

**Mass Incarceration:
The Further Compromise of Public Safety**
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INTRODUCTION

The penal system does just as much damage as crime itself. It further erodes the social fabric rather than repairs it. The system ensures that the criminalized get what they deserve while portraying them as evil and unworthy people who deserve little more than reproach, suffering, and punishment. This is an observation that encapsulates the attitudes of the Department of Corrections (DOC) personnel. In the United States that punishment is *mass* incarceration. Rather than utilizing effective and proven strategies, such as Compassion Release, Presumptive Parole and Programs/Education, the system implores a “one size fits all” philosophy that does little to nothing to promote healing and change. If the strategies used in this article were implemented, money used to fund incarceration could be invested back into communities. This lack of rehabilitation maintains the status quo by allowing individuals, victims, their families and communities to remain broken, perpetuating “an unjust response to an unjust world leads to unjust communities” (Toews, 2006, p. 17). As one peels back the layers, obvious failures begin to emerge.

THE NUMBERS

The more than 2.3 million incarcerated individuals in the United States are often regarded as a throwaway population. While the criminal justice system focuses on giving the criminalized ““what they deserve”, it does little to restore the needs created by crime or to explore the factors that lead to it” (Toews, 2006, back cover). Citizens, including victims and their families, believe that when the judge’s gavel bangs and the prisoner is convicted, their involvement ends – a chapter of their life closed. Nothing could be further from the truth.

Close to 95 percent of all prisoners incarcerated will be released back into the community (Puleo and Chedekel, 2011, p. 1). Bearing this in mind, it is reasonable to assume that the “community” Puleo and Chedekel speak of could be anywhere in Massachusetts. This begs the question, what kind of released prisoner do you want living in your neighbourhood: one who is rehabilitated or one who wants to commit additional crime?

The answer seems obvious, but the ones who answer those questions are doing little to solve them.

One of the main tools used in identifying whether or not corrections are failing or succeeding is through the use of recidivism rates. In Massachusetts the mean recidivism rate is 47 percent.¹ This statistic seems to be in the top among other states. A three year study by the Pew Center on the States found that Minnesota led the way with 61.1 percent followed by California at 57.8 percent. Only five states, led by Oregon (22.8 percent), reported recidivism rates below 30 percent (PLN, 2012, p. 27). Yet, in the sardonic words of DOC Commissioner Michael Maloney: “Look, we don’t run this place based on research findings” (Haas, 2012, p. 15). Maybe they should since the failures continue to mount as more and more prisoners are released into society worse off than when they entered. With a failure ratio of almost two to one, change is in order.

In Massachusetts alone it costs taxpayers \$517,569,158 million annually to fund the state’s DOC.² The Vera Institute estimates the real cost of incarceration to be 14 percent higher than the costs highlighted in correction’s budgets alone (Vera, 2012). However, that *does not* include other incurred costs such as gasoline, transportation or the cost to run local County Correctional Facilities. Thus, the real cost to the Massachusetts taxpayer is upwards of a billion dollars annually (see www.realcostofprisons.org).

“Rising corrections costs might be acceptable if public safety is improved... and if recidivism is reduced. Yet, none of [this is] what drove the growth of the corrections budget over the past ten years” (Boston Globe 2009, B4). With the rising price tag to house prisoners, the economy being what it is, and data showing that 60 percent of prisoners leaving both DOC facilities (state prison) and House of Correction facilities (county corrections) reoffend within six years of release (MassInc., 2013, p. 20). This should raise concerns for members of the public.

From a national perspective, American taxpayers likely pay upwards of \$77 billion annually or more to incarcerate men and women in state and federal facilities (ACLU, 2012, p. 27). In addition one out of thirty-one people in the country are either incarcerated or on probation or parole (PLN 2009, p. 30). That is 3 percent of the population (ibid). Clearly not much is being done to ameliorate this trend. Take for example the 2011 DOC budget: of the half billion dollars being spent, only 2 percent is allocated to programming while 68 percent of the DOC budget goes toward employee

salaries (Haas, 2012, p. 5). This is not surprising seeing as one of every eight state employees works for a prison-related agency (PLNa, 2012, p. 26). Citizens of the Commonwealth are not getting their “bang for their buck” with those numbers. At half a billion dollars and recidivism at 47 percent, the people should be calling for better results. The system that is supposed to deter an individual from continuing their criminal behaviour, and thus protecting the public, is failing miserably. And it is the public that pays the price (pun intended). “That’s an unhappy reality”, the PLN (2012a) states, “not just for offenders, but for the safety of American communities”.

