# Crime, Cost, and Consequences:

Is It Time to Get Smart on Crime?



COMMUNITY RESOURCES FOR JUSTICE

### **ABOUT MASSINC**

Massachusetts Institute for a New Commonwealth (MassINC) is a non-partisan think tank and civic organization focused on putting the American Dream within the reach of everyone in Massachusetts. MassINC uses three distinct tools — research, journalism, and civic engagement — to fulfill its mission, each characterized by accurate data, careful analysis, and unbiased conclusions. MassINC sees its role not as an advocacy organization, but as a new kind of think tank, rigorously non-partisan, whose outcomes are measured by the influence of its products in helping to guide advocates and civic and policy leaders toward decisions consistent with MassINC's mission, and in helping to engage citizens in understanding and seeking to influence policies that affect their lives.

### ABOUT COMMUNITY RESOURCES FOR JUSTICE

For more than 130 years, Community Resources for Justice has been improving public safety while helping some our society's most challenged individuals develop their full potential. We help men and women released from incarceration to successfully re-enter mainstream society; we steer at-risk youth away from crime and toward productive lives; we offer adults with developmental disabilities the chance to flourish while living in the community. Our national-scale research and consulting practice accelerates system-level changes in corrections policy by using evidence-based practices. Working with our partners, we strengthen individuals, families, and communities. More information available at www.crj.org.

### ABOUT THE MASSACHUSETTS CRIMINAL JUSTICE REFORM COALITION

The Massachusetts Criminal Justice Reform Coalition, formed in 2012, is a diverse group of prosecutors and corrections practitioners, defense lawyers, community organizers, and businessmen and women who find common ground in the need for corrections reform in Massachusetts. The Coalition co-chairs are: Wayne Budd, former US Attorney; Kevin Burke, former Secretary of Public Safety; and Max Stern, President of the Massachusetts Association of Criminal Defense Lawyers. The Coalition's purpose is to work with lawmakers to make major changes in the criminal justice system in Massachusetts, including:

- Placing a moratorium on new prison construction
- Reestablishing and empowering the state's Sentencing Commission
- Building a statewide reentry initiative modeled after Boston's Emergency Reentry program
- Redirecting resources from the most costly settings to pre-release and drug programming
- Developing clear lines of responsibility for post-release supervision

### **ACKNOWLEDGMENTS**

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Dear Friends,

The Massachusetts Criminal Justice Reform Coalition is proud to present *Crime, Cost, and Consequences: Is It Time to Get Smart on Crime?* This report provides the foundation for the Coalition's effort to fuse research, public education, and civic discourse into a multi-year campaign to make the Commonwealth a leader in the field of corrections.

Our Coalition is made up of experts with diverse backgrounds and perspectives. We are prosecutors and corrections practitioners, defense lawyers and community organizers, and businessmen and women drawn together by a sense of urgency about reforming the criminal justice system in Massachusetts — a system that costs taxpayers \$1.2 billion a year and lags behind the country in implementing reforms proven to reduce costs and improve public safety.

In this first report, the Coalition seeks to provide the public with information on the real costs of our current approach to criminal justice. As crime rates continue to drop nationally and here in Massachusetts, the state's prison population spirals ever higher because of outdated "tough on crime" policies that have more political than practical value.

In this difficult fiscal environment, corrections budgets are unnecessarily crowding out other state spending, including funding for public health, higher education, and local aid. Without a change of course, the Executive Office of Administration and Finance estimates that at least \$1 billion will be needed for new facilities, with operating costs growing by \$120 million annually.

This new report looks to models developed elsewhere, including in many "red states" that have stopped prison construction, reduced mandatory sentences, and invested in evidence-based programs to cut cost and increase public safety. Instead of spending more on what doesn't work, states like Arkansas, Georgia, South Carolina, and Texas are spending less on what does.

As the report points out, these are instructive examples for Massachusetts. We hope this research sparks a serious discussion on how to bring the Commonwealth into line with innovative reform efforts around the country, and in doing so, lower costs and increase public safety.

