

*The Commonwealth of Massachusetts
Governor's Commission on Corrections Reform*



*Strengthening Public Safety, Increasing
Accountability, and Instituting Fiscal
Responsibility in the Department of Correction*

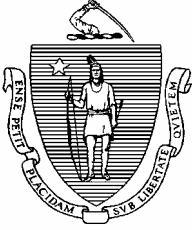
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Final Report
June 30, 2004



GOVERNOR'S COMMISSION ON CORRECTIONS REFORM

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June 30, 2004

The Honorable Mitt Romney
Governor, Commonwealth of Massachusetts
State House
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Dear Governor Romney:

I am pleased to present to you the report of the Governor's Commission on Corrections Reform which you asked me to chair last October. The report, entitled *Strengthening Public Safety, Increasing Accountability, and Instituting Fiscal Responsibility in the Department of Correction*, is the product of eight months of hard work and dedication by the Commission members who collectively represent a broad range of experience and expertise in criminal justice, corrections, law enforcement, human services, and public safety.

I personally want to express my gratitude to the members of the Commission for the contribution of their time, expertise, and energy to this critical public safety issue. In addition, the Commission would like to express our deep appreciation for the exceptional work of the staff of the Commission, including Carolyn Walsh, Rebecca Webb, Sarah Lawrence, Anne Piehl, and Joanne Scally.

This report, in response to your mandate to the Commission, is a comprehensive, top to bottom review of the Department of Correction, including leadership and governance, operational systems, security, programs and reintegration, and budget. Our report recommends significant systemic change. You will note that our findings and recommendations are focused on identifying ways to enhance public safety, ensure fiscal responsibility, and implement fair and just policies and practices, in the interest of inmates, staff, and the community. We are pleased to report that one of our most positive findings is the level of performance demonstrated by Kathleen Dennehy, Commissioner of Correction, and the leadership and vision of Edward Flynn, Secretary of Public Safety. Continued exceptional leadership is required for effective implementation of our recommendations.

I believe that the work of your Commission, presented in this report, will make a significant contribution to the Commonwealth's efforts to improve public safety and fiscal efficiency. If our recommendations are implemented, and the leadership of the Department is supported by a broad coalition of stakeholders, there is immense potential for change in the culture, governance, and operations of the Department. This change will be central to the Department's ability to become a valued partner in the Commonwealth's public safety efforts.

Thank you for the opportunity to serve as Chair of this distinguished Commission.

Sincerely,

Scott Harshbarger

ACKNOWLEDGEMENTS

The Governor's Commission on Corrections Reform would like to express its gratitude to The Gardiner Howland Shaw Foundation for its generous support of the Commission, and to The Boston Foundation for funding the Commission's research. This report could not have been produced without their financial support.

The Commission is very grateful to have received the cooperation and assistance of the Massachusetts Department of Correction throughout this process. In particular, we would like to thank Commissioner Kathleen Dennehy for speaking with the Commission on several occasions and for facilitating unimpeded access to the Department's institutions, staff, inmates, information and data. We would like to express our appreciation to the many employees of the Department who guided Commission members through the facilities, consented to be interviewed, completed surveys, testified before the Commission, and prepared materials for our use. We particularly appreciate the efforts of Michael Thompson, Director of Offender Management and Placement, for serving as the liaison between the DOC and the Commission and for coordinating accurate, thorough, and prompt responses to the Commission's many inquiries.

We would like to acknowledge the thoughtful insights shared by many current and former inmates of the Department. The Commission learned a great deal from these individuals through testimony, focus groups, and letters.

We appreciate the assistance and counsel of the Executive Office of Public Safety: Edward A. Flynn, Secretary; Jane Tewksbury, Chief of Staff; Christine Cole, Deputy Chief of Staff; Jed Nosal, Deputy General Counsel; and, especially, Patrick Bradley, Undersecretary of Criminal Justice.

The Commission would like to thank the three unions representing DOC employees for their testimony at the public hearing and for speaking at the Commission meetings. They provided an important perspective on the operations of the Department and its employees. The unions were represented by: David Pizzi, President, Public Safety Chapter of S.E.I.U. Local 509; Steve Kenneway, President, Massachusetts Corrections Officers Federated Union; and Captain Patrick DePaulo, International Brotherhood of Correctional Officers, Local R-1-10.

The Commission would like to express our appreciation to John Larivee, President and CEO, and the staff of Community Resources for Justice for their guidance and valued support throughout this process.

We are grateful for the many vital contributions of attorney Kathryn M. Murphy of Murphy, Hesse, Toomey and Lehane, LLP.

We would like to acknowledge Leslie Walker and the staff of Massachusetts Correctional Legal Services for their presentations at the public hearing and several Commission meetings, and for facilitating the Commission's communication with former and current inmates.

We appreciate the valuable contributions of many national correctional experts and administrators who provided counsel to the Commission including: Morris Thigpen, Director of the National Institute of Corrections, U.S. Department of Justice; Charles Kehoe, President of the American Correctional Association; Joseph Lehman, Secretary of Corrections, Washington; Harold Clark, Director of Corrections, Nebraska and Vice President of the American Correctional Association; Reginald A. Wilkinson, President of the Association of State Correctional Administrators and Director of the Ohio Department of Rehabilitation and Correction; and George Vose, Executive Vice President, CiviGenics, former Commissioner of Correction in Massachusetts and Rhode Island.

The Commission would also like to acknowledge the significant contributions of the following organizations and individuals which were essential to the completion of this report:

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Finally, we would like to thank those who participated in the public hearing on February 25, 2004 or submitted written testimony, and the many other individuals who educated and assisted the Commission who are not specifically mentioned above.

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If nothing else, inmates must leave our custody with a belief that there is moral order in their world. If they leave our care and control believing that rules and regulations do not mean what they say they mean, that rules and regulations can be applied arbitrarily or capriciously or for personal interest, then we will fail society, we will fail them, and we will unleash people more dangerous than when they went in.

*Edward A. Flynn, Secretary
Executive Office of Public Safety
On February 3, 2004, at the public release
of the Administrative Investigation into the
death of John Geoghan*

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EXECUTIVE SUMMARY

In Massachusetts, prisons are often viewed as little more than the “end of the line” for criminal offenders. Some believe that once an individual is sent to prison, he or she no longer poses a threat to public safety. Unfortunately, this view fails to consider the fact that the vast majority of inmates in Massachusetts (97%) are eventually released to our communities. Many of those released walk directly out of a maximum security facility onto the street. And most of those released from prison do not have any ongoing monitoring or supervision. The public safety consequences are alarming. Nearly one out of every two of those released will be convicted of a new crime within just three years.¹

Massachusetts can be doing a lot more to ensure that inmates come out of prison less dangerous than they were when they went in. While punishment alone is a critical element to corrections policy, any thoughtful system designed to protect the public must seek to curtail this continuous cycle of re-offending.

Like other states, Massachusetts is facing rising costs in its correctional system. Across the nation, states have explored and implemented broad reforms aimed at improving the safety and efficiency of their corrections and criminal justice systems.² It is time for Massachusetts to “get smart” by moving meaningful reform to the forefront of the Commonwealth’s policy agenda. We should take action in a comprehensive way that fully contemplates the interrelated components of the criminal justice system. And we should take action in the name of public safety and fiscal responsibility.³

The Governor’s Commission on Corrections Reform

Governor Mitt Romney has recognized the need for corrections reform in Massachusetts. Shortly after assuming office, he and Executive Office of Public Safety Secretary Edward Flynn announced the formation of two separate entities to examine the Department of Correction (the “Department”). On September 4, 2003, the Governor formed a special panel to investigate the circumstances and conditions surrounding the death of a high profile inmate, former priest John Geoghan. Another inmate was later indicted for his murder. During the early part of this investigation, it became clear that there was a need for a more expansive review of the system, including the Department’s policies and procedures.⁴

¹ Massachusetts Department of Correction, Research and Planning Division *Recidivism of 1997 Released Department of Correction Inmates*, (Concord, MA: Massachusetts Department of Correction, 2003), p. iii.

² These include Texas, Louisiana, and Missouri. Major criminal justice policy reforms including corrections are also presently being considered in New York, California, and Maryland.

³ Robin Campbell, *Dollars & Sentences: Legislators’ Views on Prisons, Punishment, and the Budget Crisis*, (New York: Vera Institute, 2003)

⁴ Major Mark F. Delaney, Chief Mark Reilly, and George Camp, Ph.D., *Administrative Investigation; The Facts and Circumstances Surrounding the Events Which Led to Inmate Geoghan’s Death on August 23, 2003*, (Released on February 3, 2004).

As a result, on October 17, 2003, Governor Romney established the Governor's Commission on Corrections Reform (the "Commission") chaired by former Attorney General Scott Harshbarger. The mandate of this "Blue Ribbon" Commission was to conduct a comprehensive review of the Department of Correction, including issues related to governance, operational systems, programs, reentry, and budget. The Commission consists of 15 current and former corrections officials, legislators, community leaders, and criminal justice experts. The Commissioners, who met for an eight-month period on a volunteer basis, were divided into three working groups: (1) governance; (2) operations; and (3) security, programs, and reintegration. The governance working group focused on mission, management systems and structure, and labor relations. The operations working group focused on classification, inmate discipline, investigations, and inmate grievances. The security, programs, and reintegration working group focused on issues surrounding prisoner reentry.

In developing its recommendations, the Commission conducted wide-ranging research on the Department of Correction and on best practices throughout the country, keeping in mind at all times budget and fiscal constraints. We reviewed approximately 300 documents, heard testimony from nearly 25 key stakeholders at our 13 commission meetings, listened to testimony from 38 speakers at a public hearing, conducted four focus groups which were comprised of nearly 40 current inmates, conducted visits at 12 sites, surveyed superintendents and captains at every facility and correction officers at six facilities, reviewed nearly 200 pieces of inmate correspondence, interviewed numerous DOC staff members, administrators, and former inmates, and reviewed literature and national research on corrections policy. In addition, the Chair conducted personal meetings with a dozen correctional leaders in connection with the American Correctional Association's mid-winter meeting.

Since the establishment of the Commission, the Department has undergone changes in management including the replacement of its commissioner. The current Commissioner, Kathleen Dennehy, has instituted many changes since taking office in December, 2003, including revising the Department's vision, mission and values statements, and developing a comprehensive strategic plan for the Department. This strategic plan sets forth short-term and long-term action steps for addressing the systemic problems identified in the panel report, which the Commission finds encouraging. We are pleased to acknowledge that Commissioner Dennehy is in the process of addressing many of the concerns identified in this report.

To date, Commissioner Dennehy, with the shared vision and support of Governor Romney and Secretary Flynn, has exhibited the leadership qualities that the Commission feels are required to fully effectuate the Department's mission and elevate agency performance. While we recognize this unique opportunity created by having exceptional leadership at all levels, we also understand the magnitude of the work envisioned by this report. The Commissioner will need the support and cooperation of many capable staff, and the assistance of external entities.

Enhancing Public Safety

This is an opportune time to evaluate the correctional system in Massachusetts. Even though violent crime has declined from the peak level that characterized the early 1990's, the volume of crime committed by those who are released from prison remains high. Those on the frontline of crime in our communities -- police, prosecutors, mayors, community activists and local service

providers -- continue to call attention to the large numbers of released offenders returning to our communities with little or no preparation, support, or supervision.

Our recommendations are aimed at reducing the likelihood that inmates who return to our communities will re-offend. This will involve a comprehensive reentry strategy. We understand that the Department cannot meet this challenge on its own. However, research and experience indicate that the Department -- with help from other agencies -- can take specific steps to maximize this potential. To this end, the Commission has set forth a comprehensive set of recommendations spanning the Department's leadership, programs, operations, and budget. Our recommendations begin with the premise that the Department must embrace a mission that includes reducing the rate of recidivism by released inmates, and that its budget allocation should more closely reflect its full set of priorities. In addition, we recommend that the Department adopt an extensive reentry planning process, beginning as soon as an inmate enters the system and extending through community release. Improved risk assessment, targeted and proven programming, enhanced classification, graduated step-down to release, and supervised release are all important components of a meaningful reentry focus.

Demanding System-wide Accountability

The Department's management, staff, and inmates must all become more accountable to each other and to the public. While the Department has several management systems in place to gauge various aspects of agency performance, none infuse a strong sense of managerial and staff accountability. In addition, the existing systems do not evaluate how well the agency is achieving its mission and priorities. A strong system of performance-based management and accountability can both enhance overall agency performance and promote cost savings.

Moreover, the Commission heard repeatedly that a lack of accountability contributes to conflicts between written Department policies and actual practices. The Commission's research shows that improved implementation of operational systems, such as classification, inmate discipline, inmate grievances, and internal investigations, will not only increase the levels of fairness and consistency, but will also make our prisons safer places in which to work and to live.

Finally, the Commission found that the Department does not adequately hold inmates accountable for participation in productive activities designed to reduce the likelihood that they will re-offend. While inmates themselves are responsible for their own actions, the Department can set high expectations, supported by incentives and sanctions, to encourage this process.

In order to improve accountability for managers, staff, and inmates, we recommend that the Department adopt a performance-based management and accountability system, strengthen management rights, and revise its existing rank structure. In addition, we recommend fair and consistent operational policies and procedures, including classification, discipline, grievances, and investigations. They must also be transparent, well-communicated, have specified appeals processes, and be implemented by staff who are appropriately selected, trained and supervised. The Commission also recommends the establishment of an independent investigative authority and an ongoing external advisory committee on corrections to improve the accountability and transparency of the entire Department. In our view, these systemic changes will greatly improve the culture of the institutions, living conditions for inmates, and working conditions for staff.

Instituting Fiscal Discipline

The Department of Correction's budget has grown significantly. In the past ten years, the Department's operating expenditures have gone from roughly \$287 million to \$438 million, a 52% increase.⁵ While the Department's expenditures have been increasing, the number of inmates in custody declined from 10,644 in 1994 to 9,886 in 2003. Clearly, it is getting more expensive to house inmates. Cost increases result in large part from rising labor costs, which comprise 73% of the Department's total budget.⁶ Between 1995 and 2003, staffing expenditures increased from \$200 million to \$312 million, a 56% increase.⁷ Our analysis of the staff-to-inmate ratio, labor contracts negotiated over the past decade, worker absenteeism, industrial accidents and overtime usage, reveals weak management performance and leadership that has come with a very high price tag. We do not fault the labor unions in this regard nor criticize their "success." The Commission values and appreciates the important public service that correction officers perform. In our view, the issue is not how we arrived here, but how to effectively bolster the Department's management abilities and fiscal responsibility moving forward.

The high cost of staffing reflects the fact that correction officers use an average of 52 paid days off per year (including nearly 18 sick days), or the equivalent of one paid day off every week.⁸ The total cost to the Department for correction officer sick leave usage is approximately \$21 million per year.⁹ In addition, the Department has a high number of workers (313) out on industrial accident leave. Stronger management of risks, medical care, and facilitating return to work can yield better working conditions and reduced expenditures.

The Department's leadership must ensure that tax dollars devoted to the system are better utilized to support its vision and mission. Our recommendations reallocate resources within the current budget of the Department of Correction to produce substantial improvements in public safety and efficiency, without compromising institutional security. If the report's recommendations are implemented, the Department's budget will more closely reflect its full set of priorities, including reducing the rate of re-offense by former inmates. The Commission specifically found that changes in management systems, organizational structure, and labor management will improve the allocation of the Department's public dollars. For example, reducing the number of days off used by correction officers by 12 days -- still leaving 8 weeks of paid time off per year -- would enable the Department to recoup approximately \$14 million.

⁵ Adjusting for inflation, the growth in expenditures was 23% between 1994 and 2003.

⁶ Presentation to the Commission by Kyra Silva, Acting Budget Director, Massachusetts Department of Correction, March 24, 2004.

⁷ Adjusting for inflation, the growth in staff expenditures was 29% between 1995 and 2003.

⁸ Interview with Ronald Duval, Associate Commissioner of Administration, Massachusetts Department of Correction, June 28, 2004. These figures are for the time period of December 29, 2002 through December 27, 2003. According to the Department, these figures do not include active military duty.

⁹ In making this calculation, the Commission used the weighted average (\$88,000) cost for correction officers to determine a weekly cost per officer (\$1,692), and multiplied that by the number weeks of sick time utilized (3.5) and multiplied that by 3,600 correction officers.

Effective Collaboration

The Commission's review focused on the Department of Correction, but it is important to frame the issues for the Department within a larger public safety context. The Massachusetts Department of Correction does not work in isolation. The Commission recognizes that critical roles are played by the Legislature in defining criminal behavior and appropriating funds, the Courts in sentencing, the Parole Board in supervising inmates, and the human service sector in providing programming and services. This report identifies some other areas in which these external entities constrain the policies and practices of the Department, and where improved collaboration would generate unique opportunities for improvement.

We urge the Commonwealth to make successful reentry of inmates a public safety priority. In doing so, it is necessary to consider corrections reform in the context of the larger, interconnected criminal justice system. A number of our recommendations concerning reentry, including improving classification, availability of proven programs, "step-down" prior to release, and supervised release, are impractical unless broader reforms occur. For example, a recent examination of inmates in the Department's custody revealed that 84% were restricted by statute from participating in pre-release programming.¹⁰

SUMMARY OF RECOMMENDATIONS

The following findings and recommendations are presented -- in greater detail and content -- in four major sections of this report: Leadership and Accountability; Fiscal Management; Public Safety and Inmate Reentry; and Fair and Consistent Policies and Practices. Some of these recommendations are currently at various stages of implementation by the Department. Some can be achieved relatively swiftly, and others may require more time or are outside of the control of the Department, and therefore require external action. Despite these variations, our recommendations are intended to be instituted together, and mutually reinforce one another. The Commissioner should create an action plan for accomplishing the recommendations. If an external advisory committee on corrections is established as recommended herein, it should work with the Commissioner to establish timelines and priorities for action.

LEADERSHIP AND ACCOUNTABILITY

Major Findings:

- Important aspects of the Department's mission have not been fully effectuated.
- The Department's internal management systems are inadequate to support the reforms contained in this report.
- Models of performance management systems exist, and could assist the Department in improving agency performance, accountability, and cost efficiency.
- The Department's management does not have sufficient authority and discretion.

¹⁰ Massachusetts Department of Correction, *Policy and Statutory Restrictions Impact on Inmate Placement*, (Concord, MA: January 2004), p. 2

- The Department is inextricably linked to external criminal justice and human service agencies.
- The Commissioner’s new strategic plan is a step in the right direction.
- An external advisory board on corrections would provide necessary ongoing monitoring and oversight of the DOC.

Major Recommendations:

1. The Department should revise its mission to include reducing the rate of re-offense by inmates released into the community.
2. The Department should adopt a performance management and accountability system to enhance agency performance, improve the culture, and utilize budget resources more effectively.
3. The Department’s management capacity should be strengthened through the collective bargaining process and revisions to the internal rank structure.
4. There should be an external advisory board on corrections to monitor and oversee the Department. The board should work cooperatively with the Commissioner to develop concrete goals for the future of the Department.

FISCAL MANAGEMENT

Major Findings:

- As staffing costs comprise 73% of the DOC budget, the Department’s fiscal management is closely linked with its capacity for efficient and effective labor management.

Major Recommendations:

5. The Department should take responsibility for bringing down staffing costs and reducing worker absenteeism.
6. The Department’s budget should be more closely aligned with its mission and priorities. This will enhance public safety in a fiscally responsible manner.

PUBLIC SAFETY AND INMATE REENTRY

Major Findings:

- The Department does not adequately prepare inmates for release back to the community.

- The Department does not hold inmates accountable for participating in productive activities such as programs, work, and treatment.
- Models of effective reentry planning exist and could be useful for the Department.
- The Department’s ability to effectively transition inmates is limited by state laws, sentencing practices, and internal DOC policies.
- Post release supervision strengthens inmate reentry and is especially necessary for inmates who are at a high risk for re-offense.

Major Recommendations:

7. The Commonwealth must view reducing the rate of re-offense by returning inmates as one of its highest public safety priorities.
8. The Department should adopt a comprehensive reentry strategy including risk assessment, proven programs, “step-down,” and supervised release.
9. The Department should hold inmates more accountable for participation in productive activities designed to reduce the likelihood that they will re-offend.
10. The Commonwealth and the Department should revise sentencing laws and DOC policies that create barriers to appropriate classification, programming, and “step-down.”
11. The Commonwealth should establish a presumption that DOC inmates who are released are subject to ongoing monitoring and supervision.
12. There should be a dedicated external review of inmate health and mental health services.
13. There should be a dedicated external review of issues pertaining to female offenders in the Department’s custody.

FAIR AND CONSISTENT POLICIES AND PRACTICES

Major Findings:

- Many of the Department’s current policies, procedures and practices are not fair and consistent, including those related to inmate classification, discipline and grievances.
- Current policies and practices do not adequately ensure the safety of inmates in protective custody.
- The Department’s current systems for oversight and accountability are deficient, including those related to investigations and data integration.
- Effective communication with inmates is inhibited by a limited bilingual work force. This may impact institutional security.

Major Recommendations:

14. The Department should ensure that policies and procedures, including those related to inmate classification, discipline, and grievances, are transparent, well-communicated, have specified appeals processes, and are implemented by staff who are appropriately selected, trained and supervised.
15. The Department should ensure that policies and procedures are properly implemented through oversight and accountability systems, including an independent investigative authority, data management, and unit management.
16. The Department should conduct a system-wide facility review to ensure that its physical plant is consistent with the security needs of the staff and the inmate population, and the Department's mission.
17. The Department should adequately protect and care for inmates in protective custody.
18. The Department should increase the linguistic diversity and cultural competence of its workforce.

The fiscal implications to consider along with our recommendations are discussed in Section VI of this report. There we present our view that the current budget resources of the Department should be reallocated – not reduced – consistent with our recommendations. In so doing, we can improve public safety and fiscal efficiency without undermining security for staff or inmates. Moreover, the DOC's budget will be more closely aligned with its mission and priorities, including reducing the rate of re-offense by former inmates.

Conclusion

In the detailed report that follows this summary, we have set forth a plan for the Department to enhance public safety by reducing the rate of re-offense among inmates who return to our communities. Our recommendations involve improving managerial capacity and quality; enhancing accountability for managers, staff, and inmates; adopting a comprehensive reentry focus; ensuring fairness and consistency in policies and practices; and instituting fiscal discipline. In our view, the Department can become a strong and vital partner in the public safety arena by adopting these recommendations.

I. INTRODUCTION

On August 23, 2003, the Massachusetts Department of Correction¹¹ came under scrutiny following the death of a high-profile inmate. On that date, former priest John Geoghan died while in maximum security confinement in the Department's custody, and a fellow inmate was indicted for his murder. On September 4, 2003, Governor Mitt Romney and Secretary of Public Safety, Edward Flynn, formed a special investigative panel ("Panel") to examine the circumstances and conditions surrounding the death of Mr. Geoghan. The panel members were Major Mark Delaney, Chief Mark Reilly and George Camp, Ph.D. In the course of its investigation, the Panel reviewed the DOC's policies, practices, and decision-making. In its preliminary findings,¹² the Panel identified broader systemic issues that required further study. As a result, on October 17, 2003, Governor Mitt Romney established the Governor's Commission on Corrections Reform (the "Commission"), chaired by former Attorney General Scott Harshbarger. This "Blue Ribbon" Commission was given the broad mandate of conducting a comprehensive, top to bottom review of the Department, including the governance, operational systems, security, programs, reentry, and budget. The Commission is comprised of 15 current and former corrections officials, legislators, community leaders, and criminal justice experts.

Since the Commission's first meeting in November, 2003, the Department has undergone changes in management including the appointment of a new Commissioner of Correction. The current commissioner, Kathleen Dennehy, has instituted many changes since her appointment in March, 2004, including revising the Department's vision, mission and values statements, and developing a comprehensive strategic plan for the Department. This strategic plan sets forth short-term and long-term action steps for addressing the systemic problems identified in the panel report, which the Commission finds encouraging. Thus far, Commissioner Dennehy has exhibited the leadership qualities that the Commission feels are required to fully effectuate the Department's mission and elevate agency performance. Therefore, we acknowledge that Commissioner Dennehy is in the process of addressing many issues covered in this report. However, this Commission was charged with examining the Department and offering recommendations for reform and a vision for how these changes should take shape.

Sources of Information and Data Collection

From November, 2003 through June, 2004, the Commission met every other week. The Commissioners divided into three working groups that focused on issues related to (1) governance, (2) operations, and (3) security, programs and reintegration. The Governance working group focused on mission, management systems and structure, and labor relations. The Operations working group focused on classification, inmate discipline, investigations, and inmate grievances. Finally the Security, Programs, and Reintegration working group focused on

¹¹ The Massachusetts Department of Correction is referred to as both "the DOC" and "the Department" throughout this document.

¹² Major Mark F. Delaney, Chief Mark Reilly, and George Camp, Ph.D., *Administrative Investigation; The Facts and Circumstances Surrounding the Events Which Led to Inmate Geoghan's Death on August 23, 2003*, (Released on February 3, 2004).

issues related to inmate reentry into the community, including safety, cost and supervision. The relevant budget items and fiscal issues were considered by all three working groups.

The Commission members possessed a broad range of expertise and experience. In developing its recommendations, the Commission conducted wide-ranging research, limited solely by time and resources, on the Department of Correction and on national “Best Practices.” We reviewed approximately 300 documents, heard testimony from nearly 25 key stakeholders at our 13 commission meetings, listened to testimony from 38 speakers at a public hearing, conducted four focus groups including nearly 40 inmates, conducted 13 site visits, surveyed superintendents and captains at every facility, surveyed correction officers at six facilities, reviewed nearly 200 pieces of inmate correspondence, interviewed numerous DOC staff members, administrators, and former inmates, and reviewed literature and national research on corrections policy. The Chair also conducted separate meetings with several national experts and state correctional administrators.

Overview of the Department

The Department is primarily responsible for the care and custody of those individuals sentenced to state prison. The Department of Correction also provides care and custody for a wide variety of other populations including those individuals civilly committed to Bridgewater State Hospital, the Treatment Center for the Sexually Dangerous, or the Massachusetts Addiction and Substance Abuse Center. The Department also provides care and custody for female offenders from counties with no female correctional facilities, including pre-trial detainees and those sentenced to a house of correction. The rest of the state’s incarcerated population is held in the 13 county houses of correction, led by elected sheriffs (Nantucket County is the only county that does not operate a county correctional facility). The Sheriffs Departments and their correctional facilities, while important, were not included within the Commission’s charge, and therefore are not the subject of this report. The Department’s population of approximately 10,000 inmates is housed in 18 correctional facilities that range in security level from the most restrictive, Level 6 (maximum), to the least restrictive, Level 3/2 (minimum/pre-release). (See Appendix II for a listing of the 18 facilities by security level.)

