

PLS NOTES

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**County Prisoner Collect: 617.482.4124
Massachusetts state prisoner calls: *9004#
Call in Mondays 1-4 PM, emergencies from
segregation 9-11 or 1-4 every day or write PLS at 10
Winthrop Square, Boston, MA 02110**

Proposed "Three Strikes"
Legislation Threatens to
Degrade Sentencing Policy
and Increase Overcrowding

**CONTACT YOUR LEGISLATORS RIGHT AWAY
ABOUT S. 2080 AND H. 3818**

A legislative Conference Committee is meeting right now to iron out the differences between a Senate bill (S.2080) and a House bill (H.3818) that will change the existing habitual offender law, known as "three strikes and you're out." The Senate bill also includes provisions that will require mandatory post-release supervision for all state prisoners who have served their entire sentence, reduce mandatory minimum drug sentences, and increase the amount of deductions from their sentences that prisoners can earn for good conduct ("earned good time"). The final version of the bill that the Conference Committee agrees upon cannot be amended further by the legislature. **It is vital to contact your legislators immediately to speak out against the passage of the extremely costly, misguided, and unfair provisions of the bills and to show support for those provisions that are a step in the right direction.**

Things to Keep in Mind:

- The changes to the habitual offender law will dramatically increase costs for the Department of Correction, county

correctional facilities, and the court system. It is estimated that it will cost between \$75-125 million per year, not including the costs of building new prisons. Inevitably, incarcerating more prisoners for longer sentences will cost taxpayers more money.

- The new habitual offender provisions will worsen existing overcrowding in state prisons and county correctional facilities.
- The new habitual offender provisions are overly inclusive and will lead to disproportionate punishments. Both Subsections (a) and (b) of the habitual offender provisions fail to consider the lack of seriousness of the actions required to meet the elements of many offenses deemed "strikes," and prevent consideration of mitigating factors regarding the circumstances of the case and the individual defendant that is necessary for fair and appropriate sentencing.
- No research supports a link between longer prison terms and reduced recidivism.
- Mandatory post-release supervision of prisoners who have *already served* their debt to society will cost \$10.25 million per year.

INFORM YOUR LEGISLATORS THAT THE CONFERENCE COMMITTEE SHOULD:

- (1) Make habitual offenders sentenced to life imprisonment pursuant to Subsection (b) eligible for parole after serving 25 years;
- (2) Adopt H.3818's version of Subsection (b) of Chapter 279, §25;
- (3) Adopt S.2080's version of Subsection (a) of Chapter 279, §25;
- (4) Remove less serious crimes from Subsection (b) of Chapter 279, §25;
- (5) Include an exception to the habitual offender provisions that allows a judge to disallow consideration of a prior conviction as a "strike" in the interests of justice;
- (6) Adopt the medical parole provision in S.2080 Section 23;

- (7) Adopt the earned good time provision in S.2080 Sections 24, 25, 26 to help reduce overcrowding;
- (8) Adopt the reductions to the mandatory minimum sentences provided in S.2080 Sections 6-20; and
- (9) Eliminate any provision that creates mandatory-post release supervision.

You or your family can get the names and contact information of your Senator and Representative by calling (617)722-2000. We also urge you to contact the six Conference Committee members and the House and Senate leadership identified below c/o State House, Boston, MA 02133:

Conference Committee Members:

Representative Eugene O’Flaherty (D), Chair, Joint Committee on the Judiciary, (617)722-2396
 Representative Bradford Hill (R) (617)722-2100
 Representative David Linsky (D) (617)722-2575
 Senator Cynthia Creem (D), Chair, Joint Committee on the Judiciary (617)722-1639
 Senator Bruce Tarr (R) (617)722-1600
 Senator Steven Badour (D) (617)722-1604

Leadership

Speaker of the House, Robert DeLeo (D) (617)722-2500
 Senate President, Therese Murray (D) (617)722-1500

Agreement Reached in
 Mental Health Care Case

Plan Submitted for Court Approval

In March of 2007, the Disability Law Center sued the DOC in federal court to challenge the practice of confining prisoners with mental illness in segregation units, including the DDU. The Disability Law Center was the named plaintiff. PLS, the Center for Public Representation, and the private law firms of Bingham McCutchen and Nelson Mullins represented the DLC. The judge is Mark Wolf. Although the parties engaged in extensive negotiations in an effort to resolve

the case, settlement broke down in 2009. During 2011, the parties renewed settlement discussions and reached a tentative agreement in November, which has been submitted to the court for approval.

