
The Crisis in Corrections and Sentencing in Massachusetts

**Report and Recommendations of the
Task Force on Justice**

**A joint project of
Boston Bar Association &
Crime and Justice Foundation**

February 1991

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FINAL REPORT

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I. INTRODUCTION

The Task Force on Justice was convened in July 1990 by the Boston Bar Association and the Crime and Justice Foundation, with membership drawn from both organizations. It included representatives of the prosecutorial and defense bar and other practitioners of criminal justice. The main purpose of the Task Force was to address pressing concerns with public safety--the first responsibility of a government.

The Task Force closely examined sentencing practices and the effect of mandatory sentencing. It studied probation and parole, and the capacity of those agencies to handle growing caseloads. It reviewed prison and jail crowding, and the impact of court-ordered mandates to release inmates. It surveyed the availability of resources, and the need for greater access to treatment and education services. It assessed the costs of the current system and the budgets of the justice agencies. Finally, it explored public understanding and opinion about crime and the criminal justice system.

The Task Force investigated possible solutions to these issues, including some that are being pursued in Massachusetts on a pilot basis and others that are operating in other jurisdictions. It examined intermediate sanctions--day reporting centers, restitution centers, boot camps, intensive supervision, and day fines--and their success in Massachusetts and nationally. It reviewed the use of sentencing guidelines employed by several states--Delaware, Minnesota, Oregon and Washington--and the federal courts to bring reason, balance and order to sentencing decisions. It researched organizational structures that aided a strong and balanced criminal justice system and policy.¹

The Task Force discussed its findings with public officials, including members of the executive, legislative and judicial branches. It sought advice on its recommendations from national and local recognized experts in the field of corrections, probation and sentencing policy. It reviewed issues raised by Task Force members with representatives of state and federal sentencing commissions, and members of the public and the bar.

The Task Force found that the Commonwealth's criminal justice system is unable to hold offenders accountable for their crimes, to provide adequate resources so that criminal sanctions are uniformly and fairly enforced, or to engender public confidence.

The Task Force found a justice system overwhelmed, with each element having reached a crisis point. The Commonwealth's courts are so grossly clogged that they are unable to impose timely criminal sanctions. Its probation system is so understaffed that

¹ In considering the above issues, the Task Force was unable to attend to two areas that demand further inquiry. The state's juvenile justice system is straining to deal with the increase of violence among young people, many of whom may become adult criminals. Bail and pre-trial considerations are closely linked to sentencing and prison crowding. But since these areas have their own unique procedures and problems, the Task Force decided that it could not adequately examine them within the scope of this study. Therefore, the Task Force focuses on the state's adult criminal justice system and its post-conviction functions.

it is unable to provide adequate supervision or monitoring of those on probation. Its prisons and jails are so dangerously overcrowded that they must release through the back door persons who may be more threatening to the community than those they must accept through the front door.

The Task Force found a criminal justice system that is not a "system" at all, but rather a myriad of unconnected bureaucracies lacking shared goals, adequate resources, or clear policy direction. For example, some sentencing decisions are at the complete discretion of an individual judge, while others are automatic mandatory sentences, imposed irrespective of the seriousness of the offense or the dangerousness of the offender. As a result, it is a system that is both too lenient and too harsh.

The taxpayer is the loser as an escalating share of public revenue supports this overwhelmed system at the expense of other important societal obligations. The system is also a loser, having lost credibility with the public.

The Commonwealth's criminal justice system is dangerously out of balance, unable to meet the demands placed on it despite many dedicated and hard-working personnel and enormous public funding. This report contains recommendations for system-wide policy and programmatic changes to revamp the state's sentencing and corrections practices, and to enhance the system's ability to administer fair and certain justice. Unless such changes are adopted promptly, the system that is out of balance today will be out of control tomorrow.

Throughout this report, the Task Force makes recommendations to rescue the Commonwealth's criminal justice system. Here, the most critical recommendations are summarized.

II. RECOMMENDATIONS

A. A Centralized Criminal Justice System

1. The Commonwealth must centralize and unify the state's criminal justice agencies in a single executive branch organization. To be effective, such an organization must have direct control and responsibility over the following functions, at a minimum:

- steer the development and enforcement of criminal justice policy;
- enhance the collaboration of planning and service delivery of all justice agencies;
- set priorities for allocation and management of resources; and,
- promote the acquisition and dissemination of information and data.

2. To be effective, this organization must have direct supervision of the state's criminal justice line agencies, including at a minimum corrections, parole, probation, committee on criminal justice, criminal history systems board, and security and privacy council.

B. Sentencing Guidelines

1. The Commonwealth must establish a Sentencing Commission to revise Massachusetts sentencing law, to design and implement sentencing guidelines, and to serve as the principal author of future sentencing amendments and reform in order to avoid ad hoc reactionary change.

2. Through the Sentencing Commission, the Commonwealth must pursue the development of a fair and truthful sentencing structure incorporating the following:

- a. A consistent theory of sentencing, including both retributive and rehabilitative factors;
- b. Uniform and proportional penalties, so that offenders are punished equitably, according to their criminal conduct and offense history;
- c. Judicial discretion, framed by Commission-established and Legislature-approved guidelines, and monitored for leniency and harshness by appellate review available to both the prosecution and defense;
- d. A broad scale of sentencing options, reserving incarceration for the most serious offenders while imposing appropriate intermediate punishments on less serious offenders; and,
- e. Ongoing coordination of the state's sentencing and corrections functions to ensure truth in sentencing, and to maintain balance between the state's correctional capacity--both community-based and prison-based--and its sentencing practices.

3. The Commonwealth must repeal mandatory sentencing laws, except for first degree murder, in order that appropriate sanctions and correctional resources can be directed at offenders according to the seriousness of their crime and their risk to the community.

C. Intermediate Sanctions

1. The Commonwealth must establish a range of intermediate sanctions--effective, tough and cost efficient--for the non-dangerous offender, which make use of state-of-the-art, proven programmatic technologies, and which make sense to the victim, offender, and the community.

2. The Commonwealth must provide adequate resources to the system of justice to ensure that the sanction imposed is enforced. Only then can the criminal justice system maintain its integrity with the victim, the offender, and the community.

3. In designing intermediate sanctions and allocating resources, the Commonwealth must give special attention to the needs of women offenders which are often ignored.

4. The Commonwealth must develop a range of graduated release mechanisms and make them available to correctional administrators to manage the safe release of inmates to the community and to provide inmates with reintegrative opportunities.

We believe that adoption of these recommendations will enhance the fairness and effectiveness of the Commonwealth's justice system, will restore integrity to the system, and will repair the public's confidence in that system. In addition, these recommendations will enhance the system's ability to promote the public's safety and to ensure more cost effective use of the state's limited resources.

III. ECONOMICS OF THE COMMONWEALTH'S JUSTICE SYSTEM

The Commonwealth has made a staggering financial investment in its criminal justice system during the last decade. In both capital outlays and operating budgets, the system's expenditures are consuming an escalating share of our shrinking state resources.

A. Capital Outlays

Since 1980, the state has spent more than \$1 billion in capital expenditures on corrections, including \$415.7 million on state prisons, \$613.7 million on county facilities, and an additional \$15 million on related infrastructure improvements. This investment has enabled the Department of Correction to increase its design capacity by over 62% since 1980, from 2,819 beds in 1980 to 4,574 beds in 1991. Over the same period, county corrections capacity has almost doubled, from 2,465 to 4,885.

However, these massive capital outlays have done little to relieve prison and jail crowding. To the contrary, as is reported below, the Commonwealth's prison system is among the most crowded in the nation. Clearly, the trends of increasing commitments, mandatory sentencing and longer prison terms have overwhelmed the very generous investments in prison expansion made in the 1980's. Moreover, it is clear that the Commonwealth's troubled times make it virtually impossible to *build our way out* of this crisis in the 1990's.

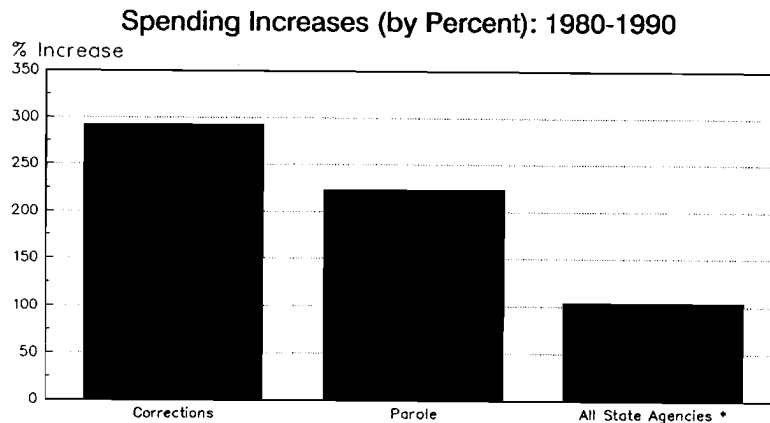
B. Operating Costs

Projected annual expenditures for fiscal 1991 for the operations of corrections, including the Department of Corrections, the Parole Board and county corrections, totalled \$391.6 million. However, since the fiscal year began on July 1, 1990, several rounds of cuts have reduced the FY 1991 corrections budget to \$385 million. This would be a 9% increase over FY 1989 actual spending.