That “deterrence” comes in the form of a legal mandate here in the Commonwealth. Massachusetts General Law *mandates* that prisoners be rehabilitated as stated under the Powers and Duties of the Commissioner of Corrections, H.G.L. 124 § 1(e):

In addition to exercising the powers and performing the duties which are otherwise given him by law, the commissioner of corrections shall...

(e) establish, maintain, and administer programs of rehabilitation including but not limited to education, training and employment, of persons committed to the custody of the department, designed as far as practicably to prepare and assist each such person to assume the responsibilities and exercise the rights of a citizen of the Commonwealth.

Very few states have this legal mandate and that is what makes these failures all the more astounding.

AN ALTERNATIVE: COMPASSIONATE RELEASE

The American people, starting with Massachusetts, need to be more aware and involved in the affairs of the corrections and understand that their tax dollars could be better utilized rather than funnelling millions toward *mass* incarceration. Instead of correcting an individual it is creating victims. Money that could be better spent on society, education, Pell Grants and the like are being used as a DOC jobs program funded on the backs of the working class citizens at the expense of innocent victims. What may be worse is there are cost effective solutions that could be utilized but are not.

Take for example, Compassionate Release, being sponsored by Senator Patricia Jehlen (D), Senate Bill No. 1139. Compassionate Release (as it is known) is used in critical situations when a prisoner is very seriously of terminally ill and when a home care, hospice or hospital setting would be more appropriate to meet a person's medical needs.³ The prisoner petitions an Advisory Board. They review the case and forward their recommendation to the Governor who in turn recommends that the Parole Board grant a hearing. If granted, and approved by the Governor, the prisoner is released on parole and monitored by a parole officer and/or electronic ankle bracelet.

With the family now taking on the role of caregiver and incurring the costs of hospice, supplies, transportation and medical it makes the cost for security and health care less of a burden for the taxpayer and society as a whole. Based on statistical analysis of available data, the ACLU estimates that releasing an aging prisoner will save states, on average, \$66,294 per year per prisoner, including healthcare, other public benefits, parole and any housing costs or taxpayer revenue. Even on the low end, states will save at least \$28,362 per year per released aging prisoner (ACLU, 2012, p. ii).

In Massachusetts prisoners over the age of 50 represent 19 percent of the prison population. This age group is the fastest growing population representing a growth rate of 8.6 percent since 2009 (Haas, 2012, p. 3). On average, the annual cost to the taxpayers to house a prisoner is \$34,135 (ACLU, 2012, p. ii). But if that prisoner is over the age of 50 that price tag increases to \$68,270 (ibid). To put that number into context, the average household makes about \$40,000 a year in income (ibid).

For those who feel releasing someone from prison in order to save money is a risky proposition I would urge consideration of the following. Empirical studies repeatedly show that recidivism decreases as one ages. For example, in 2005, a study by the Pennsylvania Board of Probation and Parole, noted that of the 99 commuted sentences of life without parole, only one of those were released over the age of 50 returned for a new crime, which in this lone case was forgery and tampering with public records. This calculates to a recidivism rate of 1.01 percent. In New York only 7 percent of ex-prisoners aged 50 to 64 return to prison for new convictions (PLN 2004, p. 41). In Virginia, only 1.3 percent of ex-prisoners over 55 committed new crimes and were re-incarcerated (PLN 2014, p. 41). Research has conclusively shown that by age 50, a person has significantly outlived the years in which they are most likely to

commit crimes. For example, arrest rates drop to just over 2 percent at age 50 and are almost 0 percent at age 65 (ACLU 2012, p. vi).

Yet, from a daily cost, Compassionate Release is by far much cheaper than keeping them in prison. See the table below:

Breakdown of Annual Fiscal Savings Per Aging Prisoner Released (Middle Estimate, 2012)	
Incarceration Costs	+68,270
State Income Tax Revenue	+\$1,145
Parole Costs	-\$2,738
State Public Benefits Received	-\$298
Public Cost of Emergency Room Visits	-\$85
Total State Cost-Savings	+\$66,294

Table 1. *Breakdown of annual fiscal savings per aging prisoner released.*

Source: ACLU, “The Mass Incarceration of the Elderly” (2012, p. 38).

