

THE WAY HOME: THE URGENCY OF DECARCERATING WOMEN IN MASSACHUSETTS

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Disclaimer

This report is authored by the Women’s Incarceration Conditions and Reentry Project (Women’s Project) of Prisoners’ Legal Services of Massachusetts (PLS). As such, it focuses on women, both cisgender and transgender, and other gender-marginalized people; the patterns that lead to their incarceration; and the urgency of decarcerating them. The reason for this is that women and other gender-marginalized people are often excluded from prisoners’ rights advocacy, prison reform, and decarceration efforts. While this report does not focus on cisgender men, PLS recognizes the urgency of decarcerating cisgender men and actively supports their decarceration.

A Note About Language

People frequently use the terms “prison” and “jail” interchangeably, but they are not the same type of facility. In Massachusetts, prisons operate under the authority of the Massachusetts Department of Correction. The majority of people incarcerated in prisons are serving felony convictions or are civilly committed. Jails and houses of correction operate under the authority of county sheriffs’ offices. The majority of people incarcerated in jails are pre-trial detainees, and the majority of people incarcerated in houses of correction are serving misdemeanor offenses. The Plymouth County House of Correction also incarcerates people who are detained by Immigration and Customs Enforcement (ICE).

Further, this report will use person-first terminology where possible. Terms such as “inmate,” “offender,” “convict,” and “criminal” are harmful and dehumanizing because they reduce people in prisons and jails to their incarcerated status, and this dehumanization normalizes harm toward people trapped in carceral systems. This report may utilize quotes that use such terminology because it is so pervasive but will otherwise use person-first language.

Introduction

Since the passage of the Criminal Justice Reform Act of 2018, the rate at which the Commonwealth incarcerates women has dramatically declined.¹ Since 2017, women's pretrial detention rates have declined by 30%; the population of women sentenced in county houses of correction (HOCs) has declined by 42%; and the population of women sentenced in the Massachusetts Department of Correction (DOC) has declined by a staggering 63%.² At the same time, rates of criminalized activity have also significantly declined,³ indicating that decarceration is not having a negative impact on public safety. Despite these incredible strides in women's decarceration, and mounting public pressure to implement decarceration as meaningful and well-resourced policy, Massachusetts is still seeking to spend over \$50 million in taxpayer funds to build a new women's prison.⁴

PLS published a report in July of 2022, entitled *A Different Way Forward*, detailing the harms incarcerated women throughout Massachusetts face.⁵ The overwhelming majority of women interviewed and surveyed for the report stated that they had either experienced or witnessed sexual misconduct or harassment by correctional or other staff. Women also reported experiencing physical violence, threats of violence, and verbal bullying from staff. Women incarcerated throughout the Commonwealth reported pervasive retaliation for reporting staff sexual misconduct, and several women reported that they had experienced physical and sexual violence prior to incarceration as well, indicating that incarceration is compounding existing trauma. Women reported experiences and conditions in Massachusetts prisons and jails that have exacerbated mental illness and reported that mental health care is woefully inadequate to virtually nonexistent.

Transgender women incarcerated throughout Massachusetts reported a lack of access to gender affirming health care, resources, and programming, and reported spending extended periods of time in solitary confinement. Transgender women also reported undergoing unclothed searches

¹ Ben Forman et al., *Crim. Just. Reform in Mass.: A Five-Year Assessment*, BOS. INDICATORS 20 (Jan. 2024), https://www.bostonindicators.org/-/media/indicators/boston-indicators-reports/report-files/criminaljusticereform_report_12224.pdf.

² *Id.*

³ Kristina D'Amours, *Crime Rates Decline Despite Perceptions*, WWLP (Mar. 20, 2024, 5:08 AM), <https://www.wwlp.com/news/local-news/crime-rates-decline-despite-perceptions/>.

⁴ DEP'T OF CORR', COMMONWEALTH OF MASS., B583, CAP. INV. PLAN FY2025-2029: WOMEN'S CORR. FACILITY (2024), <https://budget.digital.mass.gov/capital/fy25/beneficiary-agency/public-safety/department-of-correction/b583/>.

⁵ Sarah Nawab, *A Different Way Forward: Stories from Incarcerated Women in Mass. & Recommendations*, PRISONERS' LEGAL SERV. OF MASS. (July 11, 2022), https://plsma.org/wp-content/uploads/2022/07/PLS_A-Different-Way-Forward-2022_07_11.pdf.

conducted by male officers, despite having specified their preference to have female officers conduct those searches, and reported experiencing harassment based on their transgender status.

Incarcerated women who are Black, Indigenous, and people of color (BIPOC), reported issues of racism. Some women reported that officers engaged in overtly racist behavior, including using racial slurs. BIPOC incarcerated women reported experiencing job discrimination and worse medical and mental health care as compared to white incarcerated women. BIPOC incarcerated women with English as a second language reported struggling to be heard, understood, and addressed due to inadequate interpretation services. Black incarcerated women reported that the canteen does not carry hair, skin, and hygiene products appropriate for their skin type, hair texture, and health.

Given the immense trauma women reported experiencing prior to and during incarceration, *A Different Way Forward* made several recommendations, including decarceration. This follow up report seeks to expand upon that recommendation by highlighting existing pathways to decarceration that are currently underutilized and detailing new pathways to decarceration that should be passed by the Massachusetts State Legislature. This report comes at a time when incarcerated people at the Massachusetts Correctional Institution in Framingham (MCI-Framingham), the Commonwealth's only women's prison, are publicly speaking up for themselves⁶ at an unprecedented rate and are being clear about what they need from the Commonwealth: not to build a new women's prison, but to decarcerate, find pathways home, and invest in communities.

⁶ Fams. for Just. as Healing, *Incarcerated Women Urge Legis. to Pass Prison Moratorium*, YOUTUBE (Jan. 8, 2024), <https://www.youtube.com/watch?v=saVt6OgonNQ>.

Part I: The Context

MCI-Framingham is the oldest women’s prison in the nation.⁷ Historically, DOC has neglected to maintain and repair the prison, which has resulted in significant deterioration.⁸ MCI-Framingham was built in the name of reform, with the purpose of helping women, and yet today it stands as a source of abuse, neglect, and harm.⁹ The latest alleged example of this is the September 4, 2024 charging of an MCI-Framingham correction officer with four counts of rape and three counts of indecent assault and battery.¹⁰ The officer is accused of raping a woman in the prison and buying underwear for multiple women incarcerated there.¹¹

Massachusetts now seeks to build a new women’s prison, citing the physical deterioration of MCI-Framingham.¹² DOC claims that this new prison will be “trauma-informed,”¹³ but changing the physical plant will not change traumatic conditions inherent to incarceration including invasive strip-searches, dehumanization, sexual assault and harassment, and family separation.¹⁴ Multiple past attempts to build so-called “trauma-informed” prisons for women have abjectly failed.¹⁵ One stark example is Massachusetts’s own Western Massachusetts Regional Women’s Correctional Center (WCC). WCC claims to take an “approach that is trauma-informed, gender-responsive, family-focused, and culturally aware,”¹⁶ but has been accused in recent years of sexual abuse by staff, humiliating conditions, and wrongful deaths. For example, women previously incarcerated at WCC reached a \$675,000 settlement with the state in April 2015 for enduring humiliating strip searches in front of male staff, and a correction officer was sentenced

⁷ Michelle Williams, *Cost to Renovate MCI-Framingham, the Oldest Women’s Prison in the U.S., Considered Prohibitive*, MASSLIVE (Feb. 26, 2020, 12:05 PM), <https://www.masslive.com/news/2020/02/mci-framingham-the-oldest-womens-prison-in-the-us-to-close-inmates-to-be-relocated-to-bay-state-correctional-center-in-norfolk.html>.

⁸ *Id.*

⁹ Nawab, *supra* note 5.

¹⁰ Heather Morrison, *Mass. Corr. Officer Facing Rape Charges Suspended Without Pay*, MASSLIVE (Sept. 5, 2024, 3:37 PM), <https://www.masslive.com/news/2024/09/mass-corrections-officer-facing-rape-charges-suspended-without-pay.html>.

¹¹ *Id.*

¹² The Ripples Grp., *Strategic Plan for Women Who Are Incarcerated in Mass.*, MASS. DIV. OF CAP. ASSET MGMT. & MAINT. (June 21, 2022), <https://www.mass.gov/doc/strategic-plan-for-women-who-are-incarcerated-in-massachusetts-0/download>.

¹³ *Id.*

¹⁴ Sierra Dickey, *Multiple States are Bldg. New Women’s Prisons, But Can They Be Stopped?*, PRISM (July 1, 2024), <https://prismreports.org/2024/07/01/states-building-new-womens-prisons/>.

¹⁵ Ella Fassler, *Design Firm Wants to Build “Feminist” Jails & Prisons. Abolitionists Say “No.”*, TRUTHOUT (Aug. 21, 2022), <https://truthout.org/articles/design-firm-wants-to-build-feminist-jails-and-prisons-abolitionists-say-no/>; Tamanika Ferguson, *Bldg. “Feminist Jails” Ignores a Larger Problem*, TRUTHOUT (Oct. 16, 2022), <https://truthout.org/articles/building-feminist-jails-ignores-a-larger-problem/>.