The settlement will not become effective unless it is approved by the court. Until such time, the details of the proposed settlement remain confidential, but important elements of the agreement are apparent from the memorandum that has been submitted to the court by all parties in support of their motion to approve the settlement.

The heart of the settlement provides that DOC may not house a prisoner with a serious mental illness in the DDU unless he has been approved for placement in a secure treatment unit, such as the STP or the BMU, and receives enhanced mental health services and additional out of cell time while awaiting the transfer. The agreement also sets limits on the amount of time that seriously mentally ill prisoners can be held in other segregation units, and requires that they too receive enhanced mental health services and additional out of cell time. The agreement also requires the DOC to maintain the secure treatment unit beds that it has developed during the pendency of the litigation as an alternative to segregation for prisoners who are seriously mentally ill and would be likely to deteriorate in segregation but who also cannot be safely housed in general population.

From the defendants’ perspective, the settlement agreement acknowledges steps that the DOC has already taken to improve the delivery of mental health services including implementation of a mental health classification system, a policy to exclude prisoners with serious mental illness from long-term segregation, and the design and operation of the two secure treatment units and the maximum security residential

treatment unit. These have resulted in significant reductions in self-injury, crisis interventions, psychiatric hospitalizations, d-reports and use of force incidents.

Other provisions of the agreement establish requirements for evaluation of prisoners on mental health watch, and for input into the disciplinary process by mental health staff. Finally, the agreement establishes a system for monitoring and enforcement of the agreement.

The court is to retain jurisdiction for monitoring and enforcement purposes for three years.

Update: Bristol "Pay For Stay" Refunds Pending, But Delayed

Souza, et al., v. Hodgson

Approximately \$830,000 unlawfully confiscated as "pay for stay" and other unlawful fees by the Bristol County Sheriff from prisoners in the Ash Street Jail and North Dartmouth House of Correction is scheduled to be returned, with interest, to more than 1100 qualified class members in this litigation. Distribution of funds has been delayed several times, most recently by the Commonwealth's insistence that any child support owed by plaintiffs be deducted from their recoveries. A hearing is set for January 4, 2012, in Bristol Superior Court to resolve this issue. PLS anticipates that the distribution of funds will begin soon after the court makes a decision.

Subject to court approval, money that goes unclaimed will be distributed to three Bristol County charities designated in a survey of the prisoners who are plaintiffs in the lawsuit.

Unlawful Fees Challenge Filed Against Essex Sheriff

Bentley, et al. v. Essex County Sheriff

Prisoners' Legal Services and National Lawyers' Guild attorneys David Kelston and Jeffrey Thorn have filed suit in Essex Superior Court against the Essex County Sheriff to recover the thirty dollar "medical processing fee" and certain other unauthorized "medical co-pay" fees that Sheriff Cousins charges prisoners in the Essex County Correctional Facility.

The plaintiffs contend that the medical fees are unlawful because the Supreme Judicial Court has ruled in Souza, et al. v. Hodgson, that a county sheriff has no statutory authority to charge prisoners for medical care, that the fees violate G.L. c. 127, sec. 3 and G.L. c. 124 secs. 1(s) and (t), as well as the substantive and procedural due process clauses of the United States and the Massachusetts constitutions. As there are approximately 1,200 prisoners in the ECCF at any given time and more than 11,000 prisoners spend time in an Essex County facility each year, the case has been filed as a class action, and a substantial amount of money is at issue.

To date, the Essex County Sheriff has agreed to stop charging these medical fees, and the parties are involved in settlement discussions.

