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The State of Corrections
in Massachusetts:
A Warning

Massachusetts Correctional Legal Services
January 1997

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Introduction

The Massachusetts prison system is in trouble. While overcrowding is an obvious concern, the primary problem is a correctional administration that has avidly pursued misguided policies which threaten both public safety and prison security. These policies include:

- (1) Substantial reductions in rehabilitative programming, including education, substance abuse treatment, and mental health care;
- (2) Creation of daunting obstacles to prisoners' maintenance of family and community ties;
- (3) Reliance on lengthy segregation as the main form of control with drastic reduction or elimination of positive incentives to good behavior; and
- (4) Overclassification of prisoners in unnecessarily secure confinement without preparing them for life post-incarceration.

In Massachusetts, the vast majority of prisoners are idle most of the time. Education, substance abuse, and vocational programs for prisoners, as well as permissible contacts between prisoners and their families and community groups, have been sharply curtailed. With incentives for good behavior diminished or eliminated, the Department of Correction ("DOC") and many county jail administrations have increased the use of segregation and punishment as the primary method of control. Ironically, these policies which purportedly increase security and control do the opposite. They actually increase the potential for widespread prison disturbances.

The harsh treatment of prisoners also hurts the communities to which most prisoners return after completing their sentences. For example, in 1994, the latest year for which statistics are available, there were 3,763 prisoners released from DOC custody to the street (this figure does not include county releases).¹ Thanks to DOC policies, these ex-offenders come back to us increasingly embittered, without useful skills, with disrupted family ties, no community support systems, and little opportunity for a normal and productive life. These policies, therefore, increase recidivism and undermine public safety.

I. Rehabilitative Programming Slashed

Ninety-seven percent of currently incarcerated Massachusetts prisoners will be released at some point. Therefore, rehabilitative efforts within prison are essential both for crime control and to reduce the high costs involved with recidivism. Instead, all forms of rehabilitative programming, including education, substance abuse treatment, vocational opportunities, and mental health treatment have been slashed by the DOC. Mass. INC., which recently studied the state of corrections in Massachusetts, recommended that "Massachusetts should restore and expand the prison-based rehabilitation efforts that have established a proven track record of reducing future crime rates."²

For example, the DOC budget per inmate for education in 1995 was \$350 per inmate, compared to \$585 per inmate in 1990.³ According to a recent study, almost half the DOC prisoners are functionally illiterate,⁴ yet while the DOC has been "aggressive about down-grading athletic facilities, it has made no noticeable effort to upgrade the accessibility of books and other tools for learning."⁵ The teaching staff at MCI-Concord, which has a prison population of 1,000, has been cut from seven to one.⁶

Four years ago, educational and vocational programs were available to prisoners at MCI-Cedar Junction (formerly known as Walpole). Today most of the same population have no access to education or other vocational programs and almost no work opportunities. Further, community volunteers have been barred from the prison; even religious services are unavailable to all but 20% of the 800 inmates at MCI-Cedar Junction.⁷ The Boston Globe on December 8, 1996, reporting on John Salvi's death, referred to the modification of Cedar Junction from "a 1950's correctional facility into a kind of high-tech dungeon" where officials "have become callously indifferent to even the idea of rehabilitation."⁸

Studies show that completion of adult basic education and G.E.D. programs by prisoners is positively correlated with lower rates of recidivism. For example, in a Wisconsin study, 38% of all released prisoners returned to prison within three years, while prisoners who had completed education programs returned to prison one-third less and had higher rates of employment.⁹ For prisoners who get their college degrees, there is a zero percent recidivism rate.¹⁰ Yet 80% of state prisoners have no education or vocational programs on a monthly basis and only seven out of twenty-two DOC facilities offer any academic programs at all. As Mass. INC. concluded:

Based upon the research findings . . . , the Massachusetts Department of Correction should be expanding, not contracting, its correctional education programs.¹¹