The average daily cost of parole in the U.S. is \$7.50, with a range as low as \$3.50 to a high of \$13.50 per day (ACLU 2012, p. 31). These numbers stand in stark contrast to what Massachusetts taxpayers contribute daily to incarcerate: \$124.66 (ibid, p. 25).

Should one continue to have misgivings about Compassionate Release, then consideration of the following example is in order.

One 72-year-old woman in a California prison suffers from emphysema, heart disease, and arthritis. She is incapable of walking more than fifty feet without stopping to catch her breath. The total cost of her heart treatment alone is \$750,000. The state must prepare her special medical diets, provide a prison cell that can accommodate her disability, and hire additional staff members to provide daily caretaking and monitoring (Gubler 2006, p. 7).

In Massachusetts there are a myriad of these same examples. For instance, Frank Soffen was convicted in 1973 of second degree murder. He has been eligible for parole since 1987 and has been before the Parole Board 11 times – *all denied*. The last two from a wheelchair and

is now fully confined to a bed. James “Ali” Flowers moved as a child from Mississippi to Boston. He soon got involved with a bunch of older teens that went on a crime spree, which resulted in a murder. He was subsequently convicted of first degree murder and has been in prison for 42 years. He suffers from full blown Dementia and does not know where he is nor can he communicate. He is infirmed and permanently confined to a bed. Lastly, Joe Labriola is a decorated Vietnam Combat Veteran who was awarded the Purple Heart and Bronze Star for Valor. He has maintained his innocence since 1973 and now enters year 41 of his imprisonment. He is confined to a wheelchair and is fully reliant on oxygen as he suffers with end stage Bronchiectases.⁴

Most of these examples, if not all, are no longer any threat to public safety. Frank and James are locked in the Health Services Unit where they are denied access to visits from friends in general population. They are left to die alone with no hope, peace or joy. Ali is locked in a bubble cell 24/7 and stares at the walls. One can only hope that he is dreaming of sailing on the wings of doves.

For those of you not swayed by the need to rely on alternatives to prison, consider the following. “[Y]ou actually create victims”, explains Burl Cain, Warden at Louisiana State Penitentiary in Angola, “by not letting (elderly prisoners) go and us[ing] your resources on rehabilitation for the ones who are going to get out... when I came here elderly population I said, ‘God, well, why are they here?’ Our name is corrections, to correct deviant behavior [but] there’s nothing to correct in these guys; they’re harmless...” (ACLU 2012, p. i). A sentiment that is easily corroborated by the 2 percent recidivism of those over aged 50.

From both a financial and security perspective, nothing could help reduce the cost(s) to the taxpayer more than Compassionate Release would. The bottom line is – how much is too much? Although there has been no record of re-offending by prisoners released due to medical reasons, the pundits continue to advocate for punishment over mercy (PLN 2012b, p. 12). However, where is the punishment for someone like James who has no idea that he is in prison? The debate between justice and mercy may never end, especially as an increasing number of advocacy groups continue to call for prison reforms in the wake of aging prisoners reaching record levels at growing expense to taxpayers. Compassionate Release is just one way of curtailing those expenses. The following is another.

HOPE THROUGH REHABILITATION

With the DOC allocating only 2 percent of their annual budget toward programming which has decreased by 9.5 percent since 2007, it is time we start creating alternative solutions to pick up the slack (Haas 2012, p. 6). Programs/Education is an essential part of the rehabilitation process. Equally as important, if not more, is the role ‘lifers’ have in that process. Prisoners serving life sentences, or ‘lifers’ as they are known, are an underutilized and unrealized tool the DOC has at their disposal, but fails to use. To better understand this philosophy there are several factors to consider.