CPCS Innocence Program

If you have been convicted of a crime that you did not commit, the CPCS Innocence Program may be able to help you. The Program represents indigent Massachusetts state defendants who are actually innocent of the crime(s) of which they have been convicted. CPCS has funding to conduct investigations,

to hire experts, and to perform forensic testing. The Program has been moving slowly but is gearing up again. **Cases are eligible whether or not there is DNA available for testing.**

For assistance contact:

**Lisa Kavanaugh, Program Director
CPCS Innocence Program
44 Bromfield Street
Boston, MA 02108**

Good News: Bill To Create Corrections Advisory Committee Advances in Legislature

House Bill 1559, legislation introduced by State Representative Kay Kahn to create a Massachusetts Corrections Commission was reported favorably out of the Committee on Public Safety and Homeland Security on October 13th, 2011, and is now in the Rules Committee. PLS director Leslie Walker, former DOC commissioner Kathleen Dennehy, Pace Law School professor Michael Mushlin and community leaders including Boston City Councilor Charles Yancey testified in favor of this legislation at the State House this past June.

The current language of the bill provides that “[t]he commission shall be assigned to the executive office of public safety for administrative and fiscal accountability purposes, but it shall otherwise function independently of the control and direction of the executive office of public safety. The commission shall consist of the secretary of public safety or a designee; the commissioner of probation or a designee; the chairman of the parole board or a designee; the commissioner

of mental health or a designee; the commissioner of mental retardation or a designee; the commissioner of public health or a designee, ex officio. The president of the senate shall appoint 2 members; the speaker of the house of representatives shall appoint 2 members. The governor shall appoint 6 members from the following categories: a person to chair the commission who has experience in state government; a district attorney; a public defender; a sheriff; an expert on prisoner re-entry; and a corrections policy expert. The following organizations shall each make one appointment to the commission: the Women’s Bar Association shall appoint an attorney with experience in women’s prison issues; the Massachusetts Association of Health Plans shall appoint a health care expert; the National Alliance for the Mentally Ill shall make one appointment; the Massachusetts Taxpayers Foundation shall make one appointment; and Massachusetts Correctional Legal Services shall make one appointment.”

The core duty of the proposed commission would be to “study the medical services, including mental health and substance abuse treatment services, and educational, vocational, employment and rehabilitation programs available to prisoners,” and “report annually to the house and senate committees on ways and means and post-audit and oversight, the joint committee on public safety and homeland security and the joint committee on the judiciary on the allocation of resources, specifically fixed and operating costs of any new and preexisting facilities, assets, or personnel utilized by the department of correction. It shall make recommendations regarding how to allocate such resources in the most efficient and useful manner for both the taxpayer and the offender. It shall recommend innovative approaches to resolving present and future issues in criminal justice to promote public safety by, but not limited to, modernizing existing facilities,

developing alternative sentencing methods to reduce prison overcrowding, reduce recidivism, and improve rehabilitation.”

This legislation, if enacted, offers a route to balanced evaluation of the DOC and of sentencing policies, and deserves the support of every person in Massachusetts who is concerned with correctional and sentencing reform. It enjoys broad support, including the support of the DOC. Don’t hesitate to contact your state senator and representative and ask him or her to support this bill.

Parole Issues

PLS is aware of problems with Parole Board eligibility calculations and discharge dates.

Additionally, prisoners are not receiving substance abuse treatment, counseling or reentry planning assistance to help them address their history of substance abuse, even when they will need treatment or support in order to meet the conditions of their parole.

If you have a calculation concern or history of substance abuse and have not gotten help from DOC, DMH or Parole staff to address your substance abuse history or help prepare you for reentry, please write to PLS, 10 Winthrop Square, Boston, MA 02110 writing “Calculations” or “Attention: Attorney Lisa Reinsberg” if you are writing concerning substance abuse treatment and re-entry issues.