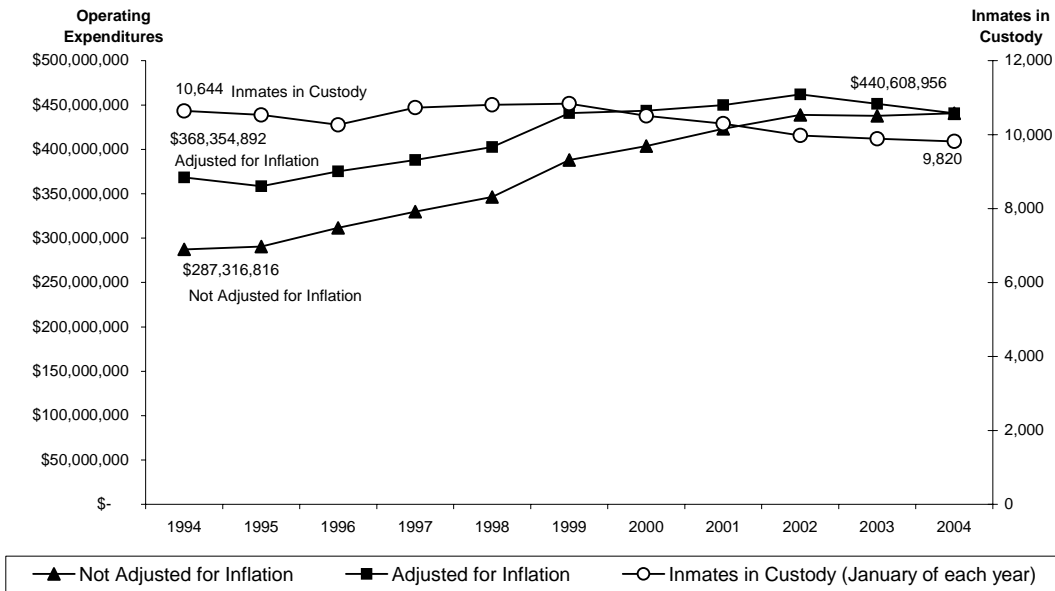
The Department of Correction’s budget has grown significantly over the past decade. The operating expenditures for the Department of Correction in 2003 totaled nearly \$438 million,¹³ a 52% increase from \$287 million in 1994.¹⁴ As shown in Figure 1, the growth in expenditures was *not* the result of a growing inmate population. While the Department’s expenditures were increasing, the number of inmates declined by 7% from 10,644 in 1994 to 9,886 in 2003. Cost increases result primarily from the rising costs of labor, including overtime and collective

¹³ This includes the \$425,957,498 for the Department’s budget plus an additional \$11,901,018 in revenue from other sources such as correctional industries.

¹⁴ Adjusting for inflation, the growth in expenditures was 23% between 1994 and 2003.

bargaining costs.¹⁵ Between 1995 and 2003, staffing expenditures increased from \$200 million to \$312 million, a 56% increase.¹⁶

Figure 1. Operating Expenditures and Custody Population, 1994 – 2003



¹⁵ Staff related expenses make up the largest portion of the DOC budget, and represents 73% of the budget. Presentation to the Commission by Kyra Silva, Acting Budget Director, Massachusetts Department of Correction, March 24, 2004.

¹⁶ Adjusting for inflation, the growth in staff expenditures was 29% between 1995 and 2003.

Vision for the Department of Correction

The Commission began its work by establishing our vision for the Department based on the foundation of enhancing public safety and maximizing cost efficiency. We recommend that the Department should strive to achieve two important objectives:

- Safe, secure and humane confinement for inmates and staff;
- Effective inmate reentry planning including proven programming to minimize the likelihood that inmates will re-offend upon release.

Both prongs of this objective are equally compelling and interrelated. The recommendations of this report are intended to assist the Department in developing a fiscally responsible blueprint for action consistent with these objectives. Then, based on demonstrated performance, to call upon others upon which it must depend, for a similarly smart, efficient, effective set of responses and actions.

The Department should provide safe, secure and humane custody while preparing inmates to return to society in a way that makes it less likely that they will re-offend.

II. LEADERSHIP AND ACCOUNTABILITY

By some key measures, the correctional system in Massachusetts has been performing well. All facilities in the Department have achieved national accreditation. Safety and security levels are much higher than in earlier years, as demonstrated by the facts that the escape rate is low and the facilities are generally orderly. However, we can, and should, expect more. The Department should be an integral component of the Commonwealth's long-term public safety strategy, not just for its ability to incapacitate people, but for the potential it has to return inmates to communities in a condition that makes it less likely that they will re-offend.

The Commissioner of Correction confronts a complex set of internal and external issues. Internally, the Commissioner of Correction must manage the critical safety risks posed by the DOC population; manage relations with various labor unions; provide needed programs and services to its population; and do it all within budgetary constraints.

Externally, the Commissioner is affected by vacillating public opinion and political attitudes surrounding criminal justice policy. The Commissioner must manage relationships with a host of outside agencies, including parole, probation, the courts, law enforcement, community-based organizations, human service agencies, the Legislature, prison advocacy groups and others. Over the past decade, legislative and policy changes have had the effect of limiting the focus of the Department to incapacitation and punishment, despite the Department's stated mission emphasizing programming and "structured reintegration."

The Commission recognizes that exceptional leadership, and enhanced senior leadership capacity and quality, is required at different levels in order to balance the complicated array of internal and external issues, while raising the level of agency performance. Moreover, we assert that the Department's culture and values are necessarily defined at the top. We advocate that the Commissioner be proactive and strategic in improving the Department while managing the risk posed by the prison population.

FINDINGS

Important aspects of the Department's mission have not been fully effectuated.

The mission of the Department, as it existed in January, 2004¹⁷ stated that the DOC's mission was to "promote public safety by imprisoning inmates (offenders, detainees, and those civilly committed) while providing opportunities for rehabilitation through a structured reintegration model."¹⁸ However, we found that programming and reintegration components of the Department's mission did not fully infiltrate operations, structure, culture, policies, or practices.

¹⁷ In February 2004, the Department released a strategic plan with revised vision and mission statements and core values. We do not address those here, as there has not been adequate time for the new Commissioner to implement them.

¹⁸ 103 DOC 100.02.

Instead, the Department has been overwhelmingly influenced by two primary values: incapacitation and punishment. Moreover, the Commission finds that this result was caused in part by external forces exerted upon the Department.

For more than a decade, the values of incapacitation and punishment were promoted nationally and throughout Massachusetts' government. "Truth-in-sentencing"¹⁹ and mandatory minimum sentencing laws were enacted. "Statutory good time" was eliminated.²⁰ Fewer and fewer inmates were discharged on parole supervision.²¹ Courts increasingly imposed sentences that resulted in inmates "maxing out" before reaching parole eligibility dates. These prevailing policies and sentiments not only affected who entered the Department's custody and how long they stayed, but also what occurred once inside.

In 1991, Governor William Weld entered office after vowing to "reintroduce our inmates to the joys of busting rock."²² This philosophy echoed national and local sentiments that the criminal justice system, and the prison system in particular, had become too lenient on criminal offenders. The Commission heard repeatedly that it also set into motion significant change inside the DOC. Over the course of the next decade, the trend was to "move behind the walls" – i.e., move more inmates into higher levels of security while simultaneously closing lower security facilities (see Figure 2) Notably, this retreat did not reflect a more violent or serious inmate population, as the offense characteristics have been stable over time.²³ Yet in 1998, the Commonwealth constructed Souza-Baranowski Correctional Center, a so-called "super-max" facility,²⁴ with a construction price tag of \$110 million. At the same time, the Department closed several minimum-security and pre-release facilities, which are less costly to operate. On June 30, 2002, the DOC closed SECC Medium, Hodder House at MCI-Framingham, MCI-Lancaster, the Massachusetts Boot Camp, and the Addiction Center at SECC. This amounted to a loss of 632 beds in lower security settings.²⁵ Today only five minimum-security facilities remain in operation.²⁶

¹⁹ See Chapter 432 of the Acts of 1993.

²⁰ See Chapter 432 of the Acts of 1993 sec. 10. Statutory good time automatically deducted days from a prisoner's maximum sentence and could be lost if the prisoner did not demonstrate good conduct.

See also, Boston Bar Association, *Parole Practices in Massachusetts and Their Effect on Community Reintegration*, (Boston, MA: Task Force on Parole and Community Reintegration, 2002), p. 14-15

²¹ Massachusetts Department of Correction, Research and Planning Division, *Releases from DOC Facilities, 1990-2002*, (Concord, MA: 2003)

²² Jack Sullivan, "Weld calls Suffolk jail too fancy, too costly," *Boston Globe*, July 31, 1990

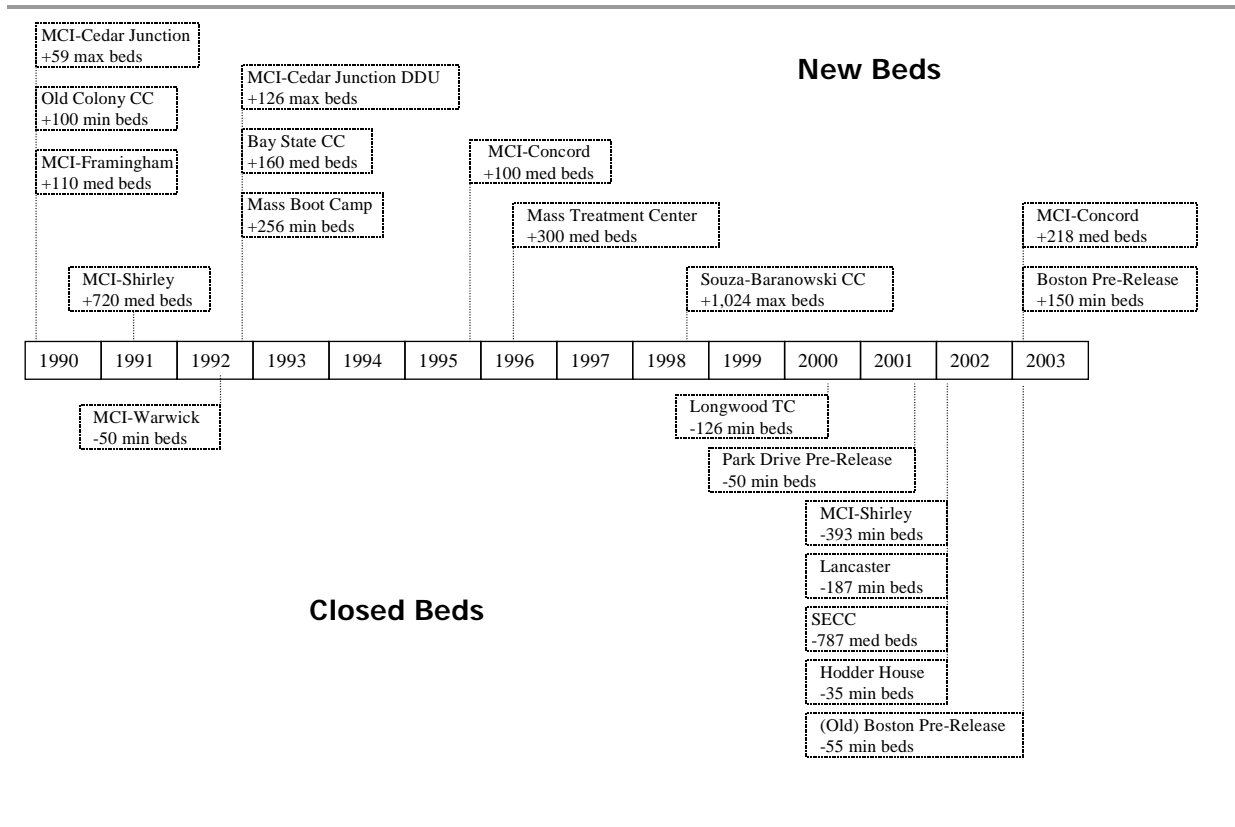
²³ The mix of offense-types for the inmate population has been relatively stable over the last 10 years. In 1993, the share of the population serving for a person offense was 47%, sex offense 17%, property offense 12%, and drug offense 20%. In 2003, the shares were person offense 49%, sex offense 18%, property offense 9%, and drug offense 21%.

²⁴ Criminal Justice Institute Inc., *A Report on an Assessment of the Institutional Culture in the Souza-Baranowski Correctional Center Provided to the Massachusetts Department of Correction*, (Middletown, CT: April 2004)

²⁵ Massachusetts Department of Correction, *Quarterly Report on the Status of Prison Overcrowding* series, (Boston, MA: multiple years).

²⁶ They are MCI-Plymouth, Northeastern Correctional Center, South Middlesex Correctional Center, Pondville Correctional Center, and Boston Pre-Release.

Figure 2. Department of Corrections New Beds and Closed Beds, 1990 – Present

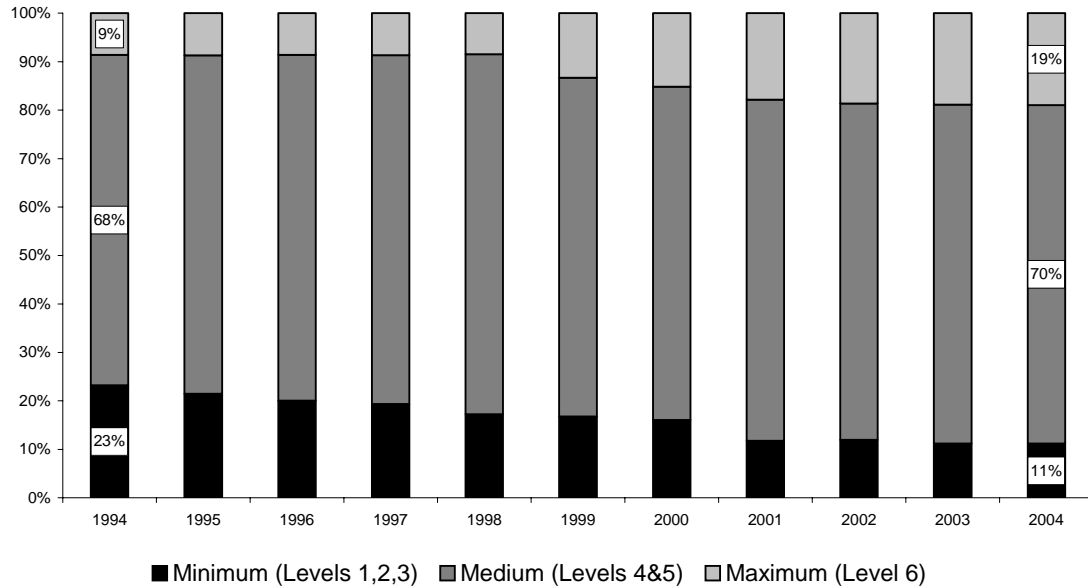


Simultaneously, the number of inmates placed in higher security levels began to rise dramatically. As shown in Figure 3, in 1994 9% of the DOC population was housed in maximum security facilities, 68% in medium security facilities, and 23% in minimum security facilities.²⁷ By contrast, in 2004 the shares were 19% in maximum security facilities, 70% in medium security facilities, and 11% in minimum security facilities.²⁸

²⁷ Massachusetts Department of Correction, *Quarterly Report on the Status of Prison Overcrowding, First Quarter of 1990*, (Boston, MA: April 1990), p. 3.

²⁸ Massachusetts Department of Correction, *Quarterly Report on the Status of Prison Overcrowding, First Quarter of 2004*, (Boston, MA: April 2004), p.7. .

Figure 3. Population by Security Level, 1994 - 2004.



In addition, two important shifts took place in terms of how inmates were “stepped down” through security levels and released back to the community. *The number of inmates released on parole supervision declined dramatically, while the number of inmates released directly from secure facilities rose dramatically.* As shown in Figure 4, in 1990 65% of the males released to the street from the DOC were released to parole supervision and 35% were discharged from their sentences.²⁹ Of the males released in 1990, 5% were released from maximum security facilities, 38% were released from medium security facilities, and 57% were released from minimum or other lower security facilities.³⁰ By 2002 these proportions were nearly reversed: 34% of the males released to the street from the DOC were released to parole supervision and 66% were discharged from their sentences.³¹ In 2002, 12% of males were released from maximum security facilities, 62% were released from medium security facilities, and 26% were released from minimum or other lower security facilities.³²

²⁹ Robert J. Tenaglia, *A Statistical Description of Releases from Massachusetts Correctional Institutions During 1994*, (Boston, MA: Massachusetts Department of Correction, 1996), p. 2

³⁰ Ibid.

³¹ Massachusetts Department of Correction, Research and Planning Division, *Releases from the Massachusetts Department of Correction During 2002*, (Concord, MA: 2003), p.26

³² Ibid, page 20. These calculations include all male releases from DOC facilities – i.e., not limited to releases to the street and excludes releases from county, federal, or inter-state facilities.

Figure 4. Releases from Prison by Type of Release, 1990 and 2002

DOC Releases	1990	2002
<u>Security Level</u>		
Maximum security	5%	12%
Medium security	38%	62%
Minimum security	57%	26%
<u>Release Type</u>		
Paroled	65%	34%
Discharged	35%	66%

Simultaneously, the DOC cut back in-prison education and programs significantly, which resulted in the layoff of 36 full time teachers and the elimination of several vocational programs, including drafting, HVAC, small engine repair, building trades and maintenance, and auto body. Academic programs were eliminated at some facilities, including special education and ESL.³³ The Commission heard repeatedly that since the deep program cuts, the demand for education and programming has greatly outweighed the supply.

These changes over the past 10 to 15 years created a significantly widening gap between key elements of the Department’s mission and the agency’s actual goals and practices. Most importantly, however, these practices also reflect an increasing divergence from what has been learned over the past decade about “what works” in successfully preparing offenders for law-abiding lives post-release. Recent federal and state recidivism studies have consistently shown higher rates of criminal offending for inmates released from higher security facilities.³⁴ In the widely cited 1997 “What Works” report to the U.S. Congress, researchers from the University of Maryland found education and treatment programming and “step down programs” effective in reducing recidivism provided that the programs were designed and implemented carefully.³⁵

³³ Data provided by the Department to the Commission on December 22, 2003.

³⁴ Patrick A. Langan and David J. Levin, *Recidivism of Prisoners Released in 1994*, (Washington D.C.: Bureau of Justice Statistics, 2002), Massachusetts Department of Correction, Research and Planning Division, *Recidivism of 1997 Released Department of Correction Inmates*, (Concord, MA: 2003), p. iii

³⁵ Lawrence W. Sherman, et al., *Preventing Crime: What Works, What Doesn't, What's Promising. Research in Brief*. National Institute of Justice, (Washington, DC National Inst of Justice: Department of Justice, 1998)

The Department's internal management systems are inadequate to support the reforms contained in this report.

The Department's management systems³⁶ are insufficient to change agency culture, improve accountability, and adequately measure overall agency performance. Management utilizes a system of regular reporting, internal and external audits, and meetings to ensure that DOC institutions fulfill minimum standards required by statute and internal policies. However, because these systems do not include defined measures of individual or organizational performance,³⁷ they essentially ask the wrong questions to support the reforms contemplated in this report. In short, they cannot help the DOC or any outside group assess whether the agency is achieving its mission and goals and, most importantly, have little ability to instill accountability.

Internal Compliance Audits

The Department has an internal auditing process designed to ensure that individual prisons meet basic standards. These audits, however, provide little information as to whether the agency is fulfilling its stated mission and goals in terms of reducing re-offense and improving public safety. On a yearly basis, the agency's Audit & Compliance Division conducts audits of each prison in the correctional system. Other agencies such as the state Department of Public Health also conduct audits related to sanitation, health, and living conditions. While audits are standard practice in corrections, and from the available evidence to the commission, were well conducted by the Department, they are an inadequate measure of the agency's performance in the broadest sense. Audits are cumbersome and lengthy, do not provide a real-time assessment of the entire agency, evaluate only on a facility-by-facility basis, and are limited in focus. A typical audit focuses on a handful of correctional practices, such as security and sanitation. Audits are scheduled in advance, giving the facility time to prepare and strengthen its policies and practices. There are numerous steps in the process, and several months can pass from the time an audit is conducted through the time when a plan to address deficiencies is completed.³⁸ *Thus, while audits are a valuable tool for ensuring that the minimum standards are being met, they do not ask the right questions to be used as an effective management tool, nor do they hold staff accountable for results.*

National Accreditation

Over the last few years, the Department has contracted with the American Correctional Association (ACA) to seek accreditation for all of its facilities. The ACA accreditation process involves an auditing process similar to the internal audit described earlier, although conducted by

³⁶ The Commission comments on the management practices in place through the winter of 2004. While these systems remain in place, and ought to for certain purposes, it is not clear that they are intended to form the basis of the current Commissioner's management system going forward.

³⁷ Massachusetts Department of Correction, *Strategic Planning Guide*, (Concord, MA: 2004)

³⁸ When necessary, the auditing division or outside agency may also request to re-inspect the areas of deficiencies after the institutional has had time to remedy the deficiencies.

external correctional professionals.³⁹ While the ACA accreditation process can encourage an institution to improve its correctional practices and is often a great source of pride for employees, its value can be overstated. The site inspection is typically cursory in nature,⁴⁰ and reviews tend to rely heavily on “paperwork” compliance with files, rather than demonstrated fulfillment of mission and compliance with best correctional practices. Moreover, the ACA standards lack specific measurable performance indicators.

The Commission commends the DOC for achieving national accreditation in each of its facilities. However, we find that this accomplishment is not a significant indicator of how well the agency is achieving its mission or goals. *Moreover, ACA accreditation is not a sufficient management tool, as it does not promote accountability for actions or results.*

Superintendent Reports

Finally, in addition to annual internal audits and outside accreditation efforts, the prior Commissioner and his staff would track institutional performance through regular reports submitted by the superintendents. On a monthly basis, the superintendents submit “Climate Reports” that detail the major incidents in their facilities, including gang related activities, the recovery and use of drugs and weapons, assaults on staff and inmates, “use of force” incidents by staff, disciplinary reports, and returns to higher custody. In addition, quarterly and annually, superintendents submit reports that provide descriptive and statistical information on their institutions, including summaries of the climate reports, staffing levels of the institution, program reports, and updates on maintenance and building projects. The Commissioner was also responsible for the agency’s annual report. *Taken as a whole, these reports provide a wealth of information for each institution and the entire agency.* However, it does not appear that the agency regularly probed or analyzed the information contained in these reports, assessed performance against benchmarks, or that particular performance indicators were used to assess the “health” of the entire system. As such, it does not appear that these reports were used as a way to hold superintendents accountable for what occurred inside their facilities.

Management by ‘Walking Around’

Many successful correctional leaders and consultants agree that one of the most effective management tools is simply walking around an institution at different times of the day or night. Just being within the walls of a facility can give a manager a vivid sense of the culture, attitudes, and operations. It also sends a strong message to the staff that management cares. This management style, both at the Commissioner and superintendent level, has been underutilized.

³⁹ The review assesses an institution’s compliance with ACA mandatory and recommended standards. To receive accreditation, an institution has to meet all of the mandatory standards and most, but not all, of the recommended standards.

⁴⁰ ACA site inspections usually involve auditors attempting to assess all of the functional areas of a prison during a two to three-day visit. The Department’s auditors will conduct multiple audits of a correctional facility, each of which focuses on different functional areas of correctional practice.

Models of performance management systems exist, and could assist the Department in improving agency performance, accountability, and cost efficiency.

Over the past decade, several correctional systems have attempted to re-think how they monitor progress toward specific agency goals to ensure greater staff and agency accountability. The Commission highlights four of these systems below:

TEAMS, New York City

Perhaps the most celebrated example of a performance management system is the Total Efficiency Accountability Management System (TEAMS) introduced in the New York City Correctional Department in 1994. Modeled after the award-winning COMPSTAT (Computerized Statistics) program run by the New York City Police Department, TEAMS was introduced to address widespread problems of violence and corruption at the ten correctional facilities at Riker's Island. TEAMS is organized around three major concepts: (1) collection and analysis of key data (160 indicators) that support agency goals and mission; (2) high-level forums chaired by the Commissioner to review and probe performance indicators and address problems; and (3) implementation of changes. Notably, since 1995, TEAMS is credited with reducing inmate-on-inmate violence by 97%; overtime by 34%; and uniformed sick leave by 38%.⁴¹

Several Commission members and staff attended a TEAMS meeting in April, 2004, and observed two wardens present data and undergo rigorous but respectful questioning from the Commissioner. One warden reported that his facility had reduced overtime by over 40% while raising morale, and decreased the waiting time for inmates to receive medical services by 26%. He discussed efforts to analyze inmate grievances, and described a plan recently instituted to reward staff for strong attendance. The Commissioner inquired about a broad range of matters including: soap scum in the showers; suicide prevention efforts; minute-by-minute accounts of staff uses of force; and what recent information existed to determine specific individuals' particular security risks. The TEAMS meeting and data enabled the Commissioner to possess highly detailed and current information about his staff, facilities, and inmates, and to communicate clearly his priorities and values to all of the Department's command staff. The program also appears to have considerable support from the rank-and-file correctional officers. Thus, based on the data, and our own observations in speaking with managers and staff at all levels, we found that TEAMS instills a sense of accountability, while producing pride for results, proactive problem-solving techniques, and shared ownership of the Mayor's and Commissioner's priorities.

DOC Watch, Washington State

DOC Watch in Washington State has some of the same elements as TEAMS. This model includes the assessment of performance measures such as the number of offenders on community

⁴¹ City of New York, *Citywide Accountability Program*, <http://www.nyc.gov/html/doc/html/cap.html>

supervision, the number of hours of community service work provided by offenders, and the number of offenders who complete basic skills education and chemical dependency treatment programs. At the DOC Watch sessions, managers must address five questions related to specific performance measures.⁴² Thereafter, the group has a discussion that focuses on best practices, barriers to success, and opportunities for collaborative problem solving.

Oregon Accountability Model

Oregon's DOC's accountability model ties together efforts of the Department and its partners in a strategy to "reduce recidivism and influence inmates into becoming productive citizens."⁴³ From the first day an inmate arrives, the DOC focuses on his or her return to the community as a productive citizen. The program has six components: (1) criminal risk factor assessment and case planning; (2) staff-inmate interactions; (3) work and programs; (4) children and families; (5) reentry; and (6) community supervision.⁴⁴ The Department has developed a series of performance measures linked to these components that reflect overall Department priorities. Evaluation of the Department's performance is conducted monthly for agency management and published in an annual performance report. Noteworthy performance measures include: percentage of inmate's correction plan completed while at DOC; percentage of inmates reintegrated into the community who completed their plan and did not recidivate; and percentage of offenders on post-prison supervision convicted of a felony within three years of release from prison.⁴⁵

Accountability in the Hampden County Sheriff's Department

The Hampden County Sheriff's Department is an example of a correctional agency that has institutionalized performance accountability without adopting a formal accountability management system. It has created a positive environment for both staff and inmates by paying attention to very basic management duties and by adopting "best practice" approaches to managing correctional facilities and successful prisoner reentry. With the benefit of a long-serving Sheriff, Hampden County has introduced approaches to inmate and staff accountability that are mutually reinforcing and that dovetail with high expectations for management personnel.

