

The Commonwealth of Massachusetts
Executive Office of Public Safety and Security
One Ashburton Place, Room 2133
Boston, Massachusetts 02108

Tel: (617) 727-7775

TTY Tel: (617) 727-6618

Fax: (617) 727-4764

www.mass.gov/eops

CHARLES D. BAKER
Governor

KARYN E. POLITO
Lt. Governor

DANIEL BENNETT
Secretary

June 16, 2015

The accompanying report of the Special Commission to Study the Commonwealth's Criminal Justice System presents the work and findings of Commission members from its inception in 2011 through December 31, 2014. Although their deliberations took place prior to my appointment as Secretary of Public Safety and Security under newly-elected Governor Charles D. Baker, I applaud the efforts of all members, past and present, who contributed to the report and thank them for their service to the Commission and to the Commonwealth.

While I may agree with a portion of the findings and information presented in the Commission report, I respectfully take issue with some of the data underlying the research. Thanks to the efforts of many hard working state employees and others, the state's criminal justice landscape has changed considerably since members began their work nearly four years ago. Current data trends and recent policy changes now paint a different picture of our criminal justice system than members observed from 2011 to July of 2014. For example, a number of the recommendations outlined in the report are based on the assumption that our state prisons are overcrowded. However, no DOC facilities currently meet the criteria for being considered overcrowded, and inmate counts at facilities within the Massachusetts Department of Correction (DOC) indicate the availability of 1,000 beds, with many prisons operating below their operational capacity. I anticipate that recent administrative changes at the DOC and Parole Board will lead to additional reductions in the DOC inmate population in the months ahead.

As members reconvene in the months ahead, I welcome the opportunity to work alongside this impressive cross section of colleagues from all three branches of government, various agencies and organizations within the criminal justice system, and community stakeholders. Thank you again for your dedicated service to the citizens of the Commonwealth.

Sincerely,

A handwritten signature in cursive script that reads "Daniel Bennett".

Daniel Bennett

Chairman, Commission to Study the Commonwealth's Criminal Justice System
Secretary, Massachusetts Executive Office of Public Safety and Security



Commonwealth of Massachusetts

Report of the Special Commission to Study the Criminal Justice System



December 31, 2014

Acknowledgements

The members of the Special Commission to Study the Criminal Justice System (the Commission) are grateful to the Massachusetts Legislature and the Administration and staff of the Executive Office for Public Safety and Security (EOPSS) for their vision and unwavering support of this endeavor. With their guidance, the Commission brings together a dedicated, diverse group of colleagues from all three branches of government, criminal justice-related agencies, and various stakeholders to achieve one common objective – to review data from the Commonwealth’s criminal justice system and provide recommendations for improvement. The Commission members would also like to recognize the participation of members of the public who attend the open meetings as concerned and involved citizens. We are appreciative of this opportunity to serve the Commonwealth of Massachusetts, and are hopeful that our recommendations will provide the framework to strengthen our criminal justice system. We look forward to our continued work together to improve public safety, reduce recidivism and crime, and decrease financial costs for taxpayers.

Table of Contents

Executive Summary.....	3
The Work of the Commission	5
History.....	5
Mandate.....	5
Membership.....	7
Process: The Subcommittees	9
Recommendations	10
Recommendations of the Special Commission to Study the Criminal Justice System (2014)	10
The Work of the Commission’s Subcommittees.....	17
Pre-Sentencing Subcommittee	17
Incarcerated and Sentenced Persons Subcommittee	18
Post-Release, Reentry, and Supervision Subcommittee.....	19
A Data-Driven Approach to Reduce Corrections Spending.....	20
The Way Forward.....	21
References.....	22
APPENDICES	25
Appendix A: Commitment Letter from Governor Deval L. Patrick	26
Appendix B: Organizational Chart	28
Appendix C: Open Meeting Notice	29
Appendix D: The Commission’s Recommendations’ Voting Tallies	30
Appendix E: The Commission’s Subcommittees	33
Appendix F: Massachusetts Results First Initiative and Justice Reinvestment Initiative	55

Executive Summary

"Our goal in Massachusetts should be to create an evidence-based criminal justice system in which policy and funding are driven by reliably analyzed data and measured outcomes. The work of this Commission can help sustain that."

Andrea Cabral, former Secretary, Executive Office of Public Safety and Security

The mandate of the Special Commission to Study the Criminal Justice System (the Commission), established by the Legislature through Section 189 of Chapter 68 of the Acts of 2011, is broad, deep, and extremely timely. In some ways, Massachusetts is similar to many other states – our prisons and jails are overcrowded, our policies need to be reexamined in light of current trends, and our citizens recommit crimes or recidivate at higher rates than we would like. The Executive Office of Public Safety and Security (EOPSS) spends an average \$1.1 billion annually to operate its complex criminal justice programs.¹ Our state system is also unique with a plethora of operational challenges, representing opportunities to take a leadership role in criminal justice reform across the nation.

For many years, Massachusetts has had an active voice in advancing new procedures and policies in the criminal justice system. This Commission seeks to continue this tradition using a data-driven approach. Given the changing demographics of our prisoner populations, coupled with the state's fiscal realities, we believe that the time is now to make important evidence-based recommendations that will lead to a more efficient and sustainable criminal justice system for all residents of the Commonwealth.

The Commission is comprised of several deeply committed and thoughtful members from various sectors, including all branches of state government and a broad range of criminal justice agencies and stakeholders. It has met consistently since the late fall of 2011, and is now a permanent feature of our government's structure. The Commission's objective is to make recommendations to improve public safety and reduce crime, ultimately saving the Commonwealth money that can be allocated for other priorities.

This report will provide a brief overview of the Commission's history, mandate, membership, and work performed from November 14, 2011 until December 31, 2014. It will then offer a comprehensive list of the administrative and legislative recommendations approved by the majority of the Commission during this time period. These recommendations are the result of the tireless work of the Commission and subcommittee members in reaching out to numerous national and state experts to gather data on the status of the state's current criminal justice system.

¹ This figure represents the annual EOPSS budget, which excludes support for municipal public safety programs and initiatives.

It will then describe one of the first priorities of the Commission – to oversee the implementation of the Pew-MacArthur Results First Initiative in Massachusetts. The Pew-MacArthur Results First Initiative is a major partnership with the Pew Charitable Trust and the John D. and Catherine T. MacArthur Foundation to promote evidence-based programming and policy development to reduce recidivism, decrease corrections spending, and improve public safety. The Commission took an active role in the launching and oversight of the Massachusetts Results First Initiative (Mass. Results First), which included an analysis of myriad ways to strengthen justice reinvestment activities. For the first time, equipped with data from across the Massachusetts criminal justice system, policymakers are able to compare policy alternatives to identify and invest in cost-effective programs and policies yielding the greatest impact.

We are hopeful that our initial recommendations will pave the way for continued improvement in our criminal justice system, and look forward to our on-going work in this endeavor.

The Work of the Commission

The Commission and its three subcommittees have worked diligently to meet with all relevant stakeholders to gather data on critical issues facing the state's criminal justice system. Our objective has been to increase our collective understanding of the challenges facing Massachusetts' criminal justice system, and propose an initial set of administrative and legislative recommendations to address them.

As described below, the subcommittees reached out to specific content experts to develop a first set of recommendations requiring statutory, operational, and administrative reforms. The chairpersons of each subcommittee sent the recommendations to the full Commission where they were discussed, revised, and approved by a majority vote.

This report represents the collective work of all of the members of the Commission and its subcommittees. We are grateful for the time and effort spent of the various talented, hard-working, and invested professionals to understand the complex set of challenges facing Massachusetts' criminal justice system that informs the recommendations outlined in this report. The Commission members believe that these initial recommendations present ways to strengthen the Commonwealth's criminal justice system, and look forward to working together to continue to address the Commission's mandate in the years to come.

History

The Commission was established by the Legislature through Section 189 of Chapter 68 of the Acts of 2011 (FY2012 state budget). The Commission was renewed through the FY2013 state budget and made a standing commission in FY2014 through Section 18, Chapter 38, of the Acts of 2013.

The Commission is part of an overarching plan in Massachusetts to promote strategic planning, performance reporting, and performance-based budgeting throughout state government, as well as improve outcomes in the state's criminal justice system and reduce crime. (See *Commitment Letter from Governor Deval L. Patrick*, Appendix A.)

EOPSS has been charged with the implementation and administration of the Commission. (See *Organizational Chart*, Appendix B.)

Mandate

According to Section 189 of Chapter 68 of the Acts of 2011, as recently amended by Section 18, Chapter 38 of the Acts of 2013, the mandate of the Commission to Study the Commonwealth's Criminal Justice System is as follows:²

² Section 18, Chapter 38, Acts of 2013

There shall be a standing commission to study the commonwealth's criminal justice system which shall include: 3 members of the house of representatives, 1 of whom shall be appointed by the minority leader; 3 members of the senate, 1 of whom shall be appointed by the minority leader; the secretary of public safety and security, who shall serve as chair; the attorney general or a designee; the chief justice of the supreme judicial court or a designee; the president of the Massachusetts Sheriffs Association, Inc. or a designee; the president of the Massachusetts District Attorneys Association or a designee; the chief counsel of the committee for public counsel services or a designee; a representative from the Massachusetts Bar Association; a representative from the Boston Bar Association; a representative from the Massachusetts Association of Criminal Defense Lawyers, Inc.; and 3 persons to be appointed by the governor, 1 of whom shall have experience in mental health and substance abuse and addiction treatment, 1 of whom shall have experience in providing services or supervision for offenders and 1 of whom shall have experience in juvenile justice.

In reviewing the commonwealth's criminal justice system, the commission shall examine a variety of areas including, but not limited to: the prisoner classification systems; mandatory minimum sentences and sentencing guidelines, including the authority of the sentencing commission to revisit such sentences and guidelines; the provision of cost-effective healthcare in corrections settings; the probation and parole systems, with particular emphasis on their relative roles in pretrial diversion and post-release supervision; the operations of the offices of the sheriffs; conditions of confinement, including overcrowding in state prisons and houses of correction and the provision of health care and mental health and substance abuse treatment; recidivism rates; the treatment of juveniles within the criminal justice system; the impact of mental health and substance abuse issues; and best practices for reintegrating prisoners into the community, including an investigation of expanded community supervision.

Where feasible, the chair of the commission shall apply for technical assistance from nationally-recognized criminal justice reform programs with a data-driven approach in order to develop legislation that would reduce corrections spending and utilize the savings to reduce crime, strengthen public safety and fund other budget priorities; provided, however, that the commission shall give priority in applying to those programs in which technical assistance comes at no cost to the commonwealth.

The commission shall have access to information related to both adults and juveniles including, but not limited to, crime, arrest, conviction, jail, prison, probation and parole supervision data provided by state and local agencies; provided, however that any information sharing shall be in compliance with chapter 66A and shall be provided in a manner that meets all applicable federal and state privacy and security requirements. As necessary, the commission shall: (i) meet with affected stakeholders; (ii) partner with nongovernmental organizations that have expertise that can benefit the commission; and (iii) create advisory subgroups that include affected stakeholders as necessary.

The commission shall issue annual reports not later than March 31 on its activities. The report shall include recommendations for legislation to reduce recidivism, improve overall public safety outcomes, provide alternatives for defendants with drug-addictions or mental illness, increase communication and cooperation among public safety entities, reduce overcrowding of facilities, increase reliance upon evidence-based criminal justice methods, improve the collection and reporting of data on adults and juveniles in the corrections system, contain correction costs and otherwise increase efficiencies within the commonwealth's public safety entities. The report shall also list methods used by the department of correction and sheriffs to measure recidivism rates for persons released from the state prison or a house of correction, including after the expiration of a sentence or if approved for parole. The report shall also

include a uniform standard for comparing recidivism rates among the department of correction and the houses of correction. The data shall include, where available, a comparison to prior calendar years and any other information the commission deems relevant to measuring recidivism.

Membership

Commission members include a diverse group of individuals from all three branches of government, including members of the House and Senate, criminal justice-affiliated agencies, and numerous stakeholders. The Commission is comprised of one larger voting body, as well as three subcommittees (Pre-sentencing, Incarcerated and Sentenced Persons, and Reentry and Post-Release Supervision), to research and provide guidance on specific topic areas.

Commission meetings are open to members of the public and are well attended by various devoted individuals and organizations. (See *Open Meeting Notice*, Appendix C.) The list below includes all individuals who have participated as members of the Commission (not just current members).