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Reducing Prison Crowding Through Parole and Sentencing Reforms: What Massachusetts Can Learn from Other States

Overcrowding in Massachusetts Prisons Contributes to Recidivism and High Costs

Massachusetts spends more per capita on corrections than nearly every other state in the country¹ and has the 6th highest corrections-to-higher education spending ratio.² However, neither our communities nor prisoners experience a corresponding benefit from the hefty investment required by a sentencing scheme that funnels non-violent offenders³ into high-cost, overcrowded prisons lacking in opportunities for rehabilitation.⁴

Massachusetts’ prison population is the largest it has been “since at least the mid 1990’s”⁵ and the monthly parole release average is two-fifths what it was in 2010.⁶ Prison overcrowding – as high as 352% in some facilities⁷ – increases violence and personnel costs⁸ and hampers the rehabilitation of a population in need of mental health treatment, education and skills training.⁹ Other states have saved taxpayers millions of dollars and increased public safety through reforms that favor treatment over incarceration for drug offenses, safeguard judicial discretion at sentencing, and use parole to strategically release prisoners unlikely to reoffend.

Overview: Other States’ Reforms Result in Dramatic Savings and Crime Reduction

- In **Kentucky, South Carolina, and Ohio**, reduced sentences and/or the **elimination of mandatory minimums** for certain drug offenses, in addition to the creation of alternatives to incarceration, averted projected prison population growth and saved the state

governments hundreds of millions of dollars.¹⁰

- **New York and New Jersey** each recently **reduced their inmate populations by 19-20%**, bucking a national trend which saw the prison population increase nationally by 12% between the years 2000 and 2008, through a combination of sentencing reforms, **drug treatment alternatives** to prison, and data-based **risk assessment in parole** decision making.¹¹
- **Mississippi** has **reduced its prison population by 22%**, **saving a projected \$450 million**, by increasing **earned credits** for clean prison disciplinary records, retroactively reinstating parole eligibility for nonviolent offenders after 25% of the sentence is served, basing parole decisions on **objective risk assessment**, providing judges with the discretion to sentence low-level drug offenders **to non-prison alternatives**, and instituting a **medical parole** program.¹² The Mississippi **crime rate dropped** to its lowest level since 1984.¹³
- **Kansas** modified its sentencing guidelines to place convicted drug offenders in mandatory **treatment programs** instead of prison and to **eliminate sentencing increases** for those with prior drug possession convictions.¹⁴ The state has saved more than **\$133 million**, while the **prison population decreased by 14.6%** and the **crime rate fell 18%**.¹⁵

Texas Reduces Crime and Recidivism Through Increased Treatment and Risk Assessment

- In 2007, **Texas**, the state with the third highest incarceration rate was facing an exploding corrections budget and a prison bed shortfall, and had been embarrassed in years prior by public outcry against excessive, decades-long imprisonment for minor drug offenses.¹⁶
- Legislation enacted in 2007 **increased treatment and diversion programs**, including residential and other substance abuse programs for probationers, parolees and inmates; expanded the **drug court system**; required parole officers **to identify parole eligible prisoners annually** and release them; initiated a **medical parole program**; and, diverted juveniles convicted of misdemeanors to residential programs.¹⁷
- A new Criminal Justice **Legislative Oversight Committee** began monitoring progress made under these reforms.¹⁸
- The Texas parole board's **validated risk assessment tool** sets paroling rate guidelines based on risk level, encouraging significantly higher approval rates for low-risk offenders; an annual report allows the public to see how the decisions of each parole board member align with the recommended rates.¹⁹
- These reforms helped **reduce the recidivism rate by 29%** among parolees and averted a projected

increase in the prison population, **saving the state \$443.9 million** in fiscal year 2008-09 alone.²⁰ Since 2007, **crime in Texas has fallen by over 8%** to its lowest level since 1973.²¹

- More recently, Texas modified its habitual offender law and expanded earned credit opportunities.²²

