

Interpretation and Analysis of the Massachusetts Sentencing Commission Review¹

How many people are eligible for indictment every year under the proposed habitual offender provisions?

The Massachusetts Sentencing Commission determined that, in FY2009, 307 defendants met the habitual offender criteria of S.2080 and 281 defendants met the habitual offender criteria of H.3818.² All of these defendants would have received the maximum sentence if convicted as habitual offenders.

To what extent would the proposed habitual offender provisions lengthen prison sentences?

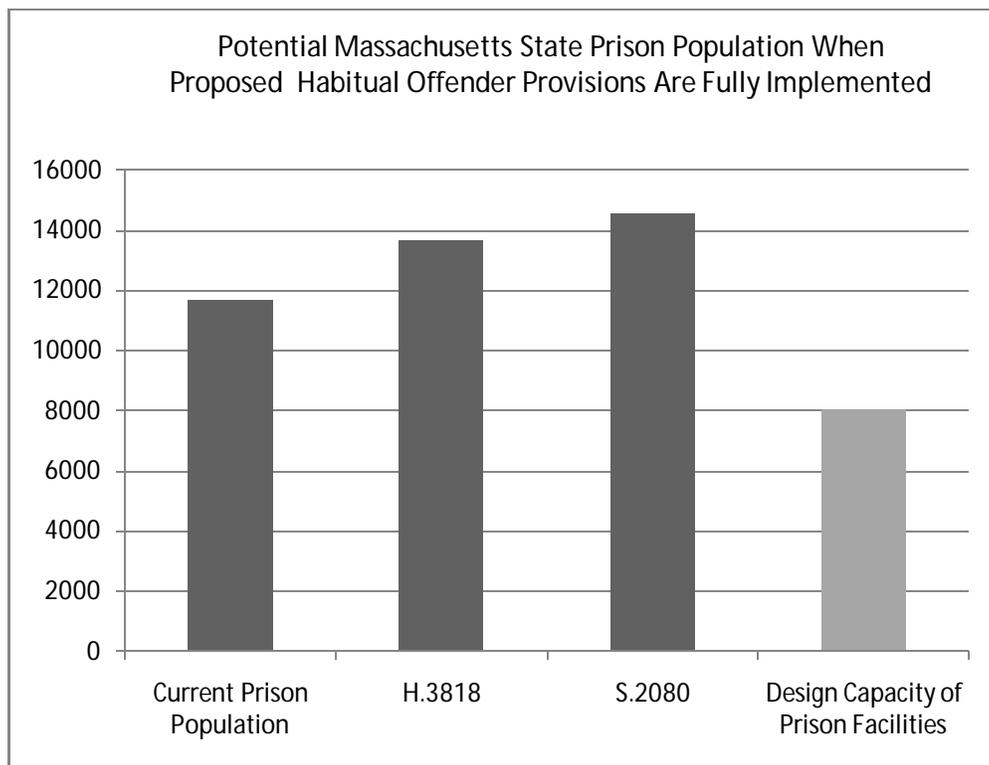
The Commission concluded that the proposed provisions would result in a substantial increase in the length of time served by people convicted as habitual offenders. According to the Commission, the average habitual offender would serve over 9 additional years (113 months) under S.2080 and over 7 additional years (85.3 months) under H.3818.³

How much will the proposed habitual offender provisions increase the prison population?

When fully implemented, the proposed provisions could lead to a significant increase in the prison population, primarily due to the additional years in prison served by people sentenced as habitual offenders.

S.2080: Based on the Commission's FY 2009 sentencing data, S.2080 has the potential to expand the prison population by approximately 2,890 people when fully implemented.⁴ Of these, 1,826 people would be sentenced under Subsection (a) and 1,064 under Subsection (b). The bill would mandate the incarceration of approximately 9 people each year who would not receive any prison at all under current law. Since these individuals would serve an average of 169.8 months before becoming parole eligible, this alone could increase the total prison population by 127 people once the law is fully in effect.⁵

H.3818: Applying the Commission's FY 2009 sentencing data, H.3818 has the potential to expand the prison population by approximately 1,997 people: 1,798 under Subsection (a) and 199 under Subsection (b).⁶ Further, H.3818 would mandate the incarceration of approximately 14 individuals each year who do not receive any prison sentence at all under current law. Since these individuals would serve an average of 140.4 months, this could ultimately lead to an increase of 163 prisoners in the Department of Correction.⁷



How much will the proposed habitual offender provisions increase costs?