Sincerely,

Massachusetts Criminal Justice Coalition Co-Chairs

Wayne A. Budd	Kevin Burke	Max D. Stern
Former US Attorney	Former Secretary of	Partner
Senior Counsel	Public Safety and Security	Stern Shapiro Weissberg & Garin LLP
Goodwin Procter LLP	Visiting Professor	President
	Endicott College	Massachusetts Association of
		Criminal Defense Lawvers

#### **EXECUTIVE SUMMARY**

Massachusetts boasts an impressive track record as a progressive laboratory of democracy. In major spheres of public policy, including clean energy, education, and healthcare, the Commonwealth continues to break new ground and provide national leadership. Unfortunately, with criminal justice, an issue that cuts to the core of our social fabric, Massachusetts has passed the baton.

Since the early 1980s, the percentage of the population confined in the state's prisons and jails has tripled. This stunning growth is the result of criminal justice policies adopted in the late 1980s and early 1990s. Due to these laws and practices, those who commit a felony today are more likely to face imprisonment and they will spend more time behind bars compared with offenders in the past. Massachusetts was not alone in pursuing this "tough on crime" approach. However, as a growing body of research began to reveal the high cost and poor outcomes associated with it, many states replaced this outmoded model with a set of more objective, data-driven corrections policies; in stark contrast, Massachusetts has resisted change.

Crime, Cost, and Consequences: Is It Time to Get Smart on Crime? is a call to action. The report advances the reform dialogue by: highlighting the direct and indirect costs of Massachusetts's current approach to corrections; presenting innovations from other states that can reduce these costs and improve public safety; and outlining recommendations that will position our corrections system to achieve similar outcomes in the Commonwealth. Major findings are summarized below:

1. When weighing the public safety gains against the direct cost to the taxpayer, Massachusetts's current policies appear to carry a hefty price tag. Lack of data and limited transparency make it difficult to perform true cost-benefit analysis. Nevertheless, a review of trends reveals four inefficient

## THE COSTS & CONSEQUENCES OF CURRENT CORRECTIONS POLICY

Massachusetts's inefficient corrections policies are costly, particularly when you consider that these are not one-time expenses, but rather bills that come due for the taxpayer year after year. Without reform, over the course of the next decade Massachusetts will spend:

- \$1.5 billion incarcerating offenders for longer periods relative to 1990
- \$900 million incarcerating more drug offenders relative to 1985
- \$160 million moving inmates to highersecurity facilities relative to 1990
- \$200 million in uncollected taxes from lost wages relative to 1987

### cost drivers:

- The cost of incarcerating offenders for longer periods. Massachusetts spends an estimated \$150 million annually to keep inmates confined for longer stays than those committing similar offenses in 1990. Because actual data are not available to track changes in average time served, this estimate assumes Massachusetts is near the national average of a one-third increase since 1990. Studies demonstrate that keeping many types of nonviolent offenders in prison longer provides little to no public safety benefit.
- The cost of keeping more drug offenders in state prisons. Reducing the number of inmates serving time for drug offenses to 1985 levels would save \$90 million annually. Drug offenders account for more than one-quarter of the growth in the state prison population since 1990. This stands out as a particularly inefficient product of sentencing policy 70 percent of DOC inmates currently incarcerated for a drug offense were sentenced under mandatory minimum statutes.

Research suggests these policies are not costeffective since incarcerating drug offenders for longer periods does little to deter the commission of these crimes and serving prison time makes these inmates more likely to reoffend upon release.

- The cost of confining more offenders in higher-security settings. The shift to higher-security settings relative to the 1990 classification structure costs the state approximately \$16 million annually. Moving an inmate up a security level costs about \$10,000 annually. In 1990, less than 8 percent of DOC inmates were confined in maximum-security facilities; these prisons held more than 18 percent of DOC inmates in 2012. In absolute terms, the number of offenders serving time in the most secure facilities grew by more than 200 percent over the last two decades.
- The cost of elevated repeat offending resulting from unsupervised release and inadequate reentry programming. If Massachusetts could reduce the number of recidivists by just 5 percent, it would generate up to \$150 million in annual savings. New data following the 2005 release cohort show that about 60 percent of inmates exiting state facilities and a similar fraction of those leaving county facilities are convicted on new charges within six years of release. In FY 2011, nearly two-thirds of drug offenders and almost 60 percent of non-drug offenders received sentences where the minimum and maximum were very similar. This sentence structure limits parole eligibility, reducing the incentive offenders have to take steps to self-rehabilitate while in prison. It also means more offenders return to the community without supervision. In 2011, nearly half of inmates released to the street from DOC facilities received no supervision.