Special Commission to Study the Criminal Justice System Complete Membership List

Current Member and Affiliation (in alphabetical order)	Appointed by:
Anthony Benedetti, Chief Counsel, Committee for Public Counsel Services (CPCS)	CPCS
Andrea J. Cabral, EOPSS	Governor
Senator William Brownsberger	Senate President
Sheila Calkins, Deputy Attorney General	Attorney General
Michael Coelho, Deputy Commissioner, Probation	Administrative Office of the Trial Court (AOTC)
Peter Elikann, Massachusetts Bar Association (MBA) representative	Massachusetts Bar Association (MBA)
Sheriff Lewis Evangelidis, Worcester County Sheriff	Massachusetts Sheriffs' Association
Patricia Garin, Massachusetts Association of Criminal Defense Lawyers representative (MACDL)	MACDL
Judge Gail Garinger, Office of the Child Advocate	Governor
Representative Randy Hunt	Minority Leader
Senator Patricia Jehlen	Senate President
John Larivee, Community Resources for Justice (CRJ)	Governor
Representative Christopher Markey	Speaker of the House
Sandra McCroom, former Undersecretary of Criminal Justice, EOPSS	EOPSS
Marty Murphy, Foley Hoag, Boston Bar Association representative	Boston Bar Association (BBA)
Michael O'Keefe, District Attorney, Cape and Islands	Massachusetts District Attorneys' Association (MDAA)
Debra A. Pinals, MD, Assistant Commissioner of Forensic Services, Department of Mental Health	Governor
Senator Richard J. Ross	Senate President

Former Member and Affiliation (in alphabetical order)	Appointed by:
Ronald Corbett, former Commissioner of Probation	AOTC
Joseph Early, Worcester District Attorney	MDAA
Mary Elizabeth Heffernan, former Secretary, EOPSS	Governor
Representative Kevin Murphy	Speaker of the House
Senator Stanley Rosenberg	Senate President
Representative Daniel Winslow	House Minority Leader

Process: The Subcommittees

The Commission is comprised of three subcommittees:

1. Pre-sentencing Subcommittee
2. Incarcerated and Sentenced Persons Subcommittee
3. Reentry and Post-Release Supervision Subcommittee

The subcommittees have met frequently since the spring of 2012. Each subcommittee is tasked to identify the most salient issues facing pre-sentenced, incarcerated, or reentering persons, and explore policy solutions specific to the subcommittee's population group. As such, subcommittee members reached out to a diverse group of national and state-wide experts to collect information and develop policy alternatives for systemic improvement. Subcommittee chairpersons delivered interim findings and recommendations to the Commission for discussion and deliberation, and in turn, the Commission worked diligently to translate these findings into the formal administrative and legislative recommendations enumerated in this report.

The next section provides some statements of fact which guided the work of the Commission and its subcommittees.

Recommendations

Recommendations of the Special Commission to Study the Criminal Justice System (2014)

The recommendations of the Special Commission to Study the Criminal Justice System are enumerated below. We have provided information about each recommendation, including the responsible subcommittee(s), date of approval, and voting tally of all present members. Members who were not present and unable to send a voting proxy to the meetings when votes were taken are captured as “members not present.” The Chair and her designee are non-voting members. (For additional information about voting tallies, see *The Commission’s Recommendations’ Voting Tallies*, Appendix D.)

Administrative Recommendation	Responsible Subcommittee	Date Approved	Vote Tallies
1. The Department of Correction should adopt policies and practices that ensure that all prisoners, including those whose risk to recidivate is determined to be high or moderate, are placed in a pre-release facility at least 90 days prior to discharge or parole.	Reentry and Post-Release Supervision Subcommittee	7-22-14	Unanimous
2. County sheriffs’ departments should adopt policies and practices to ensure that prisoners serving sentences greater than 6 months and whose risk to recidivate is determined to be high or moderate are placed in a pre-release facility at least 60 days prior to discharge or release on parole.	Reentry and Post-Release Supervision Subcommittee	7-22-14	Unanimous
3. The Department of Correction and each county sheriff’s department should enter into agreements providing for “step-down” from state prisons to county pre-release facilities for suitably identified prisoners.	Reentry and Post-Release Supervision Subcommittee	3-25-14	Unanimous
4. The Parole Board should adopt policies and practices to ensure that parole release occurs within 60 days of the parole date granted.	Reentry and Post-Release Supervision Subcommittee	7-22-14	Unanimous
5. The Parole Board should enter into agreements with the Department of Correction and each of the county sheriff’s departments to ensure that parole release occurs within 60 days of the parole date granted.	Reentry and Post-Release Supervision Subcommittee	7-22-14	Unanimous
6. The Parole Board, the Department of Correction and each of the county sheriff’s departments should adopt agreements to ensure that each prisoner’s personalized program plan is coordinated and communicated between and among those agencies.	Reentry and Post-Release Supervision Subcommittee	7-22-14	Unanimous

Administrative Recommendation (continued)	Responsible Subcommittee	Date Approved	Vote Tallies
7. The Department of Correction, the Parole Board, the Office of the Commissioner of Probation, county sheriff departments and the Department of Youth Services should report annually their recidivism outcomes in a common fashion and in a regular manner as prescribed by the Secretary of Public Safety and Security, in collaboration with the trial court, sheriff departments, and the Executive Office of Health and Human Services. Annual recidivism reports must include data tracking participation in programming and its impact on recidivism.	Reentry and Post-Release Supervision Subcommittee	9-23-14	Unanimous
8. All correctional agencies should utilize a common Risk/Need assessment tool which provides flexibility for the agencies to serve their respective populations.	Reentry and Post-Release Supervision Subcommittee	10-21-14	Unanimous
9. The results of Risk/Need assessment tool(s) should be used to determine a prisoner's risk of recidivism and criminogenic needs*. *Modifiable factors most strongly and directly correlated with risk for criminal recidivism.	Reentry and Post-Release Supervision Subcommittee	8-19-14	Unanimous
10. Following a Risk/Need assessment, a personalized program plan should be developed for all prisoners. The plans for those scoring high or moderate risk to recidivate should target criminogenic needs and utilize evidence-based programming.	Reentry and Post-Release Supervision Subcommittee	8-19-14	Unanimous
11. Re-designate the number of maximum, medium, minimum and pre-release beds in the Department of Correction to better reflect the national averages and operate these facilities in accordance with their new designation.	Incarcerated and Sentenced Persons Subcommittee	9-23-14	Unanimous
12. Revise the classification tool currently utilized at the Department of Correction to reduce the above average placement in maximum and medium security and improve the below average placement in minimum security in conformance with evidence-based best practices as reflected in national averages.	Incarcerated and Sentenced Persons Subcommittee	4-29-14	Unanimous
13. Allocate current federal Justice Assistance Grant funding where appropriate and relevant to expand the availability of evidenced-based programming to reduce recidivism.	Incarcerated and Sentenced Persons Subcommittee	8-19-14	Unanimous

Administrative Recommendations (continued)	Responsible Subcommittee	Date Approved	Vote Tallies
<p>14. All programming should be regularly evaluated for effectiveness, particularly its effect on recidivism. Use of effective, promising and emerging evidence-based practices* should be prioritized.</p> <p>* Links of examples of effective, promising and emerging evidence-based practices</p> <p>U.S. Department of Justice's CrimeSolutions.gov: http://www.crimesolutions.gov/</p> <p>Results First Clearinghouse Database:</p> <p>Council of State Governments Justice Center: http://whatworks.csgjusticecenter.org/</p> <p>Office of Juvenile Justice and Delinquency Prevention Model Programs Guide: http://www.ojjdp.gov/mpg/</p> <p>U.S. Department of Health and Human Services: http://findyouthinfo.gov/program-directory</p> <p>Coalition for Evidence-Based Policy: http://coalition4evidence.org/mission-activities/</p> <p>The Substance Abuse and Mental Health Services Administration's National Registry of Evidence-based Programs and Practices: http://nrepp.samhsa.gov/</p>	Incarcerated and Sentenced Persons Subcommittee	8-19-14	Unanimous
15. Increase funding to expand programming to reduce wait lists and to meet the identified program needs of every prisoner.	Incarcerated and Sentenced Persons Subcommittee	9-23-14	Unanimous
16. The Sentencing Commission, as renewed by Governor Deval Patrick's criminal justice initiative on February 20, 2014, shall be charged with re-evaluating sentencing practices and priorities in Massachusetts to bring them in line with evidence-based practices that are consistent with its mission set forth in M.G.L. c.211E, sec. 2.	Incarcerated and Sentenced Persons Subcommittee	9-23-14	Unanimous
17. Increase the use of evidence-based pre-charge diversion programs for appropriate populations.	Pre-Sentencing Subcommittee	10-21-14	Unanimous
18. Increase training for first responders responding to calls and incidents involving individuals with disorders/disabilities across the criminal justice system.	Pre-Sentencing Subcommittee	9-23-14	In Favor: 12 Opposed: 1 Abstained: 0 Non-Voting: 1

Legislative Recommendations	Responsible Subcommittee	Date Approved	Vote Tallies
1. Remove mandatory minimum sentencing for drug offenses.	Incarcerated and Sentenced Persons Subcommittee / Reentry and Post-Release Supervision Subcommittee	11-18-14	In Favor: 9 Opposed: 3 Abstained: 1 Non-Voting: 2
2. Adopt sentencing legislation providing parole eligibility at 2/3 of the lower end of the sentence for all state prison sentences except for sentences imposed for murder or manslaughter, and at ½ of all county houses of correction sentences of 60 days or more.	Reentry and Post-Release Supervision Subcommittee	11-18-14	In Favor: 9 Opposed: 2 Abstained: 2 Non-Voting: 2
3. Adopt legislation providing for “presumptive parole” at the first parole eligibility date.	Incarcerated and Sentenced Persons Subcommittee / Reentry and Post-Release Supervision Subcommittee	12-16-14	In Favor: 7 Opposed: 3 Abstained: 4 Non-Voting: 2

Identified Challenges and Observations

Together, the subcommittees identified the following challenges in key criminal-justice related areas to address the Commission's charge. The subcommittee members used the data below (made available to them at the time) to identify challenges and observations and inform the Commission's administrative and legislative recommendations in this report.

Reduce Recidivism

- Correctional resources should be focused on those assessed to have a moderate or high risk to recidivate.
- Releasing prisoners from a higher-security setting is correlated with higher recidivism rates.³
- In 2012, the MA Department of Correction (DOC) released 2,705 prisoners to the community: 13% to parole only, 33% to probation only, 8% to both, and 46% with no post-release supervision. 63% were released from a maximum or medium security facility.⁴
- In 2011, the DOC released 2,281 prisoners to the community: 12% to parole only, 34% to probation only, 7% to both, and 48% with no post-release supervision. 67% were released from a maximum or medium security facility.⁵
- The DOC population increased 13% from January 1, 2004 to January 1, 2013.⁶
- In 2012 to 2013, the DOC experienced a 3% drop in its population due largely to releases of offenders from the Hinton Drug Lab challenges, as well as to a new cohort of drug persons eligible for and receiving parole under the Habitual Offender and Sentencing Reform Act signed in August 2012.⁷

Reduce Overcrowding of Facilities

- In 41.6% of all state prison sentences, the difference between the minimum and maximum sentences was one day, including 49.4% of those sentenced for mandatory drug offenses.⁸
- 20% of DOC beds are designated as maximum (1,579 beds), 63% are designated as medium (5, 074 beds), and 17% are designated as minimum or below (1,376 beds).⁹

³ Department of Correction Research Brief, *Three-Year Recidivism Rates: 2009 Release Cohort*, 2009

⁴ Massachusetts Department of Correction, *Massachusetts Department of Correction Prison Population Trends*, May 2013

⁵ Massachusetts Department of Correction, *Massachusetts Department of Correction Prison Population Trends*, June 2012

⁶ Massachusetts Department of Correction, *Massachusetts Department of Correction Prison Population Trends*, May 2013

⁷ Massachusetts Department of Correction, *Massachusetts Department of Correction Prison Population Trends*, May 2013, May 2014

⁸ Massachusetts Sentencing Commission, *Sentencing Commission Report on Sentencing Practices*, May 2012

⁹ Massachusetts Department of Correction, *Massachusetts Department of Correction Prison Population Trends*, May 2014

Improve Overall Public Safety

- Correctional resources should be focused on those assessed to have a moderate or high risk to recidivate.
- In 2012, the DOC released 2,705 prisoners to the community: 13% to parole only, 33% to probation only, 8% to both, and 46% with no post-release supervision. 62% of those released from criminal sentences to the street were from a maximum or medium security level facility.¹⁰
- In 2011, the DOC released 2,281 prisoners to the community: 12% to parole only, 34% to probation only, 7% to both, and 48% with no post-release supervision. 67% were released from a maximum or medium security facility.¹¹
- 20% of DOC beds are designated as maximum (1,579 beds), 63% are designated as medium (5,074 beds), and 17% are designated as minimum or below (1,376 beds).¹²

Increase Reliance upon Evidence-Based Criminal Justice Methods

- Many of those in the correctional system have significant barriers to success and economic stability.
 - In the U.S., approximately 80% of prisoners have a substance abuse history.¹³
 - In Massachusetts, 63% of the female prisoners and 25% of the male prisoners have an open mental health case.¹⁴
 - In Massachusetts, 45% of male and 37% of female prisoners upon admission have less than a 9th grade reading level.¹⁴
 - In Massachusetts, 35% of male and 39% of female prisoners upon admission have less than a 6th grade math level.¹⁴

¹⁰ Massachusetts Department of Correction, *Massachusetts Department of Correction Prison Population Trends*, May 2013

¹¹ Massachusetts Department of Correction, *Massachusetts Department of Correction Prison Population Trends*, June 2012

¹² Massachusetts Department of Correction, *Massachusetts Department of Correction Prison Population Trends*, May 2014