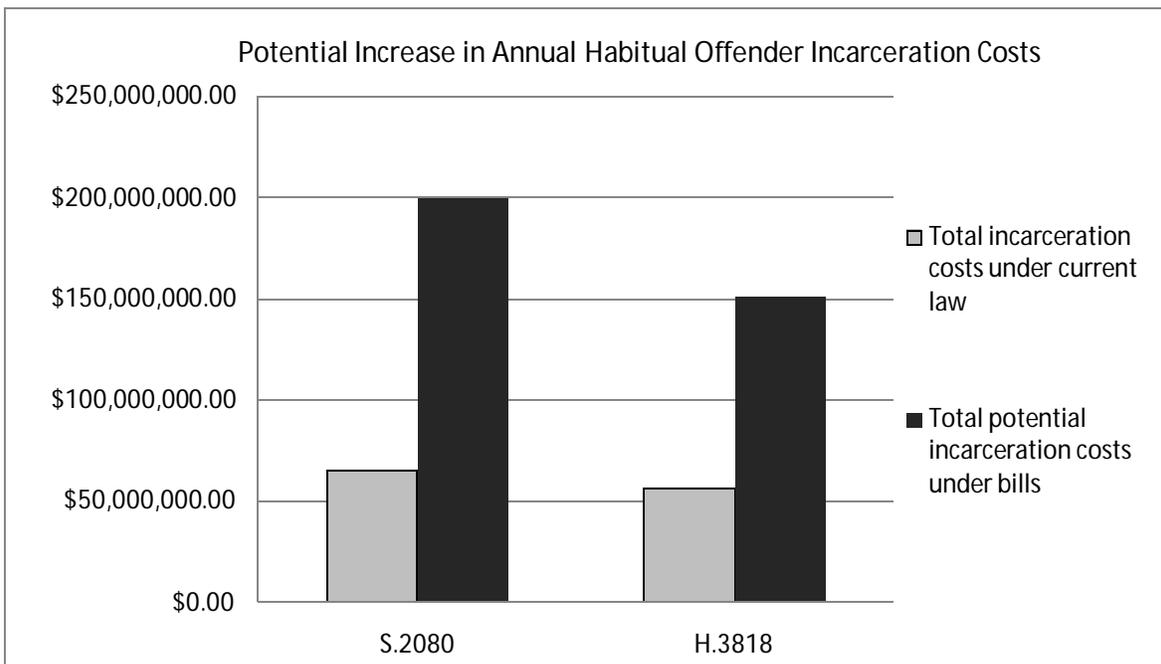
The potential costs of the huge prison population expansion that the proposed provisions may cause are staggering, even without accounting for the capital costs required to build new prisons and the increased medical costs of caring for aging prisoners. The costs of the proposed provisions are cumulative, becoming more burdensome over time, as more and more people are sentenced as habitual offenders and subjected to maximum prison sentences with delayed parole eligibility or no parole eligibility at all. The cost estimates below were calculated using the information provided in the Commission’s Review.⁸

S.2080:

- The average increase in cost to incarcerate each individual sentenced as a habitual offender would be \$432,385.55.⁹
- The total extra annual costs of the proposed habitual offender provisions could be as high as \$132,700,274.50 when the law is fully in effect.¹⁰ Out of that total, approximately \$5,831,465.35 would be required to incarcerate defendants who are not sentenced to prison at all under current law.¹¹ The remaining \$126,910,899.78 would be the result of the substantial increase in the length of time served by people convicted as habitual offenders.

H.3818:

- The average increase in cost to incarcerate each individual sentenced as a habitual offender would be \$326,393.70.¹²
- The total extra annual costs of the proposed habitual offender provisions could be as high as \$91,696,348.90 when the law is fully in effect.¹³ Out of that total, approximately \$7,484,479.15 would be required to incarcerate the defendants who are not incarcerated at all under current law.¹⁴ The remaining \$84,232,149.73 would be the result of the substantial increase in the length of time served by people convicted as habitual offenders.



The “Total incarceration costs under current law” bars show how much it now costs each year to incarcerate the people who would qualify for conviction as habitual offenders under S.2080 and H.3818. These people are currently serving average sentences of 56.8 months and 55.1 months, respectively. The “Total potential incarceration costs under bills” bars show the cost of the longer sentences that would be imposed under S.2080 and H.3818, an average of 169.8 months and 140.4 months, respectively. The difference in the height of each bar reflects the annual increase in costs that would be caused by the legislation.

How will prosecutorial discretion affect the sentencing rate and costs of the proposed bills?