¹⁶ *W. Mass. Reg’l Women’s Corr. Ctr.*, HAMPDEN CNTY. SHERIFF’S DEP’T., <https://hcsoma.org/hcso-facilities/womens-center/> (last visited Oct. 9, 2024).

to jail time for having sex with incarcerated women in exchange for contraband.¹⁷ Simply put: there is no such thing as a trauma-informed prison.¹⁸

S.1979/H.1795: An Act establishing a jail and prison construction moratorium (the moratorium bill) is a bill pending in the Massachusetts State Legislature that would put a five-year moratorium on new jail and prison construction, while simultaneously allowing for necessary repairs.¹⁹ This five-year pause would give the Commonwealth an opportunity to take a step back and reconsider its plan to spend \$50 million on a new women’s prison²⁰ and instead invest that money on facilitating successful reentry for women, funding community systems of care and safety that prevent incarceration and reincarceration, and improving programming for incarcerated women as we seek to decarcerate. While the moratorium bill passed in the Legislature in the 2021-2022 legislative session, it was vetoed by Republican Governor Charlie Baker. In the 2023-2024 legislative session it was reported out favorably from committee, but as of the date of this writing, it has not made it to the floor for a vote. When advocating for successful passage of the moratorium bill, advocates often face pushback from policymakers who posit that a new prison is necessary given the ongoing deterioration of MCI-Framingham. However, on June 27, 2023, twenty-two people incarcerated in MCI-Framingham testified in support of the moratorium bill at a hearing of the Massachusetts State Legislature’s Joint Committee on State Administration and Regulatory Oversight.²¹ They stated that the issues with MCI-Framingham are cultural, not architectural, and that any new prison would have the same issues. This report anonymizes their names to protect them from potential retaliation for speaking out.

- ❖ “All of the women here could be moved to a new prison tomorrow, but it would not do any good to any of us because the internal problems here in Framingham are far more greater than the physical surface problems.” - Ms. A, testifying in support of the moratorium bill
- ❖ “If you move us, you’ll just be transferring our problems, not solving them.” - Ms. B, testifying in support of the moratorium bill
- ❖ “Instead of using that money to actually make an impact and change lives, the DOC would rather waste those resources to fund the construction of yet another facility that’s sole purpose is to warehouse people.” - Ms. C, testifying in support of the moratorium bill

¹⁷ Fassler, *supra* note 15.

¹⁸ Susan Sered et al., *Ineffectiveness of Prison-Based Therapy: The Case for Cmty.-Based Alt.*, 5-9 (2021), <https://bpb-us-e1.wpmucdn.com/sites.suffolk.edu/dist/1/1933/files/2021/11/Ineffectiveness-of-Prison-Based-Therapy-2021-1.pdf>.

¹⁹ H. 1795, 193rd Gen. Assemb., Reg. Sess. (Mass. 2023), <https://malegislature.gov/Bills/193/HD799>.

²⁰ DEP’T OF CORR., COMMONWEALTH OF MASS., *Supra* note 4.

²¹ *Matters Concerning Pub. Constr. & State Agency: Hearing on H. 2985 Before the Mass. State Legis.’ J. Comm. on State Admin. & Regul. Oversight*, 193rd Gen. Assemb., Reg. Sess. (Mass. 2023) (statements of incarcerated individuals at MCI-Framingham), <https://malegislature.gov/Events/Hearings/Detail/4612/Video2>.

PLS’s Women’s Project also interviewed eight people incarcerated in MCI-Framingham to inform this report, and they also spoke about the cultural issues at the prison. Their reports are also anonymized to protect them from potential retaliation.

- ❖ “As long as we prioritize security, we get a paranoid, abusive environment [We endure] COs screaming, watching us in the showers, watching us in our cells, making us uncomfortable.” - Ms. D, speaking in an interview
- ❖ “[There is] not enough personal privacy. Men [male COs] shouldn’t be able to see us on the toilet or shower Security outweighs our privacy, so we are always dehumanized in all ways, shapes, and forms.” - Ms. E, speaking in an interview
- ❖ “We are reliving trauma with the COs here.” - Mx. F, speaking in an interview
- ❖ “You can’t expect a human to act like a human being if you treat them like animals Incarceration does not heal or revitalize I learned self-respect, value, worth, [but] the prison ain’t teach me that – the lifers did.” - Ms. G, speaking in an interview
- ❖ “How is it healthy to lock anyone in a cage? What is rehabilitative about that? Look what they’re doing to people. They’re taking people and destroying our lives. They treat us horribly and they expect us to get healthy and be better.” - Ms. K, speaking in an interview
- ❖ “We’re not supposed to feel and think. Being in prison is dehumanizing Why put us in a place like this when they can’t allow women to feel good about themselves.” - Ms. R, speaking in an interview

Significant academic scholarship, including the works cited in this report, has detailed the harms women face prior to incarceration, as well as the ways in which prisons and jails exacerbate those harms. This report has the added benefit of the direct perspectives of incarcerated women. People incarcerated at MCI-Framingham are closest to the problems there, and the solutions. They have articulated that while MCI-Framingham is a harmful institution, investing in a new prison will only shift that harm to a new space. They have clearly stated that they need programming, re-entry support, and meaningful pathways to release. In addition to testifying in support of the moratorium bill at the Joint Committee on State Administration and Regulatory Oversight, women incarcerated in MCI-Framingham spoke in support of bills at hearings conducted by the Joint Committee on the Judiciary²² and the Joint Committee on Public Safety and Homeland Security.²³ In all three hearings, women discussed the importance of decarceration, given the fact that incarceration creates trauma, hinders rehabilitation, and does

²² *Crim. Just. Sys. Admin.: Hearing on Proposed Bills Related to Crim. Just. Before the Mass. State. Legis.’ J. Comm. on the Judiciary*, 193rd Gen. Assemb., Reg. Sess. (Mass. 2023) (statement of incarcerated individuals at MCI-Framingham), <https://malegislature.gov/Events/Hearings/Detail/4647>.

²³ *Corr.: Hearing on Proposed Bills Related to Crim. Just. Reform Before the Mass. State. Legis.’ J. Comm. on Pub. Safety & Homeland Sec.*, 193rd Gen. Assemb., Reg. Sess. (Mass. 2024) (statement of incarcerated individuals at MCI-Framingham), <https://malegislature.gov/Events/Hearings/Detail/4659>.

little to make communities safer. People incarcerated in MCI-Framingham are the mothers, grandmothers, aunts, sisters, cousins, friends, and neighbors of our communities. They are caregivers and supporters of their families, friends, and each other. This report will delve into pathways to decarceration, supported by their words and experiences.

Part II: Pathways to Decarceration

Studies show that incarcerated women often experience gender-based violence prior to incarceration, and that it is often those exact patterns of violence that result in their incarceration.²⁴ These patterns can include defending themselves or their children from domestic violence, being unable to protect their children from a person who is abusing them, or acting under duress of a person who is abusing them.²⁵ The trauma women experience prior to incarceration is then compounded by their experiences behind bars, whether through illegal sexual violence or harassment by prison and jail staff,²⁶ or through the ordinary functions of incarceration, such as unclothed searches or monitoring while changing, showering, and toileting.²⁷ Carceral systems are rooted in the same cultural dynamics that give rise to abuse; for example, a hallmark of abusive relationships is the exercise of power and control, which is also the purpose of the prison system. The fact that incarceration compounds women’s trauma, rather than healing it, indicates the necessity of decarceration and funding community systems of care that prevent harm and help women heal.

The rate of women’s incarceration in Massachusetts has steadily been declining, positioning the Commonwealth to continue this trend and decarcerate women instead of wasting \$50 million in taxpayer funds to build a new women’s prison.²⁸ Many of the pathways to decarceration recommended in this section are reiterated from PLS’s *A Different Way Forward* report, with updated citations and statistics as well as additional information on how to strengthen and expand these pathways. This report will first describe pathways that already exist but are underutilized and in need of reform to be more effective, and then detail new possible pathways that should be passed by the state Legislature.

- ❖ “Most of the people, like myself, are first-time offenders who are battling with underlying issues of trauma and substance abuse. These types of people would be effectively rehabilitated by the use of . . . alternatives to prison.” - Ms. H, testifying in support of the moratorium bill
- ❖ “When I get out . . . I’m by myself. It would be a lot easier if the \$50 million would be used for halfway homes, possible furloughs, places where we could go where we can work on reintegrating into the community.” - Mx. I, testifying in support of the moratorium bill
- ❖ “We aren’t the same women we were years ago.” - Ms. E, speaking in an interview

²⁴Aleks Kajstura & Wendy Sawyer, *Women’s Mass Incarceration: The Whole Pie 2024*, PRISON POL’Y INITIATIVE (Mar. 5, 2024), <https://www.prisonpolicy.org/reports/pie2024women.html>.

²⁵ *Analysis & Vision*, SURVIVED & PUNISHED, <https://survivedandpunished.org/analysis/> (last visited Oct. 10, 2024).

²⁶ *Id.*

²⁷ Nawab, *supra* note 5.

²⁸ DEP’T OF CORR’, COMMONWEALTH OF MASS., *supra* note 4.

