

Integrating Harm Reduction Diversion Programs in Justice Reinvestment Strategies in Massachusetts

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Executive Summary

This paper recommends that Massachusetts pursue expanded community harm reduction pre-trial diversion programs as a means of reducing recidivism, new incarceration, and drug abuse through revisions to the Justice Reinvestment Act (S. 64/ H. 1429). This paper argues that current justice reinvestment strategies pay insufficient attention to the structural issues that motivate the revolving door of mass incarceration—namely, the connections between drug addiction, recidivism, and police–community trust. Using case studies from two successful programs, Law Enforcement Assisted Diversion (LEAD) and Project Longevity, this paper demonstrates how a multi-layered policy approach to pre-trial diversion in Massachusetts would decrease recidivism and new prisoner admissions among individuals from vulnerable communities.

Introduction

Criminal justice reform is a profound issue in the state of Massachusetts. In 2014, Massachusetts incarcerated 188 sentenced adults per 100,000 persons, an increase of approximately 300 percent since 1978.¹ The state spends around 47 percent more than any other state per inmate, about four times the amount spent on education per child.² Although the current three-year recidivism rate in Massachusetts is 39 percent,³ almost 30 percent lower than the national average,⁴ recidivism remains a major problem in the state. Offenders return to prison for one of two reasons: committing a new crime that results in a new conviction or a technical violation of their terms of supervision, such as not reporting to their parole or probation officer or failing a drug test.⁵ This is happening even though violent crime has decreased to its lowest levels nationally since 1978 and in the Commonwealth since the late 1980s.⁶ Drug-related offenses account for 18 percent of the incarcerated population of Massachusetts, and when those who turn to property crimes to fuel their habits are included, that number rises to 38 percent.^{7 8}

On August 4, 2015, Massachusetts Governor Charlie Baker, in a bipartisan effort with key state government officials, announced a request to the U.S. Department of Justice and Pew Center on the States to conduct a comprehensive analysis of the Commonwealth's criminal justice system through the Justice Reinvestment Initiative (JRI). JRI is a data-driven initiative in 27 states, spearheaded by the Council of State Governments (CSG), that aims to improve

¹ Carson, E. Ann. 2015. "Prisoners in 2014." Office of Justice Programs, Bureau of Justice Statistics. Retrieved January 10, 2015 (<http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5387>). See also, Carson, E. Ann. 2015. "Prisoners in 2013." Office of Justice Programs, Bureau of Justice Statistics. Retrieved January 10, 2015 (<http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5109>).

² Massachusetts Department of Elementary and Secondary Education, 2015. "2013-14 Per Pupil Expenditures Report," Retrieved January 11, 2016 (http://profiles.doe.mass.edu/state_report/ppx.aspx).

³ Massachusetts Department of Correction, 2015. "Frequently Asked Questions about the DOC." Public Safety and Security. Retrieved January 11, 2016 (<http://www.mass.gov/eopss/agencies/doc/faqs-about-the-doc.html>).

⁴ Cooper, Alexia D., Durose, Matthew R., Snyder, Howard N., 2014. "Recidivism Of Prisoners Released In 30 States In 2005: Patterns From 2005 To 2010." Office of Justice Programs, Bureau of Justice Statistics, Retrieved January 11, 2016 (<http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4986>).

⁵ National Conference of State Legislatures, 2008. "Probation and Parole Violations: State Responses." Retrieved January 22, 2016 (<http://www.ncsl.org/print/cj/violationsreport.pdf>).

⁶ Peters, Brittany. 2014. "Violent Crime in Massachusetts: A 25-Year Retrospective: Annual Policy Brief (1988-2012)." Massachusetts Executive Office of Public Safety and Security, Retrieved January 17, 2016. Retrieved January 25, 2016 (<http://archives.lib.state.ma.us/bitstream/handle/2452/207516/ocn870869699.pdf?sequence=1>). See also, Simpson, Ian. 2014. "Violent U.S. Crime Drops Again, Reaches 1970s Level: FBI." Reuters, November 10. Retrieved January 22, 2016 (<http://www.reuters.com/article/us-usa-crime-fbi-idUSKCN0IU1UM20141110>).

⁷ Massachusetts Bar Association Drug Policy Task Force. 2009. "The failure of the war on drugs: Charting a new course for the Commonwealth." Massachusetts Bar Association. Retrieved January 17, 2016. (<http://www.massbar.org/media/520275/drug%20policy%20task%20force%20final%20report.pdf>).

⁸ Massachusetts Department of Corrections. November 2014. "Annual Report 2013." Massachusetts Executive Office of Public Safety and Security. Date Retrieved January 17, 2016. (<http://www.mass.gov/eopss/docs/doc/research-reports/annualreport2013nov202014.pdf>).



public safety and reduce corrections and related criminal justice spending while investing savings in strategies that can reduce recidivism and crime.^{9 10} Instead of prioritizing conventional approaches to crime reduction that emphasize punishment over prevention and rehabilitation, JRI's strategy prioritizes evidence-based approaches.

Although JRI has helped states reduce incarceration, its analyses tend to favor the reduction of prison growth rather than reducing the number of prisoners. For example, JRI has recommended increased funding to community supervision; 16 states have directed significant funding to risk-based assessment and 15 states have identified accountability measures as key areas of focus. These policies broaden the net of social control while doing little to tackle the problems that lead to incarceration, such as drug abuse. In short, JRI's strategy eschews true crime prevention—the end of new criminal development.

As noted above, addiction is a major factor driving incarceration in Massachusetts. However, pretrial diversion strategies are only available for veterans and individuals with no significant criminal records in the state.¹¹ A more meaningful harm reduction approach, which includes pretrial diversion programs for addicts, can be especially effective at reducing the population under criminal justice supervision due to drug offenses. Harm reduction programs such as Law Enforcement Assisted Diversion (LEAD) in Seattle and Project Longevity in New Haven have reduced recidivism and violent crime by double digits.

In this paper we define harm reduction as a set of compassionate and pragmatic approaches for reducing harm associated with high-risk behaviors and improving quality of life.¹² A harm reduction approach to drug abuse views addiction as a disease of the brain that can be treated with renewed emphasis on “smart on crime” approaches rather than “tough on crime” approaches such as incarceration.¹³ The hope is that an approach to crime centered on public health and harm reduction will break the revolving door of the criminal justice system that traps potential offenders in a cycle of drug use, crime, incarceration, and re-arrest.

This harm reduction approach relies on understanding the importance of interventions for people with substance abuse problems at every stage of the criminal justice system. It recognizes the connections between drug abuse, recidivism, and their combined spillover effect on the local community, law enforcement, and state prisons. Despite the Obama Administration's acknowledgment of efficacy of this approach,¹⁴ many states maintain conventional punitive models and continue to grapple with the consequences.¹⁵ As noted earlier, Massachusetts, despite having one of the lowest incarceration rates in the country, spends the most per inmate and experiences a high recidivism rate.¹⁶

⁹ For purposes of this report, we consider the following 27 states to have participated in JRI: Alabama, Arizona, Arkansas, Connecticut, Delaware, Georgia, Hawaii, Indiana, Kansas, Kentucky, Louisiana, Michigan, Missouri, Nevada, New Hampshire, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Vermont, West Virginia, and Wisconsin. We consider the following 18 to have enacted JRI legislation: Arizona, Arkansas, Connecticut, Georgia, Kansas, Kentucky, Louisiana, Missouri, Nevada, New Hampshire, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas, and Vermont. We do not include Michigan in the list of states that have enacted JRI legislation because we understand Michigan to have dropped the bill proposed in connection with the JRI process there.

¹⁰ Fraga, Brian. 2015. “Group Reviewing Massachusetts Criminal Justice System Includes Fall River Chief Daniel Racine – CSG Justice Center.” The Council of State Governments. Retrieved January 22, 2016 (<http://csjusticecenter.org/jr/massachusetts/media-clips/group-reviewing-mass-criminal-justice-system-includes-fall-river-chief-daniel-racine/>).

¹¹ General Laws of The Commonwealth of Massachusetts, Part IV, Chapter 276A, Section 2.

¹² Marlatt, G. Alan, Mary E. Larimer, and Katie Witkiewitz. 2011. *Harm Reduction, Second Edition: Pragmatic Strategies for Managing High-Risk Behaviors*. Guilford Press. p. 5

¹³ White House. 2014. “2014 National Drug Control Strategy” Office of National Drug Control Policy. Date Retrieved November 17, 2015 (https://www.whitehouse.gov/sites/default/files/ndcs_2014.pdf).