Despite \$385 million in expenditures, lack of additional reserves will cause the Department to close the operations of the Boston Correctional Center (the former Charles Street Jail); it will be unable to open approximately 1,600 new beds to be added to the system in 1991 (already 75 cells sit unoccupied at the North Central Correctional Center in Gardner); and it will lack adequate monies for health care and other basic life and safety requirements. In addition, the state will lack sufficient funds to assist Bristol, Essex, and Worcester Counties in opening their new facilities.

As with capital outlays, the Commonwealth has been generous to these correctional agencies' operating budgets. According to the Massachusetts Taxpayers Foundation, state expenditures from FY 1984 through FY 1989 grew 85.6% for corrections, faster than any other state agency and almost 20% faster than the growth in all of state spending

(67.3%).² Since 1980, total Department of Correction spending grew almost 300%, and the Parole Board's spending increased 224%. At the same time, the Commonwealth's Adjusted State Agency Spending³ increased 104%.



To express these figures in a more meaningful way, the Department of Correction now represents almost 5% of the operating costs for all state agencies, double what it was in 1980; or, the annual Department of Correction spending per citizen of the Commonwealth has increased from \$11 in 1980 to \$42 in 1990.

In addition to their increasing share of the state budget, the correctional agencies are also employing a higher percentage of state personnel. The number of full-time employees in the Department of Correction grew from 3,234 in 1983 to 4,740 in 1990, an increase of 46.6%. At the Parole Board, the work force grew from 161 in 1983 to 215 in 1990, a 33.5% increase. In contrast, the rest of the work force in the Executive Office of Human Services grew by less than 1% during the same period, while total employment by the Commonwealth's Executive Agencies (excluding the legislature, the judiciary and constitutional officers) grew less than 4%. The combined correctional work force accounted for 83% of the total staffing growth within the Executive Office of Human Services for that period.⁴

C. Future Costs

These figures raise several compelling questions of most significance to the person who pays the bill: the Massachusetts taxpayer.

² Growth in State Spending and Revenues: A Status Report, Massachusetts Taxpayers Foundation, January 30, 1989.

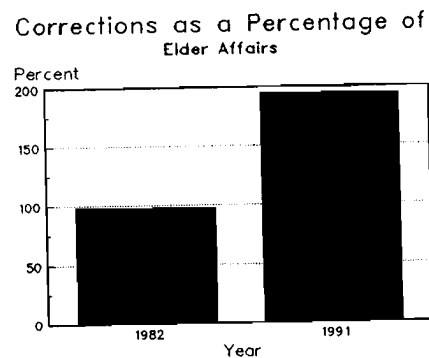
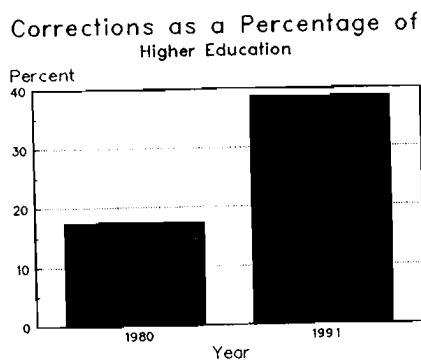
³ Adjusted State Agency Spending equals total state spending less expenditures for Direct Local Aid, Direct and Medical Assistance, and Debt Service.

⁴ Analysis of the Commonwealth's Public Sector Workforce, Executive Department, April 5, 1990

First, how effective is this system on which the taxpayer has spent over \$1.5 billion to date to expand and almost one-half a billion dollars per year to operate? It is so overcrowded that annually it must disgorge thousands of inmates who have served only a fraction of their sentences. It is so underfunded that it is unable to use newly constructed cell space. And it is so under-resourced that it cannot provide adequate supervision and programming for those under its authority in the community.

Second, in these increasingly difficult financial times, do the Commonwealth and the taxpayers have the resources to meet the increasing demands for imprisonment? The construction cost of a maximum security prison cell is \$120,000, and \$60,000 for a minimum security cell. The operating expenses per inmate can reach approximately \$30,000 per year. Considering the newly constructed cells that lie vacant and the growing numbers of inmates released early due to crowding, it appears that the imprisonment demand is now exceeding the Commonwealth's ability to pay.

Third, are the taxpayers willing to continue to commit an increasing percentage of their tax dollar to this corrections system? Since 1980, the expenditures dedicated to corrections, "among the most expensive of all agencies and secretariats"⁵ and among the fastest growing sectors of the state budget, have experienced a 13% average annual increase. These expenditures consume a significant and growing percentage of that tax dollar. For example, in 1980, the Commonwealth spent \$17.60 on corrections for every \$100 spent on Higher Education; today it spends \$38.62 for every \$100. In 1982, it spent \$97.90 on corrections for every \$100 spent on Elder Affairs; today it spends \$194.51 for every \$100.



⁵ FY 1988 Budget Recommendations of the Senate Committee on Ways and Means, p. 3-67.

And the end is not in sight. Based on predictions for increases in the inmate population and assuming no inflation, these costs will increase another 22% by 1992 and 28% by 1993. With a moderate rate of inflation (5%), annual operating expenses are expected to reach \$585 million by 1993, an increase of 28%.

The needs of our criminal justice system and the financial resources of the Commonwealth appear to be on a collision course. The Task Force strongly recommends that the system be examined not only to see how it can be made more credible and effective but also how it can function more efficiently and at less cost.

We are convinced--and every knowledgeable correctional official whom we consulted agrees--that there are many people confined in secure and very expensive prisons and jails who could be sanctioned in some other way, at far less cost to the Commonwealth and at no loss to public safety, deterrence or punishment.

We are convinced that the use of day fines, community service, day reporting and other intermediate sanctions can reduce total expenditures for corrections and provide ways for the offender to reimburse the community, rather than only imposing costs on the taxpayer.

We are convinced that correctional industries provide an opportunity to generate net revenue for the Commonwealth with no further public expenditures. There is in place now equipment and personnel to produce millions of dollars of marketable goods that state agencies purchase at a higher cost from private vendors. In addition, the industries program can keep a substantial number of inmates constructively and productively engaged.

We are convinced that the development of a coherent sentencing policy, which recognizes the limits of correctional resources, can provide the Commonwealth with a correctional system which is effective and affordable.

We are convinced that a centralized and coordinated criminal justice organization can provide more efficient management of the Commonwealth's scarce correctional resources.

It is beyond the scope of this report to articulate the root causes for the alarming amount of criminal behavior in Massachusetts and the United States. We suggest that the disintegration of our educational, social and family systems, intense poverty in the core urban areas, and lack of personal accountability at all levels of society are among the contributing factors.

It is, however, within the scope of the Task Force efforts to observe that the massive expenditures on our correctional system appear to have little bearing on the frequency of crime in our society. No study by any criminologist has ever established a causal relationship between expenditures for corrections and the crime rate within a community. In fact, recently the American Correctional Association commented that "it is a fraud on the public" to suggest that spending hundreds of millions of dollars on new prisons will make society safer. And, the neighboring state of New York has concluded that "indefinite prison expansion is not essential for our penal goals and is undesirable, given the enormous financial cost."⁶

On the other hand, there is no excuse for failing to spend this significant public investment in the justice system effectively and wisely. Governor William Weld recently applauded the potential of "entrepreneurial government" to examine the effectiveness of government programs without blindly following past practices and procedures. We believe there are few greater or more important opportunities for applying this vision than in our justice system.

⁶ John J. Poklemba, Director and Commissioner of Criminal Justice, New York State, Letter to the Editor, New York Times, February 10, 1991.

IV. PUBLIC OPINION OF THE COMMONWEALTH'S JUSTICE SYSTEM

We echo at least one finding of the Boston Bar Association's Task Force on Drugs and the Courts: the system of criminal justice has lost the confidence of the citizens. The public has little faith that the system can punish offenders, protect public safety, or secure the community's quality of life. These findings are based both on research of public opinion surveys done by others and a pilot effort to sample public opinion in Massachusetts regarding crime and the system of justice.

The public is particularly concerned that crime is threatening the community's quality of life and its values. Citizens want to feel safe and secure, and they look to the criminal justice system to protect them and to uphold those values. They are angry and frustrated that criminals are "getting away" with hurting others. What they want and expect from that justice system is for the offender to be held accountable, for the offender to pay back the victim and the community, and for the punishment to be enforced.