- ❖ “The overwhelming majority of people that are in prison would learn . . . with societal guidance.” - Ms. J, speaking in an interview
- ❖ “You’re locking people up because of who they were 10 years ago.” - Ms. K, speaking in an interview

Existing but Underutilized Pathways to Decarceration in Need of Reform

Parole

Parole²⁹ is a legal mechanism by which incarcerated people can be released prior to completion of their sentences. To be granted parole, incarcerated people must go before the Massachusetts Parole Board³⁰ (the parole board) and present arguments for release in a hearing. The parole board may grant parole if it “is of the opinion, after consideration of a risk and needs assessment, that there is a reasonable probability that, if such a person is released with appropriate conditions and community supervision, the person will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society.”³¹ Incarcerated people released on parole usually serve the remainder of their sentence in their communities under the parole board’s supervision and are subject to specific rules and conditions of behavior. Conditions of parole can include:³² (i) finding and maintaining employment; (ii) maintaining a permanent residence; (iii) refraining from using certain substances; (iv) staying within a certain area; (v) making any child support payments; (vi) refraining from associating with those who have a criminal record; (vii) attending alcohol or substance education classes; and (viii) reporting to a parole officer on a regular basis.

Unfortunately, the Massachusetts parole system is a failing one.³³ There are long delays in the process to obtain parole,³⁴ and people are frequently arbitrarily denied. The parole board approved just over half (55.1%) of all applications in 2023. Notably, from 2018 to 2023, the parole board only approved parole for 25% of the women who went before it. By contrast, the parole board approved parole for 55% of the men who went before it in those same years.³⁵ In other words, the parole board approved women for parole at less than half the rate at which it

²⁹ *Parole*, CORNELL L. SCH. LEGAL INFO. INST., <https://www.law.cornell.edu/wex/parole> (last visited Oct. 10, 2024).

³⁰ *Mass. Parole Bd.*, MASS. GOV, <https://www.mass.gov/orgs/massachusetts-parole-board> (last visited Oct. 10, 2024).

³¹ Mass. Gen. L. ch. 127, § 130 (2024), <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVIII/Chapter127/Section130>.

³² *The Basics of Parole*, L. OFF. OF PAUL R. MORASKI, <https://www.massdefense.com/the-basics-of-parole/> (last visited Oct. 10, 2024).

³³ Jorge Renaud, *Grading the Parole Release Sys. of All 50 States*, PRISON POL’Y INITIATIVE (Feb. 26, 2019), https://www.prisonpolicy.org/reports/grading_parole.html.

³⁴ Editorial Board, *An Overwhelmed Parole Bd. Means Just. Delayed*, BOS. GLOBE (Oct. 15, 2024, 4:00 AM), <https://www.bostonglobe.com/2024/10/15/opinion/parole-board-commutations-healey-sjc/>.

³⁵ Gordon Haas, *Parole Decisions for Lifers for the Year 2023*, LIFER’S GRP. 20 (Feb. 2024), <https://www.realcostofprisons.org/writing/haas-parole-decisions-for-lifers-2023.pdf>.

approved men for parole. These numbers indicate that the parole board has a pattern of disproportionately denying incarcerated women the opportunity for parole. Further, even those people to whom the parole board grants parole often face severe delays in actually being released.³⁶ The parole board also routinely denies requests to end parole supervision, which can result in people remaining under the harsh conditions of parole for years, or even the remainder of their lives.³⁷ People who violate the conditions of their parole are typically reincarcerated. Notably, between 2017 and 2019, nearly 90% of people on parole that the Commonwealth returned to custody were returned for technical, i.e. non-criminal, violations of their parole conditions.³⁸

Massachusetts recently took the important and positive step of eradicating parole fees.³⁹ Prior to this decision, people on parole would have to pay \$80 every month for parole fees. These steep fees prevented people on parole from being able to dedicate more money to necessities like housing and childcare, thus making reentry more precarious, which in turn fed into incarceration and did little to prevent harm. Eradicating these fees shows the Commonwealth's willingness and ability to reform parole to make parole a more effective pathway to decarceration, and Massachusetts should continue with this trend.

S.1544/H.2398: An Act to promote equitable access to parole⁴⁰ (the parole reform bill), would have required the parole board to grant each parole-eligible person parole unless there is clear and convincing evidence that the person would not live free without violating the law. The bill also provided that if incarcerated people have been assessed as low risk, have completed their institutional program plan, or have been placed in minimum security or pre-release, the parole board should take that as an indication that they are ready for parole. Further, this bill stated that the parole board must consider participation in work, educational, and programming opportunities as well as whether community-based risk reduction programs would minimize risk of re-offending. These reforms would not only strengthen the parole pathway to decarceration and facilitate successful reentry but also lower recidivism rates by ensuring that people have the

³⁶ Jenifer B. McKim, *Parole in Mass.: Free to Go, But Not to Leave*, WGBH (Sept. 4, 2020), <https://www.wgbh.org/news/local/2020-07-08/parole-in-massachusetts-free-to-go-but-not-to-leave>.

³⁷ Sarah Betancourt, *Many Former Prisoners Are on Parole Indefinitely. One Year Into New Rules, It's Finally Ending for Some.*, WGBH (Dec. 27, 2023), <https://www.wgbh.org/news/local/2023-12-27/many-former-prisoners-are-on-parole-indefinitely-one-year-into-new-rules-its-finally-ending-for-some>.

³⁸ Rep. Miranda & Sen. Jehlen, *Reduce Reincarceration for Tech. Violations of Parole: H. 1798 & S. 1600*, AM. CIV. LIBERTIES UNION OF MASS., https://www.aclum.org/sites/default/files/field_documents/parole_bill_fact_sheet_091521.pdf (last visited Oct. 10, 2024).

³⁹ Amanda Beland & Tiziana Dearing, *How Eliminating Fees for Prob. and Parole Impacts Those Leaving Incarceration*, WBUR (Sept. 29, 2022), <https://www.wbur.org/radioboston/2022/09/29/probation-parole-fees-incarceration>.

⁴⁰ S. 1544, 193rd Gen. Assemb., Reg. Sess. (Mass. 2023), <https://malegislature.gov/Bills/193/S1544>.

resources they need to successfully reenter the broader community upon release from incarceration.⁴¹

Right now, the parole system contributes to mass incarceration and does not sufficiently facilitate release or support reentry. The parole board should work with DOC to ensure that every incarcerated person has a programming plan that sets them up to be successful at their first parole hearing, limit the amount of time people are under parole supervision, limit the harsh conditions of parole, and not reincarcerate people for technical violations of parole. Unfortunately, the committee on Public Safety and Homeland Security sent S.1544/H.2398 to study this legislative session, but if this bill or a similar one is re-filed in the next session, the Legislature should act on it without delay. Notably, parole reform is one prominent area of the criminal legal system that was not changed during the 2018 Criminal Justice Reform Act overhaul.

Medical Parole/Compassionate Release

Medical parole, also known as compassionate release, is a legal mechanism by which the DOC commissioner can release incarcerated people who are terminally ill or permanently physically or cognitively incapacitated prior to completion of their sentences.⁴² People released on medical parole remain under the supervision and control of the parole board, and the parole board imposes the terms and conditions for medical parole that apply until the sentence has expired.⁴³ The parole board also revokes medical parole if people released violate a condition of their medical parole or if their health improves.⁴⁴ Incarcerated people can have an attorney, advocate, or family member submit a petition on their behalf, they can submit a petition on their own behalf if they are able, and DOC or its contracted medical provider can submit petitions on incarcerated people's behalf.⁴⁵ The medical parole statute does not prescribe a format for the petition,⁴⁶ and the Supreme Judicial Court of Massachusetts affirmed that no specific format is required.⁴⁷

While the current medical parole statute created an important pathway to decarceration, DOC has interpreted it narrowly and needlessly limited its application. A bill, S.1535/H.2319: An Act to

⁴¹ Sen. Miranda & Rep. Sabadosa, *Support Key Improvements to Parole: S. 1544 & H. 2398*, PRISONERS' LEGAL SERV. OF MASS., <https://plsma.org/wp-content/uploads/2023/03/23-24-Equitable-Access-to-Parole.pdf> (last visited Oct. 10, 2024).

⁴² Mass. Gen. L. ch. 127, § 119A (2024), <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVIII/Chapter127/Section119A>.

⁴³ *Id.*

⁴⁴ *Emma v. Mass. Parole Bd.*, 488 Mass. 449, 450 (Mass. 2021).

⁴⁵ G. L. c. 127, § 119A, <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVIII/Chapter127/Section119A>.

⁴⁶ *Id.*

⁴⁷ *Buckman v. Comm'r of Corr.*, 484 Mass. 14, 25 (Mass. 2020).

ensure access to medical parole,⁴⁸ would have instituted much-needed reforms to our medical parole system that would have helped realize the original vision of the law and strengthened it as a pathway to decarceration. For example, the statute currently requires a licensed physician to determine an incarcerated person's medical eligibility, but inappropriately imposes a public safety assessment within the definition of terminal illness and incapacitation. As a result, when the commissioner denies incarcerated people's medical parole petitions based on medical ineligibility, it is often unclear whether the denial is because they are not medically terminally ill or incapacitated, or whether they presently pose a public safety risk. Worse yet, the commissioner frequently engages in the problematic practice of denying medical parole based largely on incarcerated people's crimes of conviction even though these do not accurately reflect people's current level of public safety risk. This bill would separate the public safety assessment from the definition of medical eligibility, ensuring that physicians determine medical eligibility and correctional professionals determine public safety risk. This bill also shifts the focus of the public safety risk assessment away from people's underlying convictions and towards the risk people pose in their current medical condition.