¹⁴ White House. 2015. “2015 National Drug Control Strategy.” Office of National Drug Control Policy. Retrieved January 22, 2016 (<https://www.whitehouse.gov/ondcp/national-drug-control-strategy>).

¹⁵ Office of National Drug Control Strategy. 2011. “2011 National Drug Control Strategy.” Retrieved January 10, 2016 (<https://www.whitehouse.gov/sites/default/files/ondcp/ndcs2011.pdf>). See also, Obama, Barack. 2015. “Remarks by the President on Community Policing.” whitehouse.gov. Retrieved January 10, 2016 (<https://www.whitehouse.gov/the-press-office/2015/05/18/remarks-president-community-policing>).

¹⁶ Henrichson, Christian & Delaney, Ruth. January 2012. “The Price of Prisons: What Incarceration Costs Taxpayers.” Vera Institute of Justice. Retrieved January 17, 2016 (<http://www.vera.org/sites/default/files/resources/downloads/price-of-prisons-updated-version-021914.pdf>). See also, United States



The root of the problem with much of the U.S.'s criminal justice system is its emphasis on control as opposed to rehabilitation. A 2012 study in the *Journal of Contemporary Criminal Justice* notes that prisons in America were initially invented not as holding cells where individuals were restrained and warehoused, as is the case today, but as "penitentiaries" with the mission of reforming their inmates.¹⁷ This mission, steeped in the logic of rehabilitation as opposed to control, is reflected in the names associated with prisons. Even today we call prisons "correctional" institutions and agencies embrace names such as "the Department of Rehabilitation and Correction." Yet despite their origins, contemporary prisons demonstrate little success in rehabilitation.¹⁸

Separating policing, incarceration, and public health makes the problem of incarceration worse by increasing the financial and human costs of the criminal justice system. Harm reduction programs that focus on community and law enforcement collaboration have the potential to stop the revolving door for good, lowering costs and increasing opportunity for vulnerable populations in the state of Massachusetts.

First, this paper will explain the rationale for jointly addressing problems of mass incarceration, the revolving door of recidivism, and trust between the police and the community in Massachusetts and the United States. The second section reviews the factors contributing to mass incarceration and the existing strategies of Justice Reinvestment partner states across the country. The third section will examine the main limitation of Justice Reinvestment: insufficient attention to new prisoner admissions and minority community engagement. Finally, this paper will use case studies from two successful programs, Law Enforcement Against Diversion (LEAD) and Project Longevity, to demonstrate how a harm reduction approach to pre-trial diversion across Massachusetts would decrease recidivism and new prisoner admissions among individuals from vulnerable communities.

The Case for Action

Mass Incarceration

In 2013, Massachusetts incarcerated 192 sentenced adults per 100,000 persons in state prisons, an increase of 300 percent since 1978.¹⁹ This rate of increase pales in comparison to similar figures across the country. Between 1980 and 2009, the prison population in the nation increased fivefold—from approximately 320,000 inmates to 1.62 million.²⁰ U.S. mass incarceration is the result of three factors: harsher sentences for certain offenses, the proliferation of drug offenses during the 1980s, and greater policing of certain populations.²¹ Although the United States comprises only 5 percent of the world's population, it incarcerates almost a quarter of the world's prisoners.²²

Department of Justice. "NIC State Statistics - Massachusetts." National Institute of Corrections. Retrieved January 22, 2016 (<http://nicic.gov/statestats/?st=MA>) and Massachusetts Department of Correction, 2015. "Frequently Asked Questions about the DOC."

¹⁷ Cullen, Francis T., Jonson, Cheryl L. & Eck, John E. "The Accountable Prison." *Journal of Contemporary Criminal Justice* 28, no. 1 (February 1, 2012): 77–95. doi:10.1177/1043986211432202.

¹⁸ Cullen, Francis T., Cheryl L. & Eck, John E. "The Accountable Prison." p. 91

¹⁹ Carson, E. Ann. 2015. "Prisoners in 2013."

²⁰ The Sentencing Project. "Trends in U.S. Corrections." Retrieved January 17, 2016. (http://sentencingproject.org/doc/publications/inc_Trends_in_Corrections_Fact_sheet.pdf).

²¹ Levitt, Steven D. "Understanding Why Crime Fell in the 1990s: Four Factors That Explain the Decline and Six That Do Not." *Journal of Economic Perspectives* 18, no. 1 (Winter 2004): 163–90. Retrieved January 17, 2016 (<http://pricetheory.uchicago.edu/levitt/Papers/LevittUnderstandingWhyCrime2004.pdf>).

²² Gupta, V., Chettiar, I., Bloom, R., Bunnell, Z., Fogel, E., and Martin, John. 2011. "Smart Reform Is Possible: States Reducing Incarceration Rates and Costs While Protecting Communities." American Civil Liberties Union. January 17, 2016 (<https://www.aclu.org/files/assets/smartreformispossible.pdf>).



Despite the relatively low incarceration rate compared to other states, Massachusetts spends around 47 percent more than any other state per inmate in 2012.²³ This amounts to approximately \$53,000 per prisoner,²⁴ about four times the amount the state spends on education per child.²⁵ This is despite the aforementioned drops in violent crime in Massachusetts and nationwide.²⁶

Incarceration is inextricably linked to race in the Commonwealth. The vast majority of the Massachusetts prison population consists of minorities. Although Latinos and African Americans stand at only 10 percent and 7 percent of the total state population, respectively, they represent almost 24 percent and 26 percent of the prisoner population, while whites are significantly underrepresented.²⁷ These numbers reflect broader national trends. While people of color make up around 30 percent of the United States' population, they account for 60 percent of those imprisoned.²⁸ Men under the age of 40, the poorly educated, people with mental illness, and drug and alcohol addicts are similarly overrepresented.²⁹

Additionally, there are human capital consequences from our choice to imprison so many people. Exclusion from the legal labor market due to criminal justice supervision has led many of the nation's poor and disenfranchised to seek work outside it. Findings suggest that each year in prison increases the odds that a prisoner will reoffend by 5.6 percent a quarter.³⁰ In other words, any crime reduction that is realized by removing criminals from the general population is canceled out and then some by incentivizing petty offenders into professional criminality.

This human capital consequence has a distinct racial element. As of 2009, 62 percent of African American children under 17 whose parents have not completed high school have had a parent in prison. The same was true for 17 percent of Hispanic children and 15 percent of white children with similarly educated parents.³¹ The conventional approach to criminal justice is simply not enough. Vulnerable individuals and communities need support to end cycles of crime, police bias, and mass incarceration on their own terms.

The Revolving Door

The criminal justice system is often analogized as a revolving door because offenders appear again and again before the court, even after previous crimes, incarceration, and probation. This is particularly true for drug offenders because of the strong correlation between repeat offenses and addiction. This pattern of "offend, arrest, reform, repeat" frequently results in hostility between communities and police, prison overcrowding, and recidivism. The revolving door of the criminal justice system is the missing link.

²³ Henrichson, Christian & Delaney, Ruth. January 2012. "The Price of Prisons: What Incarceration Costs Taxpayers." See also, National Institute of Corrections. 2014. "NIC State Statistics - Massachusetts." Retrieved January 25, 2016 (<http://nicic.gov/statestats/?st=MA>).

²⁴ Massachusetts Department of Correction, 2015. "Frequently Asked Questions about the DOC."

²⁵ Massachusetts Department of Elementary and Secondary Education, 2015. "2013-14 Per Pupil Expenditures Report," Retrieved January 11, 2016 (http://profiles.doe.mass.edu/state_report/ppx.aspx).

²⁶ Massachusetts Department of Corrections. November 2014. "Annual Report 2013." Massachusetts Executive Office of Public Safety and Security. Retrieved January 17, 2016. (<http://www.mass.gov/eopss/docs/doc/research-reports/annualreport2013nov202014.pdf>)

²⁷ Prison Policy Initiative. 2014. "Massachusetts Profile | Prison Policy Initiative." Retrieved January 25, 2016 (<http://www.prisonpolicy.org/profiles/MA.html>).

²⁸ The Sentencing Project. "Trends in U.S. Corrections."

²⁹ Committee on Causes and Consequences of High Rates of Incarceration, National Research Council, Division of Behavioral and Social Sciences and Education, and Committee on Law and Justice. 2014. *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. National Academies Press.

³⁰ Mueller-Smith, Michael. 2015. "The Criminal and Labor Market Impacts of Incarceration." Working Paper. Columbia University. Retrieved November 17, 2015 (<http://www.columbia.edu/~mgm2146/incar.pdf>).

³¹ Committee on Causes and Consequences of High Rates of Incarceration, National Research Council, Division of Behavioral and Social Sciences and Education, and Committee on Law and Justice. 2014. *The Growth of Incarceration in the United States: Exploring Causes and Consequences*.