¹³ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, *Residential Substance Abuse Treatment for State Prisoners (RSAT) Program*, April 2005

¹⁴ Massachusetts Department of Correction, *Massachusetts Department of Correction Prison Population Trends*, May 2014

Contain Correctional Costs

- 20% of DOC beds are designated as maximum (1,579 beds), 63% are designated as medium (5,074 beds), and 17% are designated as minimum or below (1,376 beds).¹⁵
- If the Commonwealth makes no changes to its current criminal justice policies and practices, including incarcerating individuals at present rates, the Commonwealth will need 10,000 additional beds by 2020, with associated capital costs ranging from \$1.3 to \$2.3 billion in today's dollars, not including adjustments for inflation. Further highlighting the current trend as unsustainable, these new beds could require an annual increase in state and county operating budgets estimated to be as much as \$120 million (based on 2.5% population growth).¹⁶

Increase Efficiencies within the State's Public Safety Entities

- In 2012, the DOC released 2,705 prisoners to the community: 13% to parole only, 33% to probation only, 8% to both, and 46% with no post-release supervision.¹⁷
- Massachusetts is well above the national average for prisoners being released without post release supervision (21.2% national average, Massachusetts 43.3%).¹⁸

Provide Alternatives for Drug-Addicted and Mentally-Ill Defendants

- In the U.S., approximately 80% of prisoners have a substance abuse history.¹⁹
- In Massachusetts, 63% of the female prisoners and 25% of the male prisoners have an open mental health case.²⁰

Increase Communication and Cooperation among Public Safety Entities

- In 2012, the DOC released 2,705 prisoners to the community: 13% to parole only, 33% to probation only, 8% to both, and 46% with no post-release supervision.²¹

¹⁵ Massachusetts Department of Correction, *Massachusetts Department of Correction Prison Population Trends*, May 2014

¹⁶ Massachusetts Division of Capital Asset Management, *The Corrections Master Plan: The Final Report*, December 2011

¹⁷ Massachusetts Department of Correction, *Massachusetts Department of Correction Prison Population Trends*, May 2013

¹⁸ Pew Charitable Trusts, *Max Out Report*, June 2014

¹⁹ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, *Residential Substance Abuse Treatment for State Prisoners (RSAT) Program*, April 2005

²⁰ Massachusetts Department of Correction, *Massachusetts Department of Correction Population Trends*, May 2014

²¹ Massachusetts Department of Correction, *Massachusetts Department of Correction Population Trends*, May 2013

The Work of the Commission's Subcommittees

The subcommittees reached out to a diverse group of subject experts to deepen their understanding of the challenges facing the Massachusetts criminal justice system. Based on these discussions and the information provided, the subcommittees made recommendations to the Commission for consideration and debate, resulting in the above administrative and legislative recommendations approved by the Commission. This section describes the process that each subcommittee utilized which resulted in the recommendations.

Pre-Sentencing Subcommittee

The Pre-Sentencing Subcommittee began meeting regularly in February 2012. This subcommittee focused on why and how different aspects of criminal justice arrive at decisions to arrest, divert, and incarcerate individuals. Members of the Pre-Sentencing Subcommittee are included in Appendix D.

The work of the Pre-Sentencing Subcommittee involved several subcommittee meetings and conference calls, as well as specific meetings, with the following people to inform its work:

- Chief Justices of District Court, Boston Municipal Court, Superior Court, and Trial Court; Sentencing Commission representative; and Commissioner of Probation
- District Court judges
- Boston Municipal Court judges
- Major city police chiefs' representatives
- Two elected district attorneys

This subcommittee discussed and debated areas concerning pre-sentencing which include but are not limited to: the role of specialty courts (mental health, drug courts, etc.); trial court funding challenges; alternatives to incarceration; the need for increased reliance on technology (e.g., GPS monitoring) the need for sufficient police training to avoid deeper end justice involvement; increased training for the judiciary and attorneys regarding mental illness and co-occurring substance abuse disorders, programs, and services; and the need for data to track arrests.

For additional information see *The Commission's Subcommittees*, Appendix E.

Incarcerated and Sentenced Persons Subcommittee

The Incarcerated and Sentenced Persons Subcommittee began meeting regularly in April 2012. This subcommittee focused on appropriate placement of prisoners throughout the system and unmet needs. Members of the Incarcerated and Sentenced Persons Subcommittee are included in Appendix D.

The Subcommittee on Incarcerated Persons considered many of the challenges and problems facing prisoners, prison administrators, and the public concerning prison conditions in general. In addition, members discussed specific issues, including the effect that prison conditions have on successful re-entry, public safety, and fiscal expenditures.

The subcommittee decided to focus on three problem areas:

- over-crowding in state and county facilities;
- over-classification of state prisoners; and
- the lack of appropriate treatment and programming in state and county facilities.

The focus of the subcommittee's work has been to identify the causal factors of these problems and make recommendations for change. The recommendations are focused on the state system. This subcommittee subsequently made several requests for data and consulted with several executive leaders within the Department of Correction, Probation, and community agencies to understand what barriers were present for this population.

This subcommittee authored a thirteen-page report summarizing its findings on prison overcrowding in the state system, DOC's over-classification of prisoners, and the lack of appropriate treatment and programming in the state system. This subcommittee's report sets forth recommendations for changes in administrative policies at executive agencies and recommendations for legislative changes.

For the various documents referred to in this section see *The Commission's Subcommittees*, Appendix E.

The Post-Release, Reentry, and Supervision Subcommittee began meeting regularly in April 2012. This subcommittee worked with a broad coalition of stakeholders to develop recommendations aimed at reducing recidivism across the state. The work focused on risk-assessment measures, as well as analyzing tools and outcomes of supervised, dually-supervised, and unsupervised populations. Members of the Post-Release, Reentry, and Supervision Subcommittee are included in Appendix D.

The subcommittee benefitted from the work of a 2012 Future Search conference convened by Governor Deval Patrick and then Secretary of Public Safety Mary Elizabeth Heffernan, the final report of which was entitled “Rethinking Reentry: A Massachusetts Imperative.” That work defined the agenda for the subcommittee and provided much of the information for their deliberations.

The subcommittee’s discussions focused on the below questions:

- What are the best practices to reduce recidivism?
- What is our knowledge base regarding effective reentry strategies?
- Is the Commonwealth effectively preparing prisoners for reentry?

To answer these questions the subcommittee interviewed several executives in the County and State Correction System, Probation, and community leaders for victim and prisoners’ rights. In identifying the information necessary to address these questions the Subcommittee obtained several data points describing releasing persons’ challenges. Throughout this work the members identified four key issues that needed attention:

- Establishing a common definition of recidivism for the Commission’s work;
- Responses to violations of supervision and guidelines for intermediate sanctions;
- Role of oversight agencies: monitoring, evaluation and quality assurance; establishing a common set of outcome measures; and
- Role of community health centers in reentry.

For the various documents referred to in this section see *The Commission’s Subcommittees*, Appendix E.

A Data-Driven Approach to Reduce Corrections Spending

Interviews with legislative leaders indicated that the technical assistance referenced in the Commission's authorizing language should be pursued with the Pew Center for the States. The Commission subsequently voted to apply for technical assistance with both the Pew-MacArthur Results First Initiative and the Justice Reinvestment Initiative.

The Commission recognized that in the current fiscal environment the Commonwealth faces tough budget choices and lacks resources to support traditional levels of public service. As a result, policymakers seek programs and policies that yield the desired benefits in more cost-effective ways. Traditionally, cost-benefit analysis is applied to public policy areas such as environmental regulation or transportation investments; however, there is considerable growth in its application to social policy analysis.

As one of its first priorities, the Commission endorsed a major partnership with the Pew Charitable Trusts and the John D. and Catherine T. MacArthur Foundation to implement the Massachusetts Results First Initiative. Mass. Results First uses a cost-benefit analysis approach that helps policymakers identify and invest in programs that rigorous research has proven to be effective. The Results First Cost-Benefit Model—designed by the Washington State Institute of Public Policy (WSIPP)—is a nationally recognized and validated cost-benefit approach delivered to states at no cost. There are several outcome components including crime, child welfare, substance abuse disorders, early childhood education, and healthcare.

In addition, the Commission was interested in exploring ways to strengthen the Commonwealth's justice reinvestment activities. The Commission called for the submission of a formal application to the Urban Institute to receive further technical assistance to strengthen the state's efforts to reduce recidivism and address justice reinvestment activities. While the Justice Reinvestment Initiative (JRI) application was denied for the reasons enumerated in Appendix F, JRI has indicated a willingness to maintain contact and monitor the Commission's progress, offer informal assistance, and serve as a liaison with the Bureau of Justice Assistance (BJA) to secure technical assistance and resources for data review.

For more information about Mass. Results First and JRI see *Massachusetts Results First Initiative and Justice Reinvestment Initiative*, Appendix F.

The Way Forward

This report represents the initial phase of the work of the Commission and its subcommittee members. We are grateful for the time and effort of the various committed individuals who provided us with the information needed to make this set of recommendations. The Commission believes that the recommendations represent a path to move our state forward in the years to come.

Over the past several years, through the work of our committed criminal justice agencies, the Mass. Results First Initiative, and this Commission, we have made significant progress in collecting population and cost data and in using the information to develop evidence-based programs and policies. The recommendations outlined in this report seek to strengthen these programs and policies with the ultimate goal of improving services for persons, victims and communities; improving public safety; and reducing costs.

We also believe that there is still work to be done. The Commission members remain dedicated to this effort and are grateful for the opportunity to serve the Commonwealth in its efforts to reduce recidivism and improve the criminal justice system.

References

The Commission and its subcommittees consulted with national criminal justice experts on a variety of subjects throughout the process of collecting and analyzing information to fulfill the Commission's mandate. Below is a list of the key resources and publications used to gather data on the status of the criminal justice system in Massachusetts:

[DOC 2010 1 year recidivism study](#)

Massachusetts Department of Correction (2013). *Massachusetts Department of Correction 2010 Release Cohort One Year Recidivism Statistics*.

[DOC 2007 3 year recidivism study](#)

Massachusetts Department of Correction (2012). *Massachusetts Department of Correction 2007 Release Cohort One Year Recidivism Statistics*.

[Massachusetts Department of Correction Population Trends May 2011](#)

Massachusetts Department of Correction (2012), *Massachusetts Department of Correction Population Trends*.

[Massachusetts Department of Correction Population Trends May 2012](#)

Massachusetts Department of Correction (2013), *Massachusetts Department of Correction Population Trends*.

[Massachusetts Department of Correction Population Trends May 2013](#)

Massachusetts Department of Correction (2014), *Massachusetts Department of Correction Population Trends*.

[Massachusetts Department of Correction Rethinking Reentry: A Massachusetts Imperative](#)

Massachusetts Department of Correction (2012), *Rethinking Reentry: A Massachusetts Imperative*.

[Massachusetts Department of Correction Weekly Counts](#)

<http://www.mass.gov/eopss/law-enforce-and-cj/prisons/rsch-data/weekly-count-sheets.html>

[Massachusetts Department of Correction Classification CMR](#)

Massachusetts Department of Correction (2014). 103 CMR 420: Classification.

[Massachusetts Department of Correction Statutory Restrictions on Inmate Placement and Other Sentencing Related Statistics](#)

Massachusetts Department of Correction (2007). *Massachusetts Department of Correction Statutory Restrictions on Inmate Placement and Other Sentencing Related Statistics*.

[Massachusetts Department of Correction Master Plan](#)

Massachusetts Department of Correction (2012). *Massachusetts Department of Correction Master Plan*.

Massachusetts Office of the Commissioner of Probation, Ohio Risk Assessment System – Community Supervision Tool (ORAS-CST).

Massachusetts Parole Board, *Compas Reentry Assessment – Official Records*.

Massachusetts Department of Correction, *Compas Reentry Assessment – Official Records*.

www.wsipp.wa.gov/ReportFile/1412

Washington State Institute for Public Policy (2012). *Intensive Program Supervision Program Description*.

<http://www.wsipp.wa.gov/ReportFile/1414>

Washington State Institute for Public Policy (2012). *Supervision Using Risk Need and Responsivity Principles (high and moderate risk adult offenders) Program Description*.

[Massachusetts Sentencing Commission Survey of Sentencing Practices FY 2011](#)

Massachusetts Sentencing Commission (2012). *Massachusetts Sentencing Commission Survey of Sentencing Practice FY 2011*.

[US Department of Justice Substance Abuse Treatment for State Prisoners \(RSAT\) Program](#)

U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, Justice Assistance Residential Program (2005), *Substance Abuse Treatment for State Prisoners (RSAT)*.

[The Pew Charitable Trust Max Out: The Rise in Prison Inmates Released Without Supervision](#)

The Pew Charitable Trusts (2014). *Max Out: The Rise in Prison Inmates Released Without Supervision*.

[Boston Globe Editorial: “Minimum Security Prisons Play Vital Role in Mass Justice System”, Nov 18, 2011](#)

Minimum Security Prisons Play Vital Role in Mass. Justice System. (2011, November 18). *Boston Globe*, Editorial.