The public demands harsh sentences for dangerous, violent offenders; but for non-violent criminals, they want tough yet *judicious* punishment. They endorse the use of punishments outside of prison which embody those aims. Again, the concern is holding offenders accountable--making them pay back the victim and the community. Community-based sanctions such as probation, day reporting centers, house arrest, restitution, community service, fines and parole are seen as proper and effective for many of these offenders. These options are also viewed as less expensive than prisons.

Finally, people expect that the system can and will change the offender. They place a high value on rehabilitation (via treatment, education, training and work) for first, second, and even third-time offenders.

The public's understanding of the criminal justice system has not been well served by those who have the responsibility to inform and lead. Public safety is not enhanced by speeches to "get tough on crime" without a commitment of resources to the courts, prosecutors, or correctional system. The superficial appeal of "mandatory sentences" must be resisted in favor of more rational, safe and cost-effective policy making.

Opinion and perception are also derived from the media, often at the expense of understanding. For example, federal and state law enforcement agencies report that crime is down from the early 1980's.⁷ The public is convinced otherwise, however, because

⁷ In Massachusetts, the 1988 total index crimes as measured by the Federal Bureau of Investigation has declined 16% from 1980. Also, the Bureau of Justice Statistics of the U.S. Department of Justice measures the incidence of crime by the number of households victimized in a year. Its 1989 survey reported that crime "remained at the lowest level since 1975, the first year it (the survey data) was available." ("Crime and the Nation's Households, 1989", Bureau of Justice Statistics, September 1990)

media focus on the "war on drugs" and notorious incidents such as the Charles Stuart crime dominate public discussion. Massachusetts has experienced a near three-fold increase in the number of offenders sent to jail in the 1980's and for much longer prison terms. Yet the media highlights the unusual case, often with limited information, in which the sentence is viewed as not harsh enough and relentlessly publicizes it as an example of our "overly lenient" justice system.

The public also is confused and ill-served by current sentencing practices because there is little that is comprehensible or truthful in them. Judges will impose sentences that are only theoretical, as in the ten year reformatory sentence which usually means one year to be served. Or, in order to avoid the harshness of a mandatory minimum sentence for a particular offense, a district attorney will reduce the charge, or a judge will simply find the offender guilty of a lesser offense. A judge in one court might sentence a defendant harshly or leniently for a particular offense, while a judge in another court might impose a very different sentence for the same offense. Passing for the moment the message this bizarre conduct sends to offenders, it is also clear that the public has every reason to lack confidence in or understanding of what is really going on.

Poor public perception leads to poor public policy. To create a more accurate and fair perception, Massachusetts desperately needs a centralized criminal justice agency that would have the responsibility to produce regular and accurate reports on the functions and operations of the criminal justice system.

V. CRIMINAL PUNISHMENT IN THE COMMONWEALTH

The Task Force accepts the thesis that anti-social behavior deserves punishment and that dangerous individuals deserve to be removed from society. To carry out these functions of punishment and removal from society, the Commonwealth has a corrections system that includes probation supervision, state prisons and county jails, and parole supervision. From the Task Force's review of this system, punishment in the Commonwealth is both too lenient and too harsh: too many offenders receive little or no sanction, while others receive sanctions in great disproportion to their offense.

A. Probation Supervision

The most frequent sanction imposed on convicted offenders is a term of probation. The probation department, an arm of the judiciary, supervises over 86,000 people. As of May 31, 1990, those included 21,193 felons and misdemeanants, 31,432 drunk drivers and 3,403 juvenile offenders. Probation was also overseeing another 30,160 to collect fines, support payments, and other fees and to monitor certain conditions imposed by the court. To manage these cases and to handle many other duties attendant to the court's administration of justice, this agency must allocate a limited number of probation officers across many courts. As a result, probation is often forced to give only minimal supervision to many offenders.

Many people, including offenders, see probation as little more than a "slap on the wrist." At sentencing, judges find themselves facing the stark alternative of either imposing a prison sentence of total incarceration, with all of its economic and social costs, or probation, which appears to be little punishment at all.

Beyond punishment, the effectiveness of probation depends on the level of services available to probationers. A 1987 study, "Assessment of the Massachusetts Probation System" completed under the auspices of the Office of the Chief Administrative Justice of the Trial Court, reported:

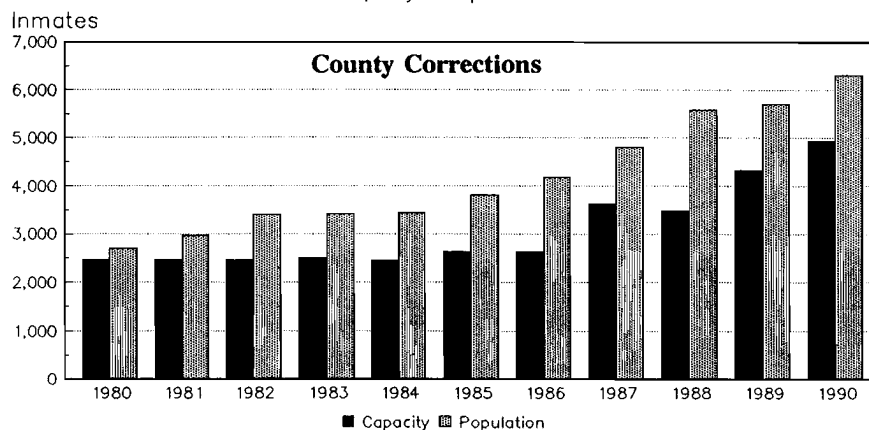
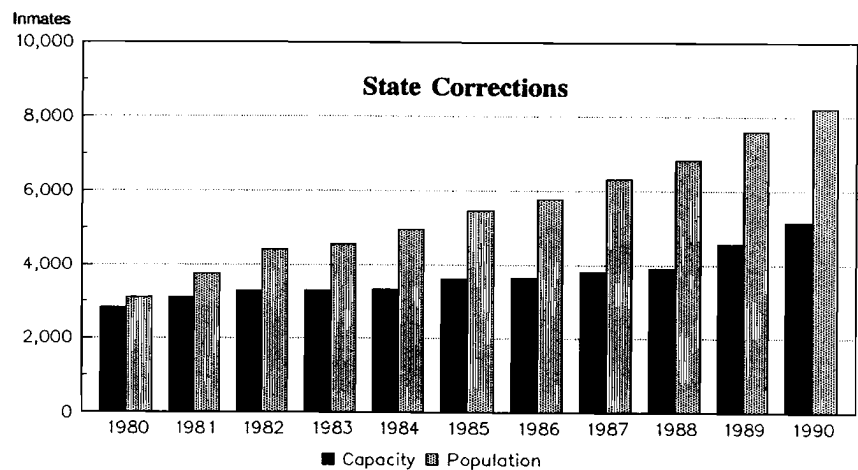
The dearth of treatment programs is rapidly becoming a threat to public safety because of the direct link between the crime rate and chemical abuse.

This statement was underscored by the Massachusetts Intensive Probation Supervision program, which concluded that "crime control through treatment" (i.e. employment, education, and substance abuse treatment) was most effective. Unfortunately, the successful experiment with Intensive Probation Supervision was short-lived due to budget reductions and lack of centralized management and control.

B. State and County Corrections

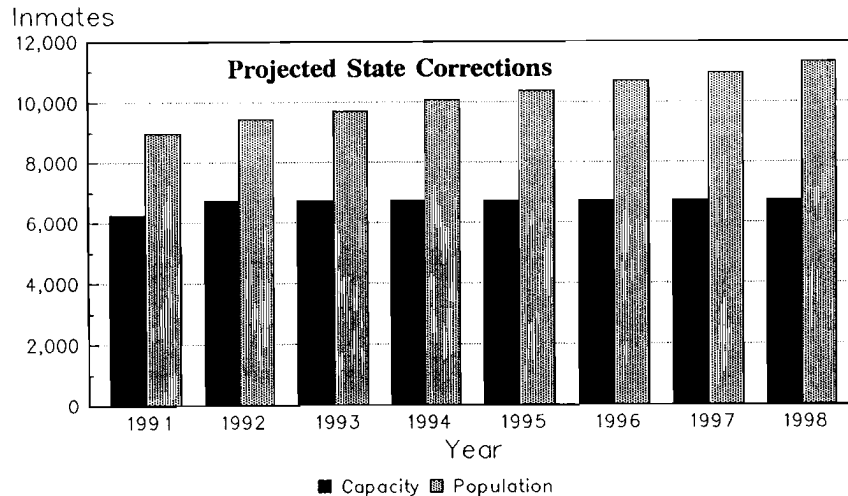
The Massachusetts corrections system includes penal institutions at both the state and county levels. Under the authority of the Department of Correction (DOC), there are twenty-one institutions: a maximum-security prison at Cedar Junction, seven medium-security prisons, and thirteen facilities at lower security levels. In addition, there are twenty county facilities under the authority of local Sheriffs. Located in thirteen of the Commonwealth's counties, these facilities house defendants awaiting trial and prisoners serving terms of less than two and one-half years. With cells for less than 10,500 inmates (including almost 1,500 deemed "temporary"), this corrections system now incarcerates almost 15,000.

