratitude to the Gardiner Howland Shaw Foundation for its steadfast commitment to finding solutions to the problems of crime, delinquency and the administration of justice in Massachusetts. We are very grateful for the Foundation's generosity in providing the significant financial support which made this Investigative Report possible.

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