[Mass, Inc. and CRJ Crime, Cost, and Consequences: Is it time to get smart on crime?](#)

Mass, Inc. and Community Resources for Justice (2013). *Crime, Cost, and Consequences: Is it time to get smart on crime?*

[Patrick Administration’s Criminal Justice Reform Initiative: Building Safer Communities and Expanding Access to Opportunity](#)

http://www.mass.gov/bb/h1/fy15h1/prnt_15/exec_15/pbudbrief5.htm

<http://www.mass.gov/eopss/law-enforce-and-cj/prisons/doc-policies/policy-list-english.html>

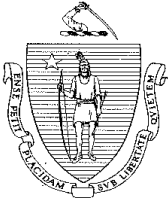
[Massachusetts Results First Initiative Presentation to Commission – 2/25/13](#)

<http://www.mass.gov/eopss/agencies/mrfi/reports-and-presentations.html>

Department of Correction Modeling Presentation to Commission – 10/23/13
<http://www.maineprertrial.org/>
<http://www.prertrial.org/>

APPENDICES

Appendix A: Commitment Letter from Governor Deval L. Patrick



OFFICE OF THE GOVERNOR
COMMONWEALTH OF MASSACHUSETTS
STATE HOUSE • BOSTON, MA 02133
(617) 725-4000

DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

March 7, 2012

Mr. Gary VanLandingham
Director, Results First
Pew Center for the States
The Pew Charitable Trusts
901 E. Street, NW, 10th Floor
Washington, D.C. 20004

Dear Mr. VanLandingham:

I am writing to affirm my administration's commitment to partner with the Pew Center on the States' *Results First* initiative. My administration is implementing many of the concepts that form the basis of the *Results First* approach. I have recently signed an executive order requiring all of our state agencies to implement strategic planning, performance reporting, and performance-based budgeting.

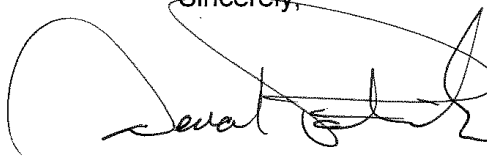
My administration has set clear goals for achieving significant reductions in our adult prison and juvenile facility population by improving outcomes relative to recidivism and overall crime rates. I have recently implemented an aggressive \$10 million dollar youth violence reduction program that is designed to intervene with proven risk youth, a strategy based on a survey of best practices within our state and informed by national models. I have also filed legislation to reform our mandatory minimum drug offender sentencing practices.

Gary Van Landingham
March 7, 2012
Page 2

We look forward to the results of our partnership. I affirm that we will consider the data produced by the team in our policy and budget deliberations, but I reserve the right of approval on any criminal justice policy recommendations which may emerge from the process.

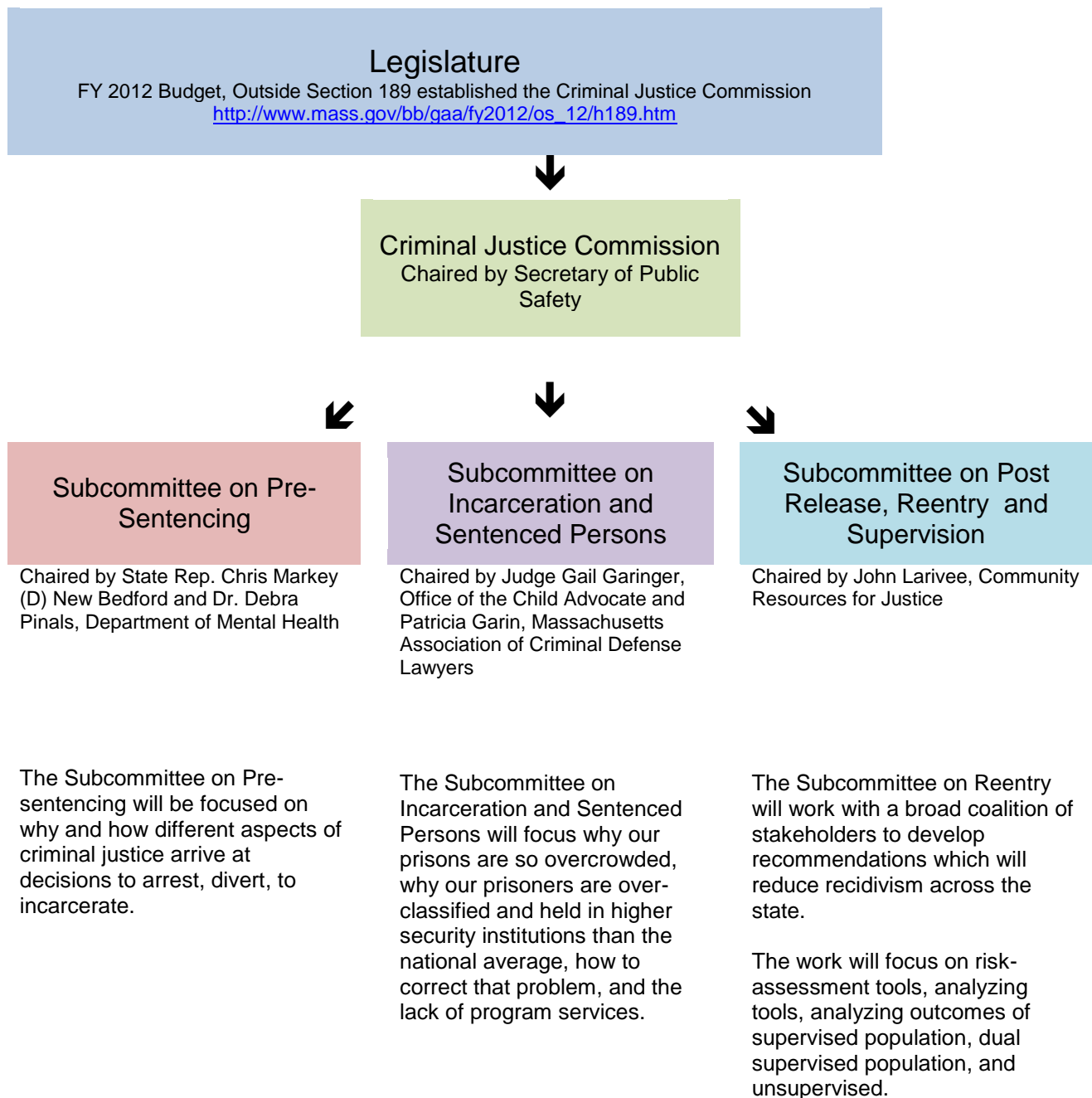
Thank you for extending this exciting opportunity to the State of Massachusetts.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Van Landingham", written over a large, loopy flourish that starts with a large circle on the left and extends to the right.

cc: Mary Elizabeth Heffernan, Secretary of Public Safety and Security

Appendix B: Organizational Chart



Appendix C: Open Meeting Notice



Deval L. Patrick
Governor

Timothy P. Murray
Lieutenant Governor

The Commonwealth of Massachusetts Executive Office of Public Safety & Security

One Ashburton Place, Room 2133
Boston, Massachusetts 02108

Tel: (617) 727-7775
TTY Tel: (617) 727-6618
Fax: (617) 727-4764
www.mass.gov/eops

Mary Elizabeth Heffernan
Secretary

MEMORANDUM

TO: Executive Office for Administration and Finance
Regulations Division, Secretary of the Commonwealth

FROM: Michael Coelho, Assistant Secretary of Policy and Planning, EOPSS

DATE: March 30, 2012

RE: Notice of Open Meeting

NOTICE OF OPEN MEETING

Pursuant to the provisions of G.L. c. 30A and 940 CMR 29.00 *et seq*, the Special Commission to Study the Criminal Justice System has scheduled subcommittee meetings on the following dates:

- 4/4/12 10:30 am- Subcommittee on Incarcerated and Sentenced Persons
- 4/10/12 2:00 pm- Subcommittee on Post-Release, Reentry and Supervision
- 4/11/12 10:30 am- Subcommittee on Pre-Sentencing

All of these meetings will be held at the Executive Office of Public Safety and Security, One Ashburton Place Room 2133, Boston, MA. All future meetings will be posted on our website along with prior meetings notes.

If you have any questions about the commission, please do not hesitate to contact Michael Coelho, Executive Office of Public Safety and Security, at mcoelho@massmail.state.ma.us or at 617-727-7775. Thank you.

Appendix D: The Commission's Recommendations' Voting Tallies

December 16, 2014 meeting

Members not present: Senator Richard Ross, Marty Murphy

Recommendation: Adopt legislation providing for “presumptive parole” at first parole eligibility date.

- **Vote: Recommendation approved by majority voting in favor.**

- **In Favor 7** Senator Jehlen, Senator Brownsberger (designee), Peter Elikann, Judge Garinger Patty Garin, Anthony Benedetti (designee), John Larivee. Senator Brownsberger would be willing to go further in setting parole eligibility earlier.
- **Opposed 3** Representative Markey (designee), Representative Hunt, Sheriff Evangelidis
- **Abstained 4** Attorney General Office (designee), Debra Pinals (designee), DA (designee), Michael Coelho
While the Attorney General may agree with the concept proposed here, without the ability to review specific language, the Office abstained from voting on this legislative recommendation at that time.
- **Non-Voting Members 2** Chair Secretary Andrea Cabral and Chair designee Undersecretary Sandra McCroom.

November 18, 2014 meeting

Members not present: Commissioner Edward Dolan, Representative Hunt, Senator Richard Ross

Recommendation: Remove mandatory minimum sentencing for drug offenses.

- **Vote: Recommendation approved by majority voting in favor.**

- **In Favor 9** Senator Jehlen, Senator Brownsberger (designee), Peter Elikann, Judge Garinger (designee), Patty Garin, Anthony Benedetti, John Larivee, Debra Pinals, Marty Murphy
- **Opposed 3** Representative Markey (designee), Sheriff Evangelidis, District Attorneys (as sent via email to chair designee prior to the meeting)
- **Abstention 1** Attorney General's Office
While the Attorney General may agree with the concept proposed here, without the ability to review specific language, the Office abstained from voting on this legislative recommendation at that time.
- **Non-Voting Members 2** Chair Secretary Andrea Cabral and Chair designee Undersecretary Sandra McCroom.

Revised Recommendation: Sentencing legislation providing parole eligibility at 2/3rds of the lower end of the sentence for all state prison sentences, except for sentences imposed for murder or manslaughter, and at ½ of all county houses of correction sentences of 60 days or more.

• **Vote: Recommendation approved by majority voting in favor.**

- **In Favor 9** Senator Jehlen, Senator Brownsberger (designee), Sheriff Evangelidis, Peter Elikann, Judge Garinger (designee), Patty Garin, Anthony Benedetti, John Larivee, Marty Murphy
Senator Brownsberger voted in favor of this recommendation, and would have been willing to go further in setting parole eligibility earlier.
- **Opposed 2** Representative Markey (designee), District Attorney (via email sent prior to the meeting)
- **Abstained 2** Attorney General Office (designee), Debra Pinals
While the Attorney General may agree with the concept proposed here, without the ability to review specific language, the Office abstained from voting on this legislative recommendation at that time.
- **Non-Voting Members 2** Chair Secretary Andrea Cabral and Chair designee Undersecretary Sandra McCroom.

October 21, 2014 Meeting

Members not present: Secretary Andrea Cabral, Senator Richard Ross, Representative Randy Hunt, Commissioner Edward Dolan, Peter Elikann, Debra Pinals

All votes taken in this meeting were unanimous.

September 23, 2014 Meeting

Members not present: Secretary Andrea Cabral, Senator Richard Ross, Commissioner Edward Dolan, Anthony Benedetti.

Recommendation: Increase training for first responders responding to calls and incidents involving individuals with disorders/disabilities across the criminal justice system.

Vote: Recommendation approved by majority voting in favor.

- **In Favor 12:** Sheila Calkins, Anne Johnson Landry (Senator Brownsberger proxy), Senator Patricia Jehlen, Susann Koelsch (Representative Randy Hunt proxy), Representative Christopher Markey, John Larivee ,Patricia Garin, Peter Elikann, Marty Murphy, Ronald Michaels (Debra Pinals proxy), Sheriff Lewis Evangelidis, Jennifer Franco (DAA proxy)
- **Opposed 1:** Judge Garinger
- **Non-voting members 1:** Undersecretary Sandra McCroom

August 19, 2014 Meeting

Members not present: Senator Richard Ross, Representative Hunt, Representative Markey, Commissioner Edward Dolan

All votes taken in this meeting were unanimous.

July 22, 2014 Meeting

Members not present: Secretary Andrea Cabral, Senator Richard Ross, Sheriff Lewis Evangelidis, District Attorney Michael O'Keefe

All votes taken in this meeting were unanimous.

June 24, 2014

No votes taken during this meeting

April 29, 2014

Members not present: Debra Pinals, Representative Randy Hunt, Senator Richard Ross

All votes taken in this meeting were unanimous.

March 25, 2014

Attendance not recorded for this meeting.

All votes taken in this meeting were unanimous.