Michigan Closes 20 Facilities through Reentry and Drug Sentencing Reforms

- Beginning in the late 1970s, mandatory minimum drug laws, a parole board composed of political appointees, and the elimination of ‘good time’ credits had led Michigan to become one of four states in the U.S. to spend more on prisons than higher education, and saddled it with an overcrowded prison system.²³
- In the wake of publicized rape-murders by a parolee, Michigan replaced its civil service parole board with political appointees; the parole rate dropped from 68 to 48%, while reincarceration for technical parole violations increased.²⁴ The new board placed primary emphasis on the crime and prior record, such that inmates were “effectively resentenced for their crimes”.²⁵
- Beginning in 2002, the state focused on reversing the damage. A move from mandatory minimums to judicial discretion at sentencing in drug convictions resulted in nearly halving the percentage of drug offenders sentenced to prison terms.²⁶ Drug offenders sentenced under the previous scheme also became eligible for parole.²⁷
- The introduction of data-driven risk assessment in parole decisions, in 2005, has given the parole board

confidence in the process, leading to a **15% increase in parole rates**, along with a **42% reduction in technical parole violations** in spite of a 40% increase in size of the parolee population.²⁸

- The **Michigan Prisoner Reentry Initiative** (MPRI) assists released offenders and parolees with housing, employment, substance abuse and other services, based on their individual needs and risk.²⁹ MPRI participants **return to prison 33% less often** than similar offenders who are not MPRI participants.³⁰
- With a **12% decrease in the prison population**, the state was able to close up to twenty correctional facilities, resulting in a projected **\$118 million in savings**.³¹

¹ National Institute of Corrections, Statistics for the State of Massachusetts, 2008 Taxpayer Cost, *available at* <http://nicic.gov/features/statestats/?State=MA>. At \$215 per inmate, Massachusetts taxpayers spend 63% more than the national average – an amount exceeded only by New York, Vermont, Rhode Island, California and Alaska.

² Pew Center on the States, *One in 100: Behind Bars in America 2008* (2008), 16, *available at* http://www.pewcenteronthestates.org/uploadedFiles/8015PCTS_Prison08_FIN_AL_2-1-1_FORWEB.pdf.

³ Approximately forty-one percent of Massachusetts inmates were convicted of non-violent offenses. *See* DOC, *January 1, 2009 Inmate Statistics*, iv, *available at* http://www.mass.gov/Eeops/docs/doc/research_reports/Jan_1_population/112009.pdf.

⁴ 92% of inmates will re-enter society; the average period of incarceration is 4.75 years and currently more than 2 of every 5

Massachusetts inmates will be back in prison within three years of release. Massachusetts Department of Correction (DOC), *Strategic Plan 2010-2015* (2010) at 4, available at http://www.mass.gov/Eeops/docs/doc/strategic_plan_2010_2015.pdf; DOC, *Prison Population Trends 2009* (2010), available at http://www.mass.gov/Eeops/docs/doc/research_reports/pop_trends/Prison_Pop_Trends_2009.pdf.

⁵ DOC, *Quarterly Report on Admissions and Releases in the Massachusetts Department of Correction: Second Quarter 2011*, 1, available at http://www.mass.gov/Eeops/docs/doc/research_reports/admin_rel_2nd_qtr2011.pdf.

⁶ DOC, *Current Parole Admission and Release Trends at the Massachusetts Department of Correction* (July 2011), available at http://www.mass.gov/Eeops/docs/doc/research_reports/parole_admiss_rel_trends/Current_Parole_Trends_7_6_2011.pdf (34.3 inmates were released on parole, on average each month in the first half of 2011, compared with 85.6 people in 2010).

⁷ The state prison system is at 140% of its design capacity, with some facilities operating at 218% and 352% of capacity in 2010. DOC, *General Information about the DOC*, available at <http://www.mass.gov/doc>. Some facilities were operating at 218% and 352% of capacity in 2010. DOC, *Quarterly Report on the Status of Prison Overcrowding, Third Quarter 2010* at 1, available at http://www.mass.gov/Eeops/docs/doc/research_reports/overcrowding/3rd_10_overcrowding.pdf.

⁸ For example, after instituting double bunking, the level of inmate-on-inmate violence at Souza Baranowski nearly doubled and inmate-on-staff assaults subsequently increased by over 82%. See, DOC, *An Analysis of Race/Ethnicity and Assaults* (Sept. 2010), http://www.mass.gov/Eeops/docs/doc/research_reports/an_analysis_of_race_ethnicity_and_assaults_9_2010.pdf See also

DOC, 2nd Quarterly Report FY11 to Joint Committee on Public Safety and House and Senate Committees on Ways and Means Pursuant to DOC Budget Line Item FY08 8900-0001: Objective Point Base Classification. The report notes, “overall the incidents of assault have decreased” due to efforts to reduce overclassification and place more prisoners in lower security.

