

## A SOUND LIST OF “STRIKE” CRIMES FOR SUBSECTION (b) OF THE PROPOSED HABITUAL OFFENDER PROVISIONS

**Under current law, only one crime – first degree murder, M.G.L.c.265, §1 – can result in a sentence of life without the possibility of parole. The habitual offender provisions in both S.2080 and H.3818 will radically expand this by making not just a few, but 21 additional crimes punishable by life in prison without parole.**

**The proposed habitual offender provisions will also have a disparate racial impact, amplifying the existing extremely disproportionate levels of incarceration of people of color in Massachusetts.** While only 6% percent of the state’s population is Black and 10% Hispanic, these groups make up 28% and 26% of the prison population, respectively.<sup>i</sup>

The cost to the taxpayers of housing aging prisoners with long sentences is extraordinarily high. Older prisoners require expensive medical care, often more than \$100,000 per year per prisoner, and also create additional demands on staff and prison infrastructure.<sup>ii</sup> The average age of prisoners in the Department of Correction has already increased dramatically: the number of prisoners 50 and older increased by 63% from 2002 to 2011, and those over 60 increased by 80%.<sup>iii</sup> **The proposed habitual offender provisions will exacerbate this costly trend by requiring that more geriatric prisoners, who are statistically least likely to reoffend, stay behind bars without the possibility of parole.**

The purpose of Subsection (b) of the habitual offender provisions is to target the most violent and dangerous habitual offenders. **While the current habitual offender law adequately serves this purpose, the proposed provisions are overinclusive, ill-advised, and should not become law.** To ensure that Subsection (b) is actually focused on its limited goal, and does not dramatically overburden Massachusetts taxpayers and the currently-overcrowded prison system,<sup>iv</sup> the list of qualifying crimes must be narrowed and carefully tailored.

**The list below is a thoughtful compilation of the most violent crimes. Crimes were selected by their level of violence and because the legislature has already deemed them the “worst” by assigning each crime the maximum penalty of life in prison. Only these crimes should remain on the list of offenses that qualify as “strikes” for Subsection (b) of the proposed habitual offender provisions.**<sup>v</sup>

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|---|---|
| (1) <u>M.G.L.c.265, §1- Murder</u>  | (6) <u>M.G.L.c.265, §22C - Rape of a child through use of force by certain previously convicted offenders</u> |
| (2) <u>M.G.L.c.265, §18C - Armed home invasion</u>  |   |
| (3) <u>M.G.L.c.265, §22 - Rape</u>  | (7) <u>M.G.L.c.265, §24B - Assault of child with intent to commit rape</u>                                    |
| (4) <u>M.G.L.c.265, §22A - Rape of child</u>  |   |
| (5) <u>M.G.L.c.265, §22B - Rape of child during commission of certain other offenses or by use of force</u> | (8) <u>M.G.L.c.266, §14 - Armed burglary</u>  |

## REFERENCES

<sup>i</sup> See Department of Corrections, “Comparing Massachusetts Census and DOC Jurisdiction Populations by Race/Ethnicity for 2010”, p.2-3, available at <http://www.mass.gov/eopss/docs/doc/research-reports/briefs-stats-bulletins/2010-racethnic-pop-brief-crystalpark.pdf>. Below are excerpts from the this document:

**Comparison of DOC and Census Population in Massachusetts by Race/Ethnicity**

Population type	Black	Native American	Hispanic	White	Other	Asian	Total
DOC Pop.	3,230	79	2,955	4,918	84	143	<b>11409</b>
Census Pop.	391,693	10,778	627,654	4,984,800	183,742	348,962	<b>6,547,629</b>
<b>Total % incarcerated</b>	<b>0.82%</b>	<b>0.73%</b>	<b>0.47%</b>	<b>0.10%</b>	<b>0.05%</b>	<b>0.04%</b>	<b>0.19%</b>
<b>Total incarcerated per 100,000 residents</b>	<b>820</b>	<b>730</b>	<b>470</b>	<b>100</b>	<b>50</b>	<b>40</b>	<b>190</b>

Although Chart 1 illustrates White offenders as the majority racial/ethnic population in the Massachusetts DOC jurisdiction, this data set can be easily misinterpreted. When compared to the general population data, there were more Black offenders incarcerated out of the total population of Black individuals (0.82%) and White offenders were one of the lowest comparatively (0.10%). At yearend 2010, 0.73% of Native American, 0.47% of Hispanic, 0.05% of Other, and 0.04% of Asian individuals were incarcerated.

**Comparison of racial/ethnic proportions between Massachusetts Census and DOC Population**

Race/Ethnicity	Census Pop.	(%)	DOC Pop.	(%)
White	4,984,800	76%	4,918	43%
Black	391,693	6%	3,230	28%
Hispanic	627,654	10%	2,955	26%
Asian	348,962	5%	143	1%
Other	183,742	3%	84	1%
Native American	10,778	<1%	79	1%
<b>Total</b>	<b>6,547,629</b>	<b>100%</b>	<b>11,409</b>	<b>100%</b>

When comparing MA DOC jurisdiction and Massachusetts Census population data, there is disparity between racial/ethnic groups. White offenders are underrepresented in the MA DOC population compared to their representation in the general population, 43% and 76% respectively, while Black offenders are overrepresented in the MA DOC (28%) when they comprise but 6% of the Massachusetts population. Similarly, Hispanic offenders comprise 26% of the DOC population while they only comprise 10% of the general population. Thus, there is a clear over-representation of both Black and Hispanic offenders and an under-representation of White offenders within the Massachusetts DOC jurisdiction.

<sup>ii</sup> “The aging of prison populations creates concerns that must be recognized and addressed, such as increased medical treatment, visits to hospitals outside the prison environment, housing issues associated with medical restrictions, limited mobility, special needs, and programming.” Department of Correction, “Age of Custody Population 2002-2011,” p.1, available at <http://www.mass.gov/eopss/docs/doc/research-reports/briefs-stats-bulletins/age-custody-pop-2002-2011.pdf>.

<sup>iii</sup> Department of Correction, “Age of Custody Population 2002-2011,” p.2, available at <http://www.mass.gov/eopss/docs/doc/research-reports/briefs-stats-bulletins/age-custody-pop-2002-2011.pdf>.

<sup>iv</sup> As of February 20, 2012, overcrowding in Department of Correction facilities averages 144% of design capacity, holding 11,569 prisoners in facilities designed to hold 8,029 prisoners. Department of Correction, “Weekly Count Sheet - 2/20/2012”, available at <http://www.mass.gov/eopss/docs/doc/research-reports/wkly-countsheet/2012/2012-wc02-20.pdf>.

<sup>v</sup> Aside from first degree murder, none of the listed crimes should mandate sentences of life without parole. Instead, for those convicted of life offenses that normally call for parole eligibility after serving 15 years, those convicted as habitual offenders should become parole eligible after serving 25 years.