Appendix E: The Commission's Subcommittees

Pre-Sentencing Subcommittee

Pre-Sentencing Subcommittee Membership List

Membership (in alphabetical order)	Role Current or Former member (C or F)
Anthony Benedetti, Chief Counsel, Committee for Public Counsel Services (CPCS)	C
Sheila Calkins, Deputy Attorney General	C
Peter Elikann, Esq.	C
Representative Christopher Markey	C
Debra A. Pinals, MD, Assistant Commissioner of Forensic Services, Department of Mental Health	C

Topics and Themes

The following list summarizes topics and themes discussed and debated during meetings:

- Role of specialty courts (mental health, drug courts, etc.)
- Concerns about collateral consequences of criminal records
- Case processing efficiencies and potential savings (e.g. continuances to allow time to develop dispositions vs. speedy trial issues)
- Bail revocation processes
- Discussion of diversion programs, District Attorney roles, and mechanisms for diversion prior to criminal charges
- Acquire data and types of the various diversion programs throughout the Commonwealth
- Discussion of additional programs as alternatives to incarceration
- Need for increased reliance on technology (e.g., GPS monitoring)
- Development of partnerships with police as a diversion strategy
- Possibility of consolidating cases for increased efficiency across courts
- Need for data to track arrests
- Consideration for statutory reform to decriminalize certain minor offenses
- Develop Office of Community Correction for more uniform practices

**Incarcerated and Sentenced Persons Subcommittee
Membership List**

Membership (in alphabetical order)	Role Current or Former member (C or F)
Andrea J. Cabral, Secretary, Executive Office of Public Safety and Security and former Suffolk County Sheriff	F
Ronald Corbett, former Commissioner of Probation	F
Patricia Garin, Massachusetts Association of Criminal Defense Lawyers representative (MACDL)	C
Judge Gail Garinger, Office of the Child Advocate	C
Senator Patricia Jehlen	C
Representative Kevin Murphy	F

The Subcommittee requested data in the following areas:

- DOC classification system;
- comparison of other states' classification tools;
- effectiveness of programming and how it is measured;
- availability of programming in DOC and county facilities;
- numbers of state and county prisoners on program waitlists;
- eligibility requirements for programming, especially academic programming;
- recidivism rates of state and county prisoners;
- overcrowding numbers in state and county facilities, with the jail and house of correction numbers given separately;
- numbers of people held pre-trial in each of the county jails and that number's relative percentage of each county's population;
- information concerning why the pretrial incarceration rates differ so greatly from county to county;
- information concerning the number of people who are held pre-trial for more than three days who actually end up receiving a house of correction or state prison sentence (since it appears that some counties have as many or more people in the jail than in the H of C); and
- effects of overcrowding on DOC classification; and, information concerning the percentages of each state's total number of incarcerated people who are held in maximum, medium and minimum security.

The Subcommittee interviewed the following people:

- Luis Spencer, the then Commissioner of the DOC;
- Carol Mici, Deputy Commissioner of DOC;
- Stephen Bocko, Deputy Commissioner of Probation;
- Katherine Chmiel, Deputy Commissioner of DOC in charge of classification and programming;
- Christopher Mitchell, Director of Program Services at DOC;
- Leslie Walker, Executive Director of Prisoner Legal Services;
- James Pigeon, Director Litigation at Prisoners' Legal Services;
- Barbara Dougan, Executive Director of Families Against Mandatory Minimums, and
- Lyn Levy, Executive Director at SPAN, Inc., a re-entry program.

The Incarcerated and Sentenced Persons Subcommittee reviewed and analyzed the following documents:

- Code of Massachusetts Regulations (CMR)
<http://www.mass.gov/courts/docs/lawlib/101-103cmr/103cmr420.pdf>
- Massachusetts Department of Correction Risk Assessment Tool
http://www.northpointeinc.com/files/technical_documents/FieldGuide2_012813.pdf
- Massachusetts Department of Correction waitlist information
(see below)
- Massachusetts DOC and county weekly facility population data
<http://www.mass.gov/eopss/law-enforce-and-cj/prisons/rsch-data/weekly-count-sheets.html>
- Massachusetts Department of Correction Male Classification Manual
<file:///C:/Users/MBERTIC/Downloads/DOC%20classification%20manual%20male.2.%202014%20pdf.pdf>
- Massachusetts Department of Correction Prison Population Trends 2010
<http://www.mass.gov/eopss/law-enforce-and-cj/prisons/rsch-data/prison-population-trends.html>

DIVISION OF INMATE TRAINING AND EDUCATION																				
MONTHLY ACADEMIC WAIT LIST																				
Revised	MCIF	SMCC	BPR	MCIN	BSCC	PCC	CJ	MCIC	NECC	MCIS	SBCC	OSCC	OCC MIN	MASAC	MTC	BSH	MCIP	NCCI	MCIS MIN	TOTAL
College																				0
PreCollege Math/ Studies																				0
A.B.E.	1	2	7	21	10	8		27	7	53	142	18	4	0	1	0	0	38	20	359
E.S.L.	1	1	4	26	10	11		128	1	40	18	17	4	0	2	0	0	20	21	304
GED	9	0	3	14	19	0	0	35	1	32	109	8	3	0	0	0	0	33	13	279
Pre-GED	8	1	2	27	16	8		55	1	67	121	16	2	0	3	0	0	33	19	379
Special Ed																		1		1
Literacy	16							1												17
Title I	16							0		0	11	0	0	1				1		29
Life Skills	2								20			5	4							31
Protective Custody/ Secured Housing Units											7	0								7
Tutor Training	12			18				54		30		0	0		10		8	26	0	158
AutoBody/ Maintenance									6								31			37
Barber Program				14						55	70							35		174
Braille Transcription					0															0
Building Trades								148		65					59					272
CDL				51	42	13	3													109
Computer for Schools																			139	139
Computer Lab	43	40		31	57			58		185	236	131			103	19		200		1103
Cosmetology	34																			34
Culinary Arts/ ServSafe	23	12		76				172	7	102	169	30						70		661
HVAC						1						42	22							65
Horticulture		25																		25
OSHA		7																		7
Small Engine Repair																		40		40
Welding				143														56		199
Wheelchair Repair										58									74	132
Total Wait List	165	88	16	421	154	41	3	678	43	687	883	267	39	1	178	19	39	553	286	4561

Program and Reentry Services																				
Program Name	MCIF	SMCC	BSPRC	MCIN	BSCC	PCC	CJ	MCIC	NECC	MCIS	SBCC	OCCC	MASAC	MTG	BSH	MCIP	NCCI			TOTAL
Correctional Recovery Academy (Substance Abuse)	X	X	X	33	3	X	X	18	X	28	X	X	X	X	X	X	10			92
Women's Recovery Academy (Substance Abuse)	1	2	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X			3
Introduction to 12 Step (Substance Abuse)	X	X	X	X	X	X	31	X	X	X	X	X	X	X	X	X	X			31
Introduction to Treatment (Substance Abuse)	X	X	X	X	X	X	23	X	X	X	X	X	X	X	X	X	X			23
Substance Abuse Education	X	X	X	X	X	X	48	X	X	X	473	292	X	X	X	X	X			813
Steps to Recovery (Substance Abuse)	7	9	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X			16
Thinking for A Change	X	X	X	X	X	22	X	X	X	X	X	32	0	X	X	6	X			60
Criminal Thinking (Cognitive Behavioral)	0	6	X	X	X	X	X	291	X	300	505	X	X	X	X	X	X			1102
Violence Reduction	38	8	X	X	X	21	X	302	X	397	547	261	3	X	5	10	X			1592
Victims of Violence	8	1	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X			9
Sex Offender Treatment	0	X	X	10	X	X	X	X	X	X	X	0	X	2	X	X	163			175
Employment Readiness (Reentry) Workshop	43	44	24	22	16	11	0	75	26	109	54	21	0	5	0	0	39			489
Total Wait List	97	70	24	65	19	54	102	686	26	834	1579	606	3	7	5	16	212			4405

Report of the Subcommittee on Incarcerated Persons

The Subcommittee on Incarcerated Persons considered many of the challenges and problems facing prisoners, prison administrators and the public concerning prison conditions in general as well as the effect that prison conditions have on successful re-entry, public safety, and fiscal expenditures. The subcommittee decided to focus on three problem areas:

1) over-crowding in the state and county facilities; 2) over-classification of state prisoners; and, 3) the lack of appropriate treatment and programming in state and county facilities.

The focus of the subcommittee's work has been to identify the causal factors of those problems and to make recommendations for change.²²

I. Overcrowding

A. Problem Statement: The Extent of the Overcrowding

Despite the fact that our crime rate is dropping, our prison population continues to grow. According to MassInc's recent report, *Crime, Cost and Consequences: Is It Time to Get Smart on Crime?* (March 2013) "[s]ince 1990, new commitments to DOC prisons have fallen by 20 percent, yet the DOC's average daily population has increased by one third. The disparity between annual commitments and average daily population is also present in county facilities. Available data show that county facilities saw their populations increase by 65 percent between 1992 and 2012; over this period new commitments to the HOCs fell by about 7 percent." *Id.* at 12. The DOC population increased 13% from January 1, 2004 to January 1, 2013. Over the same period of time, the HOC population decreased by 7%. See DOC Quarterly Overcrowding Reports, 4th Quarter 2012 and 4th Quarter 2003. (showing HOC population dropped by 816 prisoners).

1. DOC Overcrowding

As of June 2013, Department of Correction facilities had a total design capacity of 8,029 beds. (8,005 beds at DOC prisons and 24 beds at Shattuck Hospital.) The total population in these facilities was 10,925, resulting in 136% occupancy.

Of the 8,029 DOC beds:

1,579 are designated as maximum security beds (20% of total)

5,074 are designated as medium security beds (63% of total)

1,376 are designated as minimum/pre-release beds (17% of total)

^{22.} The subcommittee realizes that there are many more challenges and problems to address. We hope to address additional issues in the upcoming year.

The only two maximum security placements—Souza Baranowski Correctional Center and the maximum unit at MCI Cedar Junction—were both overcrowded with 1,888 people living in space designed for 1,579, an occupancy rate of 120%.

Of the eleven medium security placements nine were overcrowded.²³ The Awaiting Trial Unit at MCI Framingham was the most overcrowded medium facility. It housed 287 women in housing designed for 64 women, resulting in 448% occupancy. The only medium facility units not overcrowded were the reception center for incoming prisoners at MCI Cedar Junction, and the unit at MCI Framingham for sentenced women. Both of those facilities were at 94% capacity. Overall, DOC's medium security units operate at 150% occupancy.

Significantly, DOC's minimum security placements are underutilized. Overall, DOC's four minimum units at Old Colony Correctional Center, North Central Correctional Institution at Gardner, MCI Shirley and the MA Alcohol and Substance Abuse Center operate overall at 81% capacity, with only 540 of 665 beds filled. The MA Alcohol and Substance Abuse Center is at 64% capacity. We have asked for additional information as to why this placement is so underutilized. We have asked for data on the number of beds set aside for civil commitments and the number set aside for DOC minimum placements.

DOC has designated five facilities as minimum/pre-release facilities. These five facilities house 587 minimum security prisoners and 280 pre-release prisoners for a total of 867 prisoners. Overall these facilities operate at 128% occupancy. It is not clear if the overcrowding is in the minimum or pre-release units or both. We have requested more data on this. DOC has 35 contract pre-release beds in the community at the Brooke House for women and the Women and Children's Program. Only 21 of those beds are filled, resulting in only 60% occupancy.

2. House of Correction Overcrowding

The county facilities which house both persons awaiting trial (the jail population) and persons serving sentences of two and a half years or less (the house of correction population) are designed to house 8,633 persons. As of June 2013, they housed 11,262 persons for a total occupancy of 130%. The most overcrowded facilities are Bristol County's facility at Dartmouth which is at 337% occupancy and Essex County's facilities at Middleton and Lawrence which are at 246% and 244% occupancy, respectively. [We have asked for more data to separate out the jail and HOC populations.]

^{23.} The DOC lists the 24 beds at Shattuck Hospital as medium security beds. Additionally, there are prisoners housed in the Intensive Care Unit who are guarded 24 hours a day by two correctional officers who remain in their rooms. As of June 2013, 21 of the 24 medium security beds were filled.

3. Jail Overcrowding

In addition to considering how overcrowded the individual jails are at present, there appears to be great differences in the percentage of each county's population that is incarcerated pending trial. [The Subcommittee asked for statistics on the numbers of people charged with offenses in each county last year and the numbers of people detained pre-trial. We also requested data on jail versus HOC populations. It is our understanding that the Sheriff's Association provided the requested data to EOPSS but the Subcommittee did not receive this information in time for inclusion in this report.]

Causes of Prison Overcrowding: Sentencing Laws and Practices

The percentage of the Massachusetts population confined in the state's prisons and jails has tripled since the early 1980's. The "tough on crime" criminal justice policies adopted in the late 1980's and early 1990's are responsible for these high cost/poor outcome practices. From 1990 to 2012, the typical length of stay in prison for the same crime increased by one-third. According to MassInc., "[t]his equates to an additional year for the average state inmate and an additional 41 days for the average county inmate." *Id.*^{24/} Two categories of offenders account for nearly half the growth in the state prison population since 1990: drug offenders and first-degree lifers.