The overcrowding in the state prisons (159% of capacity⁸) gives Massachusetts the dubious distinction of having one of the most crowded prison systems in the United States. While some might be encouraged by a lower rate of crowding in the county jails (124% of capacity), this has only come about through court intervention limiting the capacity of these facilities and forcing the premature release of thousands of inmates.



⁸ On February 4, 1991, the Department of Correction reported 8,378 inmates in 5,274 cells (including 300 temporary spaces).

Despite enormous capital outlays over the past decade discussed above, the ratio of inmates to cells has risen from 105% in 1980 to 142% in 1990, or a shortfall of 4,350 cells. Projected capacity for the Commonwealth's state and county prisons by 1993, assuming the additional capital expenditure of \$500 million, will be 13,000. However, current (and conservative) projections predict that the total inmate population in Massachusetts will exceed 15,000 by 1992 and that shortly thereafter the Commonwealth will be just as overcrowded as it is today.



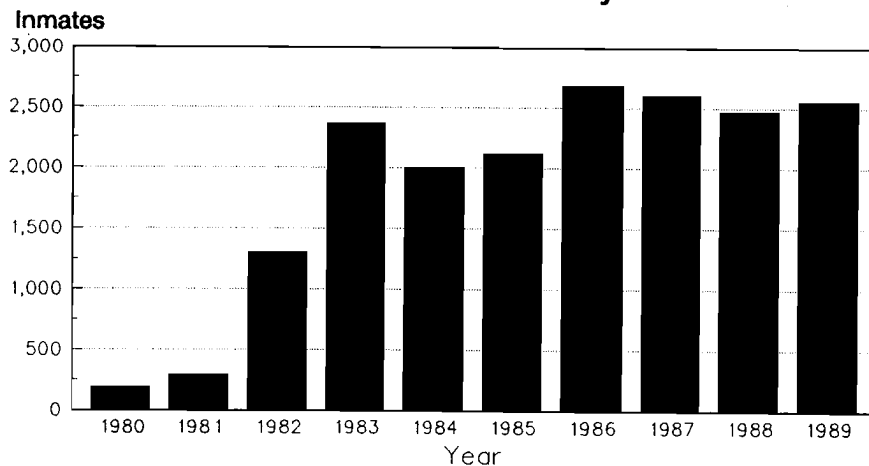
Increased Incarceration Rate: Over the last decade, prison overcrowding has worsened each day for many reasons. The Commonwealth is incarcerating more people today than in the recent past. In 1980, the incarceration rate (the number of people committed to state prison per 100,000 resident general population) was 56; by 1983, it had risen to 79; by 1990, the state's incarceration rate was 135. For the county jails, the rate was 57 in 1983; by 1988 it had jumped to 93. While still lower than many states, notably those in the West and South, the increase in the state's incarceration rate is faster than the nation as a whole.⁹

Longer Sentences: The Commonwealth is confining inmates for longer periods of time. For the most part, persons sentenced to state corrections receive one of two sentences: a state prison sentence or a reformatory sentence. Because of differences in release eligibility, inmates serve significantly more time for a state prison sentence than for a reformatory sentence. Prior to 1985, commitments to state corrections were nearly equally divided between the two sentence types. By 1989, however, the longer state prison sentences accounted for over 80% of the sentences.

⁹ It should also be noted that the United States has the highest rate of incarceration--426 prisoners per 100,000 population. South Africa is second with a rate of 333, and the Soviet Union is third with a rate of 268. Many countries have rates much lower than Massachusetts' rate: Canada at 107, United Kingdom at 98, Turkey at 96, Australia at 72, the Netherlands at 40. (*Americans Behind Bars: A Comparison of International Rates of Incarceration*, The Sentencing Project, January 1991.)

Jailing Substance Abusers: The Commonwealth is confining many more people for crimes involving drug and alcohol abuse. The Task Force found that much of the crowding in the county jails is due to the explosion in commitments for drunk driving, which increased from 191 in 1980 to 2,558 in 1989. Whereas these inmates represented 4% of the county inmate population in 1980, today they represent over 20%.

O.U.I. Commitments to County Facilities

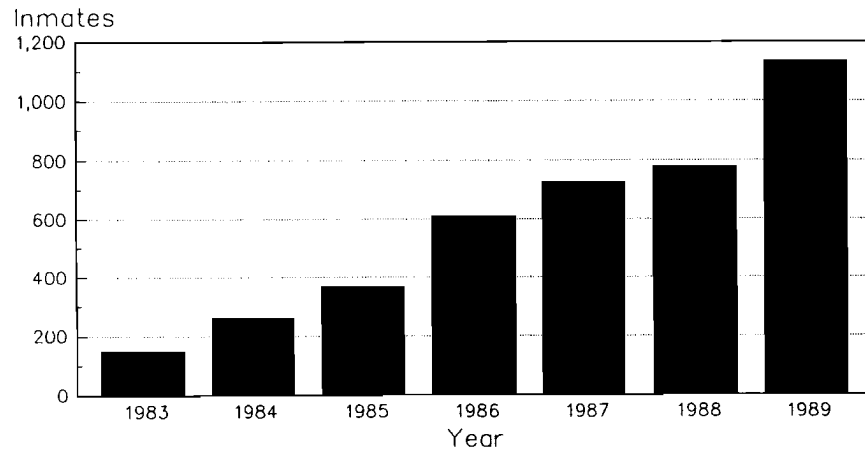


We also found a sad irony here. While incarceration gets the offender off the road, the county jails have little in the way of alcohol treatment. The state and county Sheriffs have established three effective alcohol treatment centers (recidivism of 6.6% for the treatment centers v. 15.9% for jail)¹⁰, but entrance to them is blocked to over half the convicted drunk drivers by waiting lists or narrow entrance criteria.

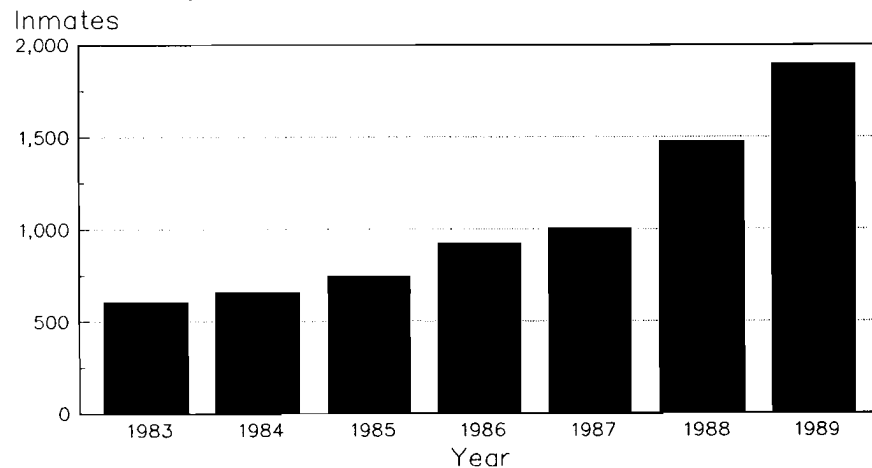
In the state prisons, there is a dramatic increase in drug offenders serving long mandatory sentences. These commitments went from 55 in 1980 to 1,133 in 1989. As was found in the county jails, drug treatment before release is not available for these offenders. Indeed, drug abusers constitute over 80% of state inmate population (6,700 of 8,380), yet treatment is available for only 400. Moreover, ironically, many of these offenders are sentenced under mandatory sentences which prohibit them from participating in effective reintegration programs.

¹⁰ "The Use of Prison Confinement for the Treatment of Multiple Drunken Driver Offenders: An Evaluation of the Longwood Treatment Center", Daniel P. LeClair, Lynn Felici and Ed Klotzbier, Massachusetts Department of Correction, June 1987.