There is also strong evidence of a correlation between substance abuse and criminality. Fifty-two percent of state prisoners nationwide have a prior history of drug offenses. The National Institute of Justice reports that in 1994, approximately two-thirds of arrestees tested positive for at least one drug, excluding alcohol, at the time of booking.¹² Yet only 10.6% of Massachusetts state prisoners were in some type of drug treatment on January 1, 1995.¹³ In fact, a recent national study placed the Massachusetts DOC in the lowest twentieth percentile of states in terms of funding for treatment programs in corrections, expending only 2% of the FY 1996 budget on treatment and programs. By contrast, four states - - Iowa, Maine, New York and Washington - - spent between 10% to 18% on those services to their state prisoners.¹⁴

Drug treatment has been proven to reduce recidivism. For example, in Missouri, there was a 50% lower recidivism rate for graduates of a court-supervised treatment program than for inmates who did not receive treatment.¹⁵ A recent federal study concluded that 50% of people who participate in federally funded drug treatment programs remain drug-free after one year. Further, their crime and unemployment rates also drop significantly.¹⁶ The failure of the DOC to achieve such results cannot be justified. Nor can the decrease in mental health services for prisoners, at a time of rising need. The words of Dr. James Gilligan, state director of Prison Mental Health Services from 1981 to 1991, are particularly apt. "In corrections, we are moving backwards. The Salvi case is one example of the repercussions."¹⁷

2. Impossible Obstacles to Family and Community Ties

Using security as justification, new restrictive Department of Correction telephone and mail policies impede or destroy personal ties between prisoners and their families and friends. All telephone calls are monitored and recorded by DOC personnel. Many inmates and family members stop communicating rather than tolerate this invasion of privacy. Additionally, visitors are often subject to such arbitrary, time-consuming and humiliating procedures that many no longer visit the prisons. Family members travel as long as two to three hours, yet by the time they are processed, they may only be permitted a brief visit. Recently, a blind volunteer from a community agency was delayed over an hour and a half by the DOC before she was permitted to visit a disabled prisoner to provide rehabilitative services. She had to terminate her visit after twenty-five minutes so that she could connect with her transportation. There is arbitrary and inconsistent application of clothing rules - - for example, a person who has visited wearing a particular article of clothing will be denied access on another visit wearing the same clothing. Women face additional humiliations. For example, women who are menstruating must show their bloody tampon to an officer before they are permitted to change their tampon during a prison visit. There are also random strip searches of visitors, and a refusal to undergo a search might provide justification for being barred from visiting for up to one year.

These are examples of the approach to prison visitors that discourages outside contact, as well as limits access to rehabilitate services.

DOC's own study demonstrates that prisoners who retain close family and community relationships have lower recidivism rates and a higher likelihood of success on release.¹⁸ As Mass. INC. emphasizes:

The process of transition from prison back to the community deserves more attention than it now gets. Offenders can better learn to obey the law if they are involved through personal and social ties with the institutions of the community - - family, church, schools, and the work-place.¹⁹

In addition, between 60 and 70% of the women at MCI-Framingham are mothers, for whom maintenance of ties with their children and preparation for them to be constructive parents on release, are especially important.²⁰

Yet current policies isolate prisoners from the community, at great peril to public safety. An additional example is Massachusetts' decision to transfer 299 state prisoners to Texas a year ago. As one commentator has noted:

Sooner or later, all the transferees will get out. Their Texas incarceration will have cut them off from family and friends and the community to which they will return. They will experience additional doses of depression and rage, and they will be precluded from a gradual reintegration into society through work release or parole.²¹

3. Segregation as the Primary Method of Control

The DOC and certain county jails have been expanding the use of long term segregation as the primary tool of punishment. For example, during the summer of 1995, MCI-Cedar Junction was completely locked down for four months. This meant that inmates were locked in their cells 23 to 24 hours a day, with no education, work, or exercise. Currently, 360 prisoners are being held there in the East Wing in cells which a Superior Court judge deemed segregation cellblocks; those prisoners are released from their cells for as little as one hour per day or not at all. Approximately 100 additional prisoners are held for periods of up to ten years in the Departmental Disciplinary Unit, a high-tech segregation unit where prisoners have virtually no contact with anyone else. Another 105 MCI-Cedar Junction prisoners are in segregation in the infamous Nine and Ten Blocks. These horrendous conditions were recently highlighted in the Boston Globe, after the suicide of John Salvi, who was being held in segregation there despite apparent serious mental health problems.²² There are also segregation units at many other state prisons where prisoners are held for long

periods. Currently, the DOC is building a new maximum security prison at Shirley, presumably to hold prisoners under the same level of deprivation as is currently maintained at Cedar Junction.