Drug offenders represented just 6 percent of DOC prisoners in 1985; by 1990, they accounted for 20 percent of all prisoners. *Id.* at 14. They still make up 22% of the DOC population.

The number of prisoners serving life sentences with no eligibility for parole represents the second major population driver. According to MassInc., "[i]n 1990, DOC facilities housed 353 first-degree lifers. Today, more than 1,000 inmates are ineligible for release. This 188 percent increase accounts for 23 percent of the DOC population growth since 1990. In contrast to the increase in drug offenders, which is clearly linked to mandatory minimum statutes, the growth in this population is largely driven by increasing life expectancy and other factors unrelated to policy." *Id.* at 15.

1. Mandatory Minimum Sentences for Drug Offenses

Mandatory minimum sentences for drug offenses were enacted in Massachusetts in the 1980's without any evidence that they would either reduce drug crimes or drug addiction.

Over 30 years later, drug offenses have not tapered off. According to the Mass. Sentencing Commission, the number of convictions for drug offenses that require mandatory minimum sentences has held steady in the 700 to 900 convictions per year range for nearly 20 years.

Drug abuse and addiction have not tapered off, either. Instead, by 2009 the state's OxyContin and Heroin Commission called drug addiction a public health epidemic.

Mandatory minimums result in the over-sentencing of too many drug offenders. According to the Sentencing Commission, for nearly 20 years over half of all drug offenders who were sentenced to mandatory minimums fell into the two lowest level criminal history groups. Mandatory minimums prevent sentencing practices that distinguish between drug offenders who present a risk to public safety and those who do not.

Since 2000, at least nine states have repealed mandatory minimums for certain drug offenses, including Ohio, New York, Michigan, South Carolina, Louisiana and Oregon. Indeed the national trend is to pull away from using prisons for drug treatment.

^{24.} "At a cost of \$45,500 per year for state prisoners and \$37,000 per year for county inmates, increasing time served by one-third translates too an added cost of \$150 million per year." MassInc. *supra* at 12.

All drug offenses presently provide hefty maximum sentences – usually from 15 to 20 years, without any consideration of mandatory minimum terms. If mandatory minimums for drug offenses were repealed, courts would still be able to sentence the most dangerous offenders severely while crafting more appropriate sentences for the majority of drug offenders who present a lower risk to the public.

2. Mandatory Minimum Sentences for School Zone Offenses

The subcommittee is separating its comments on School Zone offenses from its comments on mandatory minimums for other drug offenses because School Zone offenses are often excluded from reforms eliminating or limiting mandatory minimums. That happened with the 2012 sentencing reforms and the Senate’s 2011 sentencing bill.

According to the Sentencing Commission, school zone convictions were the most frequent drug offense requiring a mandatory minimum sentence from 1994 to 2006, sometimes accounting for 40% or more of all mandatory drug offenses. School zone convictions have been the second most frequent mandatory drug offense since 2007 (after the distribution of cocaine). A school zone conviction is always an “add on” to one or more underlying offenses. Data from the Sentencing Commission and FAMM reveal that between 2000 and 2011, in 80% of the cases where defendants were sentenced to a mandatory minimum for a school zone case, the underlying offense did not require a mandatory minimum. FAMM’s data also reveals that during that same period of time, people of color made up 79.37% of the persons who received a mandatory minimum sentence for a school zone case.

School zone cases also greatly impact overcrowding at the HOCs. Between 2000 and 2011, 77.72% of the persons who received a school zone mandatory minimum two year sentence went to a HOC. There was an average of 324 persons sentenced each year during those years.

3. First Degree Lifers

The subcommittee considered whether persons who had served many years in prison – sometimes 40 or more years – and were often sick and dying must always die in prison in every circumstance. At present, the only way for a first degree lifer to get out of prison is commutation and the Governor’s Office has not commuted the sentence of an elderly or dying prisoner in decades. The subcommittee believes there should be a legislatively created mechanism for elderly or terminally ill persons to leave prison if prison personnel determine that the prisoner poses no risk of harm to the public. Data on second degree lifers who have been paroled in the past, show us that lifers present the least likelihood to reoffend and that caring for these elderly prisoners as they age involves significant medical costs. The annual cost to house a prisoner at DOC’s Shattuck Hospital is \$232,065.26 annually.

B. Recommendations to Address Overcrowding

1. Remove mandatory minimums for drug offenses.
2. Remove the two year mandatory minimum for school zone convictions.
3. Adopt legislation establishing a process for medical/geriatric release from prison.
4. The Sentencing Commission should be reestablished and charged with re-evaluating sentencing practices and priorities in Massachusetts to bring them in line with evidence-based practices that are consistent with its mission set forth in M.G.L. c.211E, sec. 2.
5. EOPSS should perform a fiscal analysis and cost-benefit analysis looking back thirty years before any additional mandatory minimum sentencing bills are enacted.
6. This subcommittee recognizes that parole issues are being addressed by the Subcommittee on Reentry and Post-Release Supervision. However, because the drop in parole rates has contributed to the overcrowding of prisons and HOCs²⁵, we wish to add our support to the recommendations made by the Subcommittee on Reentry to revise parole hearing/decision/eligibility standards in order to increase parole eligibility and parole more people to the community. In particular, we support the recommendation to institute presumptive parole.²⁶
7. This subcommittee realizes that probation issues are being addressed by the Subcommittee on Pre-sentencing and Pre-trial Issues. However, we believe that establishing presumptive probation for certain offenses will aid with HOC overcrowding. The population of County facilities increased by 65 percent between 1992 and 2012, while new commitments fell by 7 percent. If, in the absence of special circumstances, defendants facing sentencing for certain offenses are sentenced to probation, house of correction overcrowding may be reduced.

25. The Department of Correction (DOC) data is clear:

"Criminally sentenced releases to the street are either paroled to the street or released to an expiration of sentence; total releases to the street decreased by 17% between 2010 and 2011. At the same time, releases to an expiration of sentence increased by 8% from 1,710 in 2010 to 1,842 in 2011; **releases paroled to the street decreased by 58% from 1,028 in 2010 to 435 in 2011.** Additionally, inmates paroled to the street accounted for 19% of total releases to the street compared to 38% in 2010 and 39% in 2009." See <http://www.mass.gov/eopss/docs/doc/research-reports/misc-reports/fourthqtr2011report.pdf>.

This means the DOC had 593 more prisoners in 2011 than it did in 2010 based solely on the 58% decline in parole releases. As important, twice as many prisoners were released without supervision in 2011 compared to 2010.

26. The Subcommittee on Incarcerated Persons does not support the recommendation on mandatory post-release supervision.

II. Over-classification of Prisoners in the Department of Correction

A. Problem Statement: The Extent of DOC Over-classification

The Massachusetts Department of Correction is over-classified; there are too many prisoners confined in maximum and medium security facilities and too few in minimum security compared to prison systems in other states. Over-classification is problematic for at least two reasons. First, is public safety: prisoners in lower security have greater access to rehabilitative programming and are more likely to reintegrate successfully into the community. Second, is fiscal resources: higher security prisons are more expensive to operate than lower security prisons.

Currently, 18% of DOC prisoners are in maximum security, 69% are in medium, and only 13% are in minimum security or pre-release.

Nationally, approximately 10-15% of prisoners are in maximum, 35-40% are in medium, and 35-40% are in minimum.

Currently, 20% of DOC beds are designated as maximum (1,579 beds), 63% are designated as medium (5,074 beds), and 17% are designated as minimum or below (1,376 beds).

The DOC suggests that Massachusetts is distinguishable from other states because most prisoners serving short sentences in other states (2 and ½ years or less) are housed in minimum security state prisons, but in Massachusetts they are in county houses of correction rather than in the DOC; however, this explanation does not persuasively explain the disparity.²⁷ A more likely explanation is that the DOC classification system is overly restrictive and designed to place prisoners in the facilities where DOC has beds, and DOC has too few minimum and pre-release beds.

At present, it appears that any meaningful attempt at reforming the DOC classification system will be difficult unless the DOC re-designates the number of maximum, medium, minimum and pre-release beds in the DOC to reflect the national averages and operates these facilities in accordance with their new designation.

B. Causes of Over-classification

“Another feature of the tough on crime era has been the movement of prisoners to higher-security settings. In 1990, less than 8 percent of DOC inmates were confined in maximum-security facilities . . . In absolute terms, the number of offenders serving time in the most secure facilities grew by more than 200 percent over the last two decades. Evidence

²⁷. In fact, DOC population data on female prisoners – many of whom are serving short House of Correction sentences in DOC custody at MCI Framingham – clearly refutes DOC’s explanation. The data indicate that only 25% of sentenced women in DOC custody, including the women with House sentences, are in minimum security. Although this percentage is significantly higher than the percentage of male prisoners in minimum security, it is still well below the overall national average of 35-40 % of the total population. Since women generally need less security than men, the percentage of women in minimum should be even higher than the overall national average.

suggests that this trend was not primarily the result of a more dangerous prisoner population – violent offenders today make up 62 percent of the DOC population, exactly the same share as 1990 – but rather the result of classifying prisoners into higher-security facilities. Since 1990, the department has added more than 1200 maximum-security beds and more than 1,000 medium security beds. While DOC’s population has grown by one-third since 1990, minimum security settings have just 39 new beds. Moving a prisoner up a security level costs about \$10,000.00 annually. The shift to higher-security settings relative to the 1990 classification structure costs the state approximately \$16 million annually.” *Id.* at 15.

Since 2007, the DOC has used an “objective classification system” designed to ensure that prisoners are matched to their appropriate security level and to eliminate arbitrary classification decisions. An “objective classification score” is calculated for each prisoner, with points assigned for each specified risk factor. Depending on the point score, the DOC assigns a security level to each prisoner, ranging from pre-release to maximum security. Although the current DOC classification system is an improvement over prior the systems, it has not succeeded in reducing over-classification or in eliminating arbitrary decision making.

The lack of minimum and pre-release beds has led DOC classification hearings that frequently result in the over-classification of prisoners. The prisoners appear to be designated a particular security level based on where there is bed space. At present, two-thirds of DOC prisoners released into the community come directly from medium and maximum security prisons. “From a public safety standpoint, this practice is clearly unacceptable, given that DOC prisoners released from high security prisons recidivate at nearly twice the rate as those leaving from lower security settings. Research suggests that the restrictive conditions found in these facilities contribute to this increased rate of recidivism.” *Id.* at 16.

C. Recommendations

1. Re-designate the number of maximum, medium, minimum and pre-release beds in the DOC to reflect the national averages and operate these facilities in accordance with their new designation.
2. Revise the Classification Scoring System. The DOC Classification system was revised in February 2014 to allow prisoners with six or fewer points to be eligible for minimum. (Prior to the revision, only prisoners with five or fewer points were eligible for minimum) Presently, for male prisoners, 12 or more points scores maximum security, 7-11 points indicates medium security, and 6 points or less means the prisoner should be in minimum or pre-release. These numbers should be adjusted so that fewer prisoners are rated maximum and medium security and more are rated minimum.

3. Modify the Specified Classification Risk Factors. Several of the risk factors are frequently applied in an arbitrary manner to produce results that do not reflect actual risk. Specific provisions of the DOC Classification Manual that are particularly problematic include:
 - “History of escape or attempted escape.” Under this provision, a prisoner in a secure facility will receive seven classification points for incidents within last five years, five points for incidents occurring between five and ten years ago, and one point for incidents more than ten years ago. An incident is any escape related conduct, regardless of whether the prisoner merely expressed a wish to escape, or took steps toward an escape, or actually escaped. Furthermore, under current DOC policy, mere possession of a cell phone counts as an “escape” no matter how the prisoner used the cell phone. This has resulted in hundreds of prisoners receiving escape points even though they had no intention of attempting an escape.
 - “History of Prior Institutional Violence Within Four Years” (PIV), assigns points for “documented behavior” that occurred during a previous sentence, while in jail awaiting trial and, most significantly, while in DOC custody before the prisoner’s first classification hearing. (This number was changed from seven years to four years in February of 2014.) Although this risk factor may be appropriate at the initial classification hearing, it should be eliminated from the scoring sheet at reclassification hearings. It is irrational to punish prisoners far more harshly for behavior occurring in jail, or in their first few weeks in DOC custody before the initial classification, than for the same or worse misconduct occurring afterwards. It is also irrational to score pre-classification misconduct for four years while post-classification misconduct, even though more likely to reflect the prisoner’s current risk, is only considered for eighteen months.
 - Failure to Consider Length of Time to Release. Although the current classification system allows points to be deducted based on the prisoner’s age and program participation, it does not take into account how close the prisoner is to release. As a result, many prisoners with short sentences are forced to wrap-up from maximum or medium security, making successful reentry much more difficult.
5. Reduce Excessive and Unnecessary Overrides.