An additional issue with the current statute is that there is no way to ensure that cognitively incapacitated people have access to the medical parole process. To date, advocates have learned of their circumstances by chance, despite DOC's obstruction of access to information about them. This bill would require DOC to routinely screen incarcerated people age 55 and older for cognitive decline, and where cognitive incapacitation is indicated, the bill would require DOC to identify someone to petition for them or file the petition itself.

Moreover, as is the case with regular parole, people granted medical parole often face severe delays in being released under the current system. Even though the law currently requires the superintendent of a petitioner's institution to provide a comprehensive medical parole plan 21 days after a petition is filed, in practice, no meaningful release planning begins until after the commissioner issues a grant. This means that dying and incapacitated individuals often wait in prison for weeks and months after being granted medical parole. This bill would instead require that DOC create an actionable home plan within 35 days of receiving a petition if a physician deems an incarcerated person medically eligible, and it mandates that DOC release a person within seven days after granting medical parole absent documented extraordinary circumstances.

Unlike with regular parole, where the parole board can find a violation but decide to re-parole a person with different conditions and supports to avoid another violation, the courts have interpreted the medical parole statute to mean that a person released on medical parole must be reincarcerated in the event of a violation of parole conditions.⁴⁹ This revocation occurs

⁴⁸ S. 1535, 193rd Gen. Assemb., Reg. Sess. (Mass. 2023), <https://malegislature.gov/Bills/190/S770#:~:text=An%20Act%20providing%20community-based,by%20bill%2C%20Senate%2C%20No.>

⁴⁹ *Emma*, 488 Mass. at 450.

irrespective of circumstances surrounding the parole condition violation. This bill would make the revocation process for medical parole mirror the process for regular parole, allowing the parole board to re-parole someone after a violation where appropriate.

In the six years since its passage, DOC has failed to live up to the promise of compassionate release. At the start of 2023, 34% of incarcerated people in Massachusetts were age 50 and older, with 16% of those people being age 60 and older. Incarcerated people age more rapidly than the general population given pre-existing inequities in health care access and because living conditions inside prisons and jails are hard on physical and emotional health.⁵⁰ Thus, despite the fact that old age in the general population is typically defined as 65 years old and over, old age for incarcerated people commences around the age of 50.⁵¹ Further, many people in Massachusetts prisons suffer severe health issues⁵² but, as of January 4, 2024, only 12.6% of petitions requesting medical parole have been approved.⁵³ DOC identified 68.7% of the people granted medical parole as white; 22.5% as Black; 1.2% as Hispanic; 1.2% as Asian; and 5% as “other.”⁵⁴ Notably, DOC does not provide medical parole data by gender in its annual report.⁵⁵

The DOC should be using medical parole to release terminally ill and permanently incapacitated women from prison. The DOC commissioner should not only approve more medical parole petitions, but DOC itself should petition for terminally ill and permanently incapacitated individuals. DOC should also keep track of medical parole grants by gender to ensure gender equity in the medical parole process. Unfortunately, S.1535 was sent to study by the committee on Public Safety and Homeland Security. H.2319 was reported out favorably by the committee on Public Safety and Homeland Security, but then sent to study by the committee on Health Care Financing. The Legislature should enact these critical reforms in future sessions.

Clemency

Clemency is a legal mechanism by which the state can relieve people convicted of a criminal offense of their sentences or other punitive measures. Article 73 of the Amendments to the Massachusetts Constitution vests clemency power in the governor.⁵⁶ There are two forms of

⁵⁰ Farah A. Kaiksow et al., *Caring for the Rapidly Aging Incarcerated Population: The Role of Pol’y*, 49 J. OF GERONTOLOGICAL NURSING 7 (2023), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10129364/>.

⁵¹ Meg Anderson, *The U.S. Prison Population is Rapidly Graying. Prisons Aren’t Built for What’s Coming*, NPR (Mar. 11, 2024, 5:12 AM), <https://www.npr.org/2024/03/11/1234655082/prison-elderly-aging-geriatric-population-care#:~:text=%221%20didn't%20realize%20I,though%20it%20varies%20by%20state.>

⁵² Anna Lamb, *Activists Target Med. Neglect in Mass. Prisons*, BAY STATE BANNER (Sept. 21, 2022), <https://baystatebanner.com/2022/09/21/activists-target-medical-neglect-in-mass-prisons/#:~:text=The%20survey%20shows%20bleak%20conditions,medical%20staff%20at%20their%20institution.>

⁵³ *Med. Parole Reps.*, MASS.GOV, <https://www.mass.gov/lists/medical-parole-reports> (last visited Oct. 10, 2024).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ MASS. CONST. amend. art. LXXIII, <https://malegislature.gov/Laws/Constitution>.

clemency: commutation and pardon.⁵⁷ A commutation is a reduction in sentence, and a pardon forgives the underlying offense altogether, erasing the individual’s conviction.⁵⁸ The process for granting clemency is the same for both commutations and pardons.⁵⁹ First, an individual seeking clemency submits a petition to the parole board to begin the process.⁶⁰ The parole board then sits as the “Advisory Board of Pardons” and reviews the petition in light of the governor’s clemency guidelines to determine if a hearing is warranted.⁶¹ If the board determines that the petition warrants a hearing, it questions the petitioner and any witnesses.⁶² Following the hearing, the board makes a recommendation on the clemency petition to the governor.⁶³ The governor then evaluates the petition and determines whether to grant clemency.⁶⁴ If the governor decides to grant clemency, a body of elected officials called the Governor’s Council reviews the governor’s decision, and if it agrees, approves the decision thus giving the decision effect.⁶⁵

In 2023, the governor’s administration updated the Executive Clemency Guidelines, and among those updates was the following:

“The Governor acknowledges that survivors of sexual assault, domestic violence, or human trafficking, and those who are LGBTQ+ are often at heightened risk of harm and experience additional trauma while incarcerated. The Governor will take the unique circumstances of incarcerated individuals who are LGBTQ+ and those who are survivors of sexual assault, domestic violence, or human trafficking into account in considering whether additional incarceration is merited and whether a petitioner will pose a safety risk upon release.”⁶⁶

This update reflects the Commonwealth’s acknowledgment that incarcerated women are disproportionately survivors of sexual and domestic violence and that incarceration is not necessarily the best response for this population. Laura Burnett, a senior staff attorney with the Women’s Bar Foundation (WBF) and head of the WBF’s Clemency Project, stated in an interview with PLS’s Women’s Project that the WBF is “pleased with the inclusion of these important considerations in the updated guidelines and [is] hopeful that it presents an opportunity to make a meaningful difference in the lives of the women we represent.”

⁵⁷ *Pardons & Commutations*, MASS.GOV, <https://www.mass.gov/info-details/pardons-and-commutations> (last visited Oct. 10, 2024).

⁵⁸ *Id.*

⁵⁹ *Exec. Clemency Process*, MASS.GOV, <https://www.mass.gov/info-details/executive-clemency-process> (last visited Oct. 10, 2024).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Gov. Maura Healey, *Exec. Clemency Guidelines*, OFF. OF THE GOV. COMMONWEALTH OF MASS. (Oct. 31, 2023), <https://www.mass.gov/doc/executive-clemency-guidelines-healey/download>.

- ❖ “If I had a place I felt safe, I wouldn’t be here.” - Ms. K, testifying in support of the moratorium bill
- ❖ “As a child, I witnessed domestic violence . . . and then became the victim of domestic violence myself.” Ms. L, testifying in support of the moratorium bill
- ❖ “I ran away [from home] because I was being abused [N]o matter how often I said don’t send me back, [the Department of Children and Families] always sent me back.” - Ms. M, testifying in support of the moratorium bill
- ❖ “It’s often abusive relationships and trauma . . . that brings many women to prison.” - Ms. D, speaking in an interview
- ❖ “A lot of us are scarred from relationships . . . many have been abused and molested, and this environment puts them in a state of ‘freeze’ and they can’t deal with it Some people think that’s normal because they aren’t taught differently.” - Ms. E, speaking in an interview
- ❖ “I’ve been in the system since I was a little girl. I was in DYS [Department of Youth Services], then was abused. I was running away from dysfunctional homes that were supposed to be safe. Society is shaped in a way that doesn’t protect certain people of a certain class.” - Ms. G, speaking in an interview
- ❖ “[Many incarcerated women] have been sexually assaulted.” - Ms. J, speaking in an interview
- ❖ “I needed a safe haven I did the best I could and wound up in prison because of it.” - Ms. K, speaking in an interview
- ❖ “Many women are incarcerated simply for trying to protect themselves.” - Ms. N, speaking in an interview
- ❖ “I lived in a house of glass, and when the glass shattered there was nobody there to catch me, [and] I was left alone.” - Ms. R, speaking in an interview

Clemency is a vital but severely underused pathway to decarceration in Massachusetts. It aids in decarceration by shortening sentences of incarceration, eliminating some underlying convictions, and allowing incarcerated people to return to their communities. Pardons can decrease the likelihood of reincarceration by allowing returning citizens the opportunity to reintegrate into society without the social and economic barriers of a prior conviction. The Commonwealth’s use of clemency has severely declined since 1997,⁶⁷ and the few grants that have happened since then have largely been for men.⁶⁸ With the increased attention given to the use of clemency, as seen in the updated Executive Clemency Guidelines, the time is ripe to grant clemency to women incarcerated in Massachusetts.