The DOC also has a segregation policy specifically directed at gang members. Prisoners considered to be gang members, regardless of their conduct in prison and based, in many cases, on slim evidence at best, are kept in isolation 23 to 24 hours a day, with almost no access to education, treatment or work. The policy appears discriminatory since approximately 90% of the prisoners so designated are Latino, despite the existence of white, Asian and African-American gangs. It is also counterproductive. Researchers have found that law enforcement personnel typically exaggerate gang cohesiveness and pursue "crackdown" policies which only heighten gang self-identification. Rather than creating safety, the DOC gang policy increases the risk that prisoners will return to their communities as confirmed gang members.

The elimination of statutory good time has exacerbated the problems of overuse of segregation. Traditionally, one of the principal forms of prison punishment was the forfeiture of statutory good time. This might add months or years to a sentence. But "truth-in-sentencing" eliminated statutory good time for all state and county prisoners, thereby removing a key incentive for good behavior.

Widespread use of long-term segregation as the primary tool of punishment is counterproductive and leaves prisoners with no incentive for good behavior. It increases tensions and removes the possibility for access to rehabilitative programs. When most prisoners realize they are stuck in high security or segregation for the duration of their sentences, they feel no incentive for good behavior. Their largely accurate perception is that they will not move to lower security, no matter how well they behave.

4. Failure of Reintegration

In the past few years, the DOC has closed pre-release facilities and reduced minimum security beds while expanding medium and maximum security prisons. The DOC's own study has concluded that Massachusetts is overclassifying a large percentage of inmates to maximum and medium security who would be safely housed in minimum and pre-release by other jurisdictions.²³ The error, the DOC study concluded, was in failing to use an objective point-based classification system.²⁴

The result is the continued overclassification of large numbers of prisoners in higher security than necessary. This is not a fiscally or correctionally responsible approach. First, appropriate classification is fundamental to an effective system of control within prison. Second, overclassification is disastrous to the state's financial well-being. It costs between \$50,000 and \$100,000 to build a prison cell and \$30,000 per year to incarcerate prisoners.²⁵ Currently, the state corrections budget is 74% of the budget for higher education.²⁶ Should the state proceed to construct the additional 6,000 prison beds authorized in the 1996 prison bond legislation, the corrections budget will increase by approximately \$186,000,000. At that point, the state correctional budget would compose 97% of the state's higher education budget. This comparison highlights the imbalance in priorities imposed on the state by a strategy that focusses on expanding prison space.

The overclassification of prisoners also increases recidivism of ex-offenders.

[A]ssociated with the reduction in recidivism is the graduated societal reintroduction of the offender. This is accomplished through a series of movements among institutions in descending levels of security and size along with the awarding of increased increments of community contacts.²⁷

But instead, over half of all male and female state prisoners are released from maximum or medium security prisons directly to the street, without any graduated reintegration. As Mass. INC. observes, they emerge "less prepared to handle the responsibilities of life in the community, and are thus more likely to return to a life of violence and crime in our neighborhoods."²⁸ Massachusetts should heed the comments of New Haven Police Chief Nicholas Pastore:

If we continue to quick-fix by expanding our prisons, this drop is just the lull before the storm. You will within a few years have a significant segment of society who are prison-influenced and prison-behaved.²⁹

Correctional policy in Massachusetts needs to focus on creating a range of levels of security and classifying people appropriately. In this light, the expansion of higher security prison space needs reappraisal, not only for security within prison but for the safety of our communities.

History's Lessons.

These short-sighted correctional policies are not new to Massachusetts. Corrections policy in other states have been based on coercion, lack of opportunity, and a severing of ties between community and prison. Riots involving major loss of lives and property damage ensued in two infamous examples - - the New York State Prison at Attica in 1971 and the New Mexico State Penitentiary in 1980. In both cases, the riots followed a change in correction policy from positive incentives to a diet of segregation, deprivation and separation from the non-prisoner world. Thirty-two inmates and eleven correctional staff were killed at Attica, many by state troops who fired into crowds. The New Mexico State Penitentiary riot resulted in large scale property destruction, brutality and death.