The DOC classification system provides for eleven categories of “non-discretionary overrides” that require the prisoner be assigned to a higher security level than his objective score would indicate. In addition, there are seven types of “discretionary overrides” that allow the prisoner to be placed in higher security based on the judgment of DOC administrators, and three types that allow lower security placement. Although “discretionary overrides are limited to 15% of the DOC population, more than half of the overall prisoner population is subject to a mandatory override. Particularly problematic are the following:

- Code A bars all prisoners from minimum unless they are within five years of their earliest release date. (This was changed from four to five in February 2014) According to the MGT report commissioned by DOC, the four year override kept approximately 400 prisoners at medium security even though they are otherwise suitable for minimum. The rationale for the Code A override appears to be driven by the shortage of minimum beds rather than actual security needs.
- Code C bars all prisoners from minimum security if they are potentially subject to civil commitment under G.L. c. 123A, no matter how unlikely that may be. Even though G.L. c. 123A, requires DOC to determine which prisoners are most likely to be the subject of commitment proceedings, DOC has refused to do so. Instead, it applies the override automatically to all prisoners who are even theoretically subject to a civil commitment petition (e.g.) - approximately 25% of the total prisoner population.
- Code E provides that all first degree lifers are prohibited from living in minimum. Code F bars all persons convicted of a crime involving loss of life (second degree murder, manslaughter) from living in minimum or below absent a positive vote by the Parole Board. All juveniles convicted of first degree murder are now parole eligible and all adults and juveniles serving second degree life sentences and sentences for manslaughter are eligible for parole. Barring them from stepping down to minimum security when their classification numbers rate them as appropriate for minimum unnecessarily extends their stays in prison for years. If they could step down when eligible, as opposed to waiting to see the Parole Board, they could be ready to be paroled much sooner since the Parole Board generally wants these prisoners to have served at least one year in minimum or lower before returning to the community.
- Code J requires that all individuals serving first degree life sentences be placed in maximum security for at least two years. Although a period of time in maximum security may be appropriate for many prisoners, each prisoner should be evaluated on an individual basis. A categorical non-discretionary override is not appropriate.
- Code L requires that any prisoner convicted of murder while incarcerated be permanently housed in maximum security. While this override impacts only a very small number of prisoners, it is unduly restrictive. Some of these individuals committed their crime more than 30 years ago and had successfully lived in medium security for many years prior to implementation of this rule.
- Code T and Code U allow discretionary overrides to higher security based on “Institutional Negative Adjustment” and threats to “Safe Orderly Operation of the Facility.” These are highly subjective standards that are often applied arbitrarily and without adequate explanation.

6. Revise the Classification Scoring System. The DOC Classification system was revised in February

1. Amend statutes that preclude placement in minimum and pre-release facilities.

According to DOC almost 80% of all prisoners are subject to statutory restrictions that impact their classification and interfere with successful re-entry. These include:

- G.L. c. 127, § 49, which prohibits DOC from placing a prisoner in a pre-release unless he is within 18 months of his parole eligibility or discharge date. Section 49 also prohibits any sex offender from placement in pre-release.
- Mandatory minimum sentences statutes, many of which specifically prohibit work release or pre-release for the entire mandatory portion of the sentence. This interferes with successful re-entry by forcing DOC to confine many prisoners at higher security than is necessary until they are discharged, and makes it impossible to implement a comprehensive re-entry plan.

2. Limit the use of discretionary overrides to ____%, a national best practice percentage. [We are getting data on this]

III. Lack of Appropriate Treatment and Programming

A. Problem Statement: The Extent of the Problem

1. DOC

- In 2011, the Department of Correction (DOC) devoted 2.09% of its budget to prison programming, including education (this figure is down from a 2.2% expenditure in 2010)
- In September 2012, there were 4,561 prisoners on the DOC's wait list for academic programming, including job training.
- In September 2012, there were 4,405 prisoners on the DOC's wait list for program and re-entry services, including critical substance abuse treatment
- Approximately 80% of prisoners report substance abuse
- The six year recidivism rate (based on re-arrest) for those released from the DOC is 61% (EOPSS/Pew Center for the States Results First MA data)
- The recidivism rate (based on re-incarceration) of those released from a maximum security prison is 62%; the overall DOC rate is 42%
- 473 of the approximately 1,300 prisoners at the state maximum security prison are on the DOC's wait list for substance abuse treatment

2. HOCs

HOCs - [The Subcommittee requested data on HOC programming. It is our understanding that the Sheriff's Association provided the requested data to EOPSS but the Subcommittee did not receive the information in time for inclusion in this report.]

B. Cause of Lack of Treatment and Programming

1. There have been deep cuts to state funding of prison programming and treatment. In 1990, the state allocated nearly \$7 million (in today's dollars) to prison education. By 2004, the figure had fallen by 25 per cent to \$5 million. At present, the prison education line item is eliminated entirely from the DOC budget.

C. Recommendations

1. The DOC's budget should be more closely aligned with its mission and priorities. Public safety will be enhanced with increased educational, vocational and program services. More funds must be dedicated to these areas.
2. Increase programming
 - prisoners should be able to access appropriate programming on demand
 - research should be conducted to obtain the costs of providing treatment and training on demand or at least reducing the wait lists for both to a reasonable period of time
 - programming participation must be guaranteed prior to prisoners' release dates
 - funding for programming needs to increase; this funding may require an earmark to insure that programming remains funded when staff contracts are negotiated, 9C cuts occur, etc.
3. All programming must be assessed
 - all programming must be evidence- based and regularly evaluated for its effectiveness, particularly its effect on recidivism
 - data on programming and outcomes must be reported annually
4. Massachusetts needs to re-institute college education for prisoners. Studying the program recently instituted in New York State might be beneficial.

**Post-Release, Reentry, and Supervision Subcommittee
Membership List**

Membership (in alphabetical order)	Role Current or Former Member (C or F)
John Larivee, Community Resources for Justice	C
Mary Elizabeth Heffernan, former Secretary, EOPSS	F
Sandra McCroom, Undersecretary of Criminal Justice, EOPSS	C
Marty Murphy, Foley Hoag, Boston Bar Association representative	C
Michael O'Keefe, District Attorney, Cape and Islands	C
Senator Richard J. Ross	C
Senator Stanley Rosenberg	F
Representative Daniel Winslow	F

The Subcommittee interviewed the following people:

- Sheriff Michael Bellotti, Norfolk County
- Sheridan Haines, Executive Director; Governor's Council to Address Sexual & Domestic Violence
- Rhiana Kohl, Executive Director, Office of Strategic Planning & Research, Department of Correction
- Ann Lambert, American Civil Liberties Union (ACLU)
- Luis Spencer, former Commissioner of Probation
- James Walsh, Massachusetts Sheriff Association

The members identified information that would help its deliberations:

- Demographics on state and county prisoner releases, including home (zip code) address and the usual demographics;
- Risk/Need profile at time of discharge;
- Services available and utilized by released persons (not just a directory of available services, but services that are included in discharge plans and that are utilized by the release);
- A recommended portfolio of services that are proven to be effective for this population. What dosage of programs will be effective? Who will prescribe the dosage and who will monitor it?;
- A list of agencies that are responsible (accountable) for oversight of these services; and
- Standardized briefing on the risk assessment tools utilized by criminal justice agencies.

Borrowing on the work of the 2012 Future Search Conference and its report, the subcommittee identified “Goals of the Commonwealth’s Reentry System (see pp. 2 & 17).

- Reduce recidivism by 50% in the coming five years;
- Establish a comprehensive communications system;
- Create a statewide continuum of care and support services;
- Engage the broader community in reentry; and
- Build a performance-based accountability system.

The subcommittee identified four key principles to guide its work:

- Expand parole eligibility and use;
- Focus correctional resources on those assessed to have a moderate or high risk to recidivate;
- Ensure that such prisoners who are serving sentences of one year or more are under supervision following release from a correctional facility; and
- Ensure efficient utilization of correctional resources.

The Post-release, Reentry, and Supervision Subcommittee reviewed and analyzed the following documents:

- [Mass. Department of Correction Risk Assessment Tool
http://www.northpointeinc.com/files/technical_documents/FieldGuide2_012813.pdf](http://www.northpointeinc.com/files/technical_documents/FieldGuide2_012813.pdf)
- [Parole Risk Assessment Tool
http://www.mhs.com/product.aspx?gr=saf&id=overview&prod=ls-cmi](http://www.mhs.com/product.aspx?gr=saf&id=overview&prod=ls-cmi)
- [Probation Risk Assessment Tool
http://www.northpointeinc.com/files/technical_documents/FieldGuide2_012813.pdf](http://www.northpointeinc.com/files/technical_documents/FieldGuide2_012813.pdf)
- Recidivism Rates 2005 Release Cohort
- 2006 Parole Recidivism Research Brief

Department of Correction, Parole, and Probation Risk Assessment Tools Presented to the Special Commission to Study the Criminal Justice System

- **DOC Risk Assessment Tool (COMPAS)**
- **Parole Risk Assessment Tool (LS/CMI)**
- **Probation Risk Assessment Tool (ORAS)**

Presentations to the Special Commission to Study the Criminal Justice System

- **Maine Pre-trial Presentation**
- **Final DOC Modeling Presentation – February 25, 2014**
- **Pre-Trial Justice Institute**
- **Mass. Results First Initiative Presentation – February 25, 2013**

Appendix F: Massachusetts Results First Initiative and Justice Reinvestment Initiative

Massachusetts Results First Initiative Overview:

The Pew-MacArthur Results First Initiative, a project of The Pew Charitable Trusts and the John D. and Catherine T. MacArthur Foundation, works with 16 states to implement a cost-benefit analysis approach that helps policymakers identify and invest in programs that rigorous research has proven to be effective. It enables states to analyze a wide range of policy choices and identify those that can maximize outcomes and avoid costs.

The Results First Cost-Benefit Model—designed by the Washington State Institute of Public Policy (WSIPP)—is a nationally recognized and validated cost-benefit approach delivered to states at no cost. There are several outcome components including crime, child welfare, substance abuse disorders, early childhood education, and healthcare.

In 2012, in partnership with the Commission, Massachusetts launched the Massachusetts Results First Initiative (Mass. Results First), implementing the WSIPP crime model to focus on data-driven adult and juvenile criminal justice policy solutions to curtail spending and strengthen public safety. Mass. Results First brings together representatives from Massachusetts' criminal justice agencies to collect and analyze recidivism data, conduct cost-benefit analyses of agencies' evidence-based programs, and identify ways to utilize data in making evidence-based programmatic and policy decisions. Representatives from these agencies comprise the Mass. Results First workgroup:

- Executive Office of Public Safety and Security
- Sentencing Commission and Trial Court
- Department of Correction
- County sheriffs' departments
- Department of Youth Services
- Office of the Commissioner of Probation
- Parole Board
- Sheriffs' Association
- Statistical Analysis Center

The Massachusetts Results First Initiative Implementation in Massachusetts:

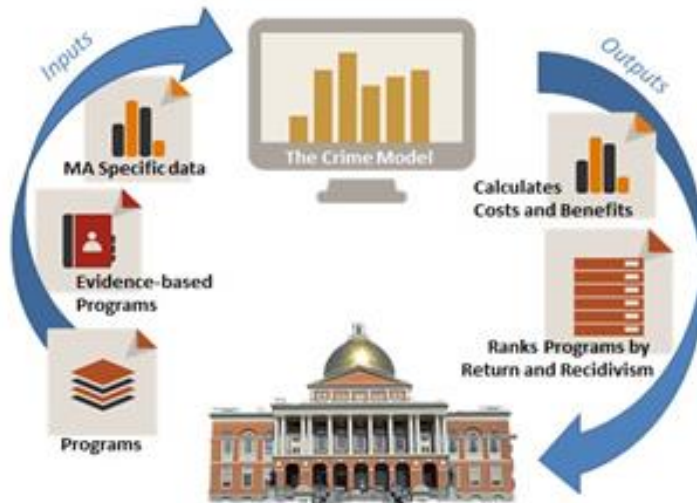
To implement Mass. Results First, the Mass. Results First workgroup (the workgroup) collected three key data sets:

1. ***Inventories of evidence-based programs.*** The workgroup collected program information for 21 evidence-based, state-funded programs aimed at recidivism reduction operated by the Department of Correction (DOC), Probation, and Parole. For example, programs included Education in Prison (DOC), Hawaii Opportunity probation Enforcement /Massachusetts Offender Recidivism Reduction (HOPE/MORE) (Probation), and Risk need and Responsivity Principles with Level of Service/Case Management Inventory (LS/CMI) (Parole).
2. ***Program marginal costs.*** The workgroup determined the marginal costs—the cost to serve one additional person (excluding fixed agency costs)—for each DOC, Probation, and Parole program.
3. ***Agency resource use and recidivism data.*** The workgroup analyzed over 44,000 recidivism records from individuals released from the DOC, Houses of Correction, Department of Youth Services (DYS), and those beginning Parole or Probation supervision during 2005, to compute a 7-year cumulative recidivism rate. The workgroup reviewed recidivism data, the seriousness of offenses, and the number of trips to court per charge by offense category. Additionally, the workgroup calculated Massachusetts' criminal justice system resource use. This effort marked the first time Massachusetts' criminal justice agencies systematically collected and shared data across agencies and with policymakers.