Drug Commitments to State Facilities

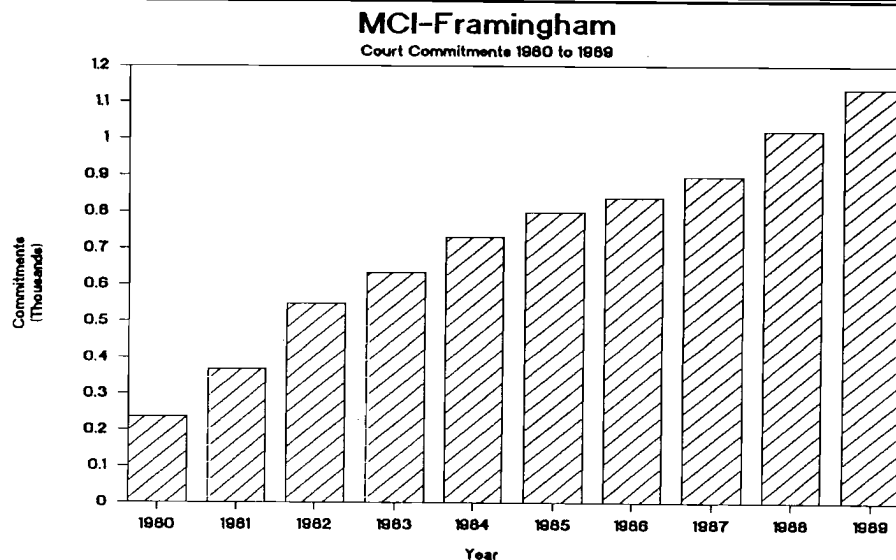


Drug Commitments to County Facilities



The Task Force believes that the public is not well served by locking up substance abusers with little opportunity or encouragement to confront their abuse, and then releasing them with no supervision or treatment.

Locking Up Women: The Commonwealth incarcerates many more women today. In 1980, 236 women were committed to MCI-Framingham; in 1989, 1,137 women were committed, an increase of almost 400%. Over the same period, the number of men committed to state and county facilities grew at half that rate. Closer scrutiny of this data also reveals that while the number of women incarcerated for violent crimes doubled during the 1980's, the number incarcerated for non-violent offenses increased sixfold, mainly due to drug offenses.



Perhaps the most startling data on female offenders appeared in a recent Department of Correction study, "The Incarcerated Female Offender: Victim or Villain?". It reports that the Commonwealth more frequently imprisons women on types of offenses for which it rarely incarcerates men.

DOC Residents on January 1, 1990
by Gender and Offense



It also found that most women serve their time in medium security, at MCI-Framingham, regardless of their crime or classification level in contrast to male offenders who have many more lower security options. The one primary location for women offenders also causes extreme difficulties for family visits, attorney meetings and other communications with resources in the woman's home community. There is also disparity in available programming for women-fewer vocational training opportunities and inadequate access to medical services.

The Task Force, echoing several other recent female offender studies, found that issues for female offenders, both legal and personal, are far more complex than those for men and that the system is ill-equipped to address them. Women tend to have cases

pending in several courts. They often have crucial service needs: sole caretaking of young children, physical and mental health problems (including AIDS and battering), few job skills and little or no employment experience, and lack of housing and other necessary support.

The Task Force recognizes the work of several other committees on behalf of female offenders--the Executive Office of Human Services 1987 *Report on Female Offenders*, the 1988 *Female Offender Advisory Group Report*, and the 1989 *Gender Bias Study* of the Supreme Judicial Court. While some progress has been made, the Task Force endorses continued efforts to fully implement their recommendations. With the completion of new county jails, several Sheriffs' Departments are now taking women inmates back from MCI-Framingham and developing service structures to meet their needs. However, lack of priorities, budget constraints, and systemic changes leave much more to be done.

More Reliance on Prison: The nature of the state inmate population has shifted from primarily violent offenders to primarily property and drug offenders. In 1980, approximately two-thirds of the commitments to the state prisons were for violent crimes; by 1989, the commitments for these crimes were only 38%.

In the county facilities, in which the average sentence served is between four and five months, people continue to be incarcerated for offenses for which any incarceration, as opposed to some other form of punishment, is inappropriate. In 1989, 1,900 individuals were sentenced to county jails for motor vehicle violations, not including drunk driving or stolen auto; another 200 people were sentenced for shoplifting, 460 for disturbing the peace, and 123 for trespassing. In addition, another 1,500 people were sent to jail for 30 days or less for a variety of offenses, some as minor as injury to property, false alarm, gaming, and illegitimacy. Often, these people are more in need of mental health care than imprisonment. With the current shortage of prison and jail cells, incarceration for these offenses seems inappropriate.

Court Intervention: One consequence of overcrowding is the constitutionally required intervention by the federal and state courts to ensure safe operation of these facilities. Today, seven county jails are under court orders limiting their populations and imposing a forced released strategy to reduce overcrowding. Under these mandates, over 6,000 inmates have been given early releases from county facilities, with no restrictions and often after serving less than one-fourth of their sentence.

While many of these early, unsupervised releases may not present a serious threat to public safety, they clearly threaten the integrity of the system. For instance, there are reports of persons on probation intentionally violating the terms of probation in order to

get committed to jail and, soon thereafter, being prematurely released by court order without any remaining probation or jail requirements.

The county jail situation reached its most dramatic moment in 1990 when the Sheriff of Hampden County--pressured by continuing commitments by the state court, a federal court order limiting the capacity of his jail, and his concern for community safety--commandeered a National Guard Armory for extra space. Unfortunately, without the funds to pay for this operation, the Sheriff had to abandon the armory and release the inmates.

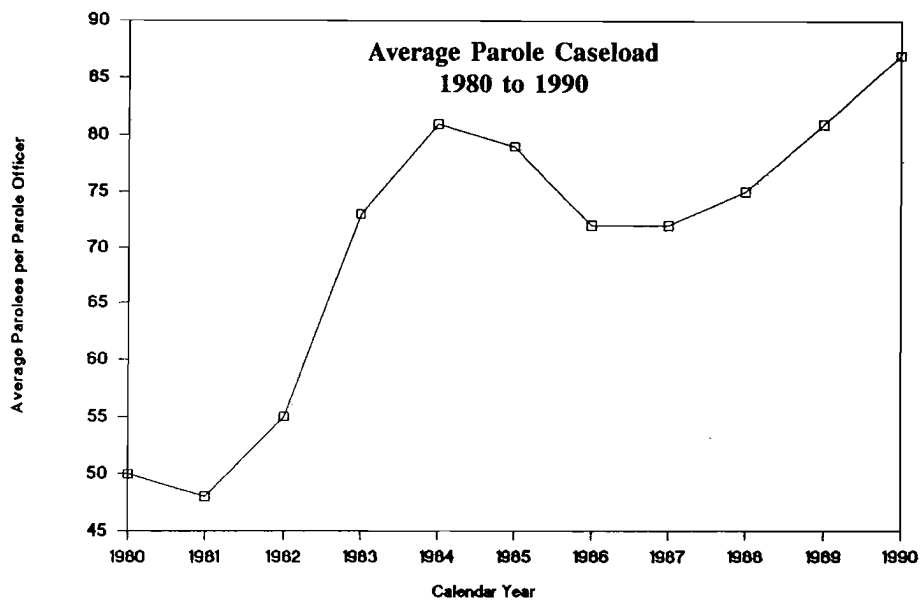
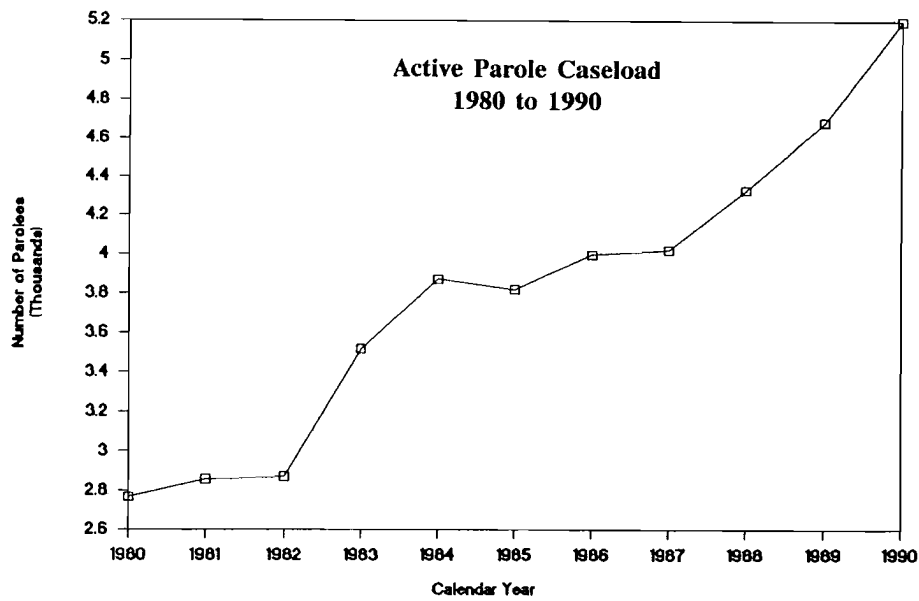
The overcrowding in our state prisons has yet to come under a court-ordered release strategy. The effect of such an order would be forced premature release of thousands of inmates, as nearly 40 other states have already experienced. This would be disastrous for both public safety and the integrity of the justice system.

The Task Force echoes the concerns of the Senate Committee on Ways and Means, Governor's Advisory Committee on Correction, the last two Commissioners of Correction and many others: The state and county prisons are in crisis. Pressure is building within the institutions with more and more crowding and a tightening of the traditional relief valves such as work release, furloughs and parole. Corrections administrators believe such overcrowded conditions constitute a serious threat to the safety of institution personnel and inmates. While building additional prison space alone will not solve this crisis, the Task Force recommends that the Commonwealth provide at once the resources to reduce prison crowding by opening and adequately funding all available institutions, including New Braintree.