The Pattern

In 2011, approximately 7 million people were under the supervision of state and federal criminal justice systems. Of that number, 2 million were incarcerated while the remainder were on probation or parole.³² An estimated 53 percent of state prisoners in Massachusetts with substance abuse problems have had three probationary sentences or been incarcerated previously. This is compared to 32 percent of inmates nationally.³³ Inmates with substance abuse problems also tend to have been on probation or parole supervision at the time of their arrest.³⁴

On any given day in the U.S. around one in 100 adults are incarcerated. This costs nearly \$52 billion annually.³⁵ Research demonstrates that mass imprisonment decreases crime rates, but this is due to incapacitation instead of rehabilitation.³⁶

Emphasis on incarceration has proved unsuccessful if the long-term aim is to end cycles of crime. In a Department of Justice study of recidivism in 30 states, more than a third of released prisoners were arrested again within six months of their release. That number rose to 56.7 percent by the end of the first year, 67.8 percent within three years, and 76.6 percent within five years.³⁷ A 29-year study from the University of Michigan revealed that incarceration actually increased the odds that a prisoner would reoffend by 5.6 percent.³⁸

Recidivism in Massachusetts

Conditions in Massachusetts reflects these national trends. The recidivism rate based on the three-year outlook for prisoners released after 2008 is 39 percent.³⁹ Offenders are returned to prison for one of two reasons: for committing a new crime that results in a new conviction, or for a technical violation of supervision, such as not reporting to their parole or probation officer or failing a drug test.⁴⁰

Massachusetts has a drug abuse problem, and as that problem increases, the criminal justice system attempts to absorb these vulnerable populations. A report published by the National Center on Addiction and Substance Abuse at Columbia University highlights this problem. According to the report, most people incarcerated are connected directly to drugs and alcohol, and while Massachusetts spends around \$4.5 billion a year (or 21.8 percent of the state budget) on responses to addiction it only invests \$66 million a year (0.32 percent of the state budget) in harm reduction.⁴¹ Substance-abusing inmates who complete treatment are less likely to relapse into drug use and less likely to be rearrested after release.⁴²

³² Statistics, Bureau of Justice. 2012. "Bureau of Justice Statistics Correctional Populations in the United States, 2011 and Probation and Parole in the United States, 2011." Retrieved January 25, 2016 (<http://www.bjs.gov/content/pub/press/cpus11ppus11pr.cfm>).

³³ Mumola, C.J. & J.C. Karberg. 2006. "Drug Use and Dependence, State and Federal Prisoners, 2004." U.S. Department of Justice, Bureau of Justice Statistics. Retrieved January 17, 2016 ([bjs.ojp.usdoj.gov/content/pub/pdf/dudsfp04.pdf](https://www.bjs.ojp.usdoj.gov/content/pub/pdf/dudsfp04.pdf)).

³⁴ Karberg, J.C. & D.J. James. 2005. "Substance Dependence, Abuse, and Treatment of Jail Inmates, 2002." U.S. Department of Justice, Bureau of Justice Statistics. Retrieved January 17, 2016 (<http://www.bjs.ojp.usdoj.gov/content/pub/pdf/sdatji02.pdf>).

³⁵ Pew Center on the States. 2008. "One in 100: Behind Bars in America 2008." Retrieved January 25, 2016 (<http://www.pewtrusts.org/en/research-and-analysis/reports/2008/02/28/one-in-100-behind-bars-in-america-2008>). See also, Pew Center on the States. 2011. "State of Recidivism: The Revolving Door of America's Prisons." Retrieved January 25, 2016 (https://www.michigan.gov/documents/corrections/Pew_Report_State_of_Recidivism_350337_7.pdf).

³⁶ Durose, Matthew R., Cooper, Alexia D., Snyder, Howard N. 2014. "Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010." U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Retrieved January 25, 2016 (<http://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf>).

³⁷ Durose, Matthew R., Cooper, Alexia D., Snyder, Howard N. 2014. "Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010."

³⁸ Mueller-Smith, Michael. 2015. "The Criminal and Labor Market Impacts of Incarceration."

³⁹ Massachusetts Department of Corrections. 2013. "Prison Population Trends" Retrieved November 17, 2015 (<http://www.mass.gov/eopss/docs/doc/research-reports/pop-trends/prisonpop trendsfinal-2012.pdf>).

⁴⁰ National Conference of State Legislatures, 2008. "Probation and Parole Violations: State Responses."

⁴¹ National Center on Addiction and Substance Abuse at Columbia University. 2009. Shoveling Up II: The Impact of Substance Abuse on Federal, State, and Local Budgets. Retrieved January 25, 2016 (<http://www.casacolumbia.org/addiction-research/reports/shoveling-ii-impact-substance-abuse-federal-state-and-local-budgets>).

⁴² Belenko, Steven, Matthew Hiller, and Leah Hamilton. 2013. "Treating Substance Use Disorders in the Criminal Justice System." Current psychiatry reports 15(11). Retrieved November 17, 2015 (<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3859122/>).



According to a report by the Vera Institute, two-thirds of all offenders in the American criminal justice system report having substance abuse problems, compared to 9 percent of the general population.⁴³ In federal prisons specifically, Approximately half of all inmates currently in federal prison are there for drug offenses, according to the Federal Bureau of Prisons (see figure below).⁴⁴

Prison Overcrowding

As the number of people convicted of drug offenses has increased, the federal prison population has become significantly more overcrowded.⁴⁵ In 2005, federal prisons operated at an average of 134 percent capacity and state prisons operated at an average of 107 percent above capacity.⁴⁶ The federal prison system was 36 percent over its rated capacity in FY2013, and high- and medium- security male facilities were operating at 52 percent and 45 percent above rated capacity, respectively.⁴⁷

Overcrowding creates a feedback loop of recidivism. According to a study published by the nonprofit advocacy organization PLOS (Public Library of Science), the rates of parole violations were 2.28 to 2.77 times greater for parolees from highly crowded prisons compared to those from prisons with low levels of crowding.⁴⁸ Overcrowding, substance abuse, and recidivism appear to be inextricably connected.

Breaking the Cycle

Warner and Kramer note that the revolving door for drug offenders exists because of the fundamental lack of recognition of the connection between addiction and offending.⁴⁹ This pattern generally results in repeated incarceration and eventually prison overcrowding. The authors note that in the early 1990s, data from the Arrestee Drug Abuse Monitoring Program (ADAM) and the Drug Use Forecasting Program (DUF) showed that a large proportion of offenders were drug users.

In response to this type of data, Warner and Kramer note that criminal justice researchers debated the effectiveness of incarceration as a deterrent, especially among drug-dependent offenders, who were perceived by the justice system as repeat offenders driven by addiction and unable to remain in treatment.⁵⁰ Incarceration was ineffectual for offenders who were addicted to drugs, according to this emerging scholarship, because it did not address the specific needs of these offenders, specifically; the social and psychological correlates of drug addiction.⁵¹

⁴³ Cloud, David. 2014. "On Life Support: Public Health in the Age of Mass Incarceration." Vera Institute of Justice. Retrieved January 25, 2016 (<http://www.vera.org/pubs/public-health-mass-incarceration>).

⁴⁴ Federal Bureau of Prisons. "Offenses – Statistics Based on Prior Month's Data." Retrieved January 25, 2016 (https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp).

⁴⁵ James, Nathan. 2014. "The Federal Prison Population Buildup: Overview, Policy Changes, issues, and Options." Congressional Research Service. Retrieved November 17, 2015 (<https://www.fas.org/sfgp/crs/misc/R42937.pdf>).

⁴⁶ Harrison, Paige M., Beck, Allen J. 2006 "Prisoners in 2005." United States Department of Justice, Bureau of Justice Statistics. Retrieved November 17, 2015 (<http://www.bjs.gov/content/pub/pdf/p05.pdf>).

⁴⁷ Ibid.

⁴⁸ Ruderman, Michael A., Wilson, Deirdra F., Reid, Savanna. 2015. "Does Prison Crowding Predict Higher Rates of Substance Use Related Parole Violations? A Recurrent Events Multi-Level Survival Analysis." Public Library of Science. Retrieved January 25, 2016 (<http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0141328>).

⁴⁹ Warner, Tara D. and John H. Kramer. 2009. "Closing the Revolving Door? Substance Abuse Treatment as an Alternative to Traditional Sentencing for Drug-Dependent Offenders." *Criminal Justice and Behavior* 36(1):89–109.