Evidence-based programs or practices are those whose level of effectiveness has been determined by rigorous evaluations, such as randomized clinical trials, statistically-controlled evaluations that incorporate strong control or comparison group designs, or a single, large multi-site randomized trial. Typically, these programs have specified a set of procedures that allow for successful replication. ***Recidivism*** occurs when a person, who has been sentenced and released from the criminal justice system or begins a term of probation or parole supervision, commits a new crime and gets convicted.

With this information, the workgroup conducted a cost-benefit analysis. The Figure below depicts the role of the cost-benefit crime model in the evidence-based policymaking process. Highlights of the model include:

**Figure 2. Mass. Results First
Evidence-Based Policymaking Process**



Source: EOPSS (2014)

- A. ***Comprehensive Inventory of Evidence-Based Programs.*** The crime model contains an inventory of evidence-based programs proven to reduce crime through WSIPP's rigorous scientific evaluation. Evidence-based programs include interventions related to education, employment training, substance abuse, and behavioral therapy, for example.
- B. ***State-Specific Information.*** Massachusetts customized the crime model by adding Massachusetts-specific population, recidivism, program, and resource use data, described in detail above.
- C. ***Cost-Benefit Analysis.*** The model runs a cost-benefit analysis, providing a method of comparison to determine the efficiency of evidence-based programs based on a program's net benefit to society over time; that is, comparing total expected criminal justice costs (to taxpayers and victims) to total expected benefits (crime reduction and public safety). The model monetizes the benefits of a program based on its expected effect on recidivism, and ranks programs according to their return on investment.
- D. ***Evidence-Based Policymaking.*** Policymakers can make apple to apple comparisons of otherwise disparate programs and strategically direct funds to programs and policies proven to work.

Interim Findings and Next Steps:

“Even as Massachusetts continues to implement Results First, we’re already realizing tremendous gains in the breadth and depth of information available to policymakers. Being able to conduct meaningful analyses on our recidivism rates and understanding the cost drivers will lead to robust, evidence-based policy initiatives and, ultimately, better outcomes for all.”

Senator Stan Rosenberg (D)

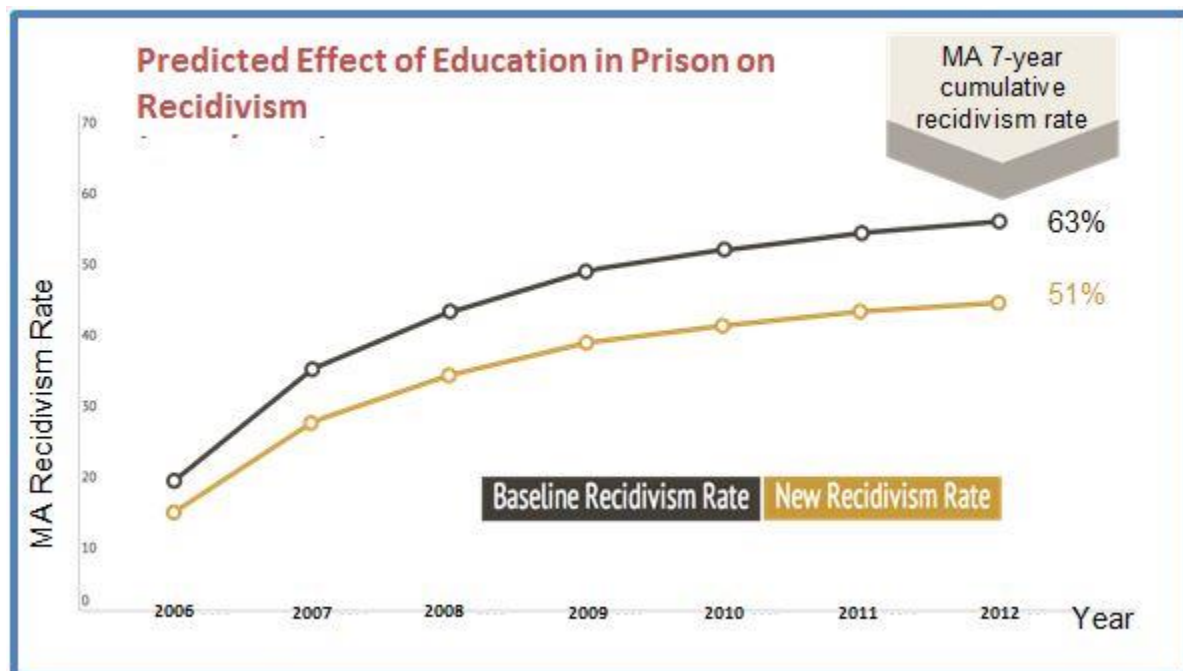
In August 2014, the EOPSS Research and Policy Analysis Division released the policy brief below outlining Mass. Results First Interim Findings.

The Legislature and leaders in program and fiscal planning used the preliminary results in several ways to make evidence-based policy decisions:

- New Funding
 - Dedicated \$4 million in state and federal funding for evidence-based programs and policy development
 - Funding enabled EOPSS to create 2 new positions to support the Mass. Results First Initiative
- Administrative Policy Changes
 - Made adjustments to classification tool, ensuring that additional prisoners receive appropriate services and treatment
 - DOC freed up administrative space for programming
- Programmatic Policy Changes
 - Explored ways to implement full-year education programs at the DOC
 - Launched the DOC Medication-Assisted Treatment for Substance-Abusing Offenders Program (MITRI)
 - Implemented the Program Engagement Strategy, resulting in growth of persons participating in programs
 - The MA Trial Court expanded [the Honest Opportunity Probation with Enforcement-Massachusetts Offender Recidivism Reduction \(HOPE-MORR\)](#) program to Worcester with Legislative support in FY 14 and FY15.
 - The MA Trial Court expanded support for [specialty courts](#) (mental health and drug courts) with Legislative support in FY 15
 - The MA Trial Court adopted [recidivism reduction](#) as a success measure in its recent strategic plan

The Mass. Results First Initiative has conducted extensive work over the past 2.5 years to gather recidivism and program cost data from the DOC, Probation, and Parole. It is important to continue this work. The next steps of the Mass. Results First Initiative are to:

- Compile agency program inventories of programs and practices to reduce recidivism
- Target state and federal funds to cost-effective, evidence-based programs or practices
- Support program evaluation studies of new and existing programs across agencies
- Obtain cost data from other agencies
- Expand evidence-based program inventory – Massachusetts County Houses of Corrections (Sheriffs), Department of Youth Services, Police, and District Attorneys
- Explore Mass. Results First expansion to other policy areas, such as child welfare
- Evaluate program fidelity to determine if programs are implemented as designed and study impact on recidivism
- Support current technology development for an integrated criminal justice system



Cost-Benefit Analysis of Department of Correction

Education in Prison Program

Education in Prison Program: Benefits per Participant	MA State 2012 Dollars	Main Source of Benefits
Reduced crime	\$21,297	Lower state & victim costs
Total Benefits per Participant	\$21,297	
Cost per Participant	\$3,240	
Net Benefit per Participant	\$18,057	
Benefits per Dollar of Costs	\$6.60	

In order to understand how the model works, we can look at an example using the DOC's Education in Prison program. As depicted above, without the Education in Prison program, persons have a 63% chance of begin reconvicted for a new felony or misdemeanor after 15 years. With the program, the model predicts that the likelihood drops to 51%, representing a 19% reduction in recidivism.

The model then monetizes the value of this 19.2% reduction in recidivism for this population. As shown above, the Education in Prison program costs \$3,240 per participant. For each participant, the reduction in recidivism saves \$21,297. For every dollar invested in Education in Prison, the state avoids \$6.60 in costs to the criminal justice system (taxpayers) and society (victims).

Mass. Results First Findings: Comparing Costs, Benefits, and Crime Reduction

October 2014

(Costs do not include the marginal cost of housing an incarcerated offender or supervising a probationer or parolee).

PROGRAM / PRACTICE NAME (in alphabetical order)	BENEFITS PER PARTICIPANT	COST PER PARTICIPANT	NET BENEFIT PER PARTICIPANT	COST-BENEFIT RATIO	CRIME REDUCTION
Department of Correction					
Cognitive-Behavioral Therapy for High- and Moderate-Risk Offenders	\$10,383	(\$598)	\$9,785	\$17.35	-10.1%
Cognitive-Behavioral Therapy for Sex Offenders	\$24,751	(\$17,764)	\$6,988	\$1.40	-14.6%
Correctional Industries	\$7,122	(\$1,501)	\$5,622	\$4.75	-6.3%
Education in Prison	\$21,297	(\$3,240)	\$18,057	\$6.60	-19.2%
Job Assistance Workshop	\$6,470	(\$341)	\$6,129	\$19.01	-6.0%
Modified Therapeutic Communities – Drug Treatment	\$10,698	(\$1,712)	\$8,986	\$6.27	-9.7%
Vocational Education	\$20,561	(\$3,698)	\$16,863	\$5.58	-18.2%
Probation					
Electronic Monitoring/Global Positioning Systems: Parole Population	\$22,634	(\$759)	\$21,874	\$29.88	-20.2%
Electronic Monitoring/Global Positioning Systems: Probation Population	\$14,969	(\$759)	\$14,205	\$19.66	-23.3%
Employment Training/Job Assistance in Community: House of Correction Population	\$5,678	(\$3,599)	\$2,100	\$1.59	-4.9%
Employment Training/Job Assistance in Community: Parole Population	\$5,701	(\$3,599)	\$2,105	\$1.59	-5.7%
Employment Training/Job Assistance in Community: Probation Population	\$4,023	(\$3,599)	\$424	\$1.12	-6.7%
Hawaii Opportunity Probation Enforcement/Massachusetts Offender Recidivism Reduction (HOPE/MORR)	\$14,666	(\$2,921)	\$11,745	\$5.03	-22.8%
Risk, Need, and Responsivity Principles with Ohio Risk Assessment System (ORAS)	\$12,377	(\$81)	\$12,296	\$152.54	-21.2%
Parole					
Graduated Sanctions	\$22,744	(\$24)	\$22,720	\$948.20	-19.8%
Reentry Housing Program	\$4,095	\$4,454	\$8,549	n/a	-3.7%
Reentry Housing Program: Six Months	\$10,845	(\$1,716)	\$9,129	\$6.33	-11.3%
Regional Reentry Centers: Department of Correction Population	\$6,448	(\$162)	\$6,288	\$40.14	-6.0%
Regional Reentry Centers: House of Correction Population	\$3,768	(\$162)	\$3,606	\$23.30	-4.9%
Risk, Need, and Responsivity Principles with Level of Service/Case Management Inventory (LS/CMI)	\$18,480	(\$33)	\$18,447	561.37	-18.3%
Substance Abuse Counselors	\$6,665	(\$153)	\$6,513	\$43.76	-5.8%

Strengthening Justice Reinvestment

In addition, the Commission is interested in exploring ways to strengthen the Commonwealth's justice reinvestment activities. In October 2012, with the Commission's support, Massachusetts requested a presentation on the Justice Reinvestment Initiative (JRI) process by the Pew Center for States Public Safety Performance team. Based on that presentation, Massachusetts submitted a formal application to the Urban Institute to receive further technical assistance from JRI to strengthen the state's efforts to reduce recidivism and address justice reinvestment activities, including specific activities related to criminal justice data analysis and statutory and policy reform.

What is JRI?

JRI, initiated by Congress in 2010 to address recidivism, is administered by the Bureau of Justice Assistance (BJA) in the Office of Justice Programs, U.S. Department of Justice, in coordination with justice reinvestment and related efforts supported by independent organizations such as the Pew Center for the States. The purpose of JRI is to provide technical assistance and competitive financial support to states, counties, cities, and tribal authorities that are either currently engaged in justice reinvestment or are well positioned to undertake such work as either Phase 1 or Phase II sites. Phase 1 activities are designed to analyze data, develop policy options, and adopt new policies. Phase 2 activities are designed to implement new policies, put investment strategies into place, and measure performance.

JRI reinvestment is a data-driven approach to improve public safety, reduce corrections and related criminal justice spending, and reinvest in strategies that can decrease crime and strengthen neighborhoods. The purpose of justice reinvestment is to manage and allocate criminal justice populations more cost-effectively, generating savings that can be reinvested in evidence-based strategies that increase public safety, while holding persons accountable.

Application Process

From October 2012 through June 2013, JRI managers from the Pew Center met with various, high-level colleagues from the executive, legislative, judicial branches of government to explore Massachusetts' candidacy to become a JRI partner state. In July 2013, JRI declined Massachusetts' application to become a partner state. The reasons for this decline were stated as:

- The bed-space savings modeling associated with this assistance requires precise data on time served. Across the Houses of Corrections, this is difficult data to procure, and the use of proxy data from the Parole Board's Spirit database requires too many assumptions that undermine the integrity of the model.
- The need for the Special Commission to develop a more tightly-focused problem statement that compels reform.

Continued Collaboration with JRI

The Commission has worked diligently to develop a set of specific recommendations to improve the criminal justice system in Massachusetts. JRI has indicated a willingness to maintain contact and monitor the Commission's progress, offer informal assistance, and serve as a liaison with the Bureau of Justice Assistance (BJA) to secure technical assistance and resources for data review. The Commission is grateful for this offer for continued collaboration and looks forward to working together to address many of the Commonwealth's on-going criminal justice system challenges noted in the application.