Inmates understand that their status in the institution and their progress toward community release are tied directly to their active participation in programs to prepare for release and to their institutional behavior. Similarly, correctional staff recognize that professional advancement depends upon performance. The Sheriff's Department uses a model of unit management that includes a fair amount of responsibility for uniform staff, non-uniform staff and inmates. This is made possible by the full array of programming available (within the prison and in community

⁴² These questions are: What has been done to affect this performance measure? (Administrative); What were the results? (Descriptive); Were the desired results achieved? (Diagnostic); After review of the results, should other options be considered and why? (Creative and Predictive); Which do you feel is, or could be, the best choice to affect this performance measure? (Evaluative)."

⁴³ State of Oregon, *Oregon Accountability Model*, <http://www.doc.state.or.us/oam/pdf/oam-flyer.pdf>.

⁴⁴ Ibid.

⁴⁵ Oregon Department of Corrections, Research and Evaluation Unit, *2004 Annual Performance Report*, (Salem, OR: January 2004)

settings) and by the professional operation of classification, which ensures that inmates have incentives to make appropriate use of their time.

In this system, all parties are held accountable for the decisions they make. The Sheriff personally interviews each candidate for employment with the Department, meets with each person upon promotion, and regularly meets with inmates in their housing units. In this hands-on way, the Sheriff ensures that institutional culture is consistent and that each person is contributing to fulfillment of the agency's mission.

A performance measurement management system would better enable the Commissioner to communicate and instill her mission throughout the agency. Moreover, it would provide her with a detailed sense of how the full organization is functioning in real time. Finally, it would instill a culture of accountability by holding top managers – and in doing so the entire staff – responsible for problems within their control.

The Department's management does not have sufficient authority and discretion.

Two central components of correctional management are the scope of management's authority and control, and the management structure or hierarchy. Close examination of contractually defined management rights, managerial capacity and rank structure, staff-related expenses, and contractual obligations, indicates that the agency's management abilities must be strengthened.

Management is responsible for governing the overall operation of the Department, including managing the Department, allocating its fiscal and human resources, and accomplishing its mission. The labor union serves to represent its members and to promote a work environment that is safe and free of exploitation. Ideally, management and labor have a shared respect for the work force and for achieving the Department's goals.

The correction officers' contract is distinguished by weak management rights provisions. The contract severely limits the authority of management to assign, promote, transfer and remove a correction officer for the good of the Department. In three facilities, position assignments are determined by "job pick" – which means that officers can bid for the job they want, and jobs are awarded on the basis of seniority.⁴⁶ Once the job is awarded, the officer owns it for life, or a specified term.⁴⁷ In the remaining facilities, shifts are determined strictly on the basis of seniority. In both instances, superintendents are allotted a small percentage (about 7%) of "superintendent pick" positions, whereby they retain the discretion to fill positions as they wish. Thus, locked-in bids and seniority govern the staffing process, subject only to a small number of superintendent pick positions. Similarly, the superintendents are unable to transfer or remove an officer for the good of the Department without being subject to grievance and arbitration. *These limitations on managerial discretion impact the most fundamental management functions*

⁴⁶ "Job pick" exists at three facilities, MCI Concord, MCI Walpole, and North Central Correctional Institution at Gardner.

⁴⁷ According to the DOC at MCI Walpole, the shifts are awarded for life; at MCI Concord, they are re-bid every 18 months; and at North Central Correctional Institution at Gardner, they are re-bid every 12 months.

required to effectively staff and operate DOC facilities. The Administrative Investigation found that the corrections officers were not in jobs that best matched their level of training and strengths or their compatibility with a specific population.

In addition, the Department's management hierarchy is problematic due to blurred distinctions between labor and management. Under the current management structure, captains are the highest-ranking officials on duty for the vast majority of shifts each week, 16 out of 21 shifts. Thus, a captain is responsible for managing the daily operations of his/her facility, including signing off on time cards and sick time, filling vacant positions, writing up infractions, and taking corrective actions to address misconduct by officers. Notably, the captains unionized under the International Brotherhood of Correction Officers (IBCO) in 1999.⁴⁸ Notwithstanding this fact, the managerial and supervisory responsibilities of captains have remained intact.⁴⁹ Similarly, sergeants and lieutenants who serve as direct supervisors of line correction officers are members of the same union as the correction officers, Massachusetts Corrections Officers Federated Union (MCOFU). There are inherent conflicts, redundancy, and confusion in this rank structure.⁵⁰ The Commission does not question the integrity, performance or motives of individual captains, sergeants or lieutenants. However, we believe that to enhance the overall management of the Department, clear lines between labor and management are required.

The Department is inextricably linked to external criminal justice and human service agencies.

While all government agencies intersect with other government and non-governmental entities, none do so more than the Department of Correction.⁵¹ For this reason, it is crucial that the Department have on-going communication and collaboration with a range of external agencies.

Decisions by police and District Attorneys determine which crimes and which defendants come before the courts for prosecution and sentencing. Changes in police priorities and practices therefore influence the size and character of the flow of offenders into prisons several months to a year later. Legislative and judicial decisions determine the length of an inmate's prison sentence. In some cases, such as mandatory minimum sentences, the legislature has set high

⁴⁸ The Department abolished promotional exams necessary to become a Captain. Thereafter, junior officers with less time and responsibility began to earn more than their Captain supervisors. The Captains unionized to address this inadequacy.

⁴⁹ 82% of captains who responded to the Commission survey said that their becoming unionized has not changed their roles and responsibilities.

⁵⁰ Criminal Justice Institute, Inc., *A Report on an Assessment of the Institutional Culture in the Souza-Baranowski Correctional Center Provided to the Massachusetts Department of Correction* (Middletown, CT: April 2004), p. 25–28. “At SBCC the officers identified themselves as ‘blue shirts’ and, unlike at most institutions, counted their direct supervisors – the sergeants and lieutenants who are members of the same union – as among the ‘blue shirts.’” “...sergeants and lieutenants ...expressed reluctance to issue orders or correct officers they were supervising, while, at the same time, complaining that their subordinates did not respect rank....Supervisors expressed that they often ‘found themselves with nothing to do,’ ...or ‘with nobody to supervise’ as those they were working with were all of the same rank.”

⁵¹ For more on how criminal justice operates in Massachusetts, see Anne Morrison. Piehl, *From Cell to Street: A Plan to Supervise Inmates After Release*, (Boston: MassINC, 2002), Mark A. R. Kleiman, *Criminal Justice in Massachusetts*, (Boston, MA: MassINC, 1996).

enough minimum requirements that judges rarely exceed them. Moreover, numerous laws govern how inmates must be treated once incarcerated. These range from restrictions on community-based placement for many inmates to the Supreme Court's and the state Supreme Judicial Court's interpretation of what the United States and Massachusetts Constitutions demand from conditions of confinement.

Decisions by the Board of Parole determine the timing of the flow out of prisons (to the extent that sentences, state law, and inmate behavior do not preclude discretionary release). Additionally, the Board of Parole and the Department of Probation influence the flow of inmates back into prison due to technical violations of the terms of supervision. Oftentimes, inmates have previously served sentences in a county detention and/or House of Correction prior to their terms in the DOC, and they may also be under county supervision at some point following their release.

In addition to linkages with these criminal justice agencies, there is typically substantial overlap between the prison population and those who receive social services from the state. This includes services such as Medicaid, mental health services, family support services, and transitional assistance. Thus, it is crucial that there be continuity of human services once an inmate transitions back to the Community.⁵²

Because of these linkages across agencies, there are compelling reasons for improved collaborative work in the state. Collaborations in Massachusetts have shown how coordination across agencies can be productive. For example, the Department has linked with Hampden County to re-enter some inmates from that geographic area through the Sheriff's Department. In addition, the Department is working with the Lowell Police Department to assist with the release of inmates without further criminal justice supervision. These important efforts, and others, could be evaluated for possible expansion and integration into standard operating procedures.

The Commissioner's new strategic plan is a step in the right direction.

In February 2004, Commissioner Dennehy⁵³ released a Strategic Planning Guide ("Guide"). The Commission commends the breadth of this document. The Guide identifies the right set of priority issues, and establishes a set of short-term and long-term action steps. The Guide provides a solid foundation upon which to build meaningful reform. The Commission hopes that details consistent with this report will continue to be incorporated. Further, we applaud the Commissioner for swiftly generating her own vision for the Department, rather than waiting for external directives.

⁵² The need for continuity in human services was expressed by several participants at the Commission's public hearing on February 25, 2004.

⁵³ Kathleen M. Dennehy was named Commissioner of the DOC on March 16, 2004 and was Acting Commissioner in February, 2004.

An external advisory board on corrections would provide necessary ongoing monitoring and oversight of the DOC.

This Commission was created to determine whether the problems identified in the Administrative Investigation were isolated incidents or raised questions for the entire system. The reactive nature of our task is typical of correctional systems (or any large business, private, or public institution), where highly publicized events often provide the only pressure for change. The public safety and interest are best served, however, by systems that anticipate or identify problems before serious harm occurs. Prevention is the best and cheapest form of public protection.

The findings of this report document the problems that surface when a correctional system, largely isolated from outside review for years, suddenly comes under scrutiny because of a highly publicized event. Our findings also demonstrate the capacity for our correctional system to develop in directions that are inconsistent with the Department's ultimate mission and that generate no pressure for reform, without external review of internal accountability.

Solving the Department's existing problems is crucial but will not ensure public safety and sound, efficient management in the future. The very nature of the correctional system ensures that problems will resurface, and new problems will arise, unless the Commonwealth implements a plan for continued vigilance. Corrections necessarily involves daily resolution of challenges in dealing with inmates who can be needy, angry, violent or vulnerable. Those challenges include: maintaining a professional culture in the face of a difficult, potentially dangerous environment; instilling discipline in staff to follow department policy; preventing official power over inmates from turning into abuse; protecting those who make or consider making reports of violations; and operating within a system where staff loyalties may be divided. Faced with these obstacles, human nature almost ensures that a closed correctional system, immune from meaningful outside scrutiny, will generate problems, including disrespect of inmates, staff, management, visitors and others; excesses in conduct and abuse and more. In that sense, the findings of this Commission are not surprising, given the systems in place and the nature of these issues.

The sheer size of the Department, the size of its budget, and the scope of its enterprise suggest that oversight and review of its operations would be sound public policy. The need for an independent entity, composed of experts, to provide advice and, where necessary, criticism, of the Department, will not disappear upon issuance of this Report. Ongoing developments and shifting priorities will necessitate independent review by an advisory panel of persons with relevant expertise, reporting to an official in a position to assist, direct and, where necessary, criticize, the Department. Presently, the Secretary of Public Safety is in the position to receive and act upon such reports.

RECOMMENDATIONS

The Department should revise its mission to include reducing the rate of re-offense by inmates released to the community.

In the winter of 2004, Commissioner Dennehy revised the mission of the Department as part of her Strategic Plan.⁵⁴ The Commission supports the revised mission in principle. We believe, however, that rather than merely “providing opportunities” for participation in effective programs, the new mission should set quantifiable goals and expectations for the Department. Specifically, the Commission recommends that the mission include lowering the rate of re-offense by released inmates by a measurable amount. The Commission further recommends that the Department specifically embrace the notion of “humane” incarceration within its mission.

The Department should adopt a performance management and accountability system to enhance agency performance, improve the culture, and utilize budget resources more effectively.

The Commissioner should adopt a performance management and accountability system based on key measurements of agency performance. The Commission believes that this kind of management system holds promise for dramatically improving the Department’s culture, operations, and fiscal management. If done well, this type of management system has the potential to:

- Clearly communicate all aspects of the Commissioner’s vision, mission, and values throughout the organization and encourage acceptance at all levels;
- Reduce re-offending by released inmates by improving program and treatment participation levels, promoting fairness, and closely monitoring recidivism rates;
- Improve agency performance by closely monitoring outcomes and setting measurable goals for the future;
- Hold staff accountable for what occurs in their facilities;
- Provide the Commissioner with detailed and timely information on her full organization;
- Help to minimize the gaps between policy and practice;
- Encourage innovation and effective problem solving;
- Encourage more effective use of budget resources by requiring managers to focus on excessive spending, including overtime usage.

As stated previously in our findings, the Commission is particularly impressed with elements of the TEAMS model at Rikers Island in New York City. While the results in New York City and elsewhere appear impressive, the Commission does not necessarily advocate for wholesale adoption of this system, as Massachusetts could borrow elements from TEAMS, Hampden

⁵⁴ The revised mission of the Department states: “The Massachusetts Department of Correction’s mission is to promote public safety by incarcerating offenders while providing opportunities for participation in effective programming designed to reduce recidivism.”

County, Oregon and Washington state and others in customizing a system to meet the DOC's unique goals and needs. For example, in New York the average length of stay of inmates is 40 days. Thus, successful reentry and reduction of re-offense are not as important to measure in that system. These would be critical indicators to track in Massachusetts, however. Therefore, we recommend that the Department create a management system including the following components:

- A system for accurately collecting data on key indicators of agency performance with built-in safeguards to prevent data tampering. An initial set of baseline measurements should be taken prior to implementation;
- Key indicators that are aligned with the goals of the Department. These would necessarily include measures of inmate well being, responsibility, rehabilitation, reentry and recidivism (see Appendix III);
- Accountability forums, chaired by the Commissioner, that focus on constructive problem-solving and innovation. This will help to ensure that accountability efforts are productive and have the effect of raising morale and improving the culture;
- Specific goals for improvement, assessed on a quarterly and annual basis; and
- Published annual reports available to the public, detailing the Department's overall performance.

As with any new system of this magnitude, the Commission anticipates that implementation would need to be phased in over time. However, this process could be achieved without a significant infusion of new resources if budget resources were reallocated consistent with the recommendations of this report. To begin, the agency would need to identify its goals and values, and then develop and define key measurable indicators that are linked to the agency's progress in meeting them. In Appendix III, the Commission has synthesized a number of performance indicators from different accountability systems as a suggested starting point in this process. Second, the agency would need to develop the capacity to collect data accurately and in a timely manner, and to utilize information technology to display and analyze the data.⁵⁵ Third, the Department would have to decide what type of forum was most appropriate to hold managers accountable for their performance in a manner that helps educate the entire organization about agency goals, values, and expectations.

The Department's management capacity should be strengthened through the collective bargaining process and revisions to the internal rank structure.

The Commission has found that the Department's management rights have been severely limited by prior collective bargaining agreements, particularly as they relate to assigning positions and

⁵⁵ Over the past year, the Department has rolled out a new Inmate Management System (IMS) that should help the Commissioner use data more effectively to analyze the performance of the agency with respect to the inmate population. However, the design of the IMS does not adequately incorporate research and analytical tools to help answer some fundamental questions particularly that would assess the Department's support of reentry goals. Further, the IMS will not capture important administrative and operational data that is not tied to inmates (overtime, use of force incidents, weapon and drug finds), and the Department must develop some management information system that helps track these indicators within and across institutions.

moving officers for the good of the Department. Presently, the MCOFU contract is under collective bargaining. The Commission recommends that all of the parties use this opportunity to define a more balanced labor contract. This may not be an easy process. The relationship between MCOFU and management is noticeably strained.

We recommend common sense revisions to the labor contract to strengthen the most fundamental management functions. Specifically, the Commission recommends:

- Eliminating the ability of officers to “own” positions for life, or a specified term, as they do in three facilities.
- Increasing the percentage of superintendent picks to at least 25%.
- Providing superintendents with more authority to transfer and remove staff based on credible facts for the overall benefit of the Department, without being subject to arbitration, and a lower but fair standard of review should be put into effect by the parties.

Additionally, in order to strengthen the Department’s management team and clarify distinctions between labor and management, the rank structure should be revised. Correction officer positions and supervisor positions could remain as bargaining unit positions, but the positions that manage the shifts (currently captains) should be re-designated as management positions and paid accordingly. The compensation for this position should be higher than that of correction officers and supervisors to prevent collective bargaining unit employees from receiving contractual pay increases and benefits not provided to managers.

There should be an external advisory board on corrections to monitor and oversee the Department. The board should work cooperatively with the Commissioner to develop concrete goals for the future of the Department.

Rather than relying solely upon assumptions about the direction of future management, the Commission recommends the creation of permanent systemic safeguards to improve the present system of oversight and investigations. In making these recommendations, we draw not only upon our own findings and the in-depth evaluation of the Administrative Investigation, but upon the knowledge that the system contains few safeguards to prevent deficiencies from re-surfacing.

Any ongoing advisory process must balance competing goals, and may require refinement through an initial trial period, during which all parties will need to identify ways in which the new system can be improved. On the one hand, to be effective, the system must have sufficient independence from the Department. Without independence, the review may become simply a means to justify decisions for which the Commissioner him/herself is responsible and thereby fail to identify problems before damage is done, costs are sunk, and changing course becomes more difficult. Independence also serves a reinforcing function, for a Commissioner embarking upon promising but controversial policies may benefit from an independent review that validates those policies.

At the same time, the oversight must not substantially limit the Commissioner's authority and accountability or that of her staff. Nor would it be efficient for such an oversight body to micromanage the Department's operations. Creating an oversight board that bypasses the chain of command would allow officials to avoid difficult decisions that should be made within the chain of command. Full cooperation between the Commissioner and the advisory board is, of course, essential and in the best interests of both entities.

Resolution of these competing concerns is not easy. Nor is there a single solution that meets the demands of all types of issues that will arise. In addition, the necessary expertise of the independent review body varies, depending upon the task. Proliferation of a large number of independent review boards would lead to confusion, diffusion of responsibility, and complicated problems in coordinating the multiple reviews. For that reason, we recommend two different types of independent review, one for management and policy reviews (similar to the scope of this Commission) and one for investigations into specific complaints and incidents (See Section IV).

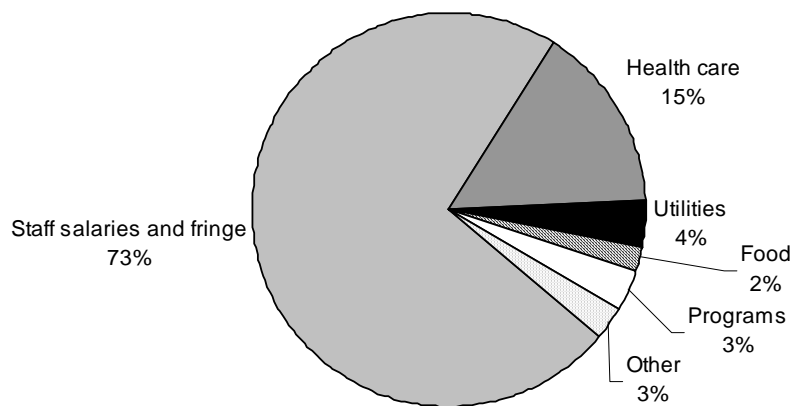
The charge to the policy advisory panel should be:

- In the short-term, assist the Commissioner in developing an action plan with priorities and timelines for implementation of these recommendations;
- Apply its members' expertise in corrections, health, finance, community needs, community facilities, and public administration to identify and help propose solutions to the problems faced by the Department;
- Report to the Secretary of Public Safety periodically regarding the Department's leadership, systems, operations and other functions, as requested by the Secretary;
- Strengthen leadership, both by reinforcing Departmental policies, practices and decisions that promote the Department's mission, and by identifying instances or patterns of events and policies that disserve the mission;
- Recommend changes that will address identified flaws or deficiencies in the Department's approach to implementing its mission;
- Evaluate, from time to time, whether the Department's statement of its mission needs changes in direction or emphasis;
- Follow up on recommendations in this report, and in future reports, by establishing a dialogue with the Commissioner regarding all such recommendations, including a reply from the Commissioner on the status of implementation within six months.

III. FISCAL MANAGEMENT

The Department's budget totals nearly \$428 million. The overwhelming majority (73%) of this budget is spent on staffing-related expenses (see Figure 5, below). By comparison, salaries, benefits and wages make up about 65% of operating expenditures for prisons nationwide.⁵⁶ The overall cost to the Commonwealth for the Department's staffing expenditures is nearly \$310 million per year.

Figure 5. Overall DOC Budget, FY 2004



Because staffing costs comprise the majority of the Department's budget, the Commission focused predominantly on staffing issues in examining and assessing the overall fiscal management capacity and efficiency of the Department.

FINDINGS

As staffing costs comprise 73% of the DOC budget, the Department's fiscal management is closely linked with labor management.

The Department's fiscal management is closely linked with the management of staff, and relationships with the three labor unions. Our analysis of the staff-to-inmate ratio, labor contracts negotiated over the past decade, worker absenteeism, industrial accidents and overtime usage, reveals weak management performance and leadership that has come with a very high price tag. *We do not fault the labor unions in this regard nor criticize their "success."* In our view, the issue is not how we arrived here, but how to effectively bolster the Department's management abilities and fiscal responsibility moving forward.

⁵⁶ James J. Stephan, *State Prison Expenditures, 2001*, (Washington, DC: Bureau of Justice Statistics, June 2004), p. 4.

Staffing levels and contractual provisions

The Department has the second highest staff-to-inmate ratio (1:2) in the nation.⁵⁷ In a recently released national study, a high staff-to-inmate ratio was identified as the primary reason for high operating costs per inmate.⁵⁸ The largest labor union serving the Department, MCOFU,⁵⁹ rightfully boasts on its website that its members are some of the highest paid corrections officers in the country.⁶⁰ According to the Bureau of Labor Statistics, Massachusetts' correctional officers are the third highest paid in the nation, behind New Jersey and California.⁶¹ The Commission fully recognizes the valuable public service that correction officers perform. They have a difficult and stressful job. Moreover, strong security in a prison system is fundamental, and appropriate staffing levels are required to accomplish this goal.

The increases in correction officer salaries, as negotiated by management and state officials in the last four labor contracts, have been significant compared to other wage earners in Massachusetts. Correction officers' salaries increased by between 70% and 77% since 1992, or between 29% and 36% adjusted for inflation. By comparison, all Massachusetts wage earners gained only 17.9% in their inflation-adjusted salaries over the same period. The salaries of U.S. citizens as a whole increased 10.7% in the same time frame.⁶²

An analysis of recent contracts illustrates the negotiated pay in the labor contract and the increases management and state officials have permitted over time (Figure 6 below). This table includes the contract salary provisions for a correctional officer in each level, assuming a bachelor's degree and 15 years of service to the Department, and excludes overtime and fringe benefits such as health insurance or sick time, all of which contribute to budget category "staff salaries and fringe" above.⁶³

⁵⁷ Ibid, p. 5. The Commission recognizes that architecture influences staffing needs.

⁵⁸ Ibid.

⁵⁹ According to the Massachusetts Department of Correction, MCOFU was certified as the exclusive bargaining representative for employees in Bargaining Unit 4 in October 1989 by the Labor Relations Commissions. The predecessor union was AFSCME council 93. While the Commonwealth and the MCOFU negotiated over a successor collective bargaining agreement employees in Bargaining Unit 4 continued to work under the 1986-1989 ALLIANCE, AFSCME-SEIU, AFL-CIO collective bargaining agreement. The first collective bargaining agreement with the MCOFU was not signed until April 15, 1992. This agreement covered the period of January 1, 1992 through December 31, 1994. Subsequent agreements were negotiated with MCOFU covering the periods January 1995 through December 1997, January 1998 through December 2000 and January 2001 through December 2003. Employees are continuing to work under the 2001-2003 agreement pending negotiation of a successor agreement.

⁶⁰ "Prior to the inception of the MCOFU Correction Officers made a base salary of \$23,176.40 per year. We advanced that base pay to \$28,463.80 at the end of our first contract, and at the end of our current contract the base salary will increase to \$54,209.48 making us one of the highest paid Correction Officers in the country. These figures do not include additional benefits such as shift differential, holiday pay, etc." from www.mcofu.com accessed April 7, 2004.

⁶¹ The top state for correctional officers and jailers pay is New Jersey, followed by California and Massachusetts. Bureau of Labor Statistics Occupational Employment Statistics, *Occupational Employment and Wages 2002*, www.bls.gov

⁶² Bureau of Economic Analysis, *Regional Economic Accounts*, <http://www.bea.gov/bea/regional/reis/>.

⁶³ Those with less education would receive somewhat lower pay (and those with more education, somewhat more money). The same is true for tenure in the Department.

Figure 6. Contract Provisions: Correctional Officers Salary, 1986 –2003⁶⁴
 (Excludes fringe benefits and overtime pay)

	1992	1995	2000	2003	% increase from 1992
Correctional Officer I					
Total pay not adjusted for inflation	35,386	41,841	51,382	59,919	69.3%
Total pay adjusted for inflation	46,329	50,792	55,404	59,919	29.3%
Correctional Officer II					
Total pay not adjusted for inflation	37,130	49,120	56,331	65,647	76.8%
Total pay adjusted for inflation	48,611	59,628	60,741	65,647	35.0%
Correctional Officer III					
Total pay not adjusted for inflation	40,531	47,976	61,775	71,946	77.5%
Total pay adjusted for inflation	53,064	58,239	66,610	71,946	35.6%

As of February 2004, correctional officers (levels I, II, III) earn on average \$61,000, \$69,000, and \$75,000 respectively, excluding benefits.⁶⁵ When fringe health and retirement benefits are included, the cost per full time employee is approximately \$82,000, \$92,000 and \$100,000 excluding overtime (or a weighted average of \$88,000). Captains earn on average \$81,000, or \$109,000 per employee with health and retirement benefits included.

The MCOFU contract also provides:

- Five full-time employees on the executive board of the union are paid by the Department to administer various aspects of the correction officer contract on behalf of the union. This practice is highly unusual, and raises numerous legal, ethical and administrative questions.⁶⁶ The total cost to the Department is approximately \$455,000 per year.
- A high number of labor management committees (18) meet on an as needed or set basis. Committee members are paid out of the Department’s budget for their participation.

⁶⁴ The average salary earned under this contract depends upon the composition of the workforce – how long people have been with the Department, their education, and so forth. There are in fact multiple “steps” within each job category (Correctional Officer I, etc.). Because nearly all employees are in the highest step, for parsimony, only the highest step is tabulated. None of these calculations considers benefits such as vacation, sick time, or overtime pay, however, 2003 includes \$500 pay for tobacco prohibition.