⁵⁰ Senjo, Scott R. and Leslie A., Leip. 2001. "Testing and Developing Theory in Drug Court: A Four-Part Logit Model to Predict Program Completion." *Criminal Justice Policy Review* 12(1):66–87.

⁵¹ Cullen, Francis T. 2005. "The Twelve People Who Saved Rehabilitation: How the Science of Criminology Made a Difference." *Criminology* 43(1):1–42.



Warner and Kramer assert that over the last two decades the foundation for the use of drug treatment in sentencing is the understanding that conventional drug sentencing is a revolving door and that offenders will continue to commit crimes to support drug use, increasing the likelihood of future criminal offenses and recidivism.

U.S. Federal Prison Population as of December 18, 2015⁵²

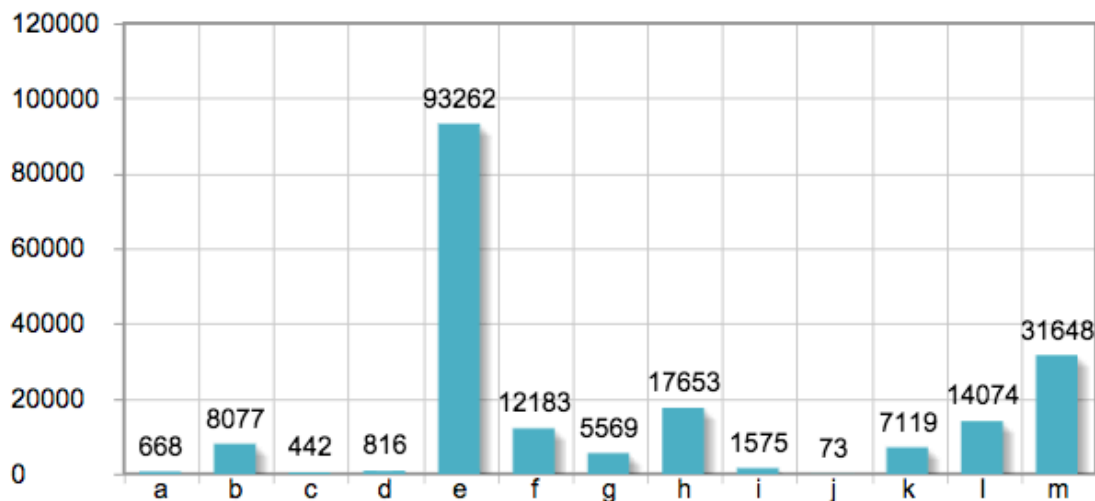


Chart Label	Offense	# of Inmates	% of Inmates
a	Banking and Insurance, Counterfeit, Embezzlement	668	0.3%
b	Burglary, Larceny, Property Offenses	8,077	4.2%
c	Continuing Criminal Enterprise	442	0.2%
d	Courts or Corrections	816	0.4%
e	Drug Offenses	93,262	48.3%
f	Extortion, Fraud, Bribery	12,183	6.3%
g	Homicide, Aggravated Assault, and Kidnapping Offenses	5,569	2.9%
h	Immigration	17,653	9.1%
i	Miscellaneous	1,575	0.8%
j	National Security	73	0.0%
k	Robbery	7,119	3.7%
l	Sex Offenses	14,074	7.3%
m	Weapons, Explosives, Arson	31,648	16.4%

⁵² Federal Bureau of Prisons. "Offenses – Statistics Based on Prior Month's Data." Retrieved January 25, 2016 (https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp).

Absence of Police–Community Trust

Often interactions with police serve as the first introduction to this revolving door of incarceration. As such, many of the disparities that exist as a result can be mitigated with greater emphasis on building trust between police officers and the communities that they serve. However, some speculate that these disparities fuel the lack of trust between law enforcement and these communities in the first place.⁵³

Current State of Relations

Following highly publicized police encounters in Ferguson, Missouri, Baltimore, Maryland, New York City, and elsewhere, trust in the police has significantly decreased.⁵⁴ Over the last 30 years, public support of police has been mostly moderate to positive. However, according to a recent Gallup poll, confidence in the police has reached a 22-year low and is much lower among African Americans, who face the brunt of over-policing.⁵⁵

According to the the Department of Justice’s Civil Rights Division (CRT), basic trust can be an essential part of defusing tension, investigating and solving crimes, and creating a system in which citizens believe that they can rely on their police departments and receive fair treatment. The report notes that victims and witnesses of crime may not approach or engage with law enforcement officials if they do not perceive them to be responsive to their experiences and concerns. According to the study, diversity can, in some cases, be used as a measure to assess the insularity and responsiveness of law enforcement.

This Mistrust is Fueled by Disparities

Community trust is a time-honored bond between an agency and the citizens that it has been tasked to assist, protect, and serve. It is fundamental to successful law enforcement, and law enforcement leaders are expected to maintain a department’s honesty, integrity, legitimacy, and competence.⁵⁶ To construct community trust, it is necessary for chiefs of police and managing supervisors to foster an environment within their departments in which ethical behavior is expected and each individual is responsible for meeting those expectations.⁵⁷

Massachusetts’s eight most ethnically and racially diverse communities are still policed by a predominantly white body of officers despite years of efforts to dispel perceptions of racism and diversify their ranks.⁵⁸ This is an urgent matter of public safety because citizens are less likely to collaborate with the police by reporting crimes or acting as

⁵³ La Vigne, Nancy G., Lachman, P., Rao, S. & Matthews, A. 2014. “Stop and Frisk: Balancing Crime Control with Community Relations.” Office of Community Oriented Policing Services. Retrieved (<http://www.urban.org/research/publication/stop-and-frisk-balancing-crime-control-community-relations>).

⁵⁴ The Massachusetts Chiefs of Police Association and the Massachusetts Major City Chiefs. 2015. “A Response to The Final Report of The President’s Task Force on 21st Century Policing.” Retrieved January 25, 2016 (<http://dovermapd.com/wp-content/uploads/2015/09/mcopa-position-paper.pdf>). “Certain events of the last year have exposed significant shortcomings, and sometimes complete breaches, in the bond that must continue to exist between the police and the people we serve. High profile law enforcement cases, including the controversial use of force deaths of Michael Brown in Ferguson, Missouri and Eric Garner in New York City in 2014, and a series of cases in 2015 in Baltimore, Maryland; North Charleston, South Carolina; Cleveland, Ohio; and most recently in Mount Auburn, Ohio, are the latest examples of a widening chasm between the criminal justice system and the communities it serves.” p. 1

⁵⁵ Jones, Jeffrey M. “In U.S., Confidence in Police Lowest in 22 Years.” Gallup.com. Retrieved January 25, 2016 (<http://www.gallup.com/poll/183704/confidence-police-lowest-years.aspx>).

⁵⁶ National Institute of Justice. 1997. “Police Integrity—Public Service with Honor, A Partnership Between the National Institute of Justice and the Office of Community Oriented Policing Services.” U.S. Department of Justice Office of Community Oriented Policing Services and Office of Justice Programs, Retrieved January 25, 2016 (<http://www.ncjrs.gov/pdffiles/163811.pdf>).

⁵⁷ International Association of Chiefs of Police. “Police Accountability and Citizen Review – A Leadership Opportunity for Police Chiefs.” International Association of Chiefs of Police. Retrieved January 25, 2016 (<http://www.theiacp.org/portals/0/pdfs/BuildingTrust.pdf>).

⁵⁸ Valencia, Milton J. & Allen E. 2014 “Massachusetts Police Forces Lag in Racial Diversity - The Boston Globe.” The Boston Globe. Retrieved January 25, 2016 (<https://www.bostonglobe.com/metro/2014/09/01/massachusetts-police-forces-lag-racial-diversity/RnEIJW5TuVki4ndotvI2GK/story.html>).



witnesses in communities that feel estranged.⁵⁹ As estrangement increases, community relationships with the criminal justice system as a whole become more negative.

How Building Trust Would Reduce Those Disparities

There is a significant connection between incarceration and public trust in police departments. A paper from New York University psychologist Tom Tyler reports that proactive, high-discretion police stops in urban communities are one key problematic law enforcement tactic that heavily erodes trust.⁶⁰ To conduct these stops, police will emphasize aggressive patrol of places with obvious signs of physical and social disorder such as parks, old buildings, and neighborhoods with empty lots.⁶¹ These high-discretion police strategies are based on the “Broken Windows” theory, named after the significant article on the communicable effects of unchecked signs of disorder.⁶² This strategy is noted to have a negative impact on trust because it delegitimizes the police in the eyes of the community. Tyler’s study found that those individuals who experienced fairer treatment by police increased their ratings of police legitimacy. They felt greater obligation to obey, had more trust and confidence in the police, and identified more strongly with the police.⁶³

Through his studies, Tyler demonstrates that punishment or the threat of punishment is a poor mechanism for policing if the intention is to deter criminality. He states, “Realizing that the fairness of police behavior, not the fear of police force and the threat of punishment, drives public actions has dramatic implications for a range of policing policies, such as racial profiling and zero tolerance policing.”⁶⁴ The framework of policing, he asserts, has to be reimagined to include specific policies and practices that impact how the public perceives police legitimacy. High-quality encounters, whether or not they lead to incarceration, are significant in altering public perceptions of police—making both the public and police more confident in one another.