⁶⁷ Lucie Gulino, *Clemency in Mass. & its Potential for Revitalization*, BOS. LAW. BLOG (Jan. 27, 2023), <https://www.bostonlawyerblog.com/clemency-in-massachusetts-and-its-potential-for-revitalization/>.

⁶⁸ Pauline Quirion, *MBA Urges Gov. Healey to Issue New Clemency Guidelines*, MASS. BAR ASS’N (June 2023), <https://www.massbar.org/publications/section-review/section-review-article/section-review-2023-may-june-2023/mba-urges-gov.-healey-to-issue-new-clemency-guidelines>.

Primary Caretakers Diversion

One significantly underutilized pathway to decarceration is the primary caretakers law,⁶⁹ which the Legislature passed in 2018 as part of the omnibus Criminal Justice Reform Act. This law requires a court, upon motion by the defense, to consider a convicted person's status as a primary caretaker of a dependent child before imposing a sentence. The primary caretakers law is a strong step in the right direction and indicates the Commonwealth's understanding of the importance of keeping families together. A bill, S.1049: An Act relative to diversion for primary caretakers,⁷⁰ would expand and strengthen this pathway to decarceration. This bill expands the definition of a primary taker to include primary caretakers of aging or sick immediate family members. It also expands this diversion opportunity to pregnant people. Further, under the current law, only people charged with non-violent offenses are entitled to this consideration, but this bill would ensure that the opportunity for diversion under this law would be available to all primary caretakers, regardless of their offense. S.1049: An Act relative to diversion for primary caretakers was sent to study this past legislative session, but it is expected to be refiled in future sessions, and the Legislature should pass it. In the meantime, the Commonwealth should use the primary caretakers law to keep women out of prison and jail.

Pre-trial Detention and Cash Bail

Pre-trial detention is when the state holds a person in custody before they have been convicted of a crime. This detention can last for months and, in some cases, years.⁷¹ One reason the Commonwealth holds people in pre-trial detention is if they are unable to pay cash bail. Cash bail is an amount of money that people pay the Commonwealth as collateral to ensure that they return to court for trial. A bail magistrate may set a cash bail if they believe that an accused person might not otherwise appear for their court date. Detained people must pay full bail in order for the Commonwealth to release them, and the Commonwealth returns the bail money when accused people return for their court dates. The second reason the Commonwealth detains people pre-trial is if the bail magistrate determines, based on a review of people's criminal records, that the Commonwealth should hold them on grounds of dangerousness.⁷² Alternatively, a person charged with certain predicate offenses may be detained pre-trial without bail on dangerousness grounds if a court finds by clear and convincing evidence that: (1) the defendant presents a danger to the community; and (2) that no conditions of release would serve to protect the community or the person to whom the danger is presented.⁷³

⁶⁹ S. 770, 190th Gen. Assemb., Reg. Sess. (Mass. 2017), <https://malegislature.gov/Bills/190/S770#:~:text=An%20Act%20providing%20community-based,by%20bill%2C%20Senate%2C%20No.>

⁷⁰ S. 1049, 193rd Gen. Assemb., Reg. Sess. (Mass. 2023), <https://malegislature.gov/Bills/193/S1049>.

⁷¹ Emily Widra, *New Data & Visualizations Spotlight States' Reliance on Excessive Jailing*, PRISON POL'Y INITIATIVE (Apr. 15, 2024), https://www.prisonpolicy.org/blog/2024/04/15/jails_update/.

⁷² Mass. Gen. L. ch. 276 § 58A (2024), <https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleII/Chapter276/Section58A>.

⁷³ *Id.*

People that the Commonwealth detains pre-trial often face devastating mental, physical, and financial consequences. In addition to being unable to work, people held pre-trial are more likely to be found guilty because they are unable to meet with their attorneys to work on their cases as often as they would if they were not incarcerated, and they are vulnerable to physical and psychological harm.⁷⁴ Women are disproportionately harmed by bail requirements because they are, on average, poorer than men.⁷⁵ In fact, one study found that typical bail amounts to a full year's income for women.⁷⁶ In Massachusetts, the law requires judges to consider an accused person's financial resources when setting bail,⁷⁷ but it remains unclear whether this requirement has actually resulted in more reasonable bail amounts. Further, when the Commonwealth detains women, who are highly likely to be primary caregivers, those women run the serious risk of having their children displaced from their primary homes.⁷⁸ In fact, many women accept plea deals in order to be reunited with their children, which results in those women having criminal records that may not accurately reflect their guilt or innocence.⁷⁹

As of January 2024, MCI-Framingham held 38 people in pre-trial detention,⁸⁰ and Massachusetts counties, collectively, held 312 women in pre-trial detention.⁸¹ Eliminating the cash bail system, which disproportionately harms women and children, would reduce the incarcerated population. It would also reduce the rate of reincarceration as research shows that people held pre-trial are more likely to subsequently engage in unlawful activity than those not held pre-trial.⁸² Cash bail criminalizes poverty and can result in people losing their employment, housing, and even custody of their children. The Commonwealth should release people, including women, held pre-trial and end cash bail; and importantly, reduction in the use of cash bail should be accompanied by adequate guardrails to reduce the inappropriate use of dangerousness, which is often applied disproportionately along racial lines.⁸³

⁷⁴ *Pretrial Det.*, PRISON POL'Y INITIATIVE, https://www.prisonpolicy.org/research/pretrial_detention/ (last visited Oct. 11, 2024).

⁷⁵ Savanna Jones, *Ending Cash Bail is a Women's Rts. Issue*, EQUAL JUST. INITIATIVE 4 (May 11, 2018), https://www.law.georgetown.edu/gender-journal/wp-content/uploads/sites/20/2020/11/Final_Savanna-Jones_Cash-Bail_Issue-1.pdf.

⁷⁶ Kajstura & Sawyer, *supra* note 24.

⁷⁷ *Brangan v. Commonwealth*, 477 Mass. 691, 692 (Mass. 2017).

⁷⁸ Jones, *supra* note 75.

⁷⁹ Wendy Sawyer, *Mass. Women Do Not Need a New Jail*, PRISON POL'Y INITIATIVE (Mar. 29, 2019), <https://www.prisonpolicy.org/blog/2019/03/29/newjail/>.

⁸⁰ *Jan. 1 Snapshot Dashboard*, MASS.GOV, <https://www.mass.gov/info-details/january-1-snapshot-dashboard> (last visited Oct. 15, 2024).

⁸¹ Suffolk Univ. Coll. of Arts & Sci. Ctr. for Women's Health & Hum. Rts., *Women & Mass. Cnty. Jails; An Introduction*, 6 (Mar. 2024), https://bpb-us-e1.wpmucdn.com/sites.suffolk.edu/dist/1/1933/files/2024/04/CAS010824-Women-in-County-Jails-Layout_Accessible-311184f2e3f519db.pdf.

⁸² *Pretrial Det.*, *supra* note 74.

⁸³ Esther Laaninen, *Pretrial Consequences: Impact of N.Y. State Bail Reforms on Racial & Ethnic Disparities in Pretrial Outcomes*, CITY UNIV. OF N.Y. JOHN JAY COLL. OF CRIM. JUST. 15-16 (Dec. 1, 2022), https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1268&context=jj_etds.

Jails and Houses of Correction

Jails and houses of correction in Massachusetts operate under the authority of county sheriffs' offices, rather than the state Department of Correction. People incarcerated in jails and houses of correction are either (1) being held in pre-trial detention, or (2) are serving sentences of two-and-a-half years or fewer.⁸⁴ Snapshot data from June 2023 indicates that 476 women were incarcerated in jails and houses of correction, with only 164 serving sentences, and a staggering 312 held pre-trial,⁸⁵ meaning that these women have not actually been convicted of a crime. Women incarcerated in jails and houses of correction tend to be younger than women in prison and are disproportionately women of color.⁸⁶ Further, because they skew younger, women incarcerated in jails and houses of correction are more likely than women in incarcerated in prisons to be pregnant.⁸⁷ Further, nationally about 80% of women in jails and houses of correction are mothers; Massachusetts does not keep state-specific data on incarcerated people's reproductive health needs despite being required to under the Criminal Justice Reform Act.⁸⁸

As stated in the previous section on pre-trial detention and cash bail, the state often holds women pre-trial because they are unable to afford bail.⁸⁹ Women held on bail in jails and houses of correction can easily be released if Massachusetts eliminates cash bail. As for women who are sentenced to jails and houses of correction, sheriffs have broad and well-established authority to release people in their custody to complete their sentences in the community with an ankle monitor.⁹⁰ Thus, Massachusetts could safely, easily, and dramatically reduce the population of women in incarcerates in jails and houses of correction and it should do so.