C. Parole

In addition to probation and county and state prisons, the third arm of the corrections system is parole. The Massachusetts Parole Board is responsible for both the conditional release of offenders from correctional facilities and their supervision.

The increase in the prison population over the past ten years has led to a higher number of paroles. In 1980, there were 1,932 paroles granted; in 1990, nearly 6,300, an increase of 226%. This growth swelled the active parole caseload from 2,766 in 1980 to 5,300 in 1990. The combination of more parolees without a corresponding increase in parole officers has inflated the caseloads from 50 parolees per officer in 1980 to 87 in 1990.



It is important to note that much of this increased parole business came in response to the crisis of prison crowding. Throughout this decade of crowding, the Commonwealth has relied on the Parole Board. For example, the Parole Board established a special component to assist the Essex County Sheriff's Department to avoid premature, absolute releases mandated by court order. Similar requests for expedited parole release have been received from the Middlesex County House of Correction in order to stay below that facility's court-ordered maximum, and from the Department of Correction to help resolve particularly severe crises in state institutions.

All but a very few of the inmates confined to our jails and prisons eventually return to the community. Today in Massachusetts, these releases occur at expiration of the sentence, parole release, or by mandatory discharge due to overcrowding. Department of Correction research has consistently found significantly lower recidivism rates for inmates released through community-based facilities and programs than for those released directly from higher security prisons (17% versus 51%).

It is in the community's interest that inmates be returned to the community through graduated release options. More specifically, such release is most safely and effectively administered through parole, the only discretionary graduated release option available.

As the Task Force found in discussions with correctional administrators nationally, such a mechanism is not just an incentive for inmate good behavior, but a necessary fact of modern correctional management. A survey conducted for the Task Force of the states that abolished parole at least five years ago found that every one of them instituted some form of discretionary release. Indeed two of the states--Connecticut and Florida--have recently reinstated parole because other forms of administrative discharge failed to provide adequate and safe release provisions.

In Florida, inmate release was achieved through the granting of across-the-board sentence credits, with little screening or review. Finding that over half of the inmates released in this fashion committed new crimes within a year, a state commission concluded that the "current system of release credits does not prevent release of offenders who pose a serious threat to society." Following its recommendation, the legislature restored parole, "providing a more orderly system for releasing inmates according to the severity of their crimes and past criminal behavior"¹¹.

D. Intermediate Sanctions

The Task Force found a serious gap in the Commonwealth's criminal punishment system: the lack of intermediate sanctions between probation and incarceration. To punish offenders while changing their behavior and protecting the public, the Task Force recommends a range of intermediate sanctions for the non-dangerous criminal. These sanctions must be tough, effective, and cost efficient; they must make use of proven programmatic technologies; and they must make sense to the victim, offender, and the community.

Changes in the Commonwealth's sentencing policies and practices are needed. Specifically, the Task Force believes that to punish the offender effectively and impose

¹¹ Criminal Justice Newsletter, v 21, no 2, January 16, 1990, p 3.

controls that protect the public and change the offender's behavior, Massachusetts must embrace a broader scale of sanctions than just probation and incarceration.

The Task Force is encouraged by the support for such intermediate punishments provided by the U.S. Department of Justice and Attorney General Richard Thornburgh. Recently Attorney General Thornburgh stated:

In principle, if we recognize gradations in the seriousness of criminal behavior, then we should have gradations in sanctions, as well. That's why we need a portfolio of intermediate punishments that are available--independent of whether or not our correctional facilities are full or empty, or whether our correctional budgets are lush or lean, or whether our offender populations are increasing or decreasing. In practice, and particularly now and for the foreseeable future when criminal justice systems nationwide are bursting at the seams, intermediate punishments can provide the means by which we can hold offenders accountable for their illegal actions, and achieve our goal of increasing public safety.¹²

The U.S. Sentencing Commission has recently completed a study of intermediate sanctions and concluded that the nation must increase its effort "to develop innovative methods to accomplish the punishment of some offenders in the community."¹³ In making their recommendations, the report concluded, "it is believed that an effective program of intermediate punishments may save the taxpayers' money, will enhance public safety as a result of more efficient utilization of prison space, and enhance fairness."¹⁴

Many states are also pursuing greater use of these options. In December 1990, the Governor of Pennsylvania signed legislation encouraging the establishment of intermediate punishments for non-violent offenders. Recently, the Governor of New York filed legislation to create a "community penalties program to permit placement of nonviolent felons, including second-felony offenders, in a community program."¹⁵

The Task Force strongly urges the Commonwealth to adopt a "portfolio of intermediate punishments." It bases this recommendation on a recognition of the limits

¹² "Opening Remarks as Delivered By Richard Thornburgh, Attorney General of the United States, at the National Drug Conference", Washington, D.C., May 15, 1990.

¹³ "The Federal Offender: A Program of Intermediate Punishments", Alternatives to Imprisonment Project, U.S. Sentencing Commission, December 28, 1990, p.4.

¹⁴ *Ibid.* p. 9.

¹⁵ "Letter to the Editor", John J. Poklemba, New York Director and Commissioner of Criminal Justice, New York Times, February 10, 1991.

of our criminal justice system, and on a belief that there are many offenders for whom a sanction greater than probation is appropriate and others for whom prison is not necessary.

In examining intermediate punishments, the Task Force categorized them into economic penalties and liberty restrictions. When compared to other jurisdictions, Massachusetts underutilizes economic penalties such as restitution centers that house and supervise the offender while ensuring that restitution is paid to the victim. While living at the center, inmates are usually required to pay an amount towards the cost of room and board. They might also perform community service work either for a public agency or a non-profit charity.

Another economic penalty is day fines. Currently the subject of two experimental schemes (New York and Phoenix), day fines have long proven successful in many European countries, where they act as a replacement for short-term prison commitments. The principle of the day fine is to impose equal severity of punishment irrespective of income. This is achieved by sentencing the offender to a certain number of day fine units depending on the gravity of the offense, and setting the value of each unit with reference to the offender's daily income.

Punishments which are based in the community with restrictions placed on the offender's liberty cover a wide range of severity. Programs such as home confinement may virtually replicate imprisonment in the degree of containment of the offender. Intensive supervision probation and parole typically involve an intensely structured plan for the participant, including high levels of supervision sometimes achieved through the use of electronic surveillance devices. For those requiring extra controls or needing housing, a halfway house may be suitable.

Day reporting centers, now being implemented in many jurisdictions across the country, began in Massachusetts. In these programs the inmate is required to report each day to a specific location where his/her schedule for the day is planned and monitored. The inmate is required to maintain contact with the center throughout the day, from work or home. In 1986, the Hampden County Sheriff's Office opened the first Center. Today, seven county Sheriffs' departments and the Department of Correction have day reporting options available to their inmate populations. From data collected by the Executive Office of Human Services and an evaluation conducted by Northeastern University, these programs have proven to be a safe and effective means of supervising offenders.¹⁶

¹⁶ Evaluation of the Hampden County Day Reporting Center, McDevitt et al, August 1988; Massachusetts Day Reporting Centers Task Force: Final Report, Elizabeth Curtin and Jack McDevitt, Executive Office of Human Services, 1990.

Such intermediate sanctions offer the advantage of flexibility in their inherent ability to adapt to the risks and needs of the individual offender. Programs such as intensive probation or day reporting are characterized by this adaptability by virtue of their composite structure of supervision--through urinalysis, daily schedules and a regular reporting structure; accountability--through curfews and community service; and treatment--through substance abuse counseling, employment and training.

Not only does this structure enable a degree of "customized sentencing" regarding the risks and needs of the offender, it also enables a range of sentencing purposes to be served. Through close supervision, public safety is enhanced; through restrictions on liberties, offender accountability is attained; through treatment, reductions in future criminal activity are pursued. Often, these community-based options are considered by offenders as being more onerous than incarceration in terms of the demands made upon them.

In recommending greater use of intermediate sanctions, the Task Force recognizes that adequate resources must be made available to carry out the sanction imposed. To that end, a jail cell must be available for every committed inmate, fines must be collected, community service conditions must be completed. Only then can the criminal justice system maintain its integrity with the victim, the offender and the community.

E. Graduated Release Mechanisms

There must also be a portfolio of options to be used in returning inmates to the community. Since the vast majority of inmates are eventually released, the community gains by having that release conducted in a controlled fashion. Consideration of an inmate's suitability for release, and under what conditions, provides the necessary release screening. Restrictions on liberties, as outlined above in the discussion of sentencing options, offer the graduated avenue to eventual full release, and the controls to return to prison offenders not adhering to imposed conditions.