Current Strategy: Justice Reinvestment

The following section will provide a brief overview of the Justice Reinvestment Initiative (JRI). The first section describes the specific goals and drivers for reinvestment in the 17 states that will be assessed for the purposes of this study. The second section will articulate the nine main strategies used by JRI states. The third section will provide an overview of the reinvestment process. The final section will briefly outline some of the predicted and preliminary outcomes of JRI in the assessed states.

JRI Goals and Drivers

JRI is a data-driven approach to corrections policy used by 27 states to reduce drivers—for example, correction costs—to maintain public safety and reduce recidivism.

In August 2015, Massachusetts Governor Charlie Baker announced a request to the U.S. Department of Justice and Pew Center on the States to conduct a comprehensive analysis of the Commonwealth’s criminal justice system through JRI. JRI works in two phases:^{65 66}

⁵⁹ Shah, Susan and Jim Burch. 2015. “How to Build Trust in Policing.” The Marshall Project, October 23. Retrieved January 25, 2016 (<https://www.themarshallproject.org/2015/10/23/how-to-build-trust-in-policing>).

⁶⁰ Tyler, Tom R., and Jeffrey Fagan. 2009. “Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities.” *Ohio State Journal of Criminal Law* 6. p. 231.

⁶¹ Fagan, Jeffrey and Davies, Garth. 2000. “Street Stops and Broken Windows: Terry, Race, and Disorder in New York City,” 28 *Fordham Urb. L.J.* 457. Retrieved January 25, 2016 (<http://ir.lawnet.fordham.edu/ulj/vol28/iss2/2/>).

⁶² Wilson, James Q. & Kelling, George L., “The Police and Neighborhood Safety: Broken Windows.” *Atlantic Monthly*. 1982. p. 29-38.

⁶³ Tyler, Tom R., and Fagan, Jeffrey. “Street Stops and Broken Windows: Terry, Race, and Disorder in New York City.” p. 260

⁶⁴ *Ibid.* p. 257

⁶⁵ <http://www.stanrosenberg.com/sites/default/files/article/pdf/justice-reinvestment-letter-final.pdf>



- Phase I involves attempts to develop and adopt policies that manage existing resources and generate savings without compromising public safety. This entails working with state legislatures to analyze criminal justice populations and expenditures to reduce costs.
- Phase II supports the implementation of policy proposals identified in Phase I while reinvesting a portion of those savings in criminal justice and community programs that further reduce recidivism and prevent crime. It also includes assessing the fiscal and public safety impact of the policies implemented.

This is an important process, as it allows flexibility within state governments to determine the best approaches to positively impact local criminal justice systems.

Along with the two-phase process laid out above, JRI notes two major goals in its 2013–16 strategic plan:⁶⁷

1) Reduce spending on corrections and increase public safety

Jurisdictions are expected to use the justice reinvestment approach to design, enact, and adopt new policies, practices, and programs that reduce recidivism, improve public safety, impact prison and jail populations, and otherwise help generate savings.

2) Reinvest in strategies that can decrease crime and strengthen neighborhoods

Jurisdictions should use the justice reinvestment approach to determine how to invest a portion of the generated savings from policy changes, such as reducing or averting growth in the jail and prison populations, in strategies to increase public safety, such as community-based treatment, probation, prevention-oriented policing strategies, and community-based recidivism reduction efforts.

In justice reinvestment policy, drivers connote factors that may positively contribute to a specific phenomenon. Therefore, central to the JRI process is determining what the drivers of prison populations are.⁶⁸ Some of these drivers include sentencing length, pretrial custodial stay and post-trial decisions such as sentences for offenders who breach community sentences.⁶⁹

According to Table 1, out of all 17 states that passed legislation through JRI, all 17 found supervision revocation as a common driver, 14 found sentencing practices as a common driver, 11 found insufficient or inefficient community supervision or support, and eight found parole processing delays or denials as common drivers.

⁶⁶ <http://www.vera.org/project/justice-reinvestment-initiative>

⁶⁷ https://www.bja.gov/programs/justicereinvestment/what_is_jri.html

⁶⁸ Fox, Chris, Albertson, Kevin and Wong, Kevin. 2013. Justice Reinvestment: Can the Criminal Justice System Deliver More for Less? Routledge. p. 77.

⁶⁹ Fox, Chris, Kevin Albertson, and Kevin Wong. 2013. Justice Reinvestment. p. 78



Table 1: States Identifying Common Drivers⁷⁰

Driver	States
Supervision revocations	AR, DE, GA, HI, KS, KY, LA, MO, NH, NC, OH, OK, OR, PA, SC, SD, and WV
Sentencing practices	AR, DE, GA, HI, KS, KY, LA, NC, OH, OK, OR, PA, SC, and SD
Insufficient or inefficient community supervision or support	GA, KS, KY, NH, NC, OH, OK, OR, PA, SC, and WV
Parole processing delays or denials	AR, HI, KY, LA, NH, PA, SC, and WV

Table 2: States Identifying Common Responses⁷¹

Response	States
Risk and needs assessments	AR, DE, GA, HI, KS, KY, LA, NH, NC, OH, OK, OR, PA, SC, SD, and WV
Accountability measures	AR, DE, GA, HI, KS, KY, LA, MO, NC, OH, OK, PA, SC, SD, and WV
Good time and earned credits	AR, DE, GA, KS, KY, LA, MO, NH, NC, OH, OR, PA, SC, SD, and WV
Intermediate and graduated sanctions	AR, DE, GA, KS, KY, LA, MO, NH, NC, OK, OR, PA, SC, SD, and WV
Enhanced community-based treatment	AR, DE, HI, KS, KY, NC, OH, OK, PA, SD, and WV
Sentencing changes and departure mechanisms	AR, GA, HI, KY, LA, NC, OH, OR, PA, SC, and SD
Mandatory supervision requirements	KS, KY, NC, OH, OK, SC, and WV
Problem-solving courts	AR, GA, KY, LA, SD, and WV
Streamlined parole processes	AR, HI, KY, LA, PA, and WV
Expanded parole eligibility	AR, KS, LA, NH, and SC

Population and Cost Drivers of Prison Growth⁷²

Each state's criminal justice system is unique. This requires the identification of the specific drivers behind prison growth and corrections spending in the state. These drivers can be divided into four groups: parole and probation revocations, sentencing policies and practices, insufficient community supervision and support, and parole system delays and denials.

⁷⁰ La Vigne, N. G., Bieler, S., Lindsey, C., Ho, H., Kotonias, C., Mayer, D., McClure, D., Pacifici, L., Parks, E., Peterson, B., Samuels, J. 2014. "Justice Reinvestment Initiative State Assessment Report." Urban Institute. Retrieved November 20, 2015. (<http://www.urban.org/research/publication/justice-reinvestment-initiative-state-assessment-report>) p. 20

⁷¹ Ibid. p. 20

⁷² La Vigne, N. G., et. al. 2014. "Justice Reinvestment Initiative State Assessment Report." p. 19-27.



Parole and Probation Revocations

Parole and probation revocations resulting in returns to jail and prison were identified as a key corrections population and cost driver in all JRI states. States that identified parole and probation revocations as a driver of the prison population enacted policies to reduce both violations and the use of revocation to prison. The main component of the revocation-reduction strategy was the support of non revocation responses to violations. In addition to expanded sanction options, probation and parole officers were encouraged to use incentives to elicit positive behavior and were given the authority to respond swiftly to violation behaviors.

To target those at a higher risk of reoffending, states used risk and needs assessments to guide supervision decisions and supported risk-reduction programs. Intermediate or graduated responses to violations, including mandatory treatment, home confinement, and short jail stays, were implemented to reduce the frequency of complete revocation of supervision.

Sentencing Policies and Practices

Sentencing policies and practices were a significant driver in prison growth in 14 out of 17 JRI partner states. These drivers can be divided into two broad categories: increasing incarceration rates and increased lengths of stay, especially for non-violent or low-risk offenders. JRI states had high incarceration rates instead of state-specific diversion programs and probation. Increased length of stay also contributed longer sentences and greater prison growth over time. Another driver was the lack of the data necessary to make informed sentencing decisions.