New Pathways to Decarceration in Need of Legislative Action

Ending Life Without Parole Sentencing

The Commonwealth should ensure every incarcerated person is eligible to seek parole by abolishing life without parole sentencing and all other mandatory minimums. One out of every six women incarcerated in Massachusetts is serving a life without parole sentence.⁹¹ A bill, S.1045/H.1821: An Act to reduce mass incarceration,⁹² would have granted those serving life

⁸⁴ Mass. Gen. L. ch. 279 § 19 (2024),

<https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleII/Chapter279/Section19>.; Mass. Gen. L. ch. 279 § 23 (2024), <https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleII/Chapter279/Section23>.

⁸⁵ Suffolk Univ. Coll. of Arts & Sci. Ctr. for Women's Health & Hum. Rts., *supra* note 81 at 6.

⁸⁶ *Id* at 9-10.

⁸⁷ *Id* at 10.

⁸⁸ *Id.*; Act of Apr. 13, 2018, ch. 69, § 10(12)(ii), 2018 Mass. Sess. L.,

<https://malegislature.gov/Laws/SessionLaws/Acts/2018/Chapter69>.

⁸⁹ Sawyer, *supra* note 79.

⁹⁰ Commonwealth v. Donohue, 452 Mass. 256 (Mass. 2008).

⁹¹ Jean Trounstein, *Commonwealth Committed to "Other Death Penalty"*, DIG BOSTON (Feb. 22, 2021), <https://digboston.com/commonwealth-committed-to-other-death-penalty/>.

⁹² S. 1045, 193rd Gen. Assemb., Reg. Sess. (Mass. 2023), <https://malegislature.gov/Bills/193/SD752>.

sentences the opportunity for parole after 25 years and would apply retroactively to those who already served more than 25 years, in effect ending life without parole sentencing in Massachusetts. This bill was sent to study this session but is expected to be refiled next session. Notably, life without parole sentencing disproportionately impacts BIPOC women—59% of people serving life without parole sentences in Massachusetts are BIPOC, but BIPOC individuals make up only 28% of the Massachusetts population.⁹³ The rise of the “tough on crime” era⁹⁴ and the abolition of the death penalty in many states, including Massachusetts, led to an increase in the use of life without parole sentencing as a supposed moral alternative to the death penalty. However, like people sentenced to the death penalty, people serving life without parole sentences are typically confined to prison until they die and are never given a second chance.⁹⁵ In Massachusetts, over half of the people serving life without parole sentences are over the age of 50.⁹⁶ Given that numerous studies show not only that our elders are the least likely population to recidivate, but also that people sentenced to life with parole are less likely to incur new arrests, convictions, or imprisonment when released on parole than those paroled from other sentences,⁹⁷ denying a pathway to release for this population makes little sense from a public safety standpoint.

- ❖ “Incarcerating myself and others for life, after 25 years is not just a waste of the human aspect, but also the energy that this planet needs right now.” - Ms. O, testifying in support of the bill to end life without parole sentencing
- ❖ “By convicting individuals to life and essentially death in prison, the cycle of victimization continues because there is no room for growth or healing for those convicted or their families.” - Ms. P, testifying in support of the bill to end life without parole sentencing
- ❖ “Life without parole is the hidden death penalty. Of the 25 first degree lifers we have here at Framingham, 10 are over the age of 55, 6 of which have debilitating health issues.” - Ms. Q, testifying in support of the bill to end life without parole sentencing

⁹³ *Mass. Dep’t of Corr. Inmates Serving a Mass. State Sentence of LWOP by Gender and Race/Ethnicity on 7/26/2021*, MASS. DEP’T OF CORR.,

https://drive.google.com/file/d/1EHnWE7_9BpnNWFfwVRU73AVNn0VkiGnJ/view (last visited Oct. 15, 2024).

⁹⁴ Dale Chappell, *New Study Shows “Tough on Crime” Generation Spent More Time in Prison Despite Falling Crime Rate*, PRISON LEGAL NEWS (Oct. 1, 2020), <https://www.prisonlegalnews.org/news/2020/oct/1/new-study-shows-tough-crime-generation-spent-more-time-prison-despite-falling-crime-rate/#:~:text=A%20study%20by%20a%20group,other%20generation%20before%20or%20after.>

⁹⁵ Ashley Nellis, *No End in Sight: Am.’s Enduring Reliance on Imprisonment*, SENT’G PROJECT 16 (2021), <https://www.sentencingproject.org/app/uploads/2022/08/No-End-in-Sight-Americas-Enduring-Reliance-on-Life-Imprisonment.pdf>.

⁹⁶ *MA DOC Life Without Parole (LWOP) and Total Criminally Sentenced Population by Age Grp., Jan. 1, 2020*, MASS. DEP’T OF CORR. RSCH. & PLAN. DIV. (Jan. 1, 2020), <https://www.realcostofprisons.org/writing/haas-criminally-sentenced-by-race-ethnicity-age.pdf>.

⁹⁷ Katy Naples-Mitchell, *Mass. Highest Ct. Decision Shows How Neuroscience Can Shape the Treatment of Young Offenders*, WBUR (Jan. 25, 2024), <https://www.wbur.org/cognoscenti/2024/01/25/life-sentences-without-parole-sjc-mattis-katy-naples-mitchell>.

Importantly, there is legal precedent in Massachusetts for ending life without parole sentencing for people under a certain age. The Supreme Judicial Court of Massachusetts recently decided that sentencing people who were under the age of twenty-one at the time of their offense to life without parole is unconstitutional under the Massachusetts Constitution.⁹⁸ This case built off the Court’s previous finding that sentencing people who were under the age of eighteen at the time of their offense to life without parole was unconstitutional,⁹⁹ demonstrating that the Commonwealth is on the right track in recognizing that people change and should not be defined by a single bad choice made in youth. The Legislature should continue this trend by ending life without parole sentencing in order to give all of the Commonwealth’s citizens a chance at redemption.

Elder Parole

A bill, S.1547/H.2397: An Act relative to parole review for aging incarcerated people,¹⁰⁰ would grant parole eligibility to incarcerated people over the age of 54 who have served at least half or fifteen years of their sentence, giving special consideration to the person’s age, health, and any mental or physical incapacities. In 2014, about 7% of DOC’s population was age 60 and older; over the last decade that percentage has more than doubled, with 15% of DOC’s current population being age 60 and older.¹⁰¹ Given the sharp increase in rates of elders facing incarceration, the time is ripe to create a pathway home for our elders in the Commonwealth.

As a result of decades of racially-biased “tough on crime” policies,¹⁰² Massachusetts has the second oldest prison population in the country.¹⁰³ These policies include increased sentence lengths and mandatory minimum sentences, “three strikes” laws,¹⁰⁴ and increased use of life without parole sentencing.¹⁰⁵ According to one study, the national shift in the 1970s from rehabilitation to incapacitation, combined with harsher sentencing laws, has resulted in “a prescription for an increase in older [incarcerated people]: more prisoners, more prison beds,

⁹⁸ Commonwealth v. Mattis, 493 Mass. 216 (Mass. 2024).

⁹⁹ Diatchenko v. Dist. Att’y for the Suffolk Dist., 466 Mass. 655 (Mass. 2013).

¹⁰⁰ S. 1547, 193rd Gen. Assemb., Reg. Sess. (Mass. 2023), <https://malegislature.gov/Bills/193/S1547>.

¹⁰¹ Jan. 1 Snapshot Dashboard, *supra* note 80.

¹⁰² *Crim. Just. Reform*, EQUAL JUST. INITIATIVE, <https://eji.org/criminal-justice-reform/#:~:text=The%20%E2%80%9Ctough%20on%20crime%E2%80%9D%20policies,drives%20excessive%20sentencing%20policies%20today.&text=More%20incarceration%20doesn't%20reduce%20violent%20crime> (last visited Oct. 15, 2024).

¹⁰³ Emily Widra, *Since You Asked: How Many People Aged 55 or Older Are in Prison, by State?*, PRISON POL’Y INITIATIVE (May 11, 2020), <https://www.prisonpolicy.org/blog/2020/05/11/55plus/>.

¹⁰⁴ Mass. Gen. L. ch. 279 § 25 (2024),

<https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleII/Chapter279/Section25#:~:text=Section%2025%3A%20Punishment%20of%20habitual%20criminals&text=A%20sentence%20imposed%20on%20a.at%20the%20time%20of%20sentencing>.

¹⁰⁵ *Excessive Punishment*, EQUAL JUST. INITIATIVE, <https://eji.org/issues/excessive-punishment/> (last visited Oct. 15, 2024).

more lifers, and less parole.”¹⁰⁶ Importantly, these harsher sentencing laws are disproportionately enforced on Black, Indigenous, and people of color, resulting in an aging prison population that is disproportionately Black and brown.¹⁰⁷ Given this, creating a pathway home for incarcerated elders is a matter of racial justice and equity.