Currently, several options are operating with success in Massachusetts--day reporting centers, intensive parole supervision, and halfway house placement. Research has found them to be successful in reducing recidivism, in safely managing their clients, and in providing a less expensive option to prison.¹⁷

Other states have experimented with some of the same options and some others. For example, 14 states have instituted so-called "boot camps" for offenders sentenced to substantial prison terms. In exchange for up to six months successful participation in an

¹⁷ Ibid., Curtin and McDevitt; also, "The Effect of Community Reintegration on Rates of Recidivism: A Statistical Overview of Data for the years 1971 Through 1985", Daniel P. LeClair, Massachusetts Department of Correction, July 1988.

intense training program, an inmate's sentence is substantially reduced. While finding only slight reductions in recidivism, research suggests that this option must be geared for serious offenders facing long prison terms to realize any savings in corrections expenditures. Research further recommends that boot camps work best as an early release mechanism controlled by correctional administrators.

The Task Force recommends the development of a range of graduated release mechanisms administered by correctional administrators to manage the safe release of inmates, and to provide inmates with rehabilitative opportunities.

New options must be added and current ones expanded to guarantee that each inmate has the necessary supervision and controls throughout the sentence. Moreover, these options must be carefully administered to ensure that their imposition is based on the offender's risks and needs.

F. Inmate-Related Services

Just as important, services for offenders must be available in order to achieve the public safety goal of reduced crime. Substance abuse treatment of drug and alcohol addicted offenders, estimated to be more than 80% of the inmate population, must be enhanced for the benefit of the community's safety and health. Education for the functionally illiterate, estimated by public officials to be 44% of the state inmate population and 30% of the probation population, is in the best interests of the state's future economy and public safety. Pre-release centers and halfway houses, with almost two decades of successful and effective operation, must be more widely used as the means of returning inmates to the community.

Currently, Massachusetts has three minimum security prisons for drunk-driving inmates. These facilities are designed exclusively to confine and to provide intensive treatment for multiple drunk-driving offenders. A 1987 evaluation of one of these programs by the Department of Correction reported that "relatively few individuals completing the program are rearrested and returned to prison within one year of release." The study found that only 6% of the drunk-driving program graduates were returned to prison versus 19% of those released from other similar low security facilities. These preliminary findings suggest, according to the study, "that the program is effective in reducing recidivism among multiple drunk drivers, as well as impacting on the alcoholic behaviors of such offenders."¹⁸

¹⁸ Ibid. LeClair et al.

The Senate Committee on Post Audit and Oversight in a recent study found that "there is a significant need for prison education." The Committee reported increasing evidence of a beneficial relationship between educational programs and recidivism, and that prison education could reduce overcrowding.¹⁹

Similar findings were reported by Suffolk County Sheriff Robert Rufo in filing legislation to mandate the development of a prison education curriculum and standards and to establish incentives for prison education programs. The Task Force endorses the recommendations of the Senate Committee's Report and the legislation filed by Sheriff Rufo, "An Act To Establish Uniform Educational Guidelines for Correctional Facilities."

These inmate-related services are just as much a part of effective corrections as prisons and intensive supervision. The Commonwealth must provide inmates with opportunities to obtain the basic tools to be productive, law-abiding citizens. In the opinion of the Task Force, this is not "pampering"; it is public safety.

¹⁹ "The Adult Correctional Education Program of the Massachusetts Department of Correction: A Performance Audit", Senate Committee on Post Audit and Oversight, November 1990.

VI. SENTENCING IN THE COMMONWEALTH

The Task Force finds that sentencing in Massachusetts is haphazard, confusing, and archaic, with a hodgepodge of options.²⁰ More importantly, Massachusetts judges are given no guidance on what to consider in sentencing, except for those crimes carrying mandatory penalties. As a result, there is substantial disproportionality in sentences given for various offenses and a lack of uniformity among sentences imposed for the same offense.

Another complication is the absence of any reasonable codification of crimes. What exists is of "common law" origin, and lacks any specificity or proportionality. As a result, the statutory sentencing ranges bear little or no relation to the comparative seriousness of the offenses. For example, the sentencing range for trafficking in marijuana is a ten year mandatory minimum, while the range for armed robbery--"for life or for any term of years"²¹--is at the complete discretion of the court.

There is also little truth in Massachusetts sentencing. As mentioned above, a reformatory sentence of 10 years means one year served for most offenders. The public has little understanding as to how much time is actually served in prison for a particular sentence.

Structural factors further inhibit uniform and proportional sentencing. The administrative and budgetary separation of District Courts from one another and from the Superior Courts allows vast disparity from court to court in the imposition of sentences. There is little serious dispositional advocacy in the District Courts, where sentences are always subject to appeal to six-person jury sessions. Such sessions perform *ad hoc* sentencing review while trying to manage skyrocketing caseloads.

Indeed, all sentencing reform in Massachusetts has been on an *ad hoc*, issue-oriented basis. In recent years, we have seen the passage of mandatory sentencing legislation for drunk driving and a host of drug offenses; we have witnessed the adoption of victim's rights measures and others that affect sentencing practices. Each of these proposals influences sentencing and criminal justice in the Commonwealth. While they

²⁰ The state's sentencing laws provide four basic options with several exceptions:

- A *state prison sentence*, ex. a minimum of 7 years and a maximum of 10 years state prison sentence with parole eligibility at 2/3rds of the minimum;
- A *reformatory sentence*, ex. 10 year reformatory sentence with parole eligibility at 12 months;
- A *county house of correction sentence*, ex. 18 month house of correction with parole eligibility at half-time; and,
- A *mandatory sentence*, ex. automatic minimum 15 years state prison sentence with no parole eligibility.

²¹ Massachusetts General Laws Chapter 265, Section 17.

may be in response to serious social concerns, together they contribute to a more haphazard and more confusing sentencing system.

As one step towards a more logical and fair sentencing system, the Task Force recommends that the Commonwealth repeal mandatory sentencing laws, except those for first-degree murder. A sentencing system with guided discretion allows appropriate sanctions and correctional resources to be directed at offenders according to the seriousness of their crime and their risk to the community.

The Task Force heard uniform condemnation of the increased reliance upon mandatory sentencing, particularly as it relates to drug offenses. Regardless of their role in the system, law enforcement and justice officials viewed mandatory sentencing as forcing the justice system to be both too lenient and too harsh in its results. The mandatory sentencing laws do not distinguish the seriousness of the crimes; and they prevent judges from fitting the sentence to the seriousness of the particular crime and role of the offender.

These same officials also blamed mandatory sentencing laws for severely hampering the administration of justice, causing serious overload of the courts and a dramatic slowdown of the justice system as defendants seek to delay their day of reckoning in court. These laws also result in deals that cheapen the system, forcing judges and prosecutors to make findings with little to substantiate them or to look the other way despite evidence to the contrary. When judges are forced to apply the minimum mandatory sentence, they often do so with great reluctance because they are unable to apply any discretion to their decision which might take into account the seriousness of the offense, the offender's record or other factors.

In addition to these problems, mandatory sentencing laws are a major contributor to prison overcrowding in Massachusetts. In the state prisons, approximately 600 inmates (and growing) are serving mandatory minimum sentences for drug offenses. While the average length of sentence is five years, one-third of them have minimum terms of ten years or longer. For most of them (80%), this is their first adult incarceration; and nearly half of them are classified by state corrections as low risk or non-violent. Despite their low risk, these inmates present special problems because they are not eligible, by virtue of the length and mandatory nature of their sentence, to participate in many treatment programs or receive good time credits.

Finally, mandatory sentencing threatens public safety by denying offenders access to treatment programs and controlled-release mechanisms.²²

We appreciate the public's desire that sentencing be uniform and not subject to the complete whim or caprice of a judge. Sentencing, like other areas of the law, should operate in accordance with law and not be subject to the complete discretion of any individual.

To bring order, balance, and reason to sentencing, the federal government and fourteen other states have established commissions whose purpose is to develop uniformly applicable sentencing guidelines for the entire range of criminal offenses.

After examining their experiences, the Task Force recommends that the Commonwealth establish a Sentencing Commission to revise Massachusetts sentencing law, to design and implement sentencing guidelines, and to serve as the principal author of future sentencing amendments and reform in order to avoid ad hoc reactionary change.

Furthermore, the Task Force recommends that the Commonwealth charge the Sentencing Commission to pursue the development of a fair and truthful sentencing structure through guidelines which incorporate the following:

- a. A consistent theory of sentencing, including both retributive and rehabilitative factors;
- b. Uniform and proportional penalties, so that offenders are punished equitably, according to their criminal conduct and offense history;
- c. Judicial discretion, framed by commission-established and legislature-approved guidelines, and monitored for leniency and harshness by appellate review available to both the prosecution and defense;
- d. A broad scale of sentencing options, reserving incarceration for the most serious offenders while imposing appropriate intermediate punishments on less serious offenders; and,
- e. Ongoing coordination of the state's sentencing and corrections functions to ensure truth in sentencing, and to maintain balance between the state's correctional capacity--both community-based and prison-based--and its sentencing practices.