First, ‘lifers’ more than any other group of criminalized persons understand the importance of second chances. With such ‘chances’ so few and far between, and so rigorously earned it is appreciated that much more. As evidenced in a 2011 study by the U.S. Bureau of Justice Statistics (BJS), which tracked 272,000 paroled prisoners in 15 states, and found that 1.2 percent of those released after serving a sentence for murder were rearrested on homicide charges within a three year period. In absolute terms, that’s 1.2 percent too many. But in relative terms, 1.2 percent was the lowest rate among all reported crimes committed by paroled prisoners, according to the BJS report. “Individuals who [are] released on parole after serving sentences for murder”, explains John Caher, spokesman for the New York State Division of Criminal Justice Services, “consistently have the lowest recidivism rates of any offenders” (Brodheim 2011, p. 18). One could even argue that the desire for reparation is much stronger in those who have taken so much. This possibly explains the success of such people.

This comes as no surprise to those who truly know the inner workings and dynamics of the prison ethos. Lifers are the cornerstones of the rehabilitation process. When those serving lesser sentences see lifers are rehabilitating themselves, they are forced to ask the question: Why? Why would a person with no chance of leaving prison, want to change himself? You would think that if anyone had an excuse to be bitter and angry it would certainly be a lifer. However, nothing could be further from the truth. Lifers reform themselves, not to impress others (there is no one to impress), but rather for the noblest of reasons: themselves. Prisoners see this and some say, “I want that too”. It can be contagious. When lifers have a sense of hope about themselves, it gives others

permission to do the same. It instills hope to the prisoner, which instills hope into the system. Nelson Mandela spoke about this in his 1994 inaugural address, “We were born to make manifest the glory of God that is within us... As we are liberated from our own fear, our presence automatically liberates others.”⁵ The ‘hope’ that I speak of, comes not just from rehabilitating oneself but from knowing that there *is* hope, a proverbial light at the end of the tunnel (NEJCCC 2002).

Through policies such as Compassionate Release, Parole or Commutation it encourages prisoners to want to change because they know that someday down the road they could possibly get out of prison. That light at the end of the tunnel gives hope to those who would ordinarily have none. By giving hope to them, you give hope to others, which in turn instills hope into the system. Hope that says, “I can be better than I used to be”. That message encourages prisoners to do just that. By attending programs, education or vocational training, little by little, imperceptibly at first, change begins to emerge. However, without those programs/education you stunt the growth of change.

In 2004, a 25-50 percent decrease in recidivism was noted for prisoners who had attended education programs (Antoniewicz 2004, p. 3). That same year the Governor’s Commission on Corrections Reform called attention to the dramatic decline in program offerings, noting that the DOC had cut full-time teaching positions, and eliminated vocational programs and academic offerings. Yet, the one prisoner expense category in the DOC budget that has decreased both in dollars and as a percentage of the total DOC budget is that for programs.

One such program is the Correctional Recovery Academy (CRA). The CRA is one of the Department’s strongest treatment programs. Prisoners live in separate housing units and are required to attend community meetings throughout the day. The program is funded by Spectrum Health Services and focuses on drug and alcohol treatment, as well as criminal thinking. Since 2004, the CRA has been removed from three facilities. It is currently in five prisons, which may explain why the wait list declined from 500 to just 92. DOC data show that hundreds and even thousands of prisoners are waitlisted for other services that have been shown to reduce recidivism [see table below] (MassInc 2013, p. 18).

Program	Total
Adult Basic Education	359
English as Second Language	304
GED	279
Pre-GED	379
Correctional Recovery Academy (Substance Abuse)	92
Substance Abuse Education	813
Criminal Thinking (Cognitive Behavioural Therapy)	1102
Violence Reduction	1592
Employment Readiness (Reentry) Workshop	489

Table 2. *Program Waitlist, January 2013.*

Source: MassINC., “Crime, Cost, and Consequences: Is it Time to get Smart on Crime?” (2013, p. 18).

What is more is that one of the mantra of the CRA is “Each One Teach One”. Prisoners take on mentor roles and play a big part in the success of a participants growth. Not all are lifers, but with an estimated 216,000 prisoners serving life sentences nationwide and 1,666 lifers in Massachusetts, the taxpayer has an untapped resource at their disposal.⁶ The DOC can work together with these prisoners, while administrators work toward increasing the funds allocated to programs/education.

MAKING A DIFFERENCE

Unless the American citizen is comfortable with the current state of our prison system, then they need to take a more vested interest in what happens behind the walls that are designed to keep people in and information from getting out. The number one problem with prison and judicial reform is that the information and flow of ideas are kept among those in the reform movement. There has to be a more consorted effort to get the word out to those who are not directly involved, namely, the

people who are unaware of the problems and issues that plague the progress of reform.