Further, aging significantly reduces a person’s risk of reincarceration. According to DOC’s own research, formerly incarcerated people age 55 and older had the lowest recidivism rates of any age group.¹⁰⁸ Findings of an earlier DOC research report were consistent with the 2022 report showing that releasees over 60 years of age had the lowest recidivism rate.¹⁰⁹ A 2017 Vera Institute of Justice report states that “early-release policies are also supported by recidivism research, which demonstrates that age is a significant predictor of re-offending: arrest rates drop to just more than 2 percent in people ages 50 to 65 years old and to almost zero percent for those older than 65.”¹¹⁰ The incredibly low rates at which elders cause harm when released makes clear that parole review for elders would not have a negative impact on public safety.

Additionally, incarceration negatively impacts people’s health and causes accelerated aging. Research indicates that incarcerated people are, on average, physiologically 10-15 years older than their chronological age, which is why researchers and agencies like the Department of Justice identify age 50 as the most appropriate threshold for research and reporting on aging incarcerated people.¹¹¹ At the start of 2024, 33% of incarcerated people in Massachusetts were age 50 and older,¹¹² with nearly half of those people being age 60 and older.¹¹³ Accelerated aging results from a confluence of environmental factors related to incarceration and characteristics that increase a person’s risk of incarceration, including lower socioeconomic status, increased history of trauma and early life stressors, and higher rates of substance use disorders.¹¹⁴ As a

¹⁰⁶ R.V. Rikard & Ed Rosenberg, *Ageing Inmates: A Convergence of Trends in the Am. Crim. Just. Sys.*, 13 J. OF CORR. HEALTH CARE 150 (2007), https://libres.uncg.edu/ir/asu/f/Rosenberg_Ed_2007_Aging_Inmates.pdf.

¹⁰⁷ *Rep. to the U.N. on Racial Disparities in the U.S. Crim. Just. Sys.*, THE SENT’G PROJECT (Apr. 19, 2018), <https://www.sentencingproject.org/reports/report-to-the-united-nations-on-racial-disparities-in-the-u-s-criminal-justice-system/>.

¹⁰⁸ Carol A. Mici, *Mass. Dep’t of Corr. Three-Year Recidivism Rates: 2016 Release Cohort*, MASS. EXEC. OFF. OF PUB. SAFETY & SEC. DEP’T OF CORR. 9 (2022), https://www.mass.gov/doc/three-year-recidivism-rates-2016-release-cohort/download?_ga=2.236842377.906173289.1711395635-322649518.1710245202&_gl=1*1e4usc3*_ga*MzIyNjQ5NTE4LjE3MTAyNDUyMDI.*_ga_MCLPEGW7WM*MTcxMTM5NTY3My4xLjEuMTcxMTM5NTcwMy4wLjAuMA.

¹⁰⁹ Rhiana Kohl, *Three Year Recidivism Rates: 2013 Release Cohort*, MASS. DEP’T OF CORR. (June 2017), <https://www.mass.gov/doc/three-year-recidivism-rates-2013-release-cohort/download>.

¹¹⁰ Rebecca Silber et al., *Ageing Out: Using Compassionate Release to Address the Growth of Aging & Infirm Prison Populations*, VERA INST. OF JUST. (Dec. 2017), <https://vera-institute.files.svdcn.com/production/downloads/publications/Using-Compassionate-Release-to-Address-the-Growth-of-Aging-and-Infirm-Prison-Populations%E2%80%94Full-Report.pdf>.

¹¹¹ Fiona G. Kouyoumdjian et al., *Do People Who Experience Incarceration Age More Quickly? Expl. Analyses Using Retrospective Cohort Data on Mortality from Ont., Can.*, 12 PLOS ONE (Apr. 14, 2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5391969/#:~:text=A%20commonly%20advanced%20assertion%20in,age%20%5B1%E2%80%935D>.

¹¹² *Jan. 1 Snapshot Dashboard*, *supra* note 80.

¹¹³ *Id.*

¹¹⁴ Kaiksow et al., *supra* note 50.

result of accelerated aging, each year spent in prison takes two years off an individual's life expectancy.¹¹⁵ Common health conditions that incarcerated elders face include dementia and other cognitive impairment, hearing impairment, mental illness, substance use disorder, urinary incontinence, mobility and functional impairment, increased fall risk, and multimorbidity, which is the presence of two or more chronic health conditions.¹¹⁶

Aging and the health-related conditions that come with it are difficult to face for anyone but become even more severe in the confines and conditions of incarceration. Prisons and jails are not hospitals or nursing homes and are not equipped to adequately care for elders and the myriad health-related issues they face. DOC's orientation towards punishment rather than treatment means that incarcerated elders with dementia are often disciplined for behavioral manifestations of their illness, including difficulty following directives, with placement in solitary confinement, which exacerbates cognitive decline. Given these facts, keeping elders incarcerated with few pathways home quickly becomes a recipe for cruelty rather than a legitimate act for public safety. If anything, keeping elders in settings where they are unable to access necessary health care and instead face conditions that worsen their health outcomes undermines public safety.

Moreover, continuing to incarcerate elders is costly to the Commonwealth.¹¹⁷ Many incarcerated elders are housed in medical units, and medical unit beds are among the most expensive beds in the DOC. Incarcerated elders must also take frequent trips to outside hospitals, and DOC regulations regarding the transportation of incarcerated people to hospitals require both transportation and a security detail, including a minimum of two officers at all times,¹¹⁸ with potential over-time pay, all of which is extraordinarily costly. In fact, in 2021, DOC spent \$235,196 per person in custody at MCI-Framingham,¹¹⁹ and the average cost of incarcerating one person in DOC for 30 years is over \$2 million.¹²⁰ Even though DOC's population has decreased by 40% over the last ten years,¹²¹ the Commonwealth continues to increase DOC's

¹¹⁵ *Id.*

¹¹⁶ Rokas Navickas et al., *Multimorbidity: What Do We Know? What Should We Do?*, 6 J. OF COMORBIDITY 4 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5556462/>.

¹¹⁷ *Buckman*, 487 Mass. at 21 (opining that reducing cost to the Commonwealth was a primary reason for the implementation of med. parole).

¹¹⁸ 103 C.M.R. 604 (2024), <https://www.mass.gov/doc/doc-604-outside-hospital-relations/download>.

¹¹⁹ Mass. Dep't of Corr., *Mass. Dep't of Corr. Ann. Rep. Calendar Year 2021*, 8 (2023), <https://www.mass.gov/doc/annual-report-2021-0/download>.

¹²⁰ Mass. Bar Ass'n, *Rep. of the Mass. Bar Ass'n Clemency Task Force* 9 (2021), <https://www.massbar.org/docs/default-source/mba-reports/mba-clemency-task-force-report-2021.pdf>.

¹²¹ Deborah Becker, *Inside the Ancient Walls of the State's Women's Prison, a Program for Young Inmates Launches*, WBUR (June 21, 2024), <https://www.wbur.org/news/2024/06/21/peace-massachusetts-women-prison-framingham>.

budget¹²² despite increasing austerity in the provision of social services.¹²³ This creates a situation in which prisons are the most well-funded placements for elders, despite being the most inappropriate. The resources Massachusetts spends on incarcerating elders are better spent on services and care for aging people upon their release from incarceration, as well as community supports that prevent incarceration in the first place.

Incarcerating elders without any opportunity for parole review is racist, cruel, costly, and does not materially protect public safety. Allowing incarcerated elders to see the parole board regardless of their sentences supports our belief in change and growth, and it has the potential to free up substantial resources that could be utilized for life-affirming systems that will increase our collective health and safety instead of those that result in harm and premature death.

- ❖ “This facility has no way to handle [elderly women’s] growing conditions, so these women, amongst others, are made to suffer. Aren’t we also human, regardless of mistakes? I think the money could be spent in more productive ways than caging the sick and elderly.” - Ms. K, testifying in support of the elder parole bill

The committee on Public Safety and Homeland Security reported H.2397 favorably out of committee, and it is currently still alive in the House Committee on Ways and Means. The Legislature should act promptly on this important bill, whether during the remainder of this session or in future sessions.

Abolishing Joint Venture Theory

Courts in Massachusetts convict people of murder even when they have not actually killed someone. This unjust outcome occurs under the common law theory of joint venture, which enables prosecutors to charge people for murders they did not commit if they are an accomplice to the murder.¹²⁴ Research indicates that prosecutors disproportionately charge Black and brown people under the joint venture theory,¹²⁵ thus contributing to the disproportionate rates at which Massachusetts incarcerates people of color.¹²⁶ Notably, the Commonwealth has already taken a step towards ensuring that courts do not convict people of murder when they have not actually

¹²² Chris Lisinski, *Corr. Spending Rises While Incarcerated Population Declines in Mass.*, WBUR (Jan. 4, 2022), <https://www.wbur.org/news/2022/01/04/correction-spending-rises-incarcerated-population-declines>.

¹²³ Carla Rojo, *Activists Push Back on Gov. Healey’s Budget Cuts to Soc. Serv.*, NBC BOS. (Jan. 12, 2024, 10:44 AM), <https://www.nbcboston.com/news/local/activists-push-back-on-gov-healeys-budget-cuts-to-social-services/3244285/>.

¹²⁴ *Model Jury Instructions on Homicide: II. Joint Venture*, MASS.GOV, <https://www.mass.gov/info-details/model-jury-instructions-on-homicide-ii-joint-venture> (last visited Oct. 15, 2024).