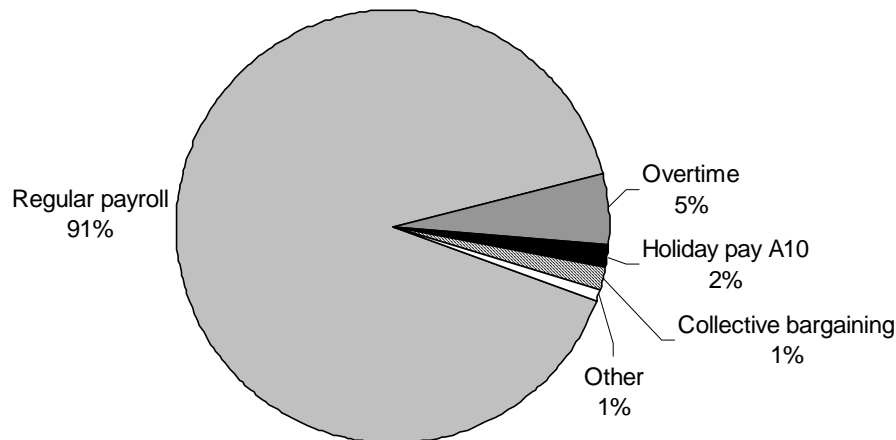
⁶⁵ Massachusetts Department of Correction, “CO I, II, II Average Salary as of 2/16/04,” (Boston, MA: 2004)

⁶⁶ See M.G.L. c. 32, sec. 28K and *Commonwealth v. Moses*, 423 Mass. 667 (1996).

Worker absenteeism and industrial accidents

The costs of employee absenteeism and overtime pay are significant expenses that can and must be reduced. Currently, overtime pay cost the Commonwealth nearly \$16 million per year, representing 5% of the overall staffing budget (see Figure 7).⁶⁷

Figure 7: DOC Staffing Costs



Correction officers use nearly 18 days of paid sick leave per year.⁶⁸ Notably, the contract allows every officer to take 5 *unsubstantiated* sick days per year. By comparison, the average sick leave used by corrections officers with the Federal Bureau of Prisons is only 5.25 days per year.⁶⁹ In California, the state with the largest prison system in the country, the average sick leave used by correction officers is 12.75 days per year.⁷⁰

When tallying the total number of paid and unpaid days off per year used by correction officers, an average of 60 days are taken, of which 52 are paid.⁷¹ In other words, correction officers use one paid day off every week. This number is excessive. Overtime costs are also significantly impacted by this absenteeism, because the more people are absent from work, the more likely it is that overtime pay will be used.

⁶⁷ Massachusetts Department of Correction, "FY 2004 Spending Plan." Note: this figure includes overtime pay for roll call.

⁶⁸ Interview with Ronald Duval, Associate Commissioner of Administration, Massachusetts Department of Correction, June 28, 2004. Note that this sick leave figure does not include FMLA, active military duty, or industrial accident leave.

⁶⁹ C. Allan Turner, "Organizational Culture and Cost Containment in Corrections: The Leadership Dimension." *Public Administration and Management, An Interactive Journal* 3, 3 (1998)

⁷⁰ "Unholy Triad Drives Costs-Use Data to Better Manage Prisons," *Sacramento Bee*, April 27, 2004.

⁷¹ Interview with Ronald Duval, Associate Commissioner of Administration, Massachusetts Department of Correction, June 28, 2004. These figures are for the time period of 12-29-02 through 12-27-03. According to the Department, these figures do not include active military duty. These are average figures, therefore the Commission cannot determine whether the high figures are due to a few egregious situations, or a system-wide pattern. In either case, the cost to the Department is too high.

Correction officers use an average of 52 paid days off per year – or one paid day off every week.

The total cost to the Department for the 17.5 sick days used per correction officer is over \$21 million per year.⁷² This is the equivalent of the cost of over 230 correction officers, exclusive of overtime.

Moreover, on a given day, there are approximately 250 to 300 correction officers, including captains, out of work due to industrial accidents. As of the end of May 2004, there were 313 workers out on industrial accident leave.⁷³ During the past year this amounted to an average of nearly 13 days per correction officer.⁷⁴ The number of industrial accident claims has increased dramatically over the past five years. In 1998 there were 343 “lost time” claims (those where an employee was out 5 days or more), and by 2003, this number increased to 1,847 claims, a 438% increase in five years.⁷⁵ Management must study staffing and conditions to determine if the job has become significantly more dangerous, and if so, how to reduce these risks as a major human resources issue. The direct costs of industrial accident leave to the Department are tremendous.

Figure 8. Industrial Accident Direct Costs to DOC, FY 2003⁷⁶

Worker compensation	\$10,930,543 ⁷⁷
Medical bills	\$1,602,199
HRD administrative fee	\$734,201
Settlements	\$342,749
Rehabilitation	\$137,740
Total direct cost (excludes cost to fill vacancies)	\$13,750,434

There are three types of pay given to injured workers: (1) “non-violent” injury pay, for injuries sustained on the job (a slip and fall for example); (2) “responding” pay, for injuries sustained in

⁷² In making this calculation, the Commission used the weighted average (\$88,000) cost for correction officers to determine a weekly cost per officer (\$1,692), and multiplied that by the number weeks of sick time utilized (3.5) and multiplied that by 3,600 correction officers.

⁷³ Massachusetts Department of Correction, Industrial Accidents Departmental Wide by BU Active IA's 313, (Concord, MA: Research and Planning Division, May 26, 2004).

⁷⁴ Interview with Ronald Duval, Associate Commissioner of Administration, Massachusetts Department of Correction, June 28, 2004. These figures are for the time period of 12-29-02 through 12-27-03.

⁷⁵ Massachusetts Department of Correction, IA History from 1998-2003, (Concord, MA: Research and Planning Division, June 2004).

⁷⁶ Massachusetts Department of Correction, IA payments made by HRD Pursuant to M.G.L. c. 152, (Concord, MA: Research and Planning Division, June 1, 2004).

⁷⁷ This figure does not include the costs to the Department for retirement benefits.

responding to an alarm/incident in a facility; and (3) “violence pay,” for injuries sustained due to an act of inmate violence.⁷⁸ Presently, nearly two thirds of the Department’s injured workers are out under categories (2) and (3).⁷⁹ This fact is important because those individuals are compensated at 100% of their full pay, tax free.⁸⁰ In fact, they earn more by staying out of work than if they were to return to work, due to the tax benefit. This rate of compensation creates a disincentive for injured correction officers to return to work in an expeditious manner.

A separate agency of the Commonwealth, the Human Resources Division (HRD), has control over the administrative functions of workers compensation for all state employees.⁸¹ Because the ultimate responsibility for administering industrial accident cases is outside of its control, the Department has little ability to expedite the claims process, or improve management and monitoring as a human resources benefit to the Department and its staff, with a goal toward cost savings. The Department has a great deal of incentive to swiftly administer the cases, and investigate suspected abuses, as the compensation payments come directly out of its budget. By contrast, HRD receives funds for administering the system, but is not charged for the compensation provided. Moreover, HRD’s workers’ compensation staffing has been reduced to levels that are inadequate in order to handle the demands of the Department.⁸² We believe costs have escalated largely due to weak management performance and failed human resources and employee benefits administration.

RECOMMENDATIONS

The Department should take responsibility for bringing down staffing costs and reducing worker absenteeism.

Correction officers’ work is critically important. The vast majority of corrections officers are honest, hard working public servants who deserve fair and appropriate compensation and benefits for the difficult work they do. In light of the fact that Massachusetts corrections officers are among the highest paid in the nation, we believe that 60 days off per year (52 of which are paid) is excessive. There are many steps the Department can take, both in the collective bargaining process, and through stronger management techniques, to more effectively manage staffing costs, and address workplace safety risks.

⁷⁸ Interview of Kelly Correira, Worker’s Compensation Coordinator, and Robin Borgstedt, Counsel, May 26, 2004.

⁷⁹ Massachusetts Department of Correction, “Industrial Accident Departmental Wide Current IA Totals by Type,” (Concord, MA: May 26, 2004).

⁸⁰ MGL c. 30, sec. 58; Memorandum of Understanding, Commonwealth of Massachusetts and the Massachusetts Correction Officers Federated Union Collective Bargaining Agreement, January 2001-December 2003, p.155.

⁸¹ MGL c. 7, sec. 4A. Because the cost of industrial accident cases to the Department is so significant, the Department established its own small unit which duplicates the administrative functions for workers compensation at HRD to help monitor and expedite these cases. However, the Department does not have independent control and responsibility, and is still charged an administrative fee of nearly one million dollars each year by the state.

⁸² Massachusetts Department of Correction, *Strategic Planning Guide*, (Concord, MA: 2004)

In re-negotiating the labor contract we recommend:

- Eliminating the provision for 5 *unsubstantiated* sick days;
- Eliminating pay for the five union stewards, which costs the Department approximately \$455,000 annually;
- Eliminating a significant number of the 18 paid labor/management committees;
- Any other reasonable modifications to bring down the 60 days off used per correction officer each year.

In bolstering internal management efforts we recommend:

- A staffing analysis conducted by an independent consulting firm in order to satisfy management and the unions that the Department is operating within nationally accepted standards of staffing. Labor and management must agree to use best efforts to abide by the outcome of the study;
- The ability to hire and train additional corrections officers if supported by the staffing analysis;
- Monthly reports on sick and overtime usage and industrial accident cases delivered to the Commissioner by the superintendent of each facility (i.e., incorporate measures into a TEAMS approach); and
- An overtime budget for each superintendent that is not to be exceeded.

In addressing industrial accidents we recommend:

- The administration of workers compensation cases must either be placed under the direct control of the Department or strengthened at the state level. At a minimum, HRD should consider creating a dedicated unit to more effectively manage corrections claims.
- The Department should review and analyze its industrial accident cases by facility to determine whether particular remedial actions could be taken to address safety and environmental risks (in conjunction with a staffing analysis, as recommended above).
- The Department should consider techniques, such as daily contact from human resources professionals (caring – not punitive), to assist employees in returning to work in an expeditious manner.
- Modifications to state law should be considered to remove disincentives for DOC employees to return to work because they are receiving 100% of their pay tax free, while at the same time ensuring just compensation for those unable to work due to job-related injuries.⁸³
- The Department should continue its recent efforts to address fraudulent claims by referring information to the Office of the Attorney General.⁸⁴

⁸³ Specifically, MGL c. 30, sec. 58.

⁸⁴ “Fake Disability Lands Guard Behind Bars,” *Boston Herald*, May 22, 2004.

The Department's budget should be more closely aligned with its mission and priorities. This will enhance public safety in a fiscally responsible manner.

As noted above, the Department's budget is substantial. However, the Commission does not advocate for reductions in that budget. Instead, we believe that the Department's budget should be reallocated, consistent with our recommendations, to ensure that the budget expenditures more closely reflect the DOC's mission and full set of priorities. The vast majority of the DOC budget is allocated for paying for security staff and related expenses. Surprisingly, only 3% of the budget is allocated for inmate programs.⁸⁵ The Commission recommends that, moving forward, the Department should align its budget more closely with the full set of its priorities, including successful prisoner reentry, described in detail in the next chapter. While strong security is clearly essential and should not be compromised, the gaping disparity between security staff costs and inmate programs targeting recidivism should be minimized. The Commission believes this can be achieved over time by implementing the recommendations of this report and reallocating appropriate cost savings (see Section VI).

⁸⁵ Presentation by Kyra Silva, Acting Budget Director, March 24, 2004. While 3% was the figure provided to the Commission, this figure does not include program staff salaries. The Commission presumes that if salaries were included in the computation, this figure may be subject to change.

IV. PUBLIC SAFETY AND INMATE REENTRY

Recent efforts nationally and in Massachusetts have highlighted the challenges of the transition from “inmate” under the authority of the Department of Correction to “civilian” responsible for productive activity in the spheres of work, family, and community life. These transitions can have significant social consequences, as successful reintegration will decrease crime, reduce the costs of the criminal justice system, and improve the lives of the victims and other citizens, particularly those in the most disadvantaged communities in the state.

The overwhelming majority (97%) of inmates will eventually be released from prison. The fact is that a significant share of inmates released from DOC custody will not make the transition successfully. The recidivism rate among released offenders in Massachusetts is high (as it is nationally).⁸⁶ Of those released in Massachusetts in 1997, 19% were reconvicted within one year and 48% were reconvicted within three years.⁸⁷

Numerous studies have documented the deficiencies in inmates’ skills and work experience, the challenges of reconstructing life after release, and how policies can hinder successful reintegration.⁸⁸ These insights have reinforced the fact that criminal justice decision-making does not end with sentencing. They have also provided useful data and ideas for designing improved corrections and reentry systems. Massachusetts is the beneficiary of several recent, in-depth research efforts on the legal, policy, and institutional environment of corrections in the state, including reports by the Governor’s Commission on Criminal Justice Innovation, MassINC, the Boston Bar Association, Community Resources for Justice, and Crime and Justice Institute.⁸⁹

We do not intend to re-invent the wheel on this topic. Rather, we have considered prisoner reentry and opportunities for self-improvement in the context of the goals, policies, and operations of the Department and have drawn from these other solid efforts to inform our

⁸⁶ Patrick A. Langan and David Levin, *Recidivism of Prisoners Released in 1994*, (Washington D.C.: Bureau of Justice Statistics, 2002)

⁸⁷ Massachusetts Department of Correction, Research and Planning Division, *Recidivism of 1997 Released Department of Correction Inmates*, (Concord, MA: Massachusetts Department of Correction, 2003). Because of definitional differences between Massachusetts and the Bureau of Justice Statistics study only reconviction rates, and not re-incarceration rates, can be compared. In Massachusetts, re-incarceration included state correctional institutions, houses of correction, jails, and federal facilities. In the 15 states include in the BJS study, re-incarceration include state correctional institutions, but did not include local jails.

⁸⁸ See Joan Petersilia, *When Prisoners Come Home: Parole and Prisoner Reentry* (New York: Oxford University Press, 2003), Jeremy Travis, Amy Solomon, and Michelle Waul, *From Prison to Home: The Dimensions and Consequences of Prisoner Reentry* (Washington, D.C.: The Urban Institute, 2001), Legal Action Center, *After Prison: Roadblocks to Reentry: A Report on State Legal Barriers Facing People with Criminal Records*, (Washington, DC: 2004)

⁸⁹ Governor’s Commission on Criminal Justice Innovation, *Reentry and Post-Release Supervision Subcommittee Final Report*, (Boston, MA: State of Massachusetts, 2004), Anne Morrison Piehl, *From Cell to Street: A Plan to Supervise Inmates After Release*, (Boston: MassINC, 2002), Boston Bar Association, *Report of the Boston Bar Association Task Force on Parole and Community Reintegration*, (Boston, MA: 2002), Community Resources for Justice, *Returning Inmates: Closing the Public Safety Gap*, (Boston, MA: 2001), Ginger Martin and Cheryl Roberts, *From Incarceration to Community: A Roadmap to Improving Prisoner Reentry and System Accountability in Massachusetts*, (Boston, MA: Crime and Justice Institute, 2004)

recommendations. The aim of this effort is to consider how corrections reforms might be structured to produce a system that provides better results for public safety, as well as for taxpayers, DOC employees, and inmates.

In addition to public safety gains from reduced re-offending, productively occupying inmates' time is one way to hold them accountable. If inmates get used to spending their time engaged in productive activities, such as work, education, volunteer service, substance abuse and/or mental health treatment, and release planning, then these habits will more easily translate into a productive, crime-free life in the community after release. The Department clearly communicates to inmates the expectations regarding their behavior and holds them accountable for misconduct with a variety of sanctions. The Department should also have high expectations for inmates and accountability mechanisms related to productive activities as well.

The following questions guided the Commission's assessment of inmate accountability and reentry: What is expected of inmates during their time of incarceration? What are the incentives, if any, to participate in productive activities while incarcerated? What do the current Department offerings look like in terms of eligibility for participation, program offerings, and capacity for participation? How do opportunities for productive activity align with other Departmental mandates, such as maintaining safe and secure environments and providing adequate medical care? Are there legal or other external restrictions that prevent the Department from fully implementing its mission?

FINDINGS

The Department does not adequately prepare inmates for release back to the community.

Preparing inmates for release with the goal of reducing recidivism has been a relatively low priority in the Department. As discussed earlier, this fact is a result of both internal and external pressures on the Department to place an even greater emphasis on incapacitation and surveillance. A few examples reflect the low priority of both Department and the Legislature when it comes to reducing re-offense by inmates following their release from prison. In recent years, several minimum and pre-release facilities have been closed. Just three percent of the current budget is allocated to inmate programs, and in 2002 the Department's education line item was cut by \$1.1 million.

Given the high cost of crime on communities and on victims, and the high cost of incarcerating offenders (\$43,000 per person per year in Massachusetts), the social benefits of reducing recidivism are substantial. At a time when crime rates have fallen to levels not seen in decades, criminal justice agencies have an opportunity to think strategically about working with inmates to reduce their re-offending. With lower crime and constant recidivism rates, former inmates may be responsible for an increasing share of crimes committed. Therefore, reducing crime by former inmates should be an important and appropriate priority for our criminal justice and law enforcement systems, including the DOC.

Inmates generally come into the system with problems that make a successful transition back into society more difficult. Inmates in this country are disproportionately poorly educated with limited work experience, and have extraordinary physical health, mental health, and substance abuse problems.⁹⁰ These characterizations fit the Massachusetts prison population precisely.

- Approximately 47% of state inmates in Massachusetts did not have a high school diploma or a GED when their sentence began. Even more striking, 14% of admitted inmates had not made it past the 8th grade at the time of their prison admission.⁹¹
- The rate of health problems (physical, mental, and substance abuse) is substantially elevated among inmates. According to the Department, between 2.75% and 3.5% of the inmate population is HIV positive and 30% tested positive for Hepatitis C.⁹² About one of every five inmates (22%) has an open mental health case. A full 65% of women have open mental health cases.⁹³ The majority of inmates have extensive histories of alcohol and substance abuse problems. However, there is uncertainty about the precise number addicted at the time of admission to prison.
- Few Massachusetts inmates have a career path to resume after release. In fact, few even have substantial work experience of any kind. Nationally, 31 percent of inmates were unemployed in the month prior to their arrest, compared to the overall unemployment rate of approximately 5%.⁹⁴

All of these deficits increase the probability that ex-inmates will re-offend. There is a large body of research evidence showing that if these (and other) criminal risk factors are addressed, the public will benefit from reduced crime.⁹⁵ There is also an emerging consensus about which program elements are most effective.⁹⁶ As correctional practice becomes more sophisticated in designing and targeting programs to those who need them most, society can expect to benefit.

Given that those released from state prison in Massachusetts have served an average of five years in prison,⁹⁷ there is adequate time to address some of these severe gaps in education, health, and

⁹⁰ Stefan LoBuglio, "Time to Reframe Politics and Practices in Correctional Education," in *Annual Review of Adult Learning and Literacy*, ed. by J. Comings, B. Garner and C. Smith. (San Francisco: Jossey-Bass, 2001), 111-150, Joan Petersilia. *When Prisoners Come Home: Parole and Prisoner Reentry* (New York: Oxford University Press, 2003).

⁹¹ Massachusetts Department of Correction, Research and Planning Division,, January 1, 2002 Inmate Statistics, (Concord, MA:), Table 8. Education levels are self-reported at the time of admission.

⁹² Massachusetts Department of Correction, Health Services Division, February 2, 2004.

⁹³ Data were originally provided to the Legislative Correction Budget Task Force by the Department and subsequently forwarded to the Commission in an April 13, 2004 letter.

⁹⁴ Data shown are for 1997. General Accounting Office, 2000, State and Federal Prisoners: Profiles of Inmate Characteristics in 1991 and 1997, (Washington, DC: General Accounting Office). Bureau of Labor Statistics, Labor Force Statistics., <http://bls.gov/cps/home.htm>.

⁹⁵ Ginger Martin and Cheryl Roberts, *From Incarceration to Community: A Roadmap to Improving Prisoner Reentry and System Accountability in Massachusetts*, (Boston, MA: Crime and Justice Institute, 2004)

⁹⁶ Gerald G. Gaes, et al., "Adult Correctional Treatment," in *Prisons: Crime and Justice: A Review of the Research*, ed. by M. H. Tonry and J. Petersilia. (Chicago: University of Chicago Press, 1999), 361-426.

⁹⁷ Massachusetts Department of Correction, Research and Planning Division, *Releases from the Massachusetts Department of Correction During 2002*, (Concord, MA: 2003), Table 25. Note that among males released in 2002, 34% had 200 or more days of jail credit. This may mean that some of inmates do not spend nearly this long in the facilities of the Department. The specifics of these flows must be considered when designing programming options.

vocational experience. At a minimum we ought to do what we can while we have them in custody, to try to have them leave less dangerous and likely to commit crime, than they were when they came in. However, taking full advantage of the opportunity to reduce the criminal risks of those in prison requires a deep commitment to structure the Department's budget and practices around this goal. In practice, the criminal justice system generally does not provide good support for correctional agencies taking on this task that is so essential to minimizing recidivism and the costs of corrections.⁹⁸ Other agencies could do much more to support the Department's work to reduce re-offense by returning inmates. Despite these external challenges, the Department could also do much better.

The Commission assessed preparations for release to the community along four dimensions: 1) risk and needs assessment, 2) program offerings, 3) step-down to release, and 4) community connections.

The Department can enhance its use of risk assessments to help minimize the rate of re-offense by released inmates.

The Department has a system for assessing the risks of re-offense upon release when inmates enter prison that results in an individualized Risk Reduction Plan (RRP). However, in order to be most effective, inmate risk assessment must be closely linked with the proper array of programs designed to reduce risks. The Department should use the information collected from the risk assessments to guide decision-making about which programs the Department should offer. Once these programs are in place, correctional program officers, those responsible for monitoring compliance with the RRP, should be able to effectively use incentives to help ensure adherence to the plan.

Risk assessment and the inmate classification must be considered together. Program offerings and participation vary by security level. Higher security generally means fewer opportunities for inmates to engage in productive activities, as movement is more time intensive and classes must be smaller. The shift over time in Massachusetts toward holding inmates in higher security levels (see Figure 3) suggests a decline in the amount of program opportunities for the population. While it may not be practical to offer equivalent program options to people regardless of housing unit, it is possible to develop different types of programming for different settings. Some state systems value education's contribution to institutional culture so much that they require that all inmates, even those in administrative segregation, participate in some educational activity.⁹⁹

The next chapter contains a broad set of critiques of the current classification scheme and the way it is implemented. The Department and the Commissioner are well aware of many, if not all, of these critiques, and have sought a review of its classification instrument.

⁹⁸ Anne Morrison Piehl, Stefan F. LoBuglio, and Richard B. Freeman, *Prospects for Re-entry: Designing and Implementing Effective Re-entry Systems*, (Washington, D.C.: Economic Policy Institute working paper no. 125, 2003)

⁹⁹ The California Youth Authority has transformed its institutions around the provision of education. It is no longer seen as a "program" but as an essential part of the operations of the facilities. "CYA Education Earns National Status at the Innovations in American Government Awards," *California Youth Authority Today*, December 1999.

The type and extent of programs currently offered by the Department is insufficient.

Well-designed programs can substantially reduce re-offense after release.¹⁰⁰ The recent report from the Crime and Justice Institute describes the most recent research on criminal risk factors and the programs to reduce them (also known as evidence-based programs).¹⁰¹ But the Crime and Justice Institute report includes an important caution: only a minority of programs in the country is evidence-based and well targeted. Like the Governor's Commission on Criminal Justice Innovation and the Crime and Justice Institute, we find that the DOC is not making maximal use of the existing research and guidance for improving prisoner reentry.

It appears from the Department website and printed materials that programming is an essential part of its activities, and the array of course titles is impressive: Father's Groups, HIV Awareness, Alcoholics Anonymous, various basic education classes, and many types of religious services, among many others. *However, these programs are not delivered in sufficient numbers or organized so that inmates experience a set of appropriate activities targeted to their particular crime risks.* In fact, a relatively small number of inmates participate in programs or work opportunities while in prison.¹⁰²

We do not know exactly the level of program participation,¹⁰³ but some of the available data indicate a dramatic decline in program offerings in the last decade.¹⁰⁴ For example:

- As a result of the \$1.1 million budget cut in FY 2002, 36 full time teachers have been laid off, several vocational programs have been eliminated, including drafting, HVAC, small engine repair, building trades and maintenance, and auto body, and academic programs have been eliminated at some facilities, including special education and ESL.¹⁰⁵
- The number of GEDs awarded has dropped from 351 in 2000 to 113 in 2002.
- The number of female inmates participating in family services has dropped by 60% between 2000 and 2004.
- The closing of SECC and MCI-Shirley minimum resulted in the loss of 110 Correctional Recovery Academy (CRA) beds.¹⁰⁶
- The number of inmates completing the first phase of CRA declined from 724 inmates in 2000 to 380 in 2003 – a 48% decline in three years.

¹⁰⁰ Lawrence W. Sherman, et al., *Preventing Crime: What Works, What Doesn't, What's Promising*. Research in Brief. National Institute of Justice, (Washington, DC:, 1998)

¹⁰¹ Ginger Martin and Cheryl Roberts, *From Incarceration to Community: A Roadmap to Improving Prisoner Reentry and System Accountability in Massachusetts*, (Boston, MA: Crime and Justice Institute, 2004)

¹⁰² This premise is supported by the superintendents' survey responses, oral and written testimony, and inmate focus groups and letters.

¹⁰³ The available data on program capacity, enrollment, and waiting lists do not easily allow for system-level analysis. Because each facility reports information differently and because programs rotate across facilities or run in cycles, accurate comparisons across facilities is difficult.

¹⁰⁴ This was partly the result of the \$1.1 million line item budget cut in FY2002 and rising costs in other areas. It was also partly a reflection of the Department's priorities.

¹⁰⁵ Data provided by the Department to the Commission on December 22, 2003.

¹⁰⁶ The Correctional Recovery Academy is a residential program that addresses several issues, such as substance abuse, criminal thinking, anger management and relapse prevention.

- ESL is no longer available at MCI-Framingham.

In addition, the demand for program and work opportunities greatly outweighs the supply.

- The Correctional Recovery Academy, currently available in eight facilities, has over 500 inmates on the waiting list.
- Despite the fact that 47% of the prisoner population does not have a high school diploma or GED, only 321 (out of 4,000) individuals are currently enrolled in a GED program.¹⁰⁷
- At MCI-Norfolk there are 475 jobs for an inmate population of about 1,400 inmates and at MCI-Shirley there are 436 jobs for a population of about 1,100.
- The total Department enrollment in traditional education programs, including Adult Basic Education, ESL, Pre-GED, GED, Computer Literacy, and the Boston University program, is just under 1,600, which is at most 17% of the inmate population.¹⁰⁸ It is also important to note that education programs are conducted on an academic schedule (nine months out of the year).