- 2. "Tough on crime" policies are increasingly linked to both opportunity costs and collateral costs. Fully accounting for these indirect costs provides additional evidence that these policies are not cost-effective.
- In this challenging fiscal environment, every additional dollar spent on corrections is offset by cuts to other state agencies. This reduces the availability of services that have a preventative effect on crime. For example, a decade ago, state support for higher education surpassed spending on corrections by 24 percent. Today, the budget for prisons, probation, and parole is 6 percent greater than the state higher education budget.
- Incarceration has a lasting impact on the economic potential of ex-offenders with real implications for their families. On average, former inmates earn 40 percent less annually than they would have had they not been sent to prison. Based on this national estimate, formerly incarcerated workers in Massachusetts lose approximately \$760 million in wages annually. For the state, this amounts to as much as \$20 million a year in reduced tax collections relative to 1987 incarceration rates.
- Incarceration also has important implications for the communities that disproportionately bear the burden of sending and receiving offenders. Just 10 Massachusetts cities, representing only one-quarter of the state's population, suffered from more than half of all violent crime committed in the Commonwealth in 2010. Homicides, which cause the most social upheaval, were even more highly concentrated, with more than two-thirds of all murders in the state occurring in these 10 communities. Similarly, 10 communities received half of all DOC inmates released to the street in 2011.

3. A significant number of states, including many with politically conservative leadership, have recognized that they cannot build their way to public safety with more prisons. These states have aggressively reduced prison terms and reprogrammed resources toward less costly, evidence-based alternatives to incarceration, pushing down prison populations and crime rates simultaneously. The approach these states have taken is rooted in hard data and careful cost-benefit analysis. While Massachusetts has flirted with this model, the Legislature has not created the structures in statute to move the bureaucracy solidly in this reform direction.

The development of this policy framework, known as Justice Reinvestment, has received intensive support from the Pew Center for the States and the Council of State Governments. These independent intermediaries have brought real resources to support reform efforts in more than a dozen states. The US Bureau of Justice Assistance has also redefined the federal role. Instead of providing grants to states that build more prisons, the agency now provides resources to states that move toward Justice Reinvestment.

Massachusetts has repeatedly pursued these reforms. The Romney administration formed two commissions that made progress but ultimately proved to be unable to achieve deep systemic change. In 2011, the Legislature assembled the Special Commission to Study the Criminal Justice System, and the Patrick administration has courted the Pew Center on the States. But support for Justice Reinvestment in Massachusetts remains lukewarm, as evidenced by the passage of legislation commonly referred to as the Three Strikes Bill in August 2012. This law requires a life sentence without the possibility of parole for habitual offenders who have two previous convictions with felony sentences resulting in imprisonment for over three years. While the Three Strikes law also includes a number of reform provisions, it excludes the push for rigorous assessment and cost-benefit analysis that have grounded successful reform legislation in other states.

4. If Massachusetts continues on the current course, the analysis contained in this report suggests the state will spend more than \$2 billion over the next decade on corrections policies that produce limited public safety benefit. To prevent the inefficient allocation of future resources, the Massachusetts Criminal Justice Reform Coalition offers eight recommendations. Implementing these reforms will put the Commonwealth on the path toward a data-driven approach that protects public safety, holds offenders accountable, and controls correctional costs

- I. Place a moratorium on the expansion of state and county prisons;
- Empower the Sentencing Commission to revisit the state's approach to sentencing and sanctions;
- Clearly delineate responsibility for all postrelease supervision to the Parole Board and pretrial and diversion to the Probation Department;
- 4. Expand the use of community supervision and pre-release;
- Make Boston's Emergency Reentry Program a model for urban centers across the state;
- 6. Complete an extensive survey of conditions of confinement, programming, and program quality across the system;
- 7. Standardize data systems and reporting protocols, and funnel information to a central research center:
- 8. Understand how the state's corrections system can be oriented toward Justice Reinvestment and develop a strategy to build a culture of data-driven decision-making with the agencies.