Sentencing changes and departure mechanisms reoriented penalties and reclassified or redefined offenses, revising mandatory minimums, providing safety valves, and expanding non-incarceration options. JRI legislation frequently increased the availability of risk and needs assessments to support risk-based sentencing. JRI legislation also commonly expanded earned credits, offering sentence reductions to inmates who maintain good behavior or participate in prison programs. Performance incentive funding programs were implemented in Pennsylvania to motivate local jurisdictions to send fewer low-level offenders to prison.

Insufficient or Inefficient Community Supervision or Support

Eleven of the 17 JRI states noted deficiencies in the amount of community supervision or support offered to offenders. These deficiencies were linked to inefficient or insufficient spending on these resources, which led to higher rates of re-arrest, revocation of supervision, and criminal justice-related costs. Behavioral services, recidivism reduction programs, and community supervision were identified as areas for reinvestment in these states. However, reinvest efforts appear to be limited solely to individuals already under criminal justice supervision.

Parole Processing Delays or Denials

Parole allows eligible prisoners to serve the remainder of their sentences under community supervision; it is significantly less expensive to the state than incarceration. Analyses demonstrate that eight JRI states identified parole processing delays and denials as the main factors that contributed to prison growth and rising costs.

Common responses include the streamlining of parole processing through system refinements, the implementation of presumptive parole for eligible offenders, expanding parole eligibility, risk assessment, and accountability measures.

Optimizing Safety and Spending⁷³

JRI member states emphasize approaches that utilize evidence-based and data-driven decision-making. JRI strategies used by participants can be divided into nine main groups: risks and needs assessments, accountability

⁷³ Ibid. p. 2-3



measures, earned credits, intermediate sanctions, community-based treatment, sentencing treatments, and sentencing changes and departure mechanisms.⁷⁴

Risks and needs assessments implemented in 16 JRI states help to predict a person's likelihood to reoffend according to criminal risk factors and influence decisions ranging from detention to the allocation of supervision and treatment resources.

Accountability measures implemented in 15 JRI states include indicators such as reporting and certification offenders and their environments and were adapted from the strict sentencing guidelines for use in data reporting.

Earned credit includes the possibility of good time credits and earned time credits that provide sentence reductions for those who maintain good behavior or program participation in 15 JRI states.

Intermediate and graduated sanctions include the establishment of quick responses such as short jail stays for parole or probation violators in 15 JRI states. Programs tested as alternatives to incarceration are models from the HOPE (Hawaii Opportunity Probation with Enforcement) program for probationers.

Community based treatment includes programs developed or expanded in 11 JRI states through the expansion of programming and services. States expanded the availability of these programs by increasing funding for key services.

Problem-solving courts are an evidence-based approach to the provision of treatment for offenders with specific needs in six JRI states. These problem-solving courts often focus on those with substance abuse problems and mental health disorders.

Streamlined parole processes and expanded eligibility facilitate the early release of eligible offenders to parole supervision, shortening prison stays while ensuring that appropriate conditions are met to protect public safety.

Reinvestment⁷⁵

Reinvestment of tangible savings and upfront investment are the two ways that reinvestment occurs according to this system. Reinvestment of tangible savings takes place when states take note of averted justice spending and reinvest those savings. This entails a waiting period before investment in other programs where savings are then realized.

Upfront investments in public savings take place when states invest in programs based on expected future savings. This strategy notes the lag in time between the realization of a project and the realization of the savings from that project. Some participating states have chosen to reinvest in alternatives to incarceration. \$165.8 million has been reinvested: \$142.1 million in upfront investment and \$23.7 million in reinvestment of tangible savings since the start of the Justice Reinvestment Initiative.

Predicted and Preliminary Outcomes⁷⁶

JRI states expect that the policies and practices implemented will have positive effects on their justice system populations and costs. JRI predicts that participating states will either reduce overall prison populations or decelerate population growth. Participating states expect total incarcerated population decreases to range from 0.6 to 19 percent. States that do not project a decrease in population expect to slow incarcerated population growth by 5 to 21 percentage points. The range of projected savings also varies significantly. Cost savings range from \$7.7 million over five years to \$875 million over 11 years. Aggregate projected savings amount to as much as \$4.6 billion.

⁷⁵ Ibid. p. 43-7

⁷⁶ Ibid. p. 3



Savings from JRI are expected to come from a number of reforms, including reducing prison operating costs, averting spending on new prison construction, and streamlining justice system operations.⁷⁷ JRI states reinvest some portion of savings into evidence-based and high-performing criminal justice programs. States have planned to reinvest more than \$398 million in public safety initiatives.⁷⁸

Limitations of Justice Reinvestment

This section attempts to present some of the limitations that exist within the current justice reinvestment strategy. It is divided into two parts. The first identifies JRI's lack of emphasis on the reduction of new prison populations. The second notes that current reinvestment strategies pay insufficient attention to local communities. Both parts are united in the assertion that justice reinvestment pays insufficient attention to the systemic foundations of the revolving door.

Insufficient Emphasis on Prison Admissions⁷⁹

The four drivers identified by JRI emphasize reductions in recidivism instead of reductions in new prisoner admissions. This focus on offenders already in the system results in the stabilization of prison populations instead of significant reductions. As a result, JRI risks institutionalizing mass incarceration in partner states.

It is very hard to gauge the extent to which justice reinvestment has led to meaningful decreases in prison populations. Factors outside of JRI may have had a part to play in the achievements that have been attributed to JRI, such as already-declining crime rates and arrest rates.

Prison admissions have been on the decline in the United States in recent years. The prison reform projections that JRI attributes to itself exclude already noted decreases in prison admissions. Several partner states made projections that assumed that prison admissions would not stabilize within three to five years of the projections being issued. As a result, there are significant errors in long-term projections.

Recidivism reduction is an important goal; however, a great deal of reform efforts exclusively tackle recidivism through reinvestment in reentry-related services and supervision instead of police reform and investment in community public health programs—strategies that have a significant impact on ending the revolving door.

Insufficient Investment in Minority Communities⁸⁰

Justice reinvestment was developed in the hopes that greater emphasis on evidence-based practices (EBPs) would create savings that could be reinvested in neighborhoods with significant populations under criminal justice control and supervision. Community reinvestment, in turn, was expected to generate a positive feedback loop of greater decreases in populations under criminal justice control, resulting in significantly greater savings.⁸¹ In recent times, however, JRI's initial commitment to community investment has become increasingly tenuous.

Justice reinvestment pays insufficient attention to the systemic foundations of the revolving door in communities of color across the country. The absence of such investment is perhaps JRI's biggest vulnerability as an avenue of

⁷⁷ Ibid. p. 3

⁷⁸ Ibid.

⁷⁹ Austin, J., Cadora, E., Clear, T.R., Dansky, K., Greene, J., Gupta, V., Mauer, M., Porter, N., Tucker, S. and Young, M.C. 2013. "Ending Mass Incarceration: Charting a New Justice Reinvestment." American Civil Liberties Union. Retrieved November 20, 2015 (<https://www.aclu.org/ending-mass-incarceration-charting-new-justice-reinvestment>). p. 8

⁸⁰ Ibid. p. 8-10

⁸¹ Tucker, Susan B., & Cadora, Eric. 2003. "Justice Reinvestment." Ideas for an Open Society 3 (3): 1–8.



meaningful corrections reform. Recent reinvestment packages are likely to strengthen the corrections policies that have led to the growth of mass incarceration in the first place.

This claim can be supported by the common responses outlined by JRI partner states. All 17 states examined for this paper have directed increased funding to community supervision, 16 states have directed significant funding to risk-based assessment, and 15 have identified accountability measures as key areas of focus. These policies have the added effect of broadening the net of social control while investing very little in tackling the problems that get potential offenders incarcerated in the first place.

The drivers of mass incarceration that have been the focus of states that have passed legislation tell a similar story. The justice reinvestment process mostly selected for drivers that excluded systemic factors. All 17 states identified parole and probation revocations, and 11 states noted insufficient or inefficient community supervision and services as major drivers.

JRI also suffers from a notable absence of county and municipal officials with specialized knowledge that can assist in meaningful reform in partner states. Any ambitious vision of criminal justice reform requires the inclusion of local constituencies, especially minority leaders in at-risk communities.

Residents in communities with large populations under some form of criminal justice supervision continue to find themselves isolated by JRI, which continues to ignore analyses of their proposals' impacts on racial disproportionality or on specific communities.⁸² JRI must reinvest in these vulnerable communities, particularly in regard to economic opportunities, mental health services, and drug abuse treatment.