Poor utilization of the time of inmates in higher levels of security is particularly problematic in Massachusetts for several reasons. First, a high proportion of inmates are in high security facilities relative to other states. Second, large numbers of inmates do not receive post-release supervision. Third, not enough prisoners are “stepped down” to lower security levels prior to release. Together, these factors, which are discussed later in the report, mean that the state largely misses the opportunity to reduce the criminal risks of the population behind bars. The consequences of this are particularly serious for those with the highest risks of re-offending.

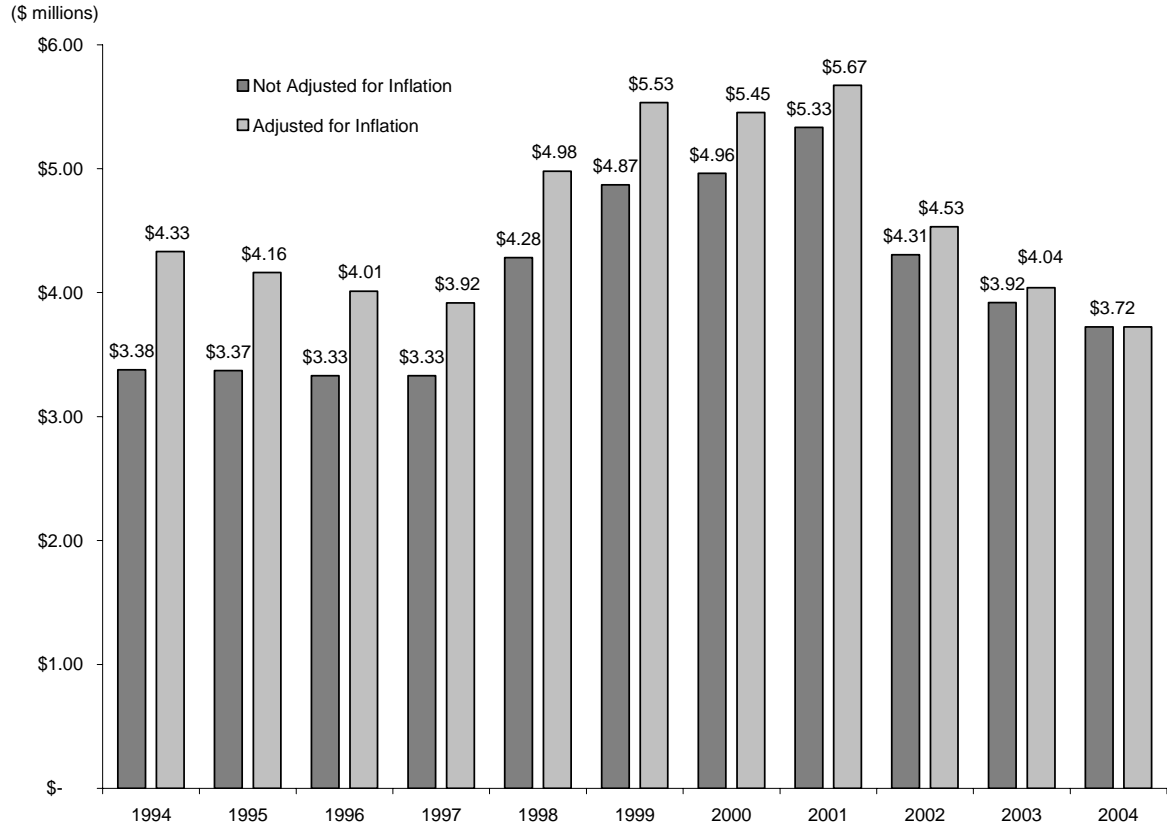
Inmate programs account for a relatively small share of the budget (approximately 3%, or \$14.2 million in 2004, see Figure 9).¹⁰⁹ The Division of Inmate Training and Education has experienced dramatic budget cuts in recent years. Between 2001 and 2004, its budget decreased by 43% from \$5.33 million to \$3.72 million.

¹⁰⁷ Massachusetts Department of Correction, Research and Planning Division., January 1, 2002 Inmate Statistics, (Concord, MA: 2002), Table 8. Education levels are reported at the time of admission.

¹⁰⁸ This is a conservative estimate. It does not account for inmates who may be enrolled in more than one education program.

¹⁰⁹ Massachusetts Department of Correction. Programs in this context include inmate work programs, educational services, community resource centers, substance abuse and anger management counseling, and sex offender community access boards, examiners, and treatment.

Figure 9. Division of Inmate Training and Education Budget, 1994 – 2004



Finally, the Commission has heard an impressive consensus, including from the leadership of three major unions, that better programs equate to better prison security.¹¹⁰ Superintendents and representatives from each of these unions expressed their belief that busy prisoners, as opposed to idle prisoners, facilitate their efforts to operate orderly and secure facilities.¹¹¹ Correctional management research makes clear that a wide range of meaningful programs is a necessary (but not sufficient) element of operating prisons and jails in an orderly, cost-effective manner.¹¹²

The Department does not sufficiently step prisoners down in security levels in preparation for release.

Approximately 75% of DOC inmates are released directly to the street from maximum or medium security confinement, while only 21% of the inmates are released from minimum

¹¹⁰ These unions are IBCO, MCOFU, and SEIU Local 509.

¹¹¹ Based on the Commission's survey of correction officers, more than half of the correction officers who completed the survey said that prisoner programs do not affect their daily responsibilities, approximately one-quarter thought that they made their daily responsibilities more difficult and approximately one-quarter thought that they made their daily responsibilities easier.

¹¹² John J. DiIulio, Jr., *No Escape* (New York: Basic Books, 1991), p.114.

security (4% are released from county, federal, or other states' facilities). The low proportion of inmates at minimum security is a serious impediment to successful reentry and an indicator that this part of the Department's mission has received inadequate attention, for whatever reason.

A graduated reentry back to the community can help reduce re-offending upon release. A series of articles on classification and the policy of stepping down to release¹¹³ in Massachusetts found that inmates who moved down through the security levels during their terms of incarceration had lower rates of recidivism than one would have predicted from their risk characteristics.¹¹⁴ A recently completed study of federal prison inmates found that inmates placed in a higher level of security had appreciably higher rates of re-arrest (approximately 50%) following release.¹¹⁵ These results indicate that a strictly punitive approach to corrections has negative public safety consequences. This study supports the advice of the American Correctional Association to house inmates at the lowest security level consistent with public safety.¹¹⁶ Common sense and a regard for safety and fiscal prudence support this advice as well.

Reentry preparation activities come closest to simulating the types of behaviors that will be required of inmates after release. Because classification policies and procedures are not producing a "step down" in custody level prior to release for most inmates, many go from a highly structured and restrictive environment one day to a completely unstructured, unrestricted environment the next (freedom). This is particularly problematic for those inmates released from higher security levels with no supervision following release.¹¹⁷ For these inmates, the Department really is the "end of the line" of the criminal justice system, and our last best chance to intervene to help protect the public.

¹¹³ Stepping down to release provides inmates with a gradual transition toward more individual responsibility while still under the legal authority of the Department. This requires the periodic review of an inmate's security status under a plan of moving inmates into less restrictive settings as they move toward their release date, where consistent with public safety.

¹¹⁴ Daniel P. LeClair and Susan Guarino-Ghezzi, "Does Incapacitation Guarantee Public Safety? Lessons from the Massachusetts Furlough and Prerelease Programs." *Justice Quarterly* 8, 1 (1991), Daniel P. LeClair and Susan Guarino-Ghezzi, "Prison Reintegration Programs: An Evaluation." *Corrections Management Quarterly* 1, 4 (1997), Daniel P. LeClair, "The Effect of Prison-Based Reintegrative Shaming Programming on Rates of Recidivism." *American Society of Criminology*, (1997)

¹¹⁵ These recidivism improvements occurred for those on the margin of low security (versus medium) in the federal system. M. Keith Chen and Jesse M. Shapiro, Does Prison Harden Inmates? A Discontinuity-based Approach, (New Haven, CT: Yale University, Cowles Foundation Discussion Paper no. 1450, January 2004). In this study, the authors used the points-based classification system of the federal prison system to cleanly separate risk from prison conditions. That is, they statistically compared those who nearly qualified for "low" security (but instead were placed in the less restrictive "minimum" security facilities) to those who barely qualified for "low" security.

¹¹⁶ One cannot be sure if the increased recidivism of those in higher security facilities is the result of association with other inmates or the restrictions on movement, programming, and individual responsibility. Furthermore, the results are not based on the most recent experience in Massachusetts.

¹¹⁷ See Anne Morrison Piehl, *From Cell to Street: A Plan to Supervise Inmates After Release*, (Boston: MassINC, 2002)

The Department does not make strong enough connections with the community before release.

Inmates transition more successfully following release if they have productive relationships with institutions in the community that can assist with their multiple needs for housing, employment, treatment, emotional support, and more.¹¹⁸ Correctional agencies have challenges facilitating these relationships when facilities are far from the communities the inmates come from, often urban, and to which they are likely to return following release. These agencies can help community institutions “reach in” to the DOC to make these connections, or can develop pre-release centers located in the most relevant communities.

The average prisoner makes few community connections prior to release. In fact, policy has been moving in the opposite direction: several pre-release facilities have been closed in recent months.¹¹⁹ At the same time, the state’s other efforts to provide community-based testing, programming and supervision (the Community Corrections Centers under the Department of Probation and the Community Resource Centers under the Department of Correction) have not lived up to their advertised potential for facilitating reentry with community organizations and centralizing correctional services. The Department is currently revamping its community efforts while developing a deeper partnership with Parole, by reorganizing the Community Resource Centers as Regional Reentry Centers to be funded by \$1.2 million from the DOC and managed by the Parole. This effort also involves greater collaboration, including a common risk assessment. This new initiative tries to generate greater coordination across agencies and within divisions of the Department.

In contrast, the innovations that have received praise in Massachusetts are those operating at the local level, some of which involve the Department as a partner. The Hampden County Sheriff’s Department has been honored for its work bringing health providers into the correctional facility to allow for uninterrupted treatment; Suffolk County Sheriff’s Department has partnered with Boston Police to target enforcement and services to those at highest risk; the Department has developed a partnership to step down inmates through Hampden County Sheriff’s Department; the Department is working with the Lowell Police Department to improve reentry to that community; and a federal grant (Serious and Violent Offender Program) is supporting the coordination of multiple agencies in the state around prisoner reentry.

Given the locations of its main facilities, the Department is at a disadvantage in bridging relationships with communities. This is particularly the case for women inmates housed at MCI Framingham. Therefore, the Department must continue to develop locally-informed and locally-based initiatives. The current challenge is to bring existing programs from the pilot stage to a scale that covers the majority of inmates. This is a major challenge, as going to scale requires

¹¹⁸ See Jeremy Travis and Michelle Waul, eds., *Prisoners Once Removed: The Impact of Incarceration on Families, Children, and Communities*. (Washington, DC: The Urban Institute Press, 2004), Dale Parent and L. Barnett, *Transition from Prison to Community Initiative*, (Washington, DC: National Institute of Corrections, 2003)

¹¹⁹ See Figure 2, Department of Correction New Beds and Closed Beds.

institutionalizing practices and procedures that are frequently at odds with usual correctional practice.¹²⁰

The Department does not hold prisoners accountable for participating in productive activities such as programs, work, and treatment.

The DOC sets clear expectations for prisoners regarding rules and behavior, and makes it very clear that non-compliance will be met with negative consequences. Yet, the Department expects relatively little of prisoners in terms of their participation in productive activities that could improve their reentry back to the community.¹²¹ The culture, laws and policies surrounding incarceration in Massachusetts actually tolerate and encourage inactivity and idleness. There are few incentives for staying busy with a regular job, completing a treatment program, or obtaining a GED. While the onus is absolutely always on the inmate to take responsibility for his/her own personal development, the DOC can encourage positive behavior by making a clear statement about what is expected, and by acting on it.

Prisoner participation in productive activities has value because of the potential to obtain skills and experiences that will help inmates become law-abiding, productive members of society. The Commission is especially interested in seeing that prisoners participate in evidence-based programs that are shown to reduce rates of recidivism. In addition, reducing idle time of prisoners clearly enhances overall prison security, as inmates have less time, energy, and opportunity to be disruptive.

The Commission heard a great deal of testimony on the fact that prisoners have far too much idle time. This was also supported by our inmate focus groups and inmate correspondence. These low levels of activity could be the result of several factors:

- Programs and work opportunities are limited.
- Programs and work opportunities exist, but enrollment is limited.
- Programs and work opportunities exist, but prisoners are not *eligible* to participate for reasons such as sentencing constraints.
- Programs and work opportunities exist, but prisoners are not held accountable for idle time, or given incentives to participate in productive activities.

While some combination of all of these factors may contribute to prisoner idleness, setting clear expectations and holding prisoners accountable for spending their time productively is a first step toward breaking a culture that tolerates inactivity. The Commission is particularly impressed with Hampden County Sheriff Department's prisoner accountability model (discussed in detail in the following section). This model utilizes a "carrot and stick" approach to encourage maximum participation in programs designed to promote a successful reentry back to the community.

¹²⁰ Anne Morrison Piehl, Stefan F. LoBuglio, and Richard B. Freeman, *Prospects for Re-entry: Designing and Implementing Effective Reentry Systems*, (Washington, D.C.: Economic Policy Institute working paper no. 125, 2003)

¹²¹ For the purpose of this report, productive activities include educational programs, vocational programs, substance abuse treatment programs, cognitive thinking programs, and employment, among others.

Using incentives to encourage prisoner participation and good behavior has long been a part of correctional practices.¹²² The most familiar incentive system (and perhaps the greatest motivator) is the deduction of time from a sentence for demonstrated good behavior including participation in certain activities (otherwise known as “good time”). Another common correctional incentive applies to prisoners whose release dates are determined by a parole board. Such prisoners have incentives to behave and to participate in productive activities, in order to increase the chances that they will be granted parole. Both of these incentive systems have been scaled back significantly in Massachusetts in the past 10 to 15 years.¹²³

Earned good time, which currently exists, awards days off of a sentence as a result of participation in certain activities. The state’s good time statute allows for up to 7.5 days per month to be earned by participating in various programs. Prisoners can earn up to 2.5 days per month for employment, 2.5 days per month for education programs, and 2.5 days per month for other, pre-approved programs and activities.¹²⁴

Despite this written policy, like so many other “policies” we note in this report which exist on paper, it is unclear the extent to which earned good time is actually used in practice. According to one estimate, the average earned good time credit awarded to inmates is less than half the allowable time at three days per month.¹²⁵ In order to be awarded good time, prisoners must have access to and be eligible for programs that qualify for good time and must not be barred from earning time by the terms of their sentence (e.g., many mandatory minimum sentences prohibit earned good time). As discussed earlier, the number of programs and work opportunities available to prisoners is inadequate. Many programs and work assignments have waiting lists; others are only available in a few facilities. In addition, many programs currently offered by the Department, including almost all run by volunteers, do not qualify as good time programs.

Models of effective reentry planning exist and could be useful for the Department.

Models exist for comprehensive systems designed to help inmates successfully transition from prison to the community. These models are implemented at the time that the inmate is sentenced and are designed to assist them through their adjustment to life outside prison. These models are intended to increase public safety, reduce recidivism and victimization, and make better use of scarce resources. These models are comprehensive and include many areas of a correctional system’s operations. Because of the centrality of this issue to DOC’s capacity to enhance public safety, spend money wisely, and ensure a safe, secure work environment for staff, we outline three of these models.

¹²² Edwin Powers, *The Basic Structure of the Administration of Criminal Justice in Massachusetts*, (Massachusetts Correctional Association, 1973), p. 230.

¹²³ The Truth-In-Sentencing Law of 1993 eliminated *statutory* good time, which was the automatic deduction of a certain number of days per month from a maximum sentence, eliminated the Reformatory sentence, and established parole eligibility at the minimum state prison sentence.

¹²⁴ MGL c. 129, sections 129C and 129D.

¹²⁵ *Haverty vs. Commissioner of Correction*, 440 Mass. 1 (2003).

National Institute of Corrections Reentry Model

In 2001, the National Institute of Corrections (NIC), in collaboration with Abt Associates and more than 35 corrections experts and academics, developed a model for prisoner reentry called the Transition from Prison to Community Initiative (TCPI).¹²⁶ The NIC defines the transition process as including how offenders spend their time during confinement, how they are released from prison, and how they are supervised during their adjustment to life outside prison. The TCPI model consists of the following seven elements:

- Assessing and classifying inmates;
- Developing and implementing the Transition Accountability Plans;
- Releasing offenders from confinement;
- Providing community supervision and services;
- Responding to violations of conditions of release;
- Terminating supervision and discharge of jurisdiction; and
- Providing post-supervision community support and aftercare.¹²⁷

To implement this, a Transition Accountability Plan (TAP) is developed for each inmate to address each phase of the inmates' transition from prison to the community. It outlines how offenders will prepare for their release from prison, defines the terms and conditions of their release, specifies the services and supervision they will receive in the community, and outlines their discharge when supervision is successfully completed. The plan is administered by a Transition Management Team, whose members include employees of the prison, parole, service, and community agencies.

This plan is structured around a target release date, which is established by law, or by discretionary action of the releasing authority. The target release date creates a strong expectation that the inmate will be released on that date if he or she adheres to the plan and maintains good behavior while confined. A premise of the model is that increased certainty around the release date will motivate inmates and make all parties more accountable for the timely performance of their responsibilities. The overall goal of the TCPI model is for released offenders to remain arrest-free, and to become competent and self-sufficient members of their communities. To achieve that goal, inmates and government actors hold themselves and each other accountable.

Crime and Justice Institute Reentry Model

The recently released report by the Crime and Justice Institute draws on national research, including the TAP model, and proposes policies related to reentry, from sentencing to post-release follow-up.¹²⁸ The model has the following essential principles:

¹²⁶ Dale Parent and L. Barnett, *Transition from Prison to Community Initiative*, (Washington, DC: National Institute of Corrections, 2003)

¹²⁷ *Ibid*, p. 7.

¹²⁸ Ginger Martin and Cheryl Roberts, *From Incarceration to Community: A Roadmap to Improving Prisoner Reentry and System Accountability in Massachusetts*, (Boston, MA: Crime and Justice Institute, 2004)

- Objective risk assessment to determine the risk that an offender poses to the public. Higher risk offenders must receive the closest supervision and be a priority for referral for correctional interventions in prison and in the community.
- Legally mandated supervision for all inmates following release from prison, but with those most likely to re-offend receiving priority.
- Correctional interventions that are effective, of high quality, and based on current research in order to reduce recidivism. Treatment should be available and accessible to higher risk offenders and should address criminal risk factors.
- A release plan for every inmate leaving prison.
- Parole officers who combine surveillance and monitoring with interventions to promote lasting behavior change.
- Offenders held accountable for violations of supervision conditions through community-based sanctions.
- Offender risk managed through a community-centered approach with collaboration between parole, local law enforcement, community service agencies, and others who can help monitor offenders and assist them with change.
- Outcomes measured to ensure that the reforms in the prison reentry process have the desired effect, specifically in reducing risk and victimization, and increasing safety.

Hampden County Sheriff's Department Accountability Model

To promote public and institutional safety and efficient inmate management, the Hampden County Sheriff's Department maintains a policy of inmate accountability. Instead of simply serving their sentences, inmates are challenged to use their period of incarceration to engage in productive activities and make positive changes in their lives by focusing on those attitudes, behaviors and cognitions that brought them to jail. It is, in effect, the inmate's job to take up the tools and directions offered and work toward a successful return to the community. Key components of this policy include:

- A climate in which staff and inmates are treated with respect and dignity.
- A system of correctional programming that specifically targets major criminogenic factors. Participation in programming is *required* for all sentenced inmates and is encouraged for pretrial detainees.
- Orientation and assessment. Within three days of arrival, each inmate undergoes screening that identifies major risk factors for re-offending such as substance abuse, lack of education or skills for employment, criminal associates, mental health issues, non-rewarding parental relationships and criminal thinking.
- Five weeks of mandatory, gender-specific programming, including core programs in Substance Abuse, Anger Management, Learn 2 Earn, Educational Assessment, Victim Impact and Cognitive Thinking.
- Development of Individual Service Plans (ISP) for more specifically targeted programs based on the results of their Level of Service Inventory (LSI) I screening and appropriate follow-up and support programs. These programs are offered at all security levels, and compliance with the ISP is mandatory for all inmates.

- Incentives linked to satisfactory participation in the treatment plan such as access to the canteen, visitors, and preferred housing and work assignments.
- Classification to the Accountability Pod (for those found out of compliance with the treatment plan) where they work on regaining the right to a regular housing unit.¹²⁹
- Inmates who meet classification criteria for movement to lower security are challenged to demonstrate their readiness for step-down through the system.
- A “direct supervision model” which provides unique opportunities for inmates and staff to work together to maintain a positive environment in the living units, resulting in a better climate for all. Staff are encouraged to serve as positive role models.

The Hampden County Sheriff’s Department has reorganized its entire operations to support a vision of accountability and treatment. Specifically, it has developed the capacity to provide substantial and coordinated inmate assessments, orientation, individualized treatment plans, and the required programming. In order to increase the capacity of the agency to offer programs to all inmates without hiring significantly more staff, the Hampden County Sheriff’s Department reviewed all of its programs and eliminated many that were poorly delivered, or had little chance of changing criminal risk factors. The staff was then redeployed to teach "approved" programs, all of which have research evidence to support them.

The Department’s ability to effectively transition inmates is limited by state laws, sentencing practices, and internal DOC policies.

Successful reentry of prisoners back to the community is limited by state sentencing laws and practices, as well as DOC policies, which directly impact inmate classification, programming options, pre-release, and supervised release. The DOC will be unable to fully implement a comprehensive reentry plan until these areas are revised.

Recent publications have discussed in detail the critical impact that sentencing laws and practices have upon reentry, including Piehl, “From Cell to Street,” Boston Bar Association Task Force on Parole and Community Reintegration, “Parole Practices in Massachusetts and Their Effect on Community Reintegration,” the Governor’s Commission on Criminal Justice Innovation Final Report, and Crime & Justice Institute, “From Incarceration to Community: A Roadmap to Improving Prisoner Reentry and System Accountability in Massachusetts.” The Commission concurs with most of these analyses. A brief summary of the laws, practices and policies that impede successful reentry follows:

¹²⁹ The Accountability Pod is a specialized living unit (not a disciplinary unit) where accountability is re-focused through a highly structured daily schedule, limited privileges and mandatory in-pod programming. Upon successful completion of the Accountability Pod program, inmates return to general population, generally within 30 days. The department recognizes that in order to comply with the accountability policy inmates must be able to benefit from targeted programs; therefore, accountability must be balanced with medical and mental health needs. Appropriate accommodations are made when necessary.

Statutory restrictions on pre-release classification

A recent DOC report stated that on December 10, 2003, 84% of the inmate population was restricted by law from participating in pre-release programming (i.e., work release, education release and pre-release centers).¹³⁰ Our reanalysis suggests slightly different numbers, but the thrust of the findings is the same.¹³¹ These statutory restrictions constrain the vast majority of the DOC population from participating in effective reentry. They include:

- ***Mandatory minimum sentences.*** These statutes specifically prohibit pre-release for the entire mandatory portion of the sentence. Mandatory minimum sentences are generally crimes of violence, firearms offenses, drug offenses, and driving under the influence offenses. There are 1,441 offenders in the DOC with a mandatory drug offense, representing 16% of the population.¹³²
- ***Parole eligibility.*** By law the Commissioner may permit inmates to participate in pre-release programs *if they are within 18 months of parole eligibility* (43% of DOC inmates were not within 18 months of parole eligibility in December, 2003).¹³³
- ***Prohibited crimes.*** A law restricts inmates convicted of certain enumerated offenses, although within 18 months of parole eligibility, from participation in pre-release programs except upon recommendation of the superintendent.¹³⁴
- ***Work release limits.*** Various laws permit work release during the mandatory term of the sentence, only in the custody of an officer, upon recommendation of a superintendent.¹³⁵

Sentencing Practices

According to the Massachusetts Sentencing Commission, 47% of offenders given a state prison sentence in 2002 received a sentence with only a one-day difference between the minimum and maximum sentence.¹³⁶ This common sentencing practice by judges effectively precludes both parole supervision (since the 1993 Truth in Sentencing Act, parole eligibility is set at the minimum sentence), and placement in pre-release.

¹³⁰ Massachusetts Department of Correction, *Policy and Statutory Restrictions Impact on Inmate Placement*, (Concord, MA: January 2004)

¹³¹ 5,080 inmates (55.8%) had parole eligibility problems (i.e., more than 18 months and lifers) and 3,193 inmates (35.1%) had less than 18 months to parole eligibility but had some offense-related statutory constraint.

¹³² Massachusetts Department of Correction, Research and Planning Division January 1, 2003 Inmate Statistics, (Concord, MA: , 2004), p. 22.

¹³³ MGL c. 127, sec. 49, emphasis supplied.

¹³⁴ Ibid.

¹³⁵ See MGL c. 90, sec. 23, 24, 24G and 24L.

¹³⁶ State of Massachusetts, *Survey of Sentencing Practices, FY 2002*, (Boston, MA: Massachusetts Sentencing Commission, May 2003), p. 31.

DOC Policy Restrictions on Classification

In addition to these significant restrictions, the Department has five internal policies that restrict inmate classification and pre-release. As of December 10, 2003, 49% of the inmate population was restricted by one or more DOC policy.¹³⁷

- Sex offenders are restricted from lower security level facilities until program requirements specific to sex offenders have been met.¹³⁸ They are also considered an escape risk because they face civil commitment.¹³⁹
- The Public Safety Security Program requires that any inmate serving a sentence with parole eligibility for Murder in the 2nd Degree, Manslaughter, Mayhem, Armed Assault with Intent to Murder, or a sex offense must have the approval of the Parole Board prior to being classified to a minimum security level facility.¹⁴⁰
- Members or suspected members of Security Threat Groups are restricted from minimum security unless they agree to renounce their membership in the group and the DOC accepts it.¹⁴¹
- The DOC's Security Risk Rating system includes placement restrictions for offenders with certain security ratings.
- Those serving 1st Degree Life sentences without the possibility of parole are restricted from level 2 or below.

According to the DOC, the policies on Public Safety Security Program, Security Threat Groups, and Security Risk Ratings are currently under review.¹⁴²

We do not necessarily question the reasonableness or validity of the policies or laws cited here. However, the total impact of these laws, practices and policies is that very few prisoners are effectively “stepped-down” through the system, and given increased responsibility and exposure to the appropriate array of programs and services to target their risks for re-offense.

Post-release supervision strengthens inmate reentry and is especially necessary for inmates who are at a high risk for re-offense.

Supervised release is smart public safety. Parolees are less likely to re-offend compared with those released without any supervision. For those inmates released from the Department in 1997, 39% of parolees were *convicted* of a new offense within three years compared with 53% of those discharged.¹⁴³ However, because they are subject to re-incarceration for violation of parole conditions, parolees were more likely to be *re-incarcerated* (48% of parolees were re-

¹³⁷ DOC, *Statutory Restrictions*, *supra*, p.5.