The official McKay Commission report on Attica stated that before the riot, educational and recreational programs were slashed so that the "principle occupation was idleness." Rehabilitation had been replaced by confinement and security as the sole objectives. The most long-lasting negative consequence of these policy changes, the McKay Commission emphasized, was the impact on the majority of prisoners who would return to their communities, "more embittered, more anti-social, and more prone to violence than they were when they entered."

The New Mexico Attorney General's office analyzed the conditions leading to their riot, concluding that overcrowding and misclassification were present but were not primarily responsible for the conflagration. Rather, the riot was caused by the disruption of incentive controls: the reduction in prison and community-based programs, the arbitrary and excessive use of segregation, tighter restrictions on inmates, and sharp limits on contact with persons outside the prison. When these occurred, the level of violence in prison increased almost immediately. "For this reason, prison programs cannot be viewed as mere window dressing."

The effective control of inmates involves a certain degree of voluntary compliance that is largely gained by giving inmates a self-interest in maintaining orderly behavior. . . . This is a fact of life in every prison in America. . . . Controlling inmate self-interest is the key to controlling prisons [and] . . . is more effective when the prison administration can use a wide range of rewards and punishments A range of programs, housing and job assignments and other formal incentives . . . can be given to inmates as rewards and taken away as punishment. To an inmate who has earned a program position, potential removal from a program is a greater deterrent to the inmate than the threat of lock-up.

After the New Mexico riot, the lack of an effective classification system was also condemned. As the New Mexico authorities observed from bitter experience:

We only stay in control of prisons to the degree that the prison population as a whole sees our administration as fair, human, somewhat reasonable, something they can understand. When we reach the point where a large number of prisoners see our administration as something other than that, then we have the potential for anything. The walls, the bars, the sallyports and all the impressive clanging hardware are deceptive in their promise of security.

Time for Change

The lessons of Attica and New Mexico should call into question what is going on in Massachusetts today. Almost monthly, Massachusetts Correctional Legal Services learns of some new regressive correctional policy which threaten to further destabilize corrections. For example, in the fall of 1996, the DOC moved to rescind almost all its regulations governing state and county corrections, an action which was enjoined by the Superior Court in December 1996. This would have left prisoners, visitors and correctional personnel without appropriate guidance concerning their respective rights and responsibilities. As of November 1996, the DOC appears to be systematically removing large numbers of law books from prison libraries, including, for example, self-help materials, donated books, child custody resources, and materials concerning post-release programs. John Salvi's suicide underlines the inadequacy of mental health treatment in prison, as well as the improper use of segregation in lieu of treatment.

Building more prisons at a time when the rate of violent crime is plummeting, locally and nationally, makes no sense. Both Boston and New York's murder rates are at the lowest point in thirty years³⁰ and in Boston in 1996, the crime rate declined for almost every category of violent crimes.³¹ The authorities attribute prevention efforts for the crime drop, citing police and community work and gun control as key factors.

Massachusetts should listen to the conclusion of the New Mexico Attorney General's report and alter its correctional course.

Prisons simply do not deal with the basic problems of crime in our society. Prison is a dehumanizing experience, and most persons come out the worse for being in. Nearly all criminals, even under the strictest sentencing practices, will return to society. Even a well managed bureaucracy, necessary to run prisons, cannot change these basic truths.

. . . If New Mexico does not dramatically change its philosophy and practices about how to deal with criminals, there will be more tragedies and the need for more reports by Grand Juries, by Citizens' Panels, and by the Attorney General. Ultimately, there will be more bureaucracy, more waste of taxpayers' money for architects and buildings, more crime and more human waste.