Organizations such as Bread & Water, Inc. and CURE-ARM Inc., are working toward changes in the Parole system, enacting a Presumptive Parole system focusing on managing successful reintegration to society. By working with legislators and academics, B&W/CURE get the information in the hands of those who are in a position to create policy, as well as educate the future college graduate. Both organizations use prisoners as their Steering Committees, ensuring that the incarcerated are not just represented, but their voices heard. Prisoners directly contribute to efforts such as Compassionate Release with firsthand knowledge, while also empowering lifers to effectuate change – inside and out. Yet, all of this is for nothing if the general public does not get involved.

Involvement consists of calling your legislators to urge them to vote on viable and effective reform issues. Choosing not to, increases the odds of taxpayers paying more and more without any significant return on their investment. No competent investor would put his money on something that has a close to 50 percent chance of failing. With the mean recidivism rate at 47 percent, and prison crowding projected to increase by 24 percent by 2019 (Reutter 2013, p. 50) that is exactly what the taxpayer is doing right now.

In 2011, David L. Hudson authored an article, “Why I Care about Prisoner Rights” (PLN 2011, p. 17). The reasons he stated stir up emotions that it would be remiss if I did not share with you.

Prisoners – whatever they have done – are still human beings worthy of some level of respect. I’ve quoted many times the words of Justice Thurgood Marshall from his concurring opinion in *Procunier v. Martinez*, 416, U.S. 396 (1974): ‘When the prison gates slam behind an inmate, he does not lose his human quality; his mind does not become closed to ideas; his intellect does not cease to feed on a free and open interchange of opinions; his yearning for self-respect does not end; nor his quest for self-realization concluded’.

Justice Anthony Kennedy said it even more succinctly in *Brown v. Plata*: ‘Prisoners retain the essence of human dignity inherent in all persons. Finally,...I believe strongly in the Bible verse Hebrews 13:3, ‘remember the prisoners as if chained to them’.⁷

However, for those who remain undeterred by Mr. Hudson's remarks, then I offer you the following from Martin F. Horn, a former Commissioner of the New York City Department of Corrections who now teaches at the John Jay College of Criminal Justice. In Horn's apt assessment, "This whole business is about managing risk. There's always going to be risk in the criminal justice system. The only way to eliminate it is to never let anyone out, and we can't afford that and it would not be just" (Brodheim, 2011).

As a lifer with over 21 years in prison, as well as numerous years in Department of Youth Services and Foster Care, I believe it affords me a unique perspective on the situation. Although I understand that not all prisoners may be willing to change just yet, I strongly believe that no one is beyond redemption. We have a moral obligation to be prepared for when those prisoners decide that they want to change. By considering the ideas proposed, we can achieve the ultimate goal of saving lives, rather than creating victims.

ENDNOTES

- ¹ Recidivism statistics gathered from various sources such as Haas (2012), MassINC. (2013) and PLN (2012a, p. 26).
- ² 2011 Annual Report available at <www.mass.gov/doc>.
- ³ To learn more about Compassionate Release go to <<http://betweenthebars.org/blogs/101>> or at <<http://www.malegislature.gov/people/findmylegislature>> or call (617) 722-2000.
- ⁴ To learn more about those stories go to <<http://motherjones.com/authors/james-ridgeway>> for "The Other Death Sentence" (September 25, 2011) and at <<http://thecrimereport.org/2009/12/10/the-greying-of-america%E2%80%99s-prisons>> for "The Greying of Americas Prisons" (December 10, 2009). Both pieces are by James Ridgeway. Also visit: <<http://realcostofprisons.org/blog/archives/20...>>
- ⁵ South African President Nelson Mandela, inaugural address – May 10, 1994.
- ⁶ The "216,000" figure is taken from Mullane, Nancy (2012) *Life After Murder*, New York: Public Affairs, p. 149. The approximate "1,666" lifers in Massachusetts can be found at <www.mass.gov/doc> at Massachusetts DOC institutional fact cards, July 2011. For more recent numbers consult the figures for 2013.
- ⁷ For "Why I Care About Prisoner Rights" by David L. Hudson, Jr. published on May 5, 2011 go to: <www.firstamendmentcenter.org>.

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