



Statement of the Boston Bar Association on Probation and Parole Reform

A scandal and a tragedy present the Massachusetts legislature with a unique opportunity to achieve unprecedented criminal justice reform. Patronage and hiring abuses in the Probation Department led to a shakeup in leadership and the suggested transfer of the department from the Judiciary to the Executive. The murder of Woburn police officer John Maguire by a paroled convict resulted in an overhaul at the Parole Board. Many agencies and study groups are at work to articulate new recommendations for the administration of these important public safety functions. For the first time in years, it seems there is a mandate for real change which can achieve broad political support.

The Boston Bar Association strongly believes that the momentum for change created in recent months should not be squandered on piecemeal solutions, and that we should not defer to established structures without good reason as we aim to design a better criminal justice system. Now is the time for an open debate on broader issues, which can be framed by a set of guiding principles around which all the stakeholders can agree.

In December 2010, Donald Frederico, President of the Boston Bar Association, commissioned a review of the probation issue by a group of BBA leaders with significant criminal justice experience, including current and former prosecutors, criminal defense counsel, and an attorney who previously served as a probation officer in the Probate and Family Court. The BBA has considered the arguments on both sides of the debate: that consolidation of probation and parole in the Executive Branch is necessary to enhance coordination and avoid waste; and that preserving effective relationships between judges and probation officers requires that probation remain in the Judiciary. We find that both propositions have merit but that neither one is controlling. We are convinced that patronage hiring can be avoided, and best practices implemented, by either the Executive or the Judiciary. We believe that both functions are currently under the leadership of competent, committed public servants, and that before any permanent reorganization is implemented new leadership should be permitted to create and implement a blueprint for change within each department.

Based on the BBA study group's careful review and analysis of the issues, the BBA recommends that the following set of principles be applied in setting an ambitious agenda for reform:

- The legislature should look beyond the problems currently documented in probation and parole to develop a coherent criminal justice and sentencing system in which these restructured agencies will play coordinated roles. We

hope that the legislature will consider more cost-effective use of mandatory sentencing and the adoption of sentencing guidelines, which would include alternative sentencing practices for low-risk offenders and intensive supervision, where appropriate, to encourage successful completion of supervision and re-entry into the community.

- The Departments of Probation and Parole should be required to implement evidence-based decision making to support risks/needs assessment of candidates for conditional release.
- Within their community release functions, the Departments of Probation and Parole should be required to apply cost/benefit analysis to guide expenditures for intensive supervision functions like electronic monitoring, community supervision, and day reporting which are not driven by political considerations but instead aimed at applying resources where they are most likely to result in the benefit of reduced recidivism.
- The legislature should insist on better collaboration among criminal justice agencies that ensures sharing of information; coordination of training, services and strategies; and elimination of redundant and wasteful government functions.
- The hiring and promotion of personnel in these agencies should be based on education, experience, and professional potential alone. The legislature should require that tracking of probationer compliance and other human resource tools such as annual reviews be utilized to retain and promote probation and parole officers who are successful in achieving reductions in recidivism.

The BBA has supported thoughtful, systemic criminal justice reform in Massachusetts for over 20 years, since its 1991 Task Force Report, *The Crisis in Corrections and Sentencing in Massachusetts*, recommended the creation of sentencing guidelines to reform the state's antiquated criminal code. We supported guidelines and the establishment of a Sentencing Commission in order to eliminate ad-hoc sentencing changes and to check politically-motivated enhancements to mandatory sentencing provisions. We also recommended the establishment of a centralized criminal justice system. "To be effective, [the criminal justice system] 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."

Although those ambitious goals have not been realized, incremental progress has been achieved. The 1995 Truth in Sentencing Act eliminated misleading practices such as the "indefinite" sentence, and the same law created the Massachusetts Sentencing Commission. The Commission's proposed guidelines have not yet been adopted, but the Commission serves as a valuable resource for data regarding sentencing practices. We

supported CORI reform, which was passed in 2010. We recently supported the first positive step toward elimination of unduly harsh and fiscally irresponsible drug mandatory sentences, when the legislature in 2010 amended the “school zone” law to permit departure from the mandatory term in certain circumstances.

Today Massachusetts spends \$1.2 billion dollars annually on state and county corrections, parole, and probation. The reduction of recidivism is a unifying goal of these agencies, together with the courts. The real issues affecting probation and parole are not in what branch of government those agencies reside, but how they make cost-effective program choices and deliver community supervision services that are best designed to protect the public by reducing recidivism.

We applaud the work done to respond to the current crisis and look forward to participating in a robust public debate on these issues.

BBA Probation Reform Study Group

Chair:	R. J. Cinquegrana	(former BBA President, Choate Hall & Stewart, LLP)
Members:	Lawrence DiCara	(chair, BBA Legislative Advisory Committee, Nixon Peabody LLP)
	Randy Gioia	(former member, BBA Council, Committee for Public Counsel Services)
	Robert Iuliano	(member, BBA Council, Harvard University)
	Liza Lunt	(member, BBA Council, Zalkind, Rodriguez, Lunt & Duncan LLP)
	Christina Miller	(member, BBA Council, Suffolk County District Attorney’s Office)
	Lee Peterson	(chair, BBA Family Law Public Policy Committee, McCarter & English, LLP)
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