Recommendations

Massachusetts should incorporate or expand programs and policies that will increase safety in the prisons and on the streets. Specifically, the criminal justice system in Massachusetts must:

- Expand access to adequate drug treatment, vocational training, education programs and mental health care for prisoners.
- Enhance contacts between prisoners and their families and community groups which promote rehabilitation.
- Curtail the use of segregation and replace it with positive incentives for good behavior.
- Increase access to a broader number of minimum security and pre-release placements with appropriate classification procedures to permit gradual reintegration of prisoners.
- Develop a program of intermediate sanctions in lieu of incarceration for appropriate offenders. These provide a far less expensive approach to corrections, hold the offender accountable to the victim and the community, and maximize the likelihood that the offender can productively re-enter society.
- Reduce and modify mandatory minimum sentences, to provide drug offenders the rehabilitative benefits of pre-release placements, intermediate sanctions programs, and earned good time.

1. Massachusetts Department of Correction, "A Statistical Description of Releases from Massachusetts Correctional Institutions During 1994," June 1996.
2. The Massachusetts Institute for a New Commonwealth, "Criminal Justice in Massachusetts: Putting Crime Control First," October 1996 (hereinafter "Mass. INC., Putting Crime Control First"). While Massachusetts Correctional Legal Services disagrees with Mass. INC.'s recommendation to build more prisons, a number of its other recommendations are consistent with the correctional approach of Massachusetts Correctional Legal Services.
3. Boston Globe, November 11, 1996.
4. Boston Bar Association, "The Crisis in Corrections and Sentencing in Massachusetts."
5. Mass. INC., "Putting Crime Control First," *supra*.
6. Boston Globe, October 18, 1996.
7. Brotman and Dove, American Friends Service Committee, May 30, 1996.
8. Boston Globe, December 8, 1996.
9. Piehl, "Prison Education Programs," *Research Bulletin* (Cambridge, MA: Malcolm Wiener Center for Social Policy, John F. Kennedy School of Government, Harvard University, Fall 1994).
10. Dr. James Gilligan, former Director of Mental Health for the Massachusetts DOC, quoted in "Spare Change", December 1, 1996.
11. Mass. INC., "Putting Crime Control First," *id*.
12. National Institute of Justice, 1995.
13. Massachusetts Department of Correction, "A Statistical Description of the Sentenced Population of Massachusetts Correctional Institutions on January 1, 1995." June 1996.
14. *Corrections Compendium*, December 1996.
15. "Take Action on 5 Policies America Must Adopt to Reduce and Prevent Substance Abuse," A Report from a Join Together National Policy Panel.
16. Study conducted by Secretary of Health and Human Services Shalala and

General McCaffrey, the White House Drug Policy Director, as reported in the Boston Globe, September 6, 1996.

17. Boston Globe, December 8, 1996.

18. LeClair, Director of Research, Massachusetts Department of Correction, "The Effect of Community Reintegration on Rates of Recidivism: A Statistical Overview of Data for the Years 1971 Through 1985," July 1988.

19. Mass. INC., "Putting Crime Control First," *supra*.

20. Governor's Special Advisory Panel on Forensic Mental Health, September 1989.

21. Newman, "Marionizing Massachusetts," The Massachusetts Review, Vol. 37, No. 1, Spring 1996.

22. Boston Globe, December 4, 1996 and December 9, 1996.

23. Department of Correction, Forcier and White, "Testing the Implementation of a Point-Based Classification System: A Comparison of DOC Initial Classifications with the NIC Model Systems Approach," March 1989.

24. The DOC purported to switch to an objective classification system recently but in fact has created a point-based system in name only. The new classification system has too many overrides and places so much discretion with classification personnel that it continues to be subjective and arbitrary in practice.

25. "The Department of Corrections - The Next Budget-Buster," Report of the Commonwealth of Massachusetts House Post Audit and Oversight Bureau, July 1994.

26. The FY 1997 state corrections budget was \$532,833,000, while the FY 1997 budget for higher education was \$793,000,000. The cost of maintaining an additional 6,000 prisoners in Massachusetts would increase the corrections budget to \$769,000,000. This cost is in addition to the \$420,000,000 prison capital construction authorization approved by the legislature in 1996.

27. "The Effect of Community Reintegration on Rates of Recidivism," *supra*.

28. Mass. INC., "Putting Crime Control First," *supra*.

29. The Nation, "How the War on Crime Imprisons America," April 11, 1996.

30. Boston Herald, December 23, 1996; New York Times, December 29, 1996.

31. Boston Herald, December 23, 1996.