Massachusetts and the Justice Reinvestment Act

Massachusetts's Justice Reinvestment Act

On October 14, 2015, State Senator Sonia Chang-Diaz (Boston) and Representative Mary Keefe (Worcester) jointly filed a bill, the Justice Reinvestment Act (S. 64/ H. 1429), to accomplish many of the reforms backed by the justice reinvestment process. This Justice Reinvestment Act attempts to remedy many of the key drivers of cause economic and racial imbalances in state prisons. The bill outlines four primary reforms to the criminal justice system in the Commonwealth:⁸³

- 1) The repeal of mandatory minimums for drug crimes
- 2) A reduction in certain low-level felonies to misdemeanors (e.g. petty theft or low-level drug charges)
- 3) The elimination of automatic collateral sanctions at the Registry of Motor Vehicles for drug-related offenses unrelated to operating a vehicle
- 4) The creation of medical parole regulations that would allow a judge to decide whether a person incapacitated or terminally ill should remain under state custody

The Justice Reinvestment Act also seeks to remedy the economic and racial imbalances that have contributed to the strength of the revolving door in Massachusetts. The final sections of the bill can be divided into five primary reforms. Each reform is to be funded through a trust created with the savings derived from earlier criminal justice reforms.⁸⁴ Those reforms include:

⁸² Austin, J., et al. 2013 "Ending Mass Incarceration." p. 5

⁸³ Chang-Diaz, Sonia. 2015. "F. Justice Reinvestment Act/An Act to Increase Neighborhood Safety and Opportunity (S.64)." Retrieved January 25, 2016 (<http://senatorchangdiaz.com/legislation/f-justice-reinvestment-act-an-act-increase-neighborhood-safety-and-opportunity-s-64>).

⁸⁴ The Massachusetts Campaign to End Mass Incarceration & Fund Job Creation. 2015. "Justice Reinvestment Act." Justice Reinvestment: An Act to Increase Neighborhood Safety and Opportunity. Retrieved January 25, 2016 (http://jobsnotjails.org/jnj/?page_id=516).



- 1) Job training programs to address the skills gaps identified by Massachusetts industry leaders
- 2) Transitional job and pre-apprenticeship programs to prepare people for today's workforce and place them in living-wage jobs
- 3) Youth jobs that provide sustenance and experience
- 4) Initiatives to create new jobs through social enterprises, co-ops, and other businesses
- 5) Evidence-based programs that specialize in drop-out prevention and recovery, giving youth a second chance at academic success

The Justice Reinvestment Act responds to many of the common drivers of mass incarceration identified in the JRI process. Its commitment to sentencing reform and intermediate sanctions attempt to reduce the number of people entering the justice system. However, the reforms still prioritize offenders already under the criminal justice system's of control and supervision.

The second section of the bill attempts to reinvest in education and jobs training in vulnerable communities. These communities are low-income, majority minority, and often have large swathes of individuals excluded from the labor force. However, the reinvestment section does not emphasize the connections between substance abuse, mental health, and the revolving door. For justice reinvestment in Massachusetts to be fully attentive to reductions in prisoner admissions and minority empowerment in vulnerable communities, mass incarceration needs to be understood as a harm reduction problem. The second section of the Justice Reinvestment Act needs to be revised to include public health reinvestment to reduce new prisoner admissions and reduce recidivism. Harm reduction reinvestment should be prioritized in pretrial diversion programs that connect law enforcement, case workers, and community leaders to target potential offenders. The hope is that such programs can increase community-police trust and reduce the potential for drug abuse and addiction while refraining from adding more of the state's residents to the criminal justice system.

Case Studies in Harm Reduction Diversion

Law Enforcement Assisted Diversion

One successful intervention with the potential to connect local stakeholders, police officers, health care officials, and drug offenders is Law Enforcement Assisted Diversion (LEAD). According to a White House-sponsored report about the program, police officers have the option to divert individuals arrested for certain low-level crimes, such as drug use or prostitution, to case managers instead of placing them under custody. These case managers would then connect these individuals to treatment, housing, and other services to push them out of the criminal justice system.⁸⁵

The LEAD program was initiated in 2011 with objective of reducing criminal recidivism, criminal justice service utilization and associated costs as well as improvements for psychological, housing and quality-of-life outcomes.⁸⁶ LEAD is the first known pre-booking program of its kind in the United States that explicitly aims to reduce strain and associated costs on the criminal justice system.⁸⁷

⁸⁵ Austin, Roy. 2015. "LEAD-ing the Way to a More Efficient Criminal Justice System." [whitehouse.gov](https://www.whitehouse.gov/blog/2015/07/02/lead-ing-way-more-efficient-criminal-justice-system). Retrieved January 25, 2016 (https://www.whitehouse.gov/blog/2015/07/02/lead-ing-way-more-efficient-criminal-justice-system).

⁸⁶ Collins, S.E., Lonczak, H.S., Clifasefi, S.L. 2015. "LEAD Program Evaluation: Criminal Justice and Legal System Utilization and Associated Costs." Harm Reduction and Treatment Lab, University of Washington – Harborview Medical Center. Retrieved January 25, 2016 (<http://static1.1.sqspcdn.com/static/f/1185392/26401889/1437170937787/June+2015+LEAD-Program-Evaluation-Criminal-Justice-and-Legal-System-Utilization-and-Associated-Costs.pdf?token=sly%2FRidPwVFqiqE3owFqNcXUxT4%3D>).

⁸⁷ Collins, S.E. et al. 2015. "LEAD Program Evaluation."



LEAD programs exist in Seattle, Washington, and Santa Fe, New Mexico, and one is being proposed in Albany, New York.⁸⁸ The County of Gloucester Police Department in Massachusetts announced a similar program in which addicts who voluntarily turn in their drugs and equipment will not be arrested, and will instead be assigned an “angel” to guide them through detox and recovery as long as they agree to get treatment.⁸⁹

The main purpose of LEAD is to reduce recidivism by closing the revolving door of the criminal justice system. A 2008 study commissioned by the Pennsylvania Commission on Crime and Delinquency assesses the effectiveness of Restrictive Intermediate Punishments or RIP/D&A, a treatment and diversion program similar to LEAD, as an alternative to incarceration.⁹⁰ According to the study, RIP/D&A is effective at reducing the risk of re-arrest, but only for participants who successfully complete the program. Offenders successfully completing RIP/D&A had a risk of re-arrest 49 percent lower than participants conventionally incarcerated at 12 months, 35 percent lower at 24 months, and 30 percent lower at 36 months when controlling for offender, offense, and county characteristics.⁹¹

LEAD reports on recidivism are similar. According to the LEAD Program Evaluation commissioned by the Law, Societies & Justice Program and the Sociology Department at the University of Washington, individuals who were incarcerated and not involved in the program demonstrated an increased recidivism rate of 51 percent in comparison to only a 6 percent increase reported for LEAD participants.⁹² The LEAD group also had a 87 percent lower probability of at least one arrest after evaluation and a 30 percent decrease in the rate of arrest.⁹³

Across nearly all outcomes, there were statistically significant reductions in LEAD participants compared to the control groups on average yearly criminal justice and legal system utilization and associated costs. According to the University of Washington study, program participants had 1.4 fewer jail bookings on average per year and spent 39 fewer days in jail per year subsequent to re-entry.⁹⁴ In terms of costs associated with criminal justice and legal system utilization, From pre- to post-evaluation entry, LEAD participants showed substantial cost reductions (-\$2100), whereas control participants showed cost increases (+\$5961).⁹⁵

States across the country, such as Georgia, have taken the lead in this new evidence-based approach to law enforcement and have seen major improvements in their criminal justice systems. A report conducted by the Georgia Council on Criminal Justice Reform highlights the great progress made in the state. Georgia has started to focus prison time, the costliest correctional sanction, on the most serious offenders. This coupled with a wholehearted embrace of cost-effective alternatives to incarceration has led to a 10 percent decrease in violent and sex offenders in prison over the last five years. Simultaneously, Georgia’s prison population has stabilized in contrast to most states in the country. Instead of an expected 8 percent increase in prison population over five

⁸⁸ Carleo-Evangelist, Jordan. 2015. “Albany Program Would Divert Low-Level Criminals from Jail.” Times Union. Retrieved January 25, 2016 (<http://www.timesunion.com/tuplus-local/article/Albany-program-would-divert-low-level-criminals-6347937.php>).

⁸⁹ Gloucester Police Department. 2015. “Gloucester Initiative Angle Program Update.” Facebook.com. Retrieved November 25, 2015 (<https://www.facebook.com/GloucesterPoliceDepartment/posts/715919441851921>).