¹³⁸ 103 DOC 446

¹³⁹ *Ibid.*, p. 4.

¹⁴⁰ *Ibid.* p. 4-5.

¹⁴¹ 103 DOC 514

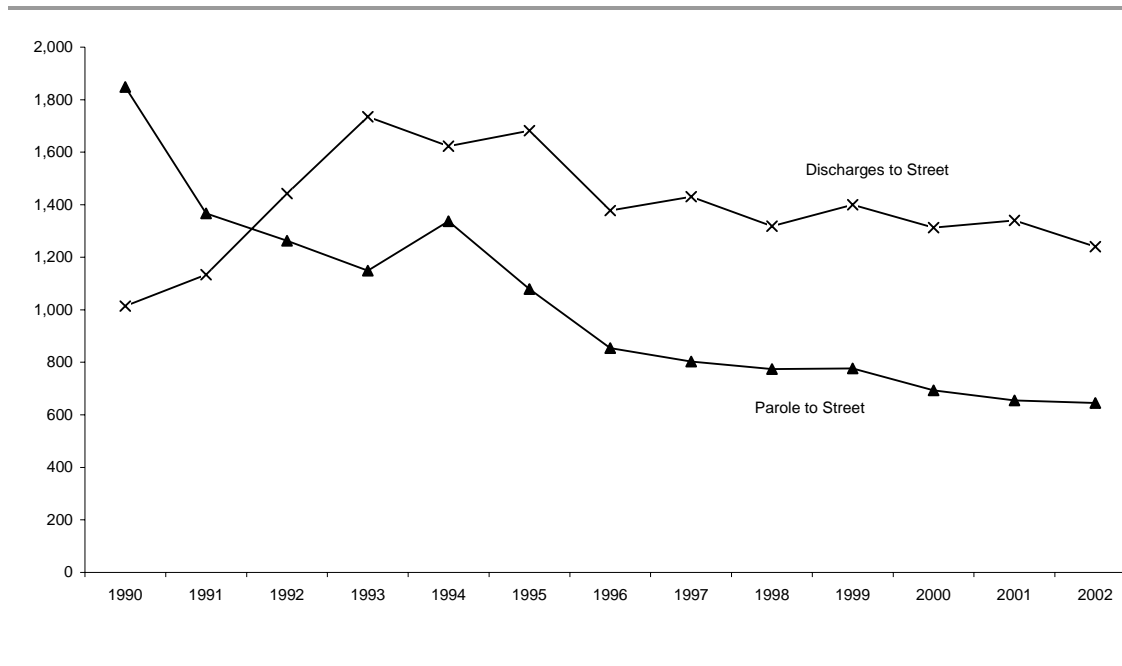
¹⁴² *Ibid.* p. 5.

¹⁴³ It is worth noting that increased post-release supervision can have a “net-widening” effect. In some cases, returns to prison actually increase as a result of close supervision and monitoring for higher numbers of former prisoners.

incarcerated during the three years following release compared to 38% of those discharged).¹⁴⁴ In addition, it is cost effective. The cost to supervise one person on parole is approximately \$4,000 per year, or \$11 per day.¹⁴⁵ The cost for secure confinement in the DOC, however, is approximately \$43,000 per year, or \$118 per day.

Unfortunately, many inmates in Massachusetts receive no supervision in the community upon release from prison. From 1994 to 2002, the trend has been to release fewer and fewer inmates on parole, as shown in Figure 10. In 1994, 1,337 males were released from the DOC on parole supervision and 1,623 were released directly to the street, whereas in 2002 only 645 males were released on parole and 1,240 were released directly to the street.¹⁴⁶ The Commission is particularly troubled by the large numbers of inmates who chose to waive their right to a parole hearing, thereby ensuring release without parole supervision in the community. In 2000, 36% of state prisoners waived their right to a parole hearing.¹⁴⁷

Figure 10. Type of Release, Males Released from DOC, 1990 to 2002



The lack of supervision is particularly troubling as we know that inmates are predominately released directly from high and medium security prisons to the street. Not surprisingly, these

¹⁴⁴ Massachusetts Department of Correction, Research and Planning Division,, *Recidivism of 1997 Released Department of Correction Inmates*, (Concord, MA: 2003), p. 16, 38.

¹⁴⁵ League of Women Voters of Massachusetts, *Administration of Justice*, (Boston, MA: 2004)

¹⁴⁶ Massachusetts Department of Correction, *Releases from DOC Facilities, 1994-2002*, (Concord, MA: 2004).

¹⁴⁷ Boston Bar Association, *Report of the Boston Bar Association Task Force on Parole and Community Reintegration*, (Boston, MA: 2002), p. 15, citing Massachusetts Parole Board, *2000 Statistical Report, 10 Year Trends, 1990-1999*.

inmates also have the highest rate of re-offense. In the Department's most recent recidivism study, 68% of those released from maximum security and 53% of those released from medium security prisons were convicted of a new offense within three years of release, as compared with 38% released from minimum security and 37% from state pre-release.¹⁴⁸

RECOMMENDATIONS

Successfully transitioning an inmate from a prison back into the community is a complex process that involves many stakeholders and is influenced by a variety of forces (internal and external). Generally the best measure of successful transition is a reduction in recidivism. There is no single issue that, if adequately addressed, will guarantee a successful return to society. Most prisoners come into the system with a myriad of problems and issues, and the Department should not be expected to be responsible for addressing all aspects of a prisoner's transition to society.

Despite this complexity, however, there are actions the Department can take in the short term and in the long term to improve post-release outcomes and reduce re-offense by returning inmates. If properly designed and implemented, a true focus on prisoner reentry will bring the Department in line with its mission and will improve its custody function of providing secure and orderly facilities.

The Commonwealth must view reducing the rate of re-offending by returning prisoners as one of its highest public safety priorities.

The responsibility for improving the success of prisoners' transitions back into the community in Massachusetts is not solely that of the Department of Correction. Many stakeholders in the state must view prisoner reentry as a high public safety and fiscal efficiency priority. Statutes, policies, and other state agencies' decisions impede the DOC's ability to reduce the recidivism rates of released prisoners. The Parole Board is a key partner in this effort, and improved coordination and communication between the two agencies would go a long way to better the transition of returning inmates. In addition, because the Commission supports supervised release for all returning inmates, the role of Parole should be greatly expanded in the prisoner reentry process. The Commonwealth must demonstrate its commitment to improving public safety by providing appropriate additional resources to support a comprehensive undertaking in Massachusetts.

The Department should adopt a comprehensive reentry strategy, including risk assessment, proven programs, step down, and supervised release.

The Department should fully embrace improving prisoner reentry as a priority by implementing systemic reforms in the operational practices of the Department, to improve the overall public safety of the Commonwealth.¹⁴⁹ This will be, and requires, a major undertaking.

¹⁴⁸Massachusetts Department of Correction, Research and Planning Division, *Recidivism of 1997 Released Department of Correction Inmates*, (Concord, MA: 2003), p. 31.

In order to fulfill a deep commitment to public safety and improving conditions inside prisons for inmates and staff, the Department must reform many key operations, including intake assessment, development of program options, classifications procedures, and staff training and professional development.

- ***Proven Programs.*** The Department should review and assess its program offerings in order to offer a continuum of programming and interventions that are proven to address criminal risk factors.¹⁵⁰ It should be possible for all inmates to complete several programs or a comprehensive program within their terms. Again, the review of programming should be coordinated with the reform of classification (which is currently underway).
- ***Volunteer Services.*** The Department should expand volunteer programs in which community members come into the facilities for teaching, recreation, or other positive interactions with inmates.
- ***Assessment.*** Effective preparation for reentry is not possible if risk is not properly assessed and targeted. Accurate assessment and classification can also make corrections more efficient by reducing costly confinement for low risk offenders, and by ensuring that treatment and programming resources are allocated to offenders who most need them. Once assessed, the Department should use the information and data gained from inmate assessments to guide decision-making about individualized reentry plans for each offender, and about the programs that should be offered to their population.¹⁵¹ Reform of assessment practices should be undertaken in conjunction the Department’s current review of its classification process.
- ***Uniform Risk Predictors.*** All partners in the reentry process, such as Parole, Probation, and the county Sheriffs, should use a uniform instrument for predicting the probability that an inmate will re-offend after release from prison. The allocation of resources for programming, supervision and services should vary directly with the level of risk that an offender poses. High-cost responses, interventions and services should be allocated to offenders who pose the greatest risk.
- ***Special Populations.*** The Department must pay special attention to subpopulations often overlooked in correctional programming. Women generally have many fewer options (especially relative to their greater needs) than men do. Even though there are fewer women in the system, the state must respond to these needs. Also, the growing numbers of lifers and those with very long sentences requires a re-assessment of their options. Though it is more difficult to time services toward their release, many will be released one day. And in the meantime, they are an important resource for influencing institutional culture.
- ***“Step Down.”*** To support reentry, the Department should institute a planned step-down of security level consistent with public safety. At all times, assign inmates to the minimum

¹⁴⁹ It is worth noting that only one-third of superintendents cited preparing prisoners for release as one of the goals of the Department.

¹⁵⁰ Based on the Commission’s survey of current Department of Correction superintendents, providing more basic education programs was the most-frequently mentioned way to better prepare inmates for release.

¹⁵¹ The Department reports that plans are currently underway to use information from inmate risk assessments to help determine programming.

safe classification level to facilitate programming and maximize the opportunity for inmates to develop responsibility.

- ***Productive Activities.*** The DOC must decrease inmate idleness and increase the amount of socially productive activity in the prisons. This action will reduce recidivism, improve safety within the facilities, and communicate the Commonwealth's values.¹⁵²
- ***Community Connections.*** Preparation for reentry must extend into the community. This can be accomplished through community "reach in," the re-development of pre-release centers, coordination with the Office of Community Corrections and the Board of Parole, and close collaboration with Sheriff's Departments and local police departments.
- ***Performance Measures.*** The models for improving prisoner reentry are all built on the concept of continuous improvement and on holding agencies and inmates accountable. Therefore, the Department should develop performance measures, data collection protocols, and a system of review in order to monitor performance over time.

Together, these recommendations require a reordering of priorities of the Department. Some of these initiatives will require additional funding, either from an increased legislative authorization or from a reallocation from existing sources. This is a challenging reform agenda to truly integrate reentry into Department practices. It will require political support in order to succeed, as it requires system-wide reform both within and outside the Department of Correction. We recommend that the Governor, the Legislature, the Board of Parole, and the Department of Probation promote the Department's reform efforts, with an eagerness to coordinate policies and practices to benefit public safety.

The Department should hold prisoners more accountable for participation in productive activities designed to reduce the likelihood that they will re-offend.

The Commission believes that prisoners should be held responsible and accountable for making efforts to reduce the likelihood that they will return to a life of crime after their release from prison. The Department can promote this objective through a system of incentives and sanctions.

The Commission recommends that the Department adopt a model similar to that implemented in Hampden County, which utilizes "carrots and sticks" to encourage prisoners to participate in activities that may improve their reentry to society. In addition, the Department should review and improve the earned good time policy, and the availability of programs that are eligible for good time credit. Finally, the Commission recommends that program participation levels and similar measures that gauge inmate activity be included in the Department's performance management and accountability system described in Section II, Leadership and Accountability.

¹⁵² Most of the correction officers responding to the staff survey responded that they did not think there were enough work opportunities for prisoners and that prisoners should be required to work. There was a mix of opinions on whether there were enough programs for prisoners, such as education and training, and whether prisoners should be required to participate.

The Commonwealth and the Department should revise sentencing laws and DOC policies that create barriers to appropriate classification, programming, and step down.

As set forth in detail in our findings, the successful reentry of prisoners back into the community is limited by Massachusetts' sentencing laws and practices, and by Department regulations regarding classification of particular offenders. Reduction of recidivism requires both inmate participation in proven programs, and post-release supervision. A truly comprehensive corrections reform plan must, in the interest of public safety and fiscal efficiency, also encompass sentencing reform, to eliminate those practices and policies which serve as an obstacle to "step-down," programming and supervision.

Nationally, other states have recognized that sentencing reforms are necessary for both public safety and fiscal reasons. Louisiana has repealed mandatory minimum sentences for simple drug possession and other nonviolent offenses, and cut minimum sentences for drug trafficking in half. Texas has introduced significant parole reforms in an effort to trim their prison population, and Missouri has passed legislation reducing many mandatory minimum sentences, advancing parole eligibility dates for nonviolent second offenders, and creating a special program for nonviolent first offenders that requires a brief period of incarceration followed by supervised release, drug treatment and job training. In addition, sentencing reform efforts are being seriously considered in states such as New York, California, and Maryland.

As previously noted, minimum-mandatory sentences constrain reentry preparation as they essentially preclude participation in pre-release programs and parole supervision. Moreover, inmates serving minimum-mandatory sentences often have little incentive to participate in education, substance abuse, or violence prevention programming within the prison environment, because they are precluded by law from receiving earned good time credit for program participation.¹⁵³ Quite simply, based on what we now know about reducing re-offense, this is a recipe for recidivism rather than a recipe for effective risk reduction.

Moreover, there are compelling fiscal reasons to examine sentencing laws. It presently costs the citizens of Massachusetts \$48,000 per year to house a maximum security inmate. In times of fiscal austerity and intense and competing demands on public dollars, we must make sure that these dollars are truly being spent on those offenders who pose the greatest public safety risks. Mandatory minimum sentences remove the ability to make that individualized risk assessment.

The Commission strongly supports the recommendations of the *Governor's Commission on Criminal Justice Innovation*, chaired by Lt. Governor Kerry Healy, for sentencing reforms to enhance offender reentry.¹⁵⁴ We do not take a position on which particular sentencing reform

¹⁵³ See, e.g., MGL c. 269, §10(m)(carrying designated firearm); MGL c. 265, 18B (use of firearm in commission of felony, second offense); MGL c. 272, § 4B (living on the earnings of a minor prostitute).

¹⁵⁴ The Lieutenant Governor's Crime Commission recommended sentencing guideline legislation that would: 1) require appropriate mandatory supervision of all offenders being released from incarceration, including additional funding to support agencies responsible for post-release supervision, like the Parole Board and the Probation Department; 2) prohibit sentences where the range between the minimum and maximum terms is very short; 3) ensure punishment for drug trafficking crimes within a sentencing grid that allows eligible offenders to participate in

package should be enacted, but a number of pending proposals would eliminate or reduce some of the counterproductive effects noted above. For example, the Massachusetts Sentencing Commission requires that the minimum term of incarceration imposed by the judge at sentencing for drug offenses must be 2/3 of the maximum term imposed; this would allow for more effective classification and enable the parole board to hold hearings on more prisoners. The Sentencing Commission proposal would also allow judges – in drug cases only -- to deviate from minimum-mandatory sentences in appropriate circumstances, based on the presence of mitigating factors reduced to writing, subject to the Commonwealth’s right to appeal the sentence. Each is worthy of serious consideration by the legislature. Other proposals -- short of a comprehensive sentencing guideline system -- would also allow the Department to shift its focus to reentry planning. For example: eliminating minimum-mandatory sentences for certain non-violent narcotics offenses, and allowing inmates with offenses carrying minimum-mandatory sentences to earn good time credit.

Moreover, the DOC itself should remove select policy and regulatory barriers to program participation and effective reentry. Several Department regulations seem to impose overly broad and unreasonable restrictions on classification step-down and pre-release, and these regulations should be reviewed and modified following an assessment of the kind of inmate activity, and restrictions based on criminal offense, that are most needed to protect public safety.

The Commonwealth should establish a presumption that DOC inmates who are released are subject to ongoing monitoring and supervision.

Supervised release of DOC inmates, particularly those at high risk for re-offense after serving their sentence, makes sense from both public safety and fiscal standpoints. The Commonwealth should adopt a system of presumptive parole. With an appropriate classification system in place, which utilizes a well-calibrated risk assessment instrument, and with targeted, evidence-based programming offered at each facility, the presumption should be that all offenders are released with ongoing monitoring and supervision. For low risk offenders, this supervision may be less intense and lengthy, in order to ensure that resources are appropriately focused on those who are most at risk of re-offense.

The Legislature should also consider *mandating* post-release supervision for those inmates who are *not* released under parole supervision, either because they are sentenced to narrow “spreads” and wrap by the time they are eligible, because they waive parole eligibility, or because they are denied by the Parole Board following a hearing. In any of these three scenarios, public safety would be better protected if inmates were released from prison under the supervision of a parole officer for a designated period of time after their release (e.g. two years). Inmates who have proven themselves ineligible for parole (for example, by refusing to participate in available programming, or by disciplinary infractions while in prison) are at a high risk of re-offending.

pre-release programs, and requires mandatory post-release supervision; 4) integrate intermediate sanctions within the comprehensive sentencing framework, providing guidance to judges on the use of such tools; and 5) make sentencing more predictable and provide the Commonwealth with an effective tool to manage the utilization of scarce correctional resources. *Governor’s Report on Criminal Justice Innovation*, p. 28 (Spring, 2004).

Public safety concerns alone require that they be supervised closely upon their release, with a range of graduated administrative and court-based sanctions for violating terms of supervision.

It is important to consider post-release supervision in the context of overall sentencing reform. Otherwise this promising public safety measure would have significant “net widening” and fiscal implications.

There should be a dedicated external review of inmate health and mental health services.

The Commission believes that the health and mental health needs and services provided to DOC inmates are critically important issues. Particularly in the area of inmate mental health, we know that there is a disproportionately high share of mental illness amongst the state prison population, and that this number rises significantly again when one separates out the female offender population. Moreover, inmate health services comprise 15% of the Department’s total budget, so it is also a significant cost to the Commonwealth.

Many inmates lack good primary care, abuse drugs and/or alcohol and participate in high risk behaviors prior to incarceration. Once an inmate is incarcerated, medical and psychological illnesses that might not have been acknowledged -- never mind diagnosed or treated -- rise to the surface and require attention. In examining this issue we heard and reviewed testimony from inmates, inmate families, advocates and others alleging significant barriers to access and treatment and delayed responses to inmate health concerns. Due to the oral testimony and additional written correspondence, the Commission requested specific documentation and devoted a session to hearing from those who service the inmate population, University of Massachusetts Medical School Correctional Health Services and the Lemuel Shattuck Hospital. UMass Medical School contracted with the Department to provide medial services to the inmate population as of January 1, 2003. The Commission was favorably impressed with the information they provided, and found that it contrasted with that provided by the inmates, inmate families and prisoner advocates in terms of physical and mental health services.

The breadth and scope of the Commission's work did not allow us to devote sufficient time and attention to the correctional health care delivery system. However, given the critical importance of this service, we recommend that further attention be specifically devoted to study the correctional health services delivery system.

There should be a dedicated external review of issues pertaining to female offenders in the Department's custody.

The Commission recognizes the need for a comprehensive review of the unique needs of female offenders. As of January 1, 2003, females represented 6% of those with criminal sentences in DOC custody.¹⁵⁵ Yet, the Framingham Facility for Women (MCI Framingham) is the most

¹⁵⁵ Massachusetts Department of Correction, Research and Planning Division,, *January 1, 2003 Inmate Statistics*, (Concord, MA: 2004), p. 28.

overcrowded facility in the Commonwealth, at 127% of capacity.¹⁵⁶ It is also the oldest active facility in the country, built in 1877. Because 7 of the 13 county houses of correction do not have facilities for women, a large proportion of the population at Framingham are either pretrial detainees or are serving House of Correction sentences. The Awaiting Trial Unit at MCI Framingham is currently at 295% of capacity.¹⁵⁷

Female offenders and their crimes *are different from their male counterparts*. Women commit fewer violent crimes (32% vs. 49%) and more drug offenses (35% vs. 20%) than males.¹⁵⁸ They have gender-specific issues that significantly affect their potential for successful reentry that cannot be adequately addressed in a co-ed environment. Primary among these issues are responsibilities for children; 80% of female offenders are mothers with an average of 3 children¹⁵⁹, and most were primary caretakers before incarceration. Concern for their children, many of whom are in foster care or with relatives, often impedes women's ability to deal with the other serious issues that many of them face such as addiction, mental illness, chronic medical problems and a significant history of physical and sexual abuse.

Framingham is the only DOC facility for females in the Commonwealth, meaning that many of the women incarcerated there are far from their families, and the community to which they will return upon release. A 1990 class action lawsuit demanded that women be provided the means to serve their time closer to home in a setting equal to their male counterparts.¹⁶⁰ In response to that suit, plans were made for a freestanding facility for women on the grounds of the Hampden County House of Correction. Those plans were abandoned due to environmental restrictions in 1992.¹⁶¹

The Commission urges a dedicated review to the unique issues pertaining to female offenders in the Department's custody. Among the issues the Commission wishes to see examined is the need for a stand-alone facility for women in western Massachusetts, to help to ease overcrowding in Framingham and provide female offenders from the western counties with better access to local post release programs and community services for housing, education, employment, counseling and treatment.

¹⁵⁶ Massachusetts Department of Correction, *Quarterly Report on the Status of Prison Overcrowding, First Quarter of 2004*, (Boston, MA: , April 2004)

¹⁵⁷ Ibid.

¹⁵⁸ Massachusetts Department of Correction, Research and Planning Division., *January 1, 2002 Inmate Statistics*, (Concord, MA: , 2002)

¹⁵⁹ Data on Female Offenders at Hampden County HOC submitted to Mental Health Committee of Mass Legislature by Kate DeCou, Assistant Superintendent of HCHOC Women's Unit, 1/14/04.

¹⁶⁰ Western Massachusetts Female Inmates-Court Order-Warrick v. George Vose, Commissioner of Correction and Sheriff of Hampden County, et al, Hampshire Superior Court, C.A. No. 89-431 (1990).

¹⁶¹ Hampden County currently houses its female population (which includes women from other counties) within the male facility where females are outnumbered 11 to 1, severely limiting their access to programs and services.

V. FAIR AND CONSISTENT POLICIES AND PRACTICES

The Administrative Investigation into the death of John Geoghan while he was in the custody of the DOC raised major issues about, and identified significant problems with, DOC policies and practices in investigations, discipline, classification, staffing, and protective custody.¹⁶² Following our review, we believe that these deficiencies were not isolated incidents.¹⁶³ Although many of the Department's policies and procedures have much to recommend them, some areas are problematic and need re-evaluation.¹⁶⁴

More administrative oversight and accountability are essential to ensure that the existing policies and procedures are properly and consistently implemented. If this is done, inmates and staff will have clear expectations and guidelines that ensure consistency, predictability and uniformity. They will understand that these systems reinforce, not undermine, the values, goals and mission of the agency. If inmates and staff feel that they are being treated fairly, the culture of the institutions will be more professional, working conditions for line staff and living conditions for inmates will improve, and safety and security will be enhanced.

While the Commission lacks the capacity to comment on all aspects of the standard operations of the Department, we have focused on critical issues that were identified in the Geoghan investigation and/or that surfaced in our own work. These issues necessarily intersect with, and integrally relate to, the issues of leadership, governance, accountability and reentry. In fact, full implementation of all of the recommendations would increase accountability throughout the Department in these areas, and require that systemic operational reforms support the DOC's increased expectations of inmates.

FINDINGS

Many of the Department's current policies, procedures and practices are not fair and consistent, including those related to inmate classification, discipline and grievances.

The culture of the Department and its facilities will be improved by operational systems that are transparent and that result in fair and predictable outcomes. The Administrative Investigation,

¹⁶² Major Mark F. Delaney, Chief Mark Reilly, and George Camp, Ph. D., *Administrative Investigation; The Facts and Circumstances Surrounding the Events Which Led to Inmate Geoghan's Death on August 23, 2003*, (Released on February 3, 2004).

¹⁶³ In its work, the Commission was only able to obtain a snapshot of the recent and current state of affairs in the Department. We have not investigated all of the Department's facilities to determine whether the problems we have documented are systemic. It was not feasible or within our scope to do so in the time allotted. In any event, even an absence of current incidents at other institutions would not obviate the need for overhaul of these systems in light of the clear potential for future harm as they are presently structured and implemented.

¹⁶⁴ The Department of Correction's Strategic Planning Guide indicates that many of these problem areas have been identified by the Department's management and improvements are planned or underway. Massachusetts Department of Correction, *Strategic Planning Guide*, (Concord, MA: 2004).

the Commission's review of current DOC policies and practices, and the Department's Strategic Plan reveal some flawed policies and others that are sound but poorly implemented. For example, the Department's classification policy may be well designed, but in practice it has never been consistently followed. The Commission found that failure to accurately use the classification tool has resulted in a subjective system in which many inmates are classified to a higher security level than is necessary. The resulting lack of predictability and consistent outcomes in these systems adversely affects the day-to-day working conditions for the staff and living conditions for the inmates.

Classification

The Department's recent Strategic Planning Guide has the following detailed assessment of the problems in the current classification system:

*The Department of Correction's classification system, despite the use of an objective, point-based scoring system to guide decision-making, remains heavily reliant on the subjective decision-making of individual correctional staff. As a result of statutory and self-imposed restrictions on the placement of certain offenders in community correctional facilities, the rate of override of the point-based classification score is currently more frequent than best correctional practice would dictate. As a result, the [current system] lacks credibility. This lack of credibility ..., in conjunction with the absence of any other clearly delineated criteria in the Department's classification policy upon which to rely for decision-making, leaves the decision-making process unduly influenced by individual staff's perceptions, interpretations, and prejudices. Many of the staff who participate in the classification decision-making process are not sufficiently trained in that process, increasing the vulnerability of the process to the influence of the prevailing informal culture. That influence is evident not only in classification decision-making but also in the manner in which staff carry out the hearing, review and appeal processes. Hearings are rushed, inmate participation in the process is minimal, review of recommendations are delegated to the lowest possible level, and the appeal process is muddled, cumbersome and without credibility. Finally, there is no systematic collection and evaluation of data relative to the classification system that would facilitate periodic assessment of the decision-making process and its effectiveness at meeting stated objectives.*¹⁶⁵

Testimony to the Commission, observations of classification hearings, interviews with staff, and inmate focus groups indicate that the Department's assessment of the current system is correct. The Commission is concerned about the current classification system and its impact on inmate accountability, the costs of incarceration, and public safety. We applaud the Department's decision to engage an outside expert to evaluate the current system.¹⁶⁶

¹⁶⁵ Massachusetts Department of Correction, *Strategic Planning Guide*, (Concord, MA: 2004). ,

¹⁶⁶ James Austin, Ph. D., is currently reviewing the Department's classification system in conjunction with the National Institute of Corrections.

The Commission differs somewhat with the Department on whether these flawed processes yield an inmate population that is “overclassified,” meaning that many inmates are classified to a higher security level than necessary. The Department reasonably states that without “systematic evaluation of key data, it is difficult to determine whether or not ... the Department overclassifies the inmate population.”¹⁶⁷ While we agree that more evidence would help us understand the problem more fully, the weight of the available evidence is that inmates are overclassified in Massachusetts and that this overclassification costs the citizens of the Commonwealth in financial and public safety terms.