⁹ “Today over 60% of offenders in the DOC system enter the system reading below the 9th grade level and 56% of males and 40% of females enter the DOC with less than a 6th grade level in math proficiency. Roughly 50% of the offenders were not gainfully employed when they committed their crimes.” DOC, *Strategic Plan 2010-2015* (2010) at 4, available at http://www.mass.gov/Eeops/docs/doc/strategic_plan_2010_2015.pdf. Further, 21.4% of male prisoners and 60.8% of female prisoners have open mental health cases, the majority of whom require psychotropic medication. DOC, *Prison Population Trends 2009* (2010), p. 16, available at http://www.mass.gov/Eeops/docs/doc/research_reports/pop_trends/Prison_Pop_Trends_2009.pdf.

¹⁰ American Civil Liberties Union, *Smart Reform is Possible: States Reducing Incarceration Rates and Costs While Protecting Communities* (2011), p. 36, 41, 47, available at <http://www.aclu.org/files/assets/smartreformispossible.pdf>.

¹¹ Judith Greene and Marc Mauer, *Downscaling Prisons: Lessons from Four States* (2010), p. 1-2, available at http://www.sentencingproject.org/doc/publications/publications/inc_DownscalingPrisons2010.pdf.

¹² *Smart Reform is Possible*, supra n. xi, p. 30-33.

¹³ *Id.* at 34.

¹⁴ *Downscaling Prisons*, supra n. xii, p. 3.

¹⁵ *Smart Reform is Possible*, *supra* n. xiii at 25.

¹⁶ *Smart Reform is Possible*, *supra* n. xi, p. 18; *Texas Criminal Justice Reform: Lower Crime, Lower Cost*, Texas Public Policy Foundation PolicyPerspective (Jan. 2010), available at <http://www.texaspolicy.com/pdf/2010-01-PP04-justicereinvestment-ml.pdf>.

¹⁷ *Smart Reform is Possible*, *supra* n. xi, p. 20-21.

¹⁸ *Smart Reform is Possible*, *supra* n. xi, p. 20.

¹⁹ Council of State Governments Justice Center, *The National Summit on Justice Reinvestment and Public Safety: Addressing Recidivism, Crime and Corrections Spending* (2011), p. 21-22, available at <http://www.justicereinvestment.org/summit/report#summitrpt>.

²⁰ *Id.* at 57-59.

²¹ *Smart Reform is Possible*, *supra* n. xi, p. 17-18.

²² *Smart Reform is Possible*, *supra* n. xi, p. 23.

²³ *Downscaling Prisons*, *supra* n. xii, p. 27-28.

²⁴ *Downscaling Prisons*, *supra* n. xii, p. 32, 34.

²⁵ *Downscaling Prisons*, *supra* n. xii, p. 33.

²⁶ The percentage of people sent to prison for drug crimes fell from 20% in 1998 to 11% in 2008. *Downscaling Prisons*, *supra* n. xii, p. 30.

²⁷ *Downscaling Prisons*, *supra* n. xii, p. 30.

²⁸ *Id.* at 35-37.

²⁹ *Id.*

³⁰ Pew Center on the States, *State of Recidivism: The Revolving Door of America's Prisons* (2011), p. 21, available at http://www.pewcenteronthestates.org/uploadedFiles/Pew_State_of_Recidivism.pdf.

³¹ *Downscaling Prisons*, *supra* n. xii, p. 27, 40-41; *State of Recidivism*, *supra* n. xi, p. 21.

Prisoners' Legal Services
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PLS' address changed this past spring. The office is now at 10 Winthrop Square, 3d Floor, Boston, MA 02110. The phone numbers are the same: *9004# for DOC prisoners and (617) 482-4124 (collect) for county prisoners. The regular business number is (617) 482-2773