While prosecutorial discretion could reduce the number of persons sentenced as habitual offenders, there is good reason to believe that District Attorneys would use the proposed legislation to vigorously prosecute habitual offenders. For several reasons, the low prosecution rate of habitual offenders under the existing law is not a reliable predictor of how prosecutors will use the new law. These include: (1) because the current law makes habitual offenders parole eligible after serving 1/2 of the maximum sentence, prosecutors can often secure from judges a harsher sentence with later parole eligibility if they do not invoke the habitual offender statute; and (2) prosecutors commonly use the threat of a habitual offender sentence as a tool to induce defendants to plea bargain.

Because the proposed habitual offender provisions in S.2080 and H.3818 mandate much longer sentences, they will provide prosecutors with a significantly greater incentive to invoke the statute and a more powerful tool to induce guilty pleas. In addition, increased media and political attention will make it difficult for District Attorneys to decline to seek habitual offender indictments.

Significantly, however, even if prosecutors were to seek habitual offender indictments against only 1/3 of the defendants who meet the habitual offender criteria, it would still increase the total prison population by approximately 665 (H3818) to 963 (S.2080) prisoners once the law is fully in effect. This would cost the taxpayers approximately \$44 million per year under S.2080 and approximately \$30 million per year under H.3818.

Prisoners' Legal Services

Completed: April 11 2012

¹ All of the above habitual offender data comes from "A Comparison of the Current Habitual Offender Statute, Chapter 279, s. 25, and Two Proposed Habitual Offender Laws, Senate Bill 2080 and House Bill 3818," produced by the Massachusetts Sentencing Commission on March 21, 2012. The Commission's analysis was completed using sentencing data from FY 2009.

² The Commission notes in Figures 3, 4, and 5 that its estimates are based only on Superior Court felony convictions. As a result, the estimates fail to account for the number of defendants convicted in District Courts that would be eligible for habitual offender treatment under the proposed law.

³ As stated in Figure 5 of the Commission's report, the Commission calculated how much time defendants who met habitual offenders criteria would serve before parole eligibility if they were sentenced as habitual offenders. However, in light of current parole rates and the label "habitual offender," it is unlikely that all or even most Subsection (a) habitual offenders will be paroled. As a result, the Figure 5 estimates underestimates the average additional time habitual offenders will serve under the proposed provisions.

⁴ The 307 habitual offenders sentenced each year would serve an average of 113 additional months in prison, leading to an eventual increase of 2,890 prisoners ($307 \times 113/12 = 2,890$) in the total prison population. Since the Commission's data does not distinguish between the extra time served under Subsections (a) and (b), this likely underestimates the impact of Subsection (b). As Subsection (b) habitual offenders are not eligible for parole, the length of time they serve would be greater than those sentenced under Subsection (a).

⁵ The 9 habitual offenders each year not sentenced to any incarceration under current law would serve the average 169.8-month sentence, leading to an accumulation of 127 additional prisoners ($9 \times 169.8/12 = 127$).

⁶ The 281 habitual offenders would serve an additional 85.3 months in prison, leading to an accumulation of 1,997 prisoners ($281 \times 85.3/12 = 1,997$).

⁷ The 14 habitual offenders each year not sentenced to incarceration under current law would serve the average 140.4-month sentence, leading to an eventual accumulation of 163 additional prisoners ($14 \times 140.4/12 = 163$).

⁸ The Massachusetts Department of Correction indicates that the average cost per year to house an inmate in FY 2010 was \$45,917.05. See <http://www.mass.gov/eopss/agencies/doc/faqs-about-the-doc.html>.

⁹ An additional 113 months of incarceration costs \$432,385.55 ($45,917.05 \times 113/12 = 432,385.55$).

¹⁰ Each of the 2,890 additional people in prison will cost \$45,917.05 per year to incarcerate ($2,890 \times 45,917.05 = 132,700,274.50$).

¹¹ Each of the 127 additional people in prison will cost \$45,917.05 per year to incarcerate ($127 \times 45,917.05 = 5,831,465.35$).

¹² An additional 85.3 months of incarceration costs \$326,393.70 ($45,917.05 \times 85.3/12 = 326,393.70$).

¹³ Each of the 1,997 additional people in prison will cost \$45,917.05 per year to incarcerate ($1,997 \times 45,917.05 = 91,696,348.85$).

¹⁴ Each of the 163 additional people in prison will cost \$45,917.05 per year to incarcerate ($163 \times 45,917.05 = 7,484,479.15$).