- Over the past 10 years, maximum security confinement in DOC facilities has increased and minimum security confinement has decreased.¹⁶⁸ The percentage of the inmate population maintained in minimum security has decreased by more than half, while the percentage of inmates in maximum security has more than doubled.¹⁶⁹
- The percentage of inmates released from maximum security prisons is higher in Massachusetts than in other states.¹⁷⁰
- As noted in the chapter on inmate reentry, approximately 25% of those released from Massachusetts prisons are at minimum security, much lower than the rate in other states.

Overclassification places inmates in facilities that are not appropriate to their risk level for purposes of public safety, and it prevents inmates from preparing for successful reentry to the community. Overclassification also wastes the opportunity to advance public safety by stepping prisoners down into more rehabilitative, less restrictive settings, where they may develop individual responsibility. Research suggests that overclassification leads to higher recidivism and wastes money.

Notwithstanding evidence of overclassification, the Department’s recent policy movements have been in the opposite direction. On June 30, 2002, the DOC closed SECC Medium, Hodder House at MCI-Framingham, MCI-Lancaster, the Massachusetts Boot Camp, and the Addiction Center at SECC. This amounted to a loss of 632 beds in lower security settings.¹⁷¹ Today there are only five minimum security facilities in operation.¹⁷²

¹⁶⁷ Massachusetts Department of Correction, *Strategic Planning Guide*, (Concord, MA: 2004),

¹⁶⁸ See Figure 3, Population By Security Level.

¹⁶⁹ Between 1994 and 2004, the share of inmates in minimum-security prison declined from 23% to 11%. The share in medium increased from 68% to 70% and in maximum from 9% to 19%. Massachusetts Department of Correction, *Quarterly Report on the Status of Prison Overcrowding* series, (Boston, MA: multiple years).

¹⁷⁰ For example, the percentage of inmates released from maximum-security facilities is 3% in North Carolina (North Carolina DOC), 4% in Georgia (Georgia DOC), 4.4% in Oregon (Oregon DOC), 5.8% in Texas (Texas Department of Criminal Justice), compared to 12% in Massachusetts.

¹⁷¹ Massachusetts Department of Correction, *Quarterly Report on the Status of Prison Overcrowding*, (Boston, MA: multiple years).

¹⁷² They are MCI-Plymouth, Northeastern Correctional Center, South Middlesex Correctional Center, Pondville Correctional Center, and Boston Pre-Release.

Discipline

The lack of fair and consistent policies for issuing disciplinary reports to inmates or applying sanctions based on those disciplinary reports was highlighted by the Administrative Investigation as a factor contributing to erroneous decisions regarding important aspects of institutional life such as inmate classification and transfers.¹⁷³ The lack of transparent and equitably implemented disciplinary policies and procedures contributes to institutional stress and negative behavior by both inmates and staff.

Perhaps the most succinct description of the issue comes from the Department's Strategic Planning Guide:

*The current inmate disciplinary system is flawed. Correctional staff has the ability to manipulate the system in a variety of ways. In some cases staff writing disciplinary reports to affect an inmate's transfer to another facility, staff retaliating against an inmate by piling on charges or writing nuisance reports that hinder an inmate's movement is the reality of the current system.*¹⁷⁴

In testimony and interviews, the Commission found that, due to inconsistent application of disciplinary rules, not all inmates understand what is required of them. Literacy or language problems may also prevent an inmate from understanding the rules. Inmates cannot be held accountable if rules are not transparent, well understood, and fairly and predictably applied.

It also appears that there are no procedures to ensure that officers who issue disciplinary reports are informed of the outcome of the reports. As noted in the Administrative Investigation, feedback is necessary so that individual officers learn from experience and, as a result, the disciplinary process becomes more consistent.¹⁷⁵ The absence of this feedback is a lost opportunity for management oversight, and training and education of the officers.¹⁷⁶

Discipline is closely linked to other operational aspects of running a prison. An inmate's classification score is based in part on his or her conduct during incarceration as indicated by the number of disciplinary convictions received. Inmates convicted of disciplinary infractions may be reclassified and transferred to a higher security facility. An overly aggressive disciplinary system, then, contributes to overclassification of inmates. Unfair or inconsistently applied disciplinary standards also deprive prison administrators of accurate information regarding what is happening in the facilities, thereby invalidating any disciplinary statistics from use in performance management. Effective disciplinary standards also protect and validate the staff. If closely followed, they are central to professional perception and performance.

¹⁷³ Major Mark F. Delaney, Chief Mark Reilly, and George Camp, *Administrative Investigation; The Facts and Circumstances Surrounding the Events Which Led to Inmate Geoghan's Death on August 23, 2003*, (Released on February 3, 2004), p. 72.

¹⁷⁴ Massachusetts Department of Correction, *Strategic Planning Guide*, (Concord, MA: 2004).

¹⁷⁵ Major Mark F. Delaney, Chief Mark Reilly, and George Camp, *Administrative Investigation; The Facts and Circumstances Surrounding the Events Which Led to Inmate Geoghan's Death on August 23, 2003*, (Released on February 3, 2004), p. 101.

¹⁷⁶ *Ibid.*

Grievances

The policies and procedures on inmate grievances regarding conditions of confinement, staff misconduct, or other issues, must be upgraded and revised to ensure that they appear to be and, in fact, are responsive and fair. As noted in the Department's Strategic Plan, grievances are frequently denied on procedural issues rather than substance, even when they involve allegations of abuse by staff.¹⁷⁷ Decisions to deny are often made without assessment of underlying causes, systemic problems, or policy inefficiencies. Additionally, the grievance process contains serious conflicts of interest. Grievance coordinators regularly investigate complaints against their peers, superiors and themselves. The appeals process is flawed in that the same grievance coordinator investigates the appeals of his or her decisions. More importantly, grievance decisions are not reviewed or audited unless they are appealed and denied by the Superintendent. Finally, grievance coordinators have little or no training in due process, mediation, or conflict resolution – all highly relevant to this critical staff-inmate interface – as well as little training in investigative techniques. This lack of training further exacerbates the situation created by having vague, ambiguous and discretionary policies and procedures.

Inmate grievances can serve as a valuable source of information to assess the climate of an institution and to identify issues of concern to inmates. They also serve as an important “safety valve” for inmates and staff. Complaints about staff, visits, food, property, mail, and a handful of other issues constitute the majority of grievances, and if analyzed critically, can help administrators discern both localized and larger systemic problems. In the case of John Geoghan, while each of his multiple grievances received a response, the Department did not examine them in their totality to identify specific problems regarding his custodial care and this information did not travel beyond MCI Concord to the Department's upper management.

The DOC may be concerned that by formalizing the grievance procedure it may become too easy for inmates to lodge untruthful complaints. However, increased use of management information systems would allow prison administrators greater opportunity to cull the nuisance grievances from those that have merit, and to share this information throughout the correctional system. These systems can track grievances filed by a particular inmate over a period of time and also cross check similar grievances filed by other inmates, even in other facilities. Such analytical capacity not only leads to more responsive and accurate handling of grievances but also leads to improvements in the overall accountability of the institution and correctional system. In addition, the fact that the majority of the complaints may be deemed “minor” when evaluated objectively, is the best defense for officers and is equally important to labor and management.

Current policies and practices do not adequately ensure the safety of inmates in protective custody.

The DOC is not taking sufficient precautions to protect inmates in protective custody¹⁷⁸ from each other. Due in part to the problems associated with the current classification system, inmates

¹⁷⁷ Massachusetts Department of Correction, *Strategic Planning Guide*, (Concord, MA: 2004).

¹⁷⁸ Protective custody is a form of separation from the general population for inmates requesting or requiring protection from other inmates for reasons of health or safety. 103 CMR 423.

who should be classified to different security levels are housed together in protective custody. For example, Mr. Geoghan who was in protective custody was re-classified from a Level 4 to a Level 6 inmate just before his transfer to Souza-Baranowski Correctional Center, despite the Classification Board's recommendation that he remain a Level 4 inmate.¹⁷⁹

Both the Administrative Investigation and the Department's Strategic Plan make detailed recommendations to improve the protection of inmates under the jurisdiction of the state. These findings and recommendations are supported by the Commission's research and tours of the facilities. The Department must decide how to locate and design units and their supporting systems (such as recreation and visiting schedules) to ensure that all inmates are adequately protected and also have access to the necessary facilities and programs. In addition to improvements to the units themselves, protective custody units require oversight. The housing units must be monitored, and the status of inmates housed in the protective custody units must be reviewed frequently by the appropriate staff.

The Department's current systems for oversight and accountability are deficient, including those related to investigations and data integration.

Investigations

The Panel Report and our discussions with the authors revealed major deficiencies in the "sporadic and cavalier" investigative process at MCI-Concord and at the Souza-Baranowski Correctional Center. The shortcomings include some elements that are present throughout the system: "lack of central control and supervisory oversight;" lack of follow-up on investigative leads due to inadequate training and experience of investigators; investigators' loyalty to fellow officers working in the same location and bargaining unit creating difficulties in objectivity; investigators' real or perceived fear of ostracism and retaliation; lack of understanding by supervisory staff; and other factors.¹⁸⁰

The Commissioner's Strategic Plan identifies essentially the same deficiencies in investigative practices department-wide. For example, the section on the "Inmate Grievance System" has an extensive statement of the problem, acknowledging that "...[i]nvestigation practices and documentation [are] poor and Institution Grievance Coordinators have little or no training in proper investigative techniques."¹⁸¹

Our review indicates that the present investigative system failed to identify and resolve serious problems at some institutions. It is virtually certain to fail again absent structural reforms.

¹⁷⁹Major Mark F. Delaney, Chief Mark Reilly, and George Camp, *Administrative Investigation; The Facts and Circumstances Surrounding the Events Which Led to Inmate Geoghan's Death on August 23, 2003*, (Released on February 3, 2004), p. 91.

¹⁸⁰Major Mark F. Delaney, Chief Mark Reilly, and George Camp, *Administrative Investigation; The Facts and Circumstances Surrounding the Events Which Led to Inmate Geoghan's Death on August 23, 2003*, (Released on February 3, 2004). Further in-depth review would help determine whether the same deficiencies in investigative policies and practices exist in every institution. Such an inquiry would be warranted if the present system stays in place.

¹⁸¹Massachusetts Department of Correction, *Strategic Planning Guide* (Concord, MA: 2004).

Rather than devote further time to a full review of failures of the present system, the DOC needs to take action now. This Commission finds that there is an urgent need to correct these problems system wide.

Outside review, as part of an overall reform and upgrading of the internal investigative process, is one way to avoid some of the major flaws in the present system, including the natural tendency of employees to protect their associates, their union colleagues, the performance of subordinates for whom they are responsible, and/or their reputation as a supervisor, superintendent or commissioner. Even at the highest levels of the Department, one can expect that future commissioners may be reluctant to examine the Department critically for fear of losing authority if investigations uncover deficiencies that need broader attention. (We have seen this in many other law enforcement agencies and in recent leadership scandals in the private and non-profit sectors.)

In this context, outside investigations operate both as a safeguard against biased or incomplete DOC investigations *and* as an incentive to improve the quality, thoroughness and objectivity of the Department's internal investigations. The Department's investigators may perform more professionally and confidently knowing that their investigations may be reviewed by an outside authority that will expose any flaws, incompetence, or incompleteness in the investigation, or will serve to validate their competence if done well.

The Inmate Management System

In order to run institutions with high expectations for management, staff, and inmates, the Department must have well-functioning data systems. The Inmate Management System (IMS), which was piloted by the Department in 2000, is in operation at many of its facilities. The system is "...a comprehensive, integrated database of offender information designed to...enhance operational efficiency."¹⁸² The IMS' integrated database contains information regarding inmates from their admission to their release and is scheduled to be activated in all DOC facilities by Fall of 2004.

The IMS has great potential, but as yet it has not led to sufficient sharing of information within the Department. As is generally true when a new system is introduced, data collection precedes efforts to ensure full utilization of the data.¹⁸³ The Administrative Investigation found that not all staff had access to IMS, that those who had access to the system sometimes failed to retrieve relevant information, and that information that was retrieved was not always shared.¹⁸⁴ The

¹⁸² Massachusetts Department of Correction, *2002-2003 Annual Report*, (Concord, MA: 2004).

¹⁸³ For example, the Administrative Investigation found that the Deputy Superintendent at MCI Concord did not know that Mr. Geoghan had been transferred to Souza-Baranowski Correctional Center until one month after the transfer occurred. Similarly, the Commissioner's designee who decided to transfer Mr. Geoghan to Souza-Baranowski Correctional Center, and other Central Office staff were unaware of most, if not all, of the significant events that occurred at MCI Concord involving Mr. Geoghan even though some of the information was in the IMS system. Major Mark F. Delaney, Chief Mark Reilly, and George Camp, *Administrative Investigation; The Facts and Circumstances Surrounding the Events Which Led to Inmate Geoghan's Death on August 23, 2003*, (Released on February 3, 2004) pp.. 72-73.

¹⁸⁴ *Ibid.*, p. 73.

system has also not been sufficiently used to track disciplinary reports as a source of accountability and training for staff.

Effective communication with inmates is inhibited by a limited bilingual work force. This may impact institutional security.

The Department lacks adequate levels of Hispanic staff and Spanish-speaking staff. The current DOC work force of 5,070 provides services to an inmate population of 10,026 (roughly one staff person for every two inmates).¹⁸⁵ Of the 5,070 employees, 596 or 12% are racial / ethnic minorities and 923 or 18% are females. The Department reports that 161 of the 5,070 employees are Hispanic, representing 3% of the work force.¹⁸⁶ In comparison, 27% of the inmate population is Hispanic.¹⁸⁷ Self-reports by DOC inmates indicate that 1,616 or 18% of the inmate population do not speak English as their primary language and that 1,394 or 15% of the population have Spanish as their primary language.¹⁸⁸ By comparison, only 3% of the workforce report an ability to speak Spanish, which is substantially less than the inmate population. Moreover, according to a Department survey of the linguistic diversity of current Department employees, only 329 employees are able to speak at least one other language (some employees knew as many as four languages in addition to English).¹⁸⁹ This represents approximately 7% of the entire work force, also substantially less than the inmate population.

The language disparities impede fair and predictable operations. In practice, it means that effective communication between correction officers and inmates – crucial to operating safe, humane and orderly prisons – is inhibited. Moreover, inmates disclosed to the Commission that they are routinely called upon to translate for fellow inmates, despite the fact that the staff has the ability to access interpreter services by phone. This practice can place inmates in an uncomfortable, potentially unsafe, position with both staff and fellow inmates and, more importantly, does not guarantee accuracy.¹⁹⁰

¹⁸⁵ Massachusetts Department of Correction, *Work Force Analysis, March 31, 2004* included in memorandum to GCCR dated May 6, 2004 and Massachusetts Department of Correction, *Quarterly Report on the Status of Prison Overcrowding, First Quarter of 2004*, (Boston, MA: April 2004), p. 7.

¹⁸⁶ Massachusetts Department of Correction, *Work Force Analysis, March 31, 2004* included in memorandum to GCCR dated May 6, 2004.

¹⁸⁷ Massachusetts Department of Correction, Research and Planning Division, *January 1, 2003 Inmate Statistics*, (Concord, MA: 2004).

¹⁸⁸ *Ibid.*, page 16.

¹⁸⁹ Massachusetts Department of Correction, *Linguist [sic] diversity of the Department of Correction by Facilities and Divisions*, included in memorandum to GCCR dated May 6, 2004.

¹⁹⁰ Inmate focus groups conducted May 12 and 13, 2004.

RECOMMENDATIONS

The Department should ensure that policies and procedures, including those related to inmate classification, discipline, and grievances, are transparent, well-communicated, have specified appeals processes, and are implemented by staff who are appropriately selected, trained and supervised.

In order to be credible, policies and procedures must make some sense to those who are expected to follow them. But more importantly, the staff implementing them must be seen to adhere to policy without showing favoritism. Because perceptions formed from every day activities may affect the credibility of the entire institution, the Department must strengthen the integrity of its systems such as classification, discipline and grievances, and respond swiftly and fairly to allegations of inmate or employee misconduct.

How matters within these systems are ultimately resolved should be communicated back to employees. For example, officers who issue disciplinary reports should be told when they are dismissed, and Classification Boards should be told when they are overruled. This communication is a necessary predicate for education, accountability and transparency.

Classification

In order to house inmates at the lowest appropriate security level consistent with public safety, the Department must have a research-based, objective classification system with appropriate procedures and trained staff to implement it. Objective classification systems should rely on factors that have been proven to predict prison adjustment. According to the standards of the American Correctional Association, a classification plan should specify objectives and methods of achieving them and require monitoring and evaluation to determine whether the objectives are being met.¹⁹¹ The Department should move forward with its classification review with haste.

In addition, several steps should be taken in order to promote fairness, transparency, and credibility in the classification process. These would include:

- The classification process must be explained to inmates clearly and in terms and language they can understand.
- Inmates must participate in assessing their own needs and selecting programs.
- Classification Board members should have all relevant information, and at least one member should have personal knowledge of the inmate.
- All Classification Board members should be trained in the classification process. In particular, the staff must be well trained in the objective use of the classification instrument, or it will fail to perform as designed.
- National “best practices” suggest that the percentage of cases in which the classification score is overridden should not exceed 15 percent. The use of overrides should be reserved for exceptional cases, and a detailed explanation of the override should be required. Some

¹⁹¹American Correctional Association, “Standards for Adult Correctional Institutions,” Section 4-4295.

discretionary overrides are necessary, but they should be limited and should reflect the considered judgment of professionals trained in classification.

- Classification decisions, and the factors used to make each decision, should be recorded and available for analysis. Supervisory staff should consistently review individual classification decisions on an ongoing basis to ensure that the classification tool is being used properly.
- In order to ensure that the system stays relevant to the DOC population, the Classification system should undergo a full process revalidation every two to three years.¹⁹²

Discipline

The Department must provide specific training and guidelines for all security and program staff regarding how disciplinary reports are to be issued. This will help to ensure that all personnel who work with inmates are thoroughly familiar with the rules of inmate conduct, the rationale for the rules, and the sanctions available. Initial training should be followed by continuous in-service training to prevent discrepancies among staff members in interpretation or implementation of the rules. In addition, the Department should establish a form for all inmates to sign indicating that they have received and reviewed the rules governing inmate conduct.

Grievances

The Commission commends Commissioner Dennehy for her candid assessment of the flaws in the current grievance policy, and for her stated intentions and implementation plans for a new inmate grievance procedure. The Commission recommends that the revised policy convey the Department's understanding that grievance procedures allow management to identify and resolve operational problems and contribute to the emotional stability of the inmates.

The Department should ensure that policies and procedures are properly implemented through oversight and accountability systems, including an independent investigative authority, data management, and unit management.

The Commission heard repeatedly about the gap that exists between the Department's policies, even well crafted policies, and their implementation. These recommendations are intended to minimize that gap by improving implementation through oversight and increased accountability.

Independent Investigative Authority

We recommend a system that includes investigations by an entity outside and fully independent of the Department, but that also preserves the Department's ability and responsibility to investigate complaints and incidents in the first instance.

¹⁹² Patricia L. Hardeman, James Austin and Owan C. Tulloch, *Revalidating External Prison Classification Systems*, (Washington DC: National Institute of Corrections, 2002).

There are a number of ways to achieve these goals, without unduly undermining the Department's authority, responsibility and accountability. There are a variety of models that could be utilized or adapted. For example, an independent inspector general, ombudsman or similar office with qualified investigatory staff ("Inspector General"¹⁹³) could perform the function, either reporting directly to the Secretary of Public Safety or to a Department head within the Executive Office of Public Safety (such as the Department of the State Police).

Even with an Inspector General in place, all complaints and investigations should be channeled through the department's investigatory staff. This would help process the large number of complaints or grievances generated in the correctional system without imposing the full burden upon the Inspector General's office. It would also provide a needed opportunity for institutional staff and management to address complaints appropriately and immediately. Finally, an initial investigation should provide some groundwork, helping the Inspector General to determine which investigations need more thorough review or an expedited review.

The Commissioner should notify the Inspector General of all complaints and investigations regularly and routinely, and at least on a monthly basis. With or without that notification, the Inspector General should have the authority to take over *any investigation at any point* or the Inspector General should be able to choose to review the final decision after the Department's investigation is complete. The Department should also refer serious complaints, such as those involving an inmate death or severe bodily injury, directly to the Inspector General (who may also refer it directly to the Attorney General or appropriate District Attorney).

The investigative system, including the Inspector General review, must include a performance review component, both to train and provide feedback to DOC investigators. This component would brief those whose findings are reviewed independently, would reinforce good investigatory practices and would permit the Department to sanction investigators who consistently fail to meet standards of competence. Positive, negative and informational feedback to the staff is also a key benefit of the investigative process, affording opportunities to reinforce appropriate staff conduct, to reassure and validate staff whose actions are upheld after independent investigation, and to train or discipline staff, where necessary.

The Commission therefore recommends:

- An independent investigatory body, such as an Inspector General, with the authority and staff to investigate complaints about Department personnel, inmates or prison conditions, reporting directly to an official outside the Department, but within the Executive Office of Public Safety;
- Enhancements to the Department's initial investigatory capacity, with improved staff training and selection of staff experienced in investigations;
- Concurrent jurisdiction of the Commissioner and the "Inspector General" to undertake final investigations of complaints regarding staff misconduct or other prison conditions;

¹⁹³ We choose the term "Inspector General" only for ease of reference, without implying any particular features of such an office beyond what is set forth in this report.

- Power of the “Inspector General” to take over any investigation at any time, with a presumption for such a take-over for all incidents involving death or serious bodily injury;
- Provision for feedback to, and training of, investigatory and other staff, based upon the ultimate conclusions regarding the adequacy of investigations and conduct of other Department staff; and
- Periodic review and adjustment of the Inspector General policies and procedures at least annually to evaluate and make any needed improvements.

Data Management Systems

As more information is collected electronically and centrally, it is essential that management systems evolve to capture this information. Otherwise, centralization might reduce, not increase, effective oversight. The Department’s inmate management system provides an opportunity for increased central management, but it requires training and new expectations for it to be utilized. The addition of a performance measurement system for management accountability could build upon this infrastructure and assist with revising management practices.

In addition, the Department could benefit from revising the organizational structure, policies and internal communication systems to help identify areas for reform. Numerous sources of information exist in the Department that, if analyzed and communicated, could help identify problems and prevent larger ones. For example, in defending inmate litigation, the General Counsel's office has the opportunity to learn about a wide variety of problems. While some complaints inevitably are baseless, others deserve a higher degree of attention and review - perhaps on policy rather than legal grounds. The General Counsel's Office's should be specifically charged with identifying potential problem areas and trends as well as opportunities for improvement, and communicating information throughout the Department. Similarly, the Grievance & Correspondence Coordinator should have responsibility not only for bringing meritorious grievances to the attention of investigators, but also for examining grievance information for patterns and trends. Once again, this information should be communicated to the Commissioner.

Unit Management

Another suggested method for improving fairness and consistency in operations is the management system known as “Unit Management.” This system relies on unit management teams comprised of security, treatment, and program staff. The staff operates under the leadership of the unit (or team) manager and is assigned to the inmates in a particular housing unit. The unit management team is responsible for all aspects of the care, custody, classification, and reentry planning for the inmates in that unit. Within the unit, the staff observes the inmates and learns their respective strengths and weaknesses as exhibited in a variety of living situations. From this perspective, the unit management team is well positioned to recommend program, work and security related assignments, as well as work with the inmates and other members of the unit team to set appropriate goals for step-down through the prison system and ultimately for reentry into the community.

The Department should conduct a system-wide facility review to ensure that its physical plant is consistent with the security needs of the staff and the inmate population, and the Department's mission.

The capacity of the prisons, and the configuration of the facilities, must be consistent with the inmate population and the Department's mission. Physical plant considerations should not drive classification. While they may inevitably influence decisions in the short run, they should not do so in the long run. The state of Massachusetts presently appears to have more maximum security beds than are necessary and fewer minimum security beds than are needed. Ultimately, the Department must complete a full assessment of capacity and needs. This is essential information for making capital decisions, and should be completed within three years. As part of this process, it makes sense to consider the population under supervision of the county Sheriffs' Departments. Massachusetts is an outlier in having so many distinct jurisdictions relative to the size of its overall inmate population. Some gains in efficiency, effectiveness, and security could be realized if the county and state facilities were operated in a more coordinated manner.

The Department should adequately protect and care for inmates in protective custody.

The Department should adopt and follow procedures that allow for the proper management, care, custody and control of inmates in protective custody. The procedures should include the following components, raised in the Administrative Investigation:

- Careful consideration of the operational procedures that allow inmates in protective custody to have contact with one another, especially inmates who have been assigned to different security levels.
- Inmates in protective custody must be protected from harm from inmates within the unit.
- Correction officers chosen to work in protective custody blocks should be specially selected and trained, particularly with reference to dealing with inmates who present special challenges.
- Inmates with different security levels should not be mixed in protective custody.

The Department should increase the linguistic diversity and cultural competence of its workforce.

Clear and effective communication between inmates and correction officers contributes to operational integrity and safety. To make its operational systems fair and predictable, the Department should take steps to address the low levels of linguistic diversity and increase the cultural competence of its staff. The Department should aggressively recruit diverse staff, and should offer incentives for staff to learn Spanish, and other suitable languages.

Operational integrity requires that those subject to a policy (such as classification or discipline) understand it. Multi-lingual staff or translators must be available. Increased competence in English among inmates, through more ESL classes, may go a long way to reducing the need for translation services. The current "hotline" is in no way sufficient for these purposes.

VI. FISCAL CONSIDERATIONS

Incarceration is expensive. Each citizen in the Commonwealth pays \$63 each year to fund the Department of Correction, and it is reasonable to ask what that money produces. The Commission argues that we should expect this expensive undertaking to produce enhanced public safety by reducing re-offense by inmates returning to the community. Instead, what we know is that the vast majority of offenders will be released, many directly from maximum security prison with no further monitoring. While inside, many sit idle, rather than working or participating in programs to reduce their risk of re-offending upon release. And in just three years after release, nearly half of them will be convicted of a new crime.

The Commission has set forth recommendations to reform this process to make better use of public dollars by applying what we know about how to reduce re-offense and manage efficiently. The Commission did not undertake a thorough budget analysis, but members were always aware of the fiscal environment and of government's responsibility to be efficient with public money. Some of our recommendations cost money; others conserve it. The Commission does not advocate for the Department's budget to be reduced. Rather, we urge that funds be reallocated to establish an enhanced managerial leadership capacity, an accountability system, and a comprehensive reentry process.