¹²⁵ Ivy Scott, *Convicted of Murder Without Ever Killing, Joint Venturers Are Petitioning the State H. to Rethink the L.*, THE BOSTON GLOBE (Feb. 10, 2024, 4:10 PM), <https://www.bostonglobe.com/2024/02/10/metro/convicted-murder-without-ever-killing-joint-venturers-are-petitioning-state-house-rethink-law/>.

¹²⁶ Jenifer B. McKim, *Five Years After Landmark Crim. Just. Reform, Prison Racial Disparities Widen in Mass.*, WGBH (Jan. 24, 2024), <https://www.wgbh.org/news/local/2024-01-24/five-years-after-landmark-criminal-justice-reform-prison-racial-disparities-widen-in-mass>.

killed someone. In 2017, the Supreme Judicial Court abolished the felony murder theory, which allowed people who participated in certain felonies but did not kill anyone to be convicted of murder if a person died during the commission of the felony.¹²⁷ Unfortunately, that ruling was not retroactive, meaning it does not apply to those who were sentenced under the felony murder rule prior to the Court's ruling.¹²⁸ A bill, H.3962: An Act regarding joint venture,¹²⁹ would have abolished the practice of joint venture sentencing and provided retroactive relief to those already convicted and sentenced under it.¹³⁰ Unfortunately, H.3962 was sent to study by the committee on the Judiciary, but the Legislature should enact this critical reform in future sessions.

Second Look

H3955: An Act for second look allows incarcerated people who have served a minimum number of years of their sentence, depending on their conviction and age at the time of the offense, to petition a court for a reduction in their sentence.¹³¹ Under this bill, courts could reduce incarcerated people's sentences upon a finding that incarcerated people do not pose a threat to public safety and have demonstrated rehabilitation.¹³² This bill supports the Commonwealth's emerging belief that change and growth are possible, and that all members of the Commonwealth deserve a second chance.

Conclusion

Given the immense trauma women experience prior to incarceration, and the way those traumas are compounded by their experiences behind bars, the time is ripe to decarcerate women in Massachusetts. The impulse to punish is common and understandable; PLS is connected with many people who have experienced harm, including incarcerated people, and many of those people experience that impulse, too. But in our policy making, we must begin to understand that the punitive impulse, while understandable, is often destructive and counterproductive. We must strive to root policy in evidence and to create better systems which will support harm-prevention and rehabilitation.

¹²⁷ Commonwealth v. Brown, 477 Mass. 805 (Mass. 2017).

¹²⁸ MARK ARSENAULT, UNFINISHED JUST.: A SPOTLIGHT TEAM INVESTIGATION INTO FELONY MURDER IN MASS. (Patricia Wen ed., Boston Globe 2022), <https://apps.bostonglobe.com/metro/investigations/spotlight/2022/03/unfinished-justice/?p1=Article Inline Text Link>.

¹²⁹ H. 3962, 193rd Gen. Assemb., Reg. Sess. (Mass. 2023), <https://malegislature.gov/Bills/193/H3962>.

¹³⁰ *Id.*

¹³¹ H. 3955, 193rd Gen. Assemb., Reg. Sess. (Mass. 2023), <https://malegislature.gov/Bills/193/H3955>.

¹³² *Id.*

Part III: Decarceration Success Stories

PLS’s Women’s Project interviewed four formerly incarcerated women¹³³ who were recently released regarding their pathways to decarceration, community support, and accomplishments. Their stories are a testament to the fact that community-supported reentry can be very successful, and that decarceration enables people to access the resources they need to become contributing members of their communities.

Angie

Angie was released from MCI-Framingham in 2022, after 31 years of incarceration. Her pathway home was through parole, and the parole board voted unanimously in favor of her release. Ms. Angie’s greatest challenge in securing her release was preparing for her parole hearing. She spent weeks practicing in mock hearings with her parole lawyer and other legal professionals, which enabled her to keep her composure and successfully advocate for her release when she went before the parole board.

Ms. Angie’s greatest challenge when reentering her community—besides the common reentry challenge of learning to use new technology—was something many people in the community take for granted: opening doors. When participating in a residential program, she would regularly ask permission to open the door and leave the building, even though she was not required to obtain permission to do so. Of this challenge, Ms. Angie stated, “that was big for me because that was something that I couldn’t do for 31 years.”

Upon her release, Ms. Angie participated in a residential program called New Beginnings Reentry Services.¹³⁴ Through this program, she was able to access all the resources and support she needed to successfully reenter into her community, including college classes, therapy, and networking. She now contributes to her community by working as the Participatory Defense and Transform Harm Coordinator at Families for Justice as Healing.¹³⁵ In this position, Ms. Angie serves her fellow community members by providing court support, finding childcare, helping obtain necessities like food, clothing, and cellphones, and providing emotional support when needed. Ms. Angie’s proudest accomplishment since being released is supporting her children and grandchildren; she loves being a mother and grandmother.

Debra

Debra was incarcerated for a total of 28 years and was released from MCI-Framingham in 2022. Her pathway home was through parole, and she will remain on parole for the rest of her life

¹³³ This report refers to these women by their first names, only, to protect their privacy.

¹³⁴ NEW BEGINNINGS RE-ENTRY SERV., <https://nbreentry.org/> (last visited Oct. 15, 2024).

¹³⁵ FAM. FOR JUST. AS HEALING, <https://www.justiceashealing.org/about-us> (last visited Oct. 15, 2024).

unless she is able to successfully petition for parole termination. Ms. Debra’s greatest challenge with reentry was finding housing. She had no family on the outside when she left prison, and she struggled for a long time to find housing that would accept her given her criminal record. Of this challenge, Ms. Debra stated, “I wish they would give people more chances.”

Other challenges Ms. Debra faced included signing up for social services like social security and food stamps, obtaining a government ID, and purchasing necessities like food and groceries. These challenges were exacerbated by the lack of reentry support provided by the prison. Upon her release, she was grateful to be able to rely on Families for Justice as Healing to assist her with these challenges, stating, “everything that I needed to do, they helped me and did with me . . . I’m settled, I’m stable, I’m so connected . . . I couldn’t believe it.” Ms. Debra now gives back to her community by providing virtual court support and hopes to do more as her health improves. Her proudest accomplishment since her release is the empathy she has developed; she has become “a different person, more understanding for other people’s needs.”

Yamiley

Yamiley was incarcerated for nearly 13 years and was released from MCI-Framingham in July of 2023. Her pathway home was through parole, and she relied on the wisdom and experiences of her fellow incarcerated people to prepare for her parole hearing. Once released, her greatest challenge was adjusting to her new-found freedom and navigating her life without an enforced structure. Of this challenge, Ms. Yamiley stated, “I just spent half my life in there [prison]! [It’s challenging] trying to remember you can make your own choices now.” Her community of formerly incarcerated people, who understand the emotional impact of making this adjustment, has been instrumental in helping her overcome this challenge.

Ms. Yamiley resides at New Beginnings Reentry Services, where she gets the support that she needs through its robust programming. Families for Justice as Healing also supported her reentry by arranging rides when she needed them and helping her obtain a job. She is now able to contribute to her community by working at a doggy daycare. Ms. Yamiley’s proudest accomplishment since being released is being admitted to Simmons College in Boston, where she is now studying social work.

Diane

Diane was incarcerated for 31 years and was released from MCI-Framingham in July of 2023. Her pathway home was through medical parole, and she worked with several advocates before she was eventually released. Her greatest challenge with securing release was maintaining hope through the slow and arduous process of obtaining medical parole. Once released, Ms. Diane’s greatest challenge was adapting to using modern technology. Due to her physical disabilities, she was unable to attend tech literacy classes while incarcerated because the classes were in an area

only accessible by going up two flights of stairs; further, no accommodations were made available for her to take classes in a location more suitable for her disability.

Ms. Diane now resides at New Beginnings Reentry Services, where she participates as she is able in programming provided by various community groups, including a group that teaches tech literacy. Ms. Diane also participates in groups hosted by Families for Justice as Healing and has been able to find community and healing through those groups. She also helps recently released women who come to New Beginnings Reentry Services with their transition by providing social and emotional support. Of her experiences since her release, Ms. Diane stated, “my dignity is in place.”

Epilogue

As part of the interviews PLS's Women's Project conducted, people incarcerated in MCI-Framingham shared their thoughts on the benefits to the community of decarcerating women. The following are their responses:

- ❖ "I have a college degree; I can use that to help my community and family."
- ❖ "My first thing would be help me [get] to church [and] help me get a job."
- ❖ "People [here] have life stories that have allowed them to teach others how to stay out of prison, to be a better mother, how to not use drugs when things are hard . . . better coping strategies."
- ❖ "Keeping mothers with their children."
- ❖ "Reuniting mothers with their children is the biggest value . . . Children need their mother. Families need mothers."
- ❖ "There's almost nothing more traumatic in childhood than being separated from your mother."
- ❖ "We are nurturers; we can help our children and grandkids."
- ❖ "You give this community back its mothers, its sisters. Women who have lived through the struggle and can help people going through it too . . . Give these communities back their women, so they can build a strong foundation with women who have lived this struggle. Who can lift up other women. Who can hug them. Who can look at them and say, 'you may not have had a mother or a sister, let me be that to you.'"

For the sake of our families and our communities throughout the Commonwealth, we must find the way home.