⁹⁰ Warner, Tara D., and John H. Kramer. 2009. “Closing the Revolving Door? Substance Abuse Treatment as an Alternative to Traditional Sentencing for Drug-Dependent Offenders.” *Criminal Justice and Behavior* 36, no. 1: 89–109. doi:10.1177/0093854808326743.

⁹¹ Warner & Kramer. 2009. “Closing the Revolving Door?” p. 105

⁹² Beckett, Katherine. 2014. “Seattle’s Law Enforcement Assisted Diversion Program: Lessons Learned From the First Two Years.” Law, Societies & Justice Program and the Sociology Department at the University of Washington. Retrieved November 17, 2016 (<http://www.seattle.gov/council/Harrell/attachments/process%20evaluation%20final%20203-31-14.pdf>).

⁹³ Beckett, Katherine. 2014. “Seattle’s Law Enforcement Assisted Diversion Program.” See also, Collins, S.E. et al. 2015. “LEAD Program Evaluation.”

⁹⁴ Collins, S.E. et al. 2015. “LEAD Program Evaluation.” p. 2.

⁹⁵ Ibid.



years, reforms have promoted stabilization and prevented growth that would have required the state to spend \$264 million to expand capacity.⁹⁶

The report notes that, similar to LEAD-style programs, Georgia's Department of Corrections has adopted a "dynamic assessment tool that helps officials better evaluate inmates and match them with programs and services that target their criminogenic profile." The state has also focused on expanding community-based options, in part through the creation of an incentive grant program. According to the report, in the 49 participating counties, felony commitments and placements for juveniles decreased 62 percent in the nine-month period ending October 2014. This progress has helped to stimulate a 14 percent drop in the population incarcerated or on probation statewide, freeing resources to expand the grant program to 60 counties that include 70 percent of Georgia's youth. A reentry program, the Georgia Prisoner Reentry Initiative (GA-PRI), was also created to transform recidivism in the next five years. By providing an array of services and supervision to offenders, "beginning at the time of their incarceration and continuing through their reintegration in the community," the state expects to reduce statewide recidivism by 7 percent over two years and by 11 percent over five years.

Project Longevity

Project Longevity is a community-oriented policing strategy to reduce gang violence in three of Connecticut's major cities: New Haven, Bridgeport, and Hartford. It is modeled after successful group violence intervention (GVI) efforts implemented by the Chicago Police Department and Operation Ceasefire: Boston Gun Project.⁹⁷ Project Longevity's key strategy is engaging with gangs or groups in danger of being perpetrators or victims of violence. Individuals from these groups are called in to an intervention, where services are offered as incentives not to engage in gun-related violence, including help with getting high school diplomas, driver's licenses, substance abuse treatment, and housing assistance.⁹⁸

Longevity attempts to reduce gun violence by focusing on law enforcement, social services, and community members to reduce the members of violent street groups that are disproportionately involved in gun violence as victims and offenders.⁹⁹ Social services offered by this program are coordinated by community-based service providers, including employment, housing, education assistance, provisions, vocational job training, childcare, mental health services, and substance abuse services.¹⁰⁰

The call-in is Longevity's signature approach to the problem of the revolving door.¹⁰¹ The call-ins are hour-long sessions where suspected group or gang members are called in by family members and community leaders to address their alleged crimes. A mix of clergy, law enforcement, service providers, and survivors of homicides are encouraged to attend the call-ins as well.

Although civilian engagement increases accountability and decreases police misconduct, substance addiction and mental health problems can be strong incentive for men to enter gang life.¹⁰² Project Longevity acts as a bridge that

⁹⁶ Boggs, Michael P. & Worthy, W. T. 2015. "Report of the Georgia Council on Criminal Justice Reform 3." Retrieved November 17, 2015 (<http://www.gjpc.org/wp-content/uploads/2014-2015-CJRC-Report.pdf>).

⁹⁷ Sierra-Arevalo, M., Charette, Y. & Papachristos, A.V. 2015. "Evaluating the Effect of Project Longevity on Group-Involved Shootings and Homicides in New Haven, CT (Working Paper)." Institution for Social and Policy Studies at Yale University. Retrieved November 17, 2015 (http://isps.yale.edu/sites/default/files/publication/2015/10/sierra-arevalo_charette_papachristos_projectlongevityassessment_isps15-024_1.pdf).

⁹⁸ Stannard, Ed. 2015. "Study: New Haven's Project Longevity Shows Positive Results." New Haven Register. Retrieved January 25, 2016 (<http://www.nhregister.com/article/NH/20151024/NEWS/151029727>).

⁹⁹ Sierra-Arevalo, M., et al. 2015. "Evaluating the Effect of Project Longevity on Group-Involved Shootings and Homicides in New Haven, CT (Working Paper)."

¹⁰⁰ "Support and Outreach." Project Longevity. Retrieved January 25, 2016 (<http://www.project-longevity.org/>).

¹⁰¹ Flynn, Ryan. 2015. "New Haven's Project Longevity Goes Face-to-Face in Work to End Violence." New Haven Register. Retrieved January 25, 2016 (<http://www.nhregister.com/article/NH/20151024/NEWS/151029726>).

¹⁰² Fung, Archon. 2001. "Accountable Autonomy: Toward Empowered Deliberation in Chicago Schools and Policing." *Politics & Society* 29, no. 1: 73–103. doi:10.1177/0032329201029001004



empowers vulnerable communities to intervene to prevent incarceration and reduce gang violence on their own terms. Violent crime in the state has decreased 10.8 percent, twice the national average.¹⁰³ Locally focused initiatives such as Project Longevity are effective in reducing violence and even foster a “diffusion of benefits” in areas surrounding hotspots, but they often lack wraparound programs to decrease recidivism.¹⁰⁴

Conclusion and Recommendation

Both the JRI and the Justice Reinvestment Act attempt to remedy many of the key drivers of economic and racial imbalances in state prisons. However, for justice reinvestment in Massachusetts to fully tackle mass incarceration and the problem of the revolving door—that is, the connection between addiction, law-enforcement, and criminal justice supervision—the Justice Reinvestment Act must be amended to emphasize reducing new prison admissions and promoting minority empowerment in vulnerable communities.

Harm reduction reinvestment should be prioritized in pretrial diversion programs that direct reinvestment to programs that connect law enforcement, case workers, and community leaders to target potential offenders. It is expected that such programs can increase community–police trust and reduce the potential for drug abuse and addiction while refraining from new additions to criminal justice supervision within the state.

Massachusetts, as one of the greatest spenders on state corrections in the country, should consider the implementation of harm reduction reinvestment in programs similar to LEAD and Project Longevity.¹⁰⁵ Instead of prioritizing conventional approaches to crime reduction that emphasize punishment over prevention and rehabilitation, JRI’s strategy prioritizes evidence-based approaches. However, JRI approaches tend to stabilize prison populations instead of reducing them and preventing the entrance of new participants under the system of criminal justice control. Consistent with JRI’s mission, it makes both economic and ethical sense to reinvest in these data-driven harm reduction programs proven to improve public safety and reduce corrections and related criminal justice spending.

Implementation of and investment in harm reduction pre-trial programs will make significant inroads in addressing the 300 percent increase in state incarceration since 1978, the 39% three-year recidivism rate, and contribute to substantial criminal justice reform in Massachusetts. A JRI and Justice Reinvestment Act that does not have harm reduction at their centers, merely puts a Band-Aid on a bullet wound, accomplishing very little against the source of mass incarceration in Massachusetts and the U.S. as a whole – the problem of the revolving door.

¹⁰³ Crimes Analysis Unit. 2014. “Annual Report of the Uniform Crime Reporting Program.” State of Connecticut Department of Emergency Services and Public Protection. Retrieved November 20, 2014. (<http://www.dpsdata.ct.gov/dps/ucr/data/2013/Crime%20In%20Connecticut%202013.pdf>).

¹⁰⁴ Sierra-Arevalo, Michael. 2013. “Micro-Policing Can Reduce Violence in Urban Hot Spots.” Yale Institution for Social and Policy Studies. Retrieved November 20, 2014 (<http://isps.yale.edu/node/20871#.VqaB2rxH2u4>).

¹⁰⁵ Mitchell, M. & Leachman, M. 2014. “Changing Priorities: State Criminal Justice Reforms and Investments in Education” Center on Budget and Policy Priorities. Retrieved January 25, 2016 (<http://www.cbpp.org/research/changing-priorities-state-criminal-justice-reforms-and-investments-in-education>). FY 2013 corrections spending levels are estimates collected by the National Association of State Budget Officers.