The Task Force further recommends that appointments to the Sentencing Commission be by the Governor, the Legislature, and the Supreme Judicial Court. The terms of the appointments should be staggered and should be for seven years.

²² The Boston Bar Association, in its "Resolution Opposing Mandatory Sentencing" of June 1990, found that mandatory sentencing laws "create many individual injustices, cause severe prison and jail overcrowding, increase court congestion and overburden the court system, and have not reduced our serious crime problem."

The Commission must be representative of the larger community, including people of color and women. It must allow input from the entire system of justice including law enforcement, prosecution, defense counsel, the judiciary, probation and corrections and from the social service system including mental health, mental retardation and public health. It must allow input from legislators, local officials, and victims of crime.

The Task Force believes that such a commission and the resulting sentencing guidelines allow for agreement on the serious offenses that require swift and long-term imprisonment, while giving appropriate discretion on the mid-range cases and less serious crimes. The Task Force also believes that sentencing guidelines must recognize the capacity and resources of the correctional system to ensure that the sentence can and will be enforced. Finally, the Task Force believes that a sentencing commission administering written guidelines can provide the publicly stated policy and rationale for sentencing now lacking in the Commonwealth.

A necessary first step for the Commission is to identify current sentencing patterns in Massachusetts and to recognize their impact on the capacity of the entire system--courts, prosecutors, public defense, probation, corrections and parole. The Commission must also create a range of sentencing options, including both community-based and prison-based, and identify appropriate options for each offense. Where existing statutes are ill suited to the application of such sentencing ranges, they must be revised. Finally, the Commission must establish aggravating and mitigating factors to be applied to every offense.

Adoption of this proposal would make the Massachusetts justice system and sentencing policy more truthful and fair. The Commonwealth would benefit, as have several states--Minnesota, Delaware, Washington, Oregon and others--from a system that balances the need to punish the offender, the means to do so, and the desire to be fair and equitable.

The Task Force is mindful of the history of presumptive sentencing in the Commonwealth, but that does not deter us from this recommendation. We believe that guidelines developed by a sentencing commission, incorporating a range of criminal sanctions and guided by capacity of the state's correctional resources, will result in a fair and just sentencing system.

The Task Force is also mindful of criticisms voiced about the federal sentencing guidelines, particularly that they virtually eliminate judicial discretion and have dramatically increased incarceration in federal prisons. There is much to be learned from the federal commission's experiences as well as the advances made by several states, notably

Minnesota and Oregon, to develop a system which affords the judge necessary discretion and which seeks to balance the state's correctional capacity with its sentencing policy.

Finally, the Task Force believes that the Sentencing Commission would perform one other important function. An informed and official body is needed to speak clearly and honestly to the public concerning the operation and effectiveness of the criminal justice system. One of the reasons there is so much misinformation about criminal justice is that it is a politically loaded area of public discourse. Establishing the commission as a politically independent body that can speak authoritatively and knowledgeably on matters of criminal justice will allow regular and accurate communication with the public and others.

VII. A CENTRALIZED CRIMINAL JUSTICE SYSTEM

Throughout its deliberations, the Task Force heard a universal call for a centralized and unified criminal justice organization that could oversee and enforce policy, promote knowledge acquisition and communication, coordinate management of resources, and enhance collaboration, planning and information dissemination.

Currently, the Commonwealth lacks such a body. As discussed above, there is no policy to guide judges at sentencing, except for mandatory sentencing. There is no policy guidance for probation in determining supervision terms and conditions other than the very general and insufficient pronouncement of the sentence and probation term. There are fourteen separate policies guiding classification systems for the Commonwealth's prisons and jails, each with their own procedures and criteria. And each of these agencies, as well as the Parole Board, sets policy for their functions with no collaboration or central guidance.

There is also no centralized information system responsible for collection, analysis and dissemination of accurate information and knowledge to criminal justice agencies. There is no central storage of information by which these agencies can track a criminal case or an offender from arrest through parole. Thus, for example, a prison may classify an inmate for work release without knowledge of a warrant for a separate charge because it has not been lodged by a law enforcement agency. Information is gathered by each agency (oftentimes the same information), each with its own process, and each for its own use.

There is also a lack of coordination of the justice system's very limited resources. For example, it is not unusual that a recently released inmate is supervised by a parole officer and a probation officer at the same time. For another example, there are private halfway houses under contract with the Department of Correction that provide essentially the same service for much less cost than state operated pre-release centers.

There is little monitoring of the agencies of the system. In recent years we have seen assessments by the Senate Committee on Post Oversight and Audit concerning prison educational services, reviews by the Senate Committee on Ways and Means regarding prison and jail crowding, and studies by the Executive Office of Human Services of female offenders and prison crowding. While these studies provide an important impetus for change, what is needed is regular and comprehensive review, against stated policies and standards.

Finally, there is no organization charged with the very important task of providing accurate and timely information to better educate the public. While several criminal

justice agencies have spokespersons, often this role is one of responding to media attention to incidents or of giving information concerning the single agency. What the justice systems lacks, however, is a systemwide perspective of how criminal justice agencies work to protect public safety and to change an offender's behavior.

The Task Force recommends that to meet the problems and demands examined above, the Commonwealth must centralize and unify the state's criminal justice agencies in a single executive branch organization. To be effective, such an organization must have direct control over the following functions, at a minimum:

- steer the development and enforcement of criminal justice policy;
- enhance the collaboration of planning and service delivery of all justice agencies;
- set priorities for allocation and management of resources; and,
- promote the acquisition and dissemination of information and data.

To be effective, this organization must have direct supervision of the state's criminal justice line agencies, including at a minimum corrections, parole, probation, committee on criminal justice, criminal history systems board, and security and privacy council.

In times of fiscal austerity, this centralization and unification are more essential than ever.

In considering this recommendation, the Task Force found a shared mission, function, and client population among probation, state corrections, county corrections, and parole. Part of the mission for these agencies is public safety--to conduct their responsibilities mindful of supervising and controlling the offender so as to protect the community from further crime. The other part of their shared mission is to change offenders' behavior so that when they return to the community and leave all custodial care (which the vast majority of offenders do), they are enabled to live as contributing, law-abiding citizens.

To carry out this mission, the functions of these agencies include punishment, control and treatment. Punishment includes restricting the offender's liberty--either in the community through probation or parole restrictions, or in prison through incarceration. Controls are enforced through supervision and monitoring activities to ensure that the offender is complying with the terms of the sentence and the laws of the Commonwealth. Treatment is provided through education services, training programs, substance abuse counseling and other activities geared to changing the offender's behavior and reducing future crime.

The Task Force found that a centralized criminal justice organization is a concept that is widely employed across the country. From a 1988 survey²³, it was the organizational choice of 25 states. Most recently it was adopted by Texas as that state seeks to regain control of its criminal justice system from the federal court. In each of these states, the functions of community supervision, incarceration and controlled release are coordinated and monitored by a single organization.

It is a concept that has been employed on a limited basis with the county jails and houses of correction. Today, the Sheriffs' Departments operate under state oversight through standards and grant conditions while maintaining control of facility operations and programs. They send standard data on inmates committed to their facilities to the Department of Correction which in turn generates reports on trends for the entire county corrections system. The Sheriffs' Departments have also taken the initiative to standardize certain operations, such as gathering health data, among all county facilities.

It is also a concept that has been proposed for Massachusetts several times over the last couple of decades by legislative committees, governor's commissions and others. Oftentimes, these proposals have grown out of problems or crises. Today, many of those problems remain--overcrowded court dockets, probation and parole caseloads, prisons and jails; a swelling of the offender population by the mentally ill, medically afflicted, homeless, alcoholic, illiterate, drug addicted and other socially handicapped; increased litigation focused on the inadequacies of the justice agencies. Other crises and challenges will arise to confront the Commonwealth's criminal justice agencies.

In the short-term, a centralized and unified organization will not resolve these matters. But it can provide the necessary specialized and focused management in matters of policy, planning, information acquisition and communication, program development, and service delivery. It can advance a criminal justice system that enforces the penalties and conditions imposed on offenders, demands accountability from offenders, and provides the structure to minimize future crime and protect the public.

²³ "An Executive Office of Criminal Justice: A Concept Whose Time Has Come", Crime and Justice Foundation, (unpublished) December 1988.

VIII. CONCLUSION

The work undertaken by the Task Force and the conclusions it has reached illustrate the need for significant change in the Commonwealth's criminal justice system. The Task Force is convinced that change, as embodied in our recommendations, is sorely needed and must be pursued immediately. Both of the sponsoring organizations--the Boston Bar Association and the Crime and Justice Foundation--are fully committed to furthering the recommendations and will work towards their adoption.

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