Our recommendations reallocate resources within the current budget of the Department of Correction to produce substantial improvements in public safety and efficiency, without compromising institutional security. Moreover, if the report's recommendations are implemented, the Department's budget will more closely reflect its full set of priorities, including reducing the rate of re-offense by former inmates.

We acknowledge that some existing policies, operating procedures, and external factors will make these reallocations difficult, if not impossible, without pre-requisite changes. For example, some of our recommendations are dependent on revising the classification system; some are dependent on changes in sentencing laws; and some are dependent on transferring staff. We have attempted to highlight in the report instances where these factors appear to be significant.

Highlighted below are areas of greatest fiscal impact for further discussion:

Managing staffing costs

Our review has determined that management failed to effectively manage several critical aspects of staffing costs. The DOC's staffing levels of one employee for every two inmates are among the highest in the nation.¹⁹⁴ In light of this, it should not be necessary to rely on substantial amounts of overtime spending. At a minimum, the Department should commission a full staffing analysis to determine the actual staffing needs, which would allow the Department to operate with as few overtime expenditures as possible. By reducing overtime spending by 25%

¹⁹⁴ James J. Stephan, *State Prison Expenditures, 2001*, (Washington, DC: Bureau of Justice Statistics, June 2004)

the Department could reallocate \$2.6 million in just one year; reductions by 50% over \$5 million; and reductions by 90% over \$9 million.¹⁹⁵

Absenteeism, both paid and unpaid, is another large factor in high staffing costs. Correction officer paid sick leave usage alone costs the Department approximately \$21 million per year. Currently, correction officers use an average of 52 paid days off, or over 10 weeks per year. Reducing the number of days off by 12 days, still leaving 8 weeks of paid time off, would enable the Department to recoup approximately \$14 million.¹⁹⁶

The Department has a high number of workers (313) out on industrial accident leave. Stronger management of risks, medical care, and facilitating return to work can yield better working conditions and reduced expenditures. Without a thorough review it is impossible to estimate how much of the nearly \$14 million currently spent on workers' compensation could be avoided in the future by implementing our recommendations in a fair and professional way.

Reducing Re-Offense

If the Department is able to implement a comprehensive reentry strategy, including expanding proven programs designed to reduce recidivism, the Commonwealth will be able to realize savings from reduced crime. This is, of course, in addition to the gains to citizens from reduced victimization. The potential here is great. For example, if the re-incarceration rate were reduced by just five percentage points, then, to the extent that the Department is able to close units or entire institutions, reallocate staff, and reduce other expenses proportionately, the Commonwealth potentially could save the money necessary to house, feed, and monitor 130 inmates.

Restructuring the Department

As the Department fully implements our recommendations, and is able to incarcerate inmates at the lowest security level consistent with public safety, it may be appropriate to restructure the physical plant and reallocate, or even reduce, staffing levels. Presently, the Department over-relies on the most costly form of punishment, i.e. incapacitation in high-security prison facilities. If policies and procedures are reformed so that this is no longer necessary in order to ensure institutional safety for inmates, staff and the public, then substantial cost savings are possible.

Investing in a Comprehensive Reentry Strategy

The Commission's recommendations to improve and increase the extent to which inmates are prepared for release will have substantial short-term costs. Resources are needed to improve use of risk assessment, develop and expand programs proven to reduce risk of re-offense, and expand

¹⁹⁵ In FY2004, the estimated overtime payroll equals \$10,236,845, according to the March 24, 2004 budget presentation by Kyra Silva, Acting Budget Director.

¹⁹⁶ This calculation uses the weighted average cost \$88,000, per officer, to derive a weekly cost of \$1692. Reducing the paid days off by 12 days, or 2.5 weeks, would save \$4230 per officer, or \$14 million assuming a workforce of 3600.

post-release monitoring and supervision. Some of the investments should be made through the Department, others should be directed through the Board of Parole. As noted above, over time, these efforts are expected to produce savings for the Commonwealth, but the returns will be realized a year or more in the future.

The current budget and staff effort dedicated to programs and reentry is not sufficient to achieve the goals of this report. Given limited resources, aspects of a comprehensive reentry program may need to be prioritized and/or phased in over time.

Investing in Management Accountability

Establishing a system-wide performance measurement and accountability system, similar to the TEAMS system in New York City, would require additional resources to collect and analyze performance-related data. The Commission estimates that the data collection capacity would require new technology and a sizeable staff to be able to gather reliable and timely figures throughout the system and conduct appropriate analyses. The results in New York reflected numerous opportunities and strategies for cost reductions. In fact, the management accountability system was credited for a significant reduction in overtime expenditures.

Re-Thinking Sentencing Costs

Prison sentences are established by the legislature and imposed by the courts. They also influence the majority of the Department's costs. For example, mandatory minimum sentences, by their terms, restrict certain lower security classifications for all those who are subject to them, without any opportunity for a case-by-case determination. In fact, 84% of the DOC population is restricted at some point by statute from participating in pre-release programming. Currently, nearly 16% of the DOC population is subject to a mandatory minimum sentence for a drug offense. These restrictions drive much of the high classification in the Department and, consequently, drive up the overall costs to the Commonwealth.

Other inmates waive their right to a parole hearing or are given sentences that allow them to finish their sentences while still in the DOC, thus avoiding parole supervision in the community. It is, therefore, important that the legislature periodically review the appropriateness of criminal sentences, considering the costs and benefits of the length, range, specific terms, restrictions, and their relationship to public safety. As the Department implements a revised classification process and shifts resources accordingly, and *if* the Legislature revisits this issue, it should be possible to bring the Department more in line with national staffing levels and classification patterns, thereby reducing overall operating expenses.

Summary of Fiscal Implications

To summarize the fiscal implications of our recommendations, the Commission advocates for a reallocation of existing resources from under-managed staffing costs to improving inmate, staff, and management accountability and performance. Increasing accountability for outcomes -- including the prudent use of public money -- is a reasonable expectation for a public agency. The

Department must be given the resources it needs to fulfill its obligations, role, and mission as a partner in enhancing public safety. Then it must be held accountable for utilizing these resources efficiently, effectively, and proactively.

VII. CONCLUSION

This report has set forth a comprehensive blueprint for the Department of Correction. Our recommendations are intended to improve accountability for managers, staff, and inmates; strengthen public safety through a comprehensive prisoner reentry strategy; ensure fair and consistent policies and practices; and institute system-wide fiscal discipline. All of these measures support the ultimate goal of enhancing public safety and fiscal responsibility.

We are encouraged by recent changes instituted by Commissioner Dennehy. We also recognize that despite the leadership and support of Secretary Flynn and Governor Romney, the Commissioner cannot accomplish the tasks set out in this report alone. She must also receive the support of her full staff and valued external stakeholders. We call on these key players to engage with the Commissioner in implementing our recommendations.

We believe that the Department of Correction, by adopting the recommendations presented in this report as a road map for action and reform, can become a strong and vital partner in improving the quality of life and public safety in Massachusetts, and perhaps even become a national model.

APPENDIX I. COMMISSION ACTIVITIES AND SOURCES OF INFORMATION

Commission Meetings

The full Commission held 13 closed session meetings between November 2003 and June 2004. The Commission met on the following dates: November 17, 2003, December 3, 2003, December 10, 2003, January 7, 2004, January 21, 2004, February 4, 2004, March 10, 2004, March 24, 2004, April 7, 2004, May 5, 2004, May 19, 2004, June 2, 2004, and June 16, 2004.

Working Group Meetings

The Commission broke into three working groups, which met at regular intervals throughout the duration of the Commission. The working groups were: 1) Governance, 2) Operations, and 3) Security, Programs, and Reintegration. They focused on establishing objectives, identifying performance gaps, and establishing immediate, short-term, and long term goals.

Site Visits

Commissioners or members of the Commission staff made visits to 12 sites during this eight-month period. On most visits, the Commissioners or Commission staff members met with the superintendent, were given a facility tour, observed the operations and procedures at each site, and spoke with employees and inmates. The sites visited were: Boston Pre-Release Center, Bridgewater State Hospital, Massachusetts Alcohol and Substance Abuse Center, Massachusetts Treatment Center, MCI-Concord, MCI-Cedar Junction, MCI-Framingham, MCI-Norfolk, MCI-Plymouth, South Middlesex Correctional Center, and Souza-Baranowski Correctional Center. In addition, several Commissioners and Commission staff members visited Rikers Island in New York City to observe their TEAMS system and also met with the Commissioner of the New York City Department of Corrections.

Information and Data from the Department of Correction

Commissioner Kathleen Dennehy was very responsive to requests of the Commission. Commissioner Dennehy made three formal presentations to the Commission and provided numerous written communications. Secretary Edward Flynn also attended the public hearing and Commission meetings and contributed valuable input and direction to the Commission members.

Over the course of the eight months, the Department of Correction made several presentations to Commissioners and made numerous senior staff members available to answer Commissioners' questions. These DOC staff included Michael Thompson, Director of Offender Management and Placement; Ronald Duval, Associate Commissioner; Dr. Rhiana Kohl, Director of Research & Planning; Kyra Silva, Acting Budget Director; Peter Macchi, Director of Administrative Services; Sue Martin, Director of Health Services; Carolyn Vicari, Director of Inmate Training and Education; Allison Hallett, Director of Program Services; and Brian Kearnan, Program Coordinator of Program Services.

Two of the unions representing DOC employees provided testimony at the public hearing and three unions presented at a closed Commission meeting. The Public Safety Chapter of S.E.I.U. Local 509 was represented by President David Pizzi. Massachusetts Corrections Officers Federated Union was represented by President Steve Kenneway. The International Brotherhood of Correctional Officers, Local R-1-10 also provided testimony to the full Commission at a closed meeting and was represented by Captain Patrick DePaulo.

Several representatives from UMASS Correctional Health & Criminal Justice Program made a presentation to the full Commission, including June S. Binney, Director; Andrew J. Harris, Ph.D., Deputy Director; Arthur Brewer, MD, Medical Director; Kenneth Appelbaum, MD, Mental Health Director; Patti Onorato, RN., MS., Director for Nursing and Patient Care Services. Presentations were also made by Paul D. Romary, Executive Director, Lemuel Shattuck Hospital and Joseph Cohen, MD, Medical Director, Lemuel Shattuck Hospital.

Guest speakers at full Commission meetings and Working Group meetings

A diverse group of guest speakers from agencies and organizations outside of the DOC, along with their staff members, shared their expertise and experiences with the Commission in the closed session meetings. The following individuals and their staff met with the full Commission at Commission meetings (in order of appearance): Maureen E. Walsh, Chair, Massachusetts Parole Board; Michael J. Ashe, Jr., Sheriff Hampden County Jail & House of Correction; George Camp, Ph.D., Criminal Justice Institute, Inc.; Mark F. Delaney, Major, Massachusetts State Police; Leslie Walker, Director, Massachusetts Correctional Legal Services; and Rebecca Young, Prison Brutality Project, Massachusetts Correctional Legal Services.

Individuals representing a variety of groups were invited to testify at the public hearing on February 25, 2004, including law enforcement, victims groups, defense attorneys, former inmates, family members of current inmates, service providers, correction officers' unions, prison advocacy groups, among others. The Commission invited 73 individuals and organizations, and 38 individuals provided oral and written testimony. In addition, testimony was received from eight groups that did not appear at the public hearing.

Documents and Research Information

Commission members and staff also received, cataloged, and reviewed approximately 295 documents and research materials. These documents were critical to the formulation of our findings and recommendations.

Staff Surveys

The Commission conducted employee surveys for three staff levels of the Department of Correction. Survey respondents were made aware that their participation was voluntary and that their responses would be kept confidential. Surveys were sent to the superintendents and captains at all 18 DOC facilities. We received responses from 17 superintendents and 12 captains. Surveys were also given to every correction officer and correction program officer at

six DOC facilities at varying security levels. We received 69 completed surveys from correctional officers and correctional program officers.

Focus Groups and Correspondence

The Commission conducted four inmate focus groups with male and female inmates currently incarcerated in DOC facilities. On May 12, 2004 two focus groups with a total of 20 inmate participants were held at MCI-Norfolk. On May 13, 2004, two focus groups were held at MCI-Framingham with a total of 19 inmate participants. Inmates from those facilities who did not have the opportunity to participate in the focus groups were invited to send their comments to the Commission. A total of six inmates from MCI-Norfolk and 10 inmates from MCI-Framingham submitted correspondence after the focus groups were conducted.

In addition, the Commission received written correspondence from approximately 215 inmates (inmate letters were received from every DOC facility). These letters described inmates' own perceptions of problems with DOC practices and policies, and some made suggestions for reform and improvements.

The Commission received approximately 75 letters from individuals and organizations outside of the DOC, such as Legislators, family members of inmates, and special interest groups.

APPENDIX II. DOC CORRECTIONAL FACILITIES BY SECURITY LEVEL

	Security Level	Inmate Population as of March 29, 2004*
1. Bay State Correctional Center	4	296
2. Boston Pre-Release Center	3/2	95
3. Bridgewater State Hospital	4	342
4. Lemuel Shattuck Hospital Correctional Unit	4	
5. Mass Alcohol and Substance Abuse Center	4	188
6. Mass Treatment Center	4	580
7. MCI-Cedar Junction	6	671
8. MCI-Concord	4	1,065
9. MCI-Framingham	4	474
10. MCI-Norfolk	4	1,430
11. MCI-Plymouth	3	185
12. MCI-Shirley	4	1,084
13. North Central Correctional Institution (Gardner)	4	965
14. Northeastern Correctional Center	3/2	220
15. Old Colony Correctional Center	5/3	870
16. Pondville Correctional Center	3/2	196
17. South Middlesex Correctional Center	3/2	86
18. Souza-Baranowski Correctional Center	6	1,007

	# of Facilities
Level 6	2
Level 5/3	1
Level 4	10
Level 3	1
Level 3/2	4
Level 2	0
Level 1	0
Total	18

*Source: Massachusetts Department of Correction, Quarterly Report on the Status of Prisoner Overcrowding, First Quarter of 2004, (Boston, MA: April 2004).

APPENDIX III. OUTCOME - PERFORMANCE INDICATORS

Section II of this report (Leadership and Accountability) recommends that the Department institute a performance measurement and accountability system. The Commission reviewed a number of different systems that measure correctional performance by monitoring key outcome measures and that aim to increase overall system accountability, performance, and planning. New York City's Corrections Department's TEAMS (Total Efficiency Accountability Management System), introduced in 1994, incorporates over 160 indicators organized in five major categories: security, programs, administration, capital development, and support services, compliance and integrity. The Bristol County Sheriff's Department, which modeled its system called SAMS (Strategic Accountability Management System) after TEAMS has a similar number of indicators organized by the categories security, administrative, inmate programs/education, and food services but also has separate divisional reports for its internal affairs/criminal investigations, transportation, and finance divisions. Notably, in 2003, the Association of State Correctional Administrators published a final report on its multi-year effort to survey the correctional field and to determine the most feasible and generic indicators to measure correctional performance and categorized indicators into four main groupings: public safety, institutional safety, treatment and programming, and offender profile.

As an exercise, the Commission developed a preliminary set of outcome-performance indicators synthesized from these and other sources that could assist the Commissioner and outside observers in assessing the performance of the DOC. The indicators are organized in seven categories: *prison profile, staffing, security, support services, training and compliance, medical, and reentry*. The "prison profile" provide a snapshot of the facility and inmate population including commitments, releases, and daily counts; "staffing" provides an overview of the staff resources assigned to a facility, their availability, overtime, and staff discipline; "security" provides measures of institutional safety including activities of internal affairs departments; "support services" describes the performance of maintenance and other support operations; "training and compliance" documents in-service training and internal and external compliance efforts; "medical" offers a snapshot of the medical needs of the inmate population and the activities of the care givers; and "reentry" provides an description of rehabilitation programs, institutional activities, and classification processes. We envision that the Department would provide these and other data in real-time, using an information management system.

PRISON PROFILE

1. Facility Name
2. Capacity and Population
 - a. Total Beds
 - b. Closed for consolidation
 - c. Closed for construction
 - d. Beds at standard
 - e. Downcells
 - f. Population
3. Commitments
 - a. Offense Types
 - b. Security Levels
 - c. Average time to serve
 - d. Parole eligibility
4. Releases
 - a. By post-release status
 - b. By security level
 - c. With Transition plans
 - d. Victim/law enforcement notification
 - e. Average time served
5. Financial
 - a. Operating budget
 - b. Actual costs
 - c. Cost per available bed
6. Daily Counts
 - a. # of attempts for accurate count
 - b. Location of discrepancies
7. Prisoner Characteristics
 - a. By offense type
 - b. By security level
 - c. By gang involvement
 - d. By ethnicity
 - e. By age

STAFFING

1. Facility Name
2. Leadership (name & assign date)
 - a. Superintendent
 - b. Director of security
 - c. Director of programs
3. Human Resources as of date
 - a. Superintendents FTE
 - b. Asst. Supt. FTE
 - c. Asst. Dep. FTE
 - d. Captain FTE
 - e. Correctional Officers FTE
 - f. Total Uniforms FTE
 - g. Civilian FTEs
 - h. Inmate/Uniform Staff Ratio
 - i. Inmate/Total Staff ratio
4. Uniform Officer Availability
 - a. Indefinite sick
 - b. TDY
 - c. Suspensions
 - d. MMR in/out
 - e. Modified Duty
 - f. Other leave
 - g. Final Leave
 - h. Total Unavailable
 - i. % Assigned available
 - j. % T.O. Available
5. Average Sick Days
 - a. Uniform
 - i. Line of Duty injury
 - ii. Non-LODI
6. Civilian Facility Overtime spending
 - a. Uniform
 - b. Civilian
7. Overtime Hours
 - a. Uniform
 - b. Civilian
8. Total Uniform Vacation
9. Absence Control
10. Chronic Sick Facility Overtime spending
 - a. Uniform
 - b. Civilian
11. Overtime Hours
 - a. Uniform
 - b. Civilian

STAFFING (CONTINUED)

12. Total Uniform Vacation
13. Absence Control
 - a. Chronic Sick
14. Mutuuls
 - a. Requested
 - b. Approved
15. Staff Arrests
 - a. Uniform
 - b. Civilian
 - c. Uniform
 - d. Civilian
 - e. Contraband found
16. Staff Drug Testing
 - a. Random
 - b. Other
 - c. Positive
 - d. 12/24 Hour Housing
17. Staff Misconduct
 - a. Verbal warning
 - b. Written warning
 - c. Suspension
 - d. Demotion
 - e. Termination
18. Command Discipline
 - a. Pending
 - b. Transferred out
 - c. Adjudicated
 - d. Hearings
 - i. Dispositions
19. EEO Complaints
 - a. Open
 - b. Closed Facility Overtime spending
 - c. Uniform
 - d. Civilian

SECURITY

1. Escapes
2. Erroneous Discharges
3. Physical/Sexual Assaults
 - a. Homicide (Attempts/Methods)
 - b. Suicide (Attempts/Methods)
 - c. Prisoner on prisoner assault
 - d. Prisoner on staff assault
 - e. Prisoner sexual assault on prisoners
 - f. Prisoner sexual assaults on staff
 - g. Sexual misconduct on prisoners
4. Suicide Attempts
 - a. Number of attempts
 - b. Hanging
 - c. Cut Wrists
 - d. Other
5. Use of Force
 - a. Intensity Levels
 - b. Methods
 - i. Physical
 - ii. Chemical
 - iii. Electronic
6. Staff Duress Calls
 - a. Emergencies
 - b. False Alarms
7. Random Prisoner Drug Testing
 - a. Number tests by location
 - b. Results by type/location
8. Searches
 - a. Scheduled (by shifts)
 - b. Unscheduled
 - c. Random
 - d. Tactical
 - e. Canine
9. Cell Inspections
 - a. Scheduled (by shifts)
 - b. Unscheduled (by shifts)
10. Drugs Recovered
 - a. Locations
 - b. Type
11. Weapons Recovered
 - a. Locations
 - b. Type
12. Disturbances
 - a. Lockdowns (by reason/location)
 - b. Officer down (by type and location)

SECURITY (CONTINUED)

13. Security Risk Group Affiliation
 - a. # beginning of month
 - b. # identified during month
 - c. # removed/renounced affiliation
 - d. # at end of month
14. Disciplinary Reports
 - a. # of reports
 - i. Seriousness levels
 - ii. Categories
 - b. # pending at beginning of month
 - c. # resolved
 - d. Dispositions (by category)
 - e. Average time from filing to disposition
 - f. # pending at end of month
15. Idleness
 - a. Inmate w/o treatment or work
16. Inmate Grievances
 - a. Number/Category
 - b. Pending prior month
 - c. Filed in current month
 - d. Processed (dispositions)
 - e. Pending end of month
 - f. Average # days for disposition
17. Out of cell time (average)
 - a. By housing unit
 - b. Lockdowns (by housing unit)
 - c. Informal 24 hr Lock-ins
 - i. By housing unit
18. Transportation
 - a. By destinations
 - b. On-time court production
19. Visits
 - a. Number visitors barred from facility
 - i. Duration
 - ii. Reasons
20. Arrests
 - a. Visitor (by category)
 - b. Inmate (by category)
21. Internal Affairs/Criminal Investigations
 - a. Destroying city property
 - b. Inmate assaults
 - c. Officer assaults
 - d. Drug investigations
 - e. Strong arm investigations
 - f. Open lewd
 - g. Employee investigations

SECURITY (CONTINUED)

22. Criminal Prosecutions
 - a. A&B on CO
 - b. A&B on Civilian Staff
 - c. Drug Laws
 - d. A&B on Inmate
 - e. Destruction of property
 - f. Arson
 - g. Theft
 - h. Fugitives
 - i. Threats
 - j. Other
23. Monthly caseload
 - a. Destruction of property
 - b. Inmate assaults
 - c. Officer assaults
 - d. Drug Investigations
 - e. Employee Investigations
 - f. Strong Arming
 - g. Open Lewd
 - h. Staff Interviews
 - i. Inmate Interviews
 - j. Miscellaneous
 - k. Case History
 - i. Cases completed
 - ii. Cases open
 - iii. Cases open previous month

SUPPORT SERVICES

1. Maintenance
 - a. Work Orders Received
 - b. WO completed
 - c. Average # WO open
2. Major Capital Projects
 - a. Number/type
 - b. On-schedule/budget
3. Maintenance Projects Open
 - a. Shower
 - b. Locking
 - c. Flooring
 - d. Miscellaneous
4. Maintenance Overtime Hours
 - a. Scheduled
 - b. Actual
5. Elevator Maintenance
 - a. Total #
 - i. Available
 - ii. Inoperable
6. Vehicles
 - a. Total number by type
 - i. Available
 - ii. Inoperable
7. Meals
 - a. Number delivered
 - b. Missed
8. Laundry
 - a. Uniforms
 - b. Linens
9. Canteen
 - a. Deliveries
10. Inmate Generated Revenue
 - a. Telephone
 - b. Haircuts
 - c. Medical co-payments
 - d. Canteen
 - e.

TRAINING, COMPLIANCE, & INTEGRITY

1. New Employee Training
 - a. Total staff (civilian/uniform)
 - b. Number of hours
2. In-Service Training by Category
 - a. Total staff
 - i. Uniform
 - ii. Non-uniform
 - b. Percent appeared
 - c. Average in-service hours
 - d. In-house Training hours
 - e. Outside Training Hours & Documentation
3. Audits/accreditation
 - a. Internal/external
 - i. Location
 - ii. Functional area
 - iii. Results
 - iv. Date of last audit
 1. by location
 2. by functional area
4. Fire Safety Inspections
 - a. # Drills by shifts
 - b. Inspections
 - i. Started
 - ii. Completed
 - iii. On-going
 - iv. Pending informal resolution
 - c. Other inspections
 - i. Completed
 - ii. Pending informal resolution
 - d. Emergency Response
5. Environmental Health
 - a. Sanitation Inspections
 - b. Total Areas Inspected
 - c. Total Critical violations
 - i. Food violations
 - d. Total Serious Violations
 - i. Completed
 - ii. Open
 - e. Inmate Showers

MEDICAL CARE

1. Intake Screenings
 - a. Pending from prior month
 - b. Total number screened
 - c. Pending at end of month
 - d. % screened of total monthly commits
 - e. Average time from booking to screening
 - f. Suicide/at-risk ideations requiring monitoring
 - g. Self-reported
 - i. Prescriptions
 - ii. Mental health
 - iii. Physical health
 - h. Diagnosed
 - i. Mental health
 - ii. Physical health
2. Health Status
 - a. Average Daily # of prisoners with specified physical medical conditions
 - b. Average Daily # of prisoners with specified mental health conditions
3. Mental/Medical Watches
 - a. # detainees on watches
 - b. 15 minute
 - c. 30 minute
 - d. Eyeball
 - e. Other
4. Medical
 - a. Quarantines
 - b. Number
 - c. Reasons
 - d. Duration
5. Sick Call
 - a. Housing areas eligible
 - b. Housing areas called
 - c. Inmates called
 - d. % inmates called
 - e. Average minutes waited
 - f. Inmates waiting over 3 hours
6. Hospital Runs
 - a. Medical
 - b. Psychological

INSTITUTIONAL PROGRAMS AND REENTRY

1. Releasees Characteristics
 - a. Average time served
 - b. Post-release status
 - c. Security level
 - d. Programming
 - i. Substance abuse
 - ii. Education
 - iii. Work
 - iv. Community reentry plans
 - e. Victim/law enforcement notification
 - f. Return address
2. Recidivism
 - a. New crimes
 - b. Past crimes
 - c. Violations
3. Substance Abuse
 - a. # with diagnosed SA needs
 - b. Enrolled in intensive programs
 - c. Attending commitments
 - d. # of those in need in programs
4. Education
 - a. #of prisoners reading below 4th grade in school
 - b. # of prisoners needing ESOL in school
 - c. # of prisoners in secondary diploma programs
 - d. # of prisoners in vocational diploma programs
 - e. # in post-secondary programs
5. Work
 - a. Prison Industry
 - i. # of prisoners
 - ii. Production/revenue
 - b. Work Release
 - i. # of prisoners
 - ii. Production/revenue
 - c. Details
 - i. Kitchen
 - ii. Maintenance
 - iii. Unit

INSTITUTIONAL PROGRAMS AND REENTRY (Continued)

6. Visits
 - a. By housing unit
 - b. Cancellations
7. Recreation
 - a. By housing unit
 - b. Cancellations
8. Law/general Library Attendance
 - a. By housing unit
 - b. Cancellations
9. Religious Attendance
 - a. Denomination
10. Social Services
 - a. # of Requests by type
 - b. # resolved
 - c. # pending
11. Restitution
 - a. Restitution
 - b. Court fees
 - c. Child support
12. Classifications
 - a. # of initial classifications
 - b. # of reclassifications
 - c. # resulting in step down placement
 - d. # of classification to programs
 - e. Special management quotient