

# BLACKSTONIAN

THE BLACK BOSTON 411... 24-7

FEB / MAR - 2012

"3 Strikes" Edition

## SAY NO TO "3 STRIKES" LAW IN MASSACHUSETTS



### PROPOSED LEGISLATION LEADS TO MASS INCARCERATION

★ ★ ★ SPECIAL FOCUS ON CURRENT HABITUAL OFFENDER LEGISLATION ★ ★ ★

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## PROF. JAMES JENNINGS ON “3 STRIKES”



Prof. James Jennings

Let's be clear: the 3 strikes crime bill being proposed for Massachusetts has nothing to do with the stopping or reduction of crime. If not for the kind of long-enduring negative impacts on people and families, and communities, the proposal could be described as silly. We cannot describe it as silly, however, because there is a proven history of destruction of lives and communities associated with 3 strikes provisions in other states, at the same time that it has proven worthless in the reduction of crime. Enactment of this kind of legislation will only lead to potential increase in the state's prison population and unfairly burden impoverished people, but especially Black and Latino people, and especially young people. It is a proposal that contradicts recent and widespread efforts to reform the Criminal offender Record Information (CORI), a system that is being acknowledged as a failure by increasing numbers of people and legislators in Massachusetts.

A report issued by the Justice Policy Institute, Three Strikes and You're Out, reports that such legislation has led to many people being incarcerated for relatively minor crimes. In California, two-thirds of all persons imprisoned under its 3-Strikes law, committed nonviolent

crimes. Based on FBI crime rates reported, it was found that between 1993 and 2002, violent crime in 3-Strike states fell by 33%; in non 3-Strike states, however, crime decreased by 34.3%. In lieu of the failure of the 3-Strikes approach as crime prevention, why are our state legislators considering a strategy that has been discarded by many organizations and professionals involved with designing anti-crime strategies? And, why are our state legislators so anxious to adopt legislation that will have the effect of increasing racial divisions in the state? The adoption of this kind of law will doubtless be 'colorblind'. But in its implementation it will adversely affect communities of color which tend to have significantly greater numbers of people without the resources to pay for defending themselves, or their children, in response to accusations of crime. And, let's be honest here: or have the resources to change or challenge, or even delete records of crime.

This is not a game. It is irresponsible at worst, and goblin at best, to propose that --just like in baseball-- when a hitter has three strikes he is out. What a seductive but dangerous analogy, and arbitrary template, for the administration of justice and fairness.

- James Jennings, PhD  
Tufts University  
ACLU of Massachusetts

## MA. CAREENS IN WRONG DIRECTION ON CRIME



Nancy Gertner

Why is Massachusetts moving in a direction opposite that of other states -- retaining life without parole for juveniles, refusing to enact post conviction DNA testing statutes and more recently, proposing a new version of the discredited "Three Strikes and You're Out" crime approach?

As the Globe reported, Massachusetts is the only New England state with life without parole for juveniles. The Supreme Court has recognized that the adolescent brain is sufficiently different from that of an adult that the death penalty is inappropriate -- even for murder, as is life without parole in non-murder cases. And it is inconsistently applied. The story is a familiar one: The law is enacted because of one juvenile's horrific crime, but is then applied in very different cases - to impulsive crimes, nowhere near as brutal as the offense that motivated the law, committed by teenagers with little or no prior record.

The failure of the DNA bill is more mystifying. No one is interested in the imprisonment of an innocent man. Yet, a bill requiring DNA testing has failed to pass every year since 2003. As the Globe reported, some prosecutors claim to be worried about the cost of DNA testing, costs which have not materialized in states that permit testing.

If costs are at issue, why enact a "Three Strikes" bill? While we are not yet where California is -- California has to release more than 30,000 prisoners because of "Three Strikes" overcrowding -- that's where we are heading. Existing get-tough policies have pushed our system to the breaking point.

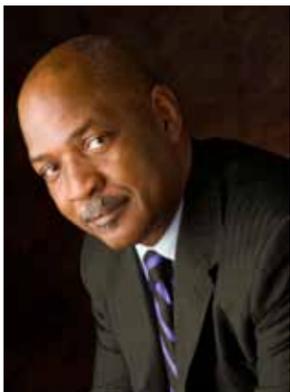
Overcrowding averages 143 percent over capacity; one unit at MCI Framingham is even at 331 percent over capacity. Parole releases -- influenced by administration policies -- have dropped by 56 percent in 2011 (according to the Department of Correction). The Commonwealth faces additional prison costs of approximately \$100 million dollars per year. And if the new law increases the prison population as it is likely to do, the Commonwealth will have to build more capacity fast -- costing \$100,000 per cell. This is on top of the \$1 billion a year the state spends on incarceration. Worse yet, since the current system is too strained to meaningfully invest in keeping prisoners from reoffending, we are doomed to keep paying to house some of the same prisoners over and over.

The issue is not being "soft on crime." Real reform saves millions and increases public safety. Real reform recognizes that every dollar spent on prison is a dollar taken away from reentry initiatives. Even Newt Gingrich, among others across the political spectrum, agree that imprisonment is an expensive resource to be carefully targeted.

The proposed "three-strikes" bills are not. Both House and Senate versions create two categories

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## PROF. CHARLES OGLETREE ON “3 STRIKES”



Prof. Charles Ogletree

This is not a bill that is smart about crime, this is something that was thrown together in both the Senate and the House to show they are tough on crime and no one has talked about the real costs.

In a discussion I had with Senator Tarr, he said 'Its only going to cost a few hundred thousand dollars' Where did that figure come from? It makes no sense at all but we know whats going to happen. You've heard about overcrowding prisons, you've heard that more people will be detained, you've heard about all the challenges. Its going to cost us. Its going to cost us all the things that we won't have, like jobs, like food, like gas for our cars, like fare for the T, all that is going to be impacted by this nonsensical mean-spirited bill that's being proposed now and we have to stop it.

The people of California did the same thing thinking they were going to be tough on crime and now the Supreme Court has told them either you let thousands of people go or we will. Crime is down across the country and yet we're going to be tougher and meaner and more irresponsible and we're moving the other way in terms of addressing this problem. No one is talking about feeding children, no one is talking about getting kids to school, no one is talking about shelter for those who are cold, no one is talking about jobs for those who are unemployed.

If we want to change the Commonwealth take care of the people who need something and not just focus on punishment. Its the wrong angle, its the wrong purpose, its the wrong time, its the wrong bill and we have to stop it right here, right now and say this is not what we need.

How many look at the face of crime in Massachusetts? Whats been driving this is not what's happening in Dorchester, Roxbury, or Mattapan. You saw the Black & Latino Caucus say no, this is not we need in our community right now we need some efforts to help children when they are born and not throw them away when they are 17 yrs. old.

You saw victims of tragedy and people all around the Commonwealth are scared that it could happen in "my" neighborhood. That's what they're worried about and that's a fear or worry but this is not the answer to that worry. This is not the answer. This bill doesn't do it.

I appreciate the fact that we've had some objections in the House and I expect that we will have some coming soon in the Senate. We're going to keep coming here every single day, in every single way because the people's voice has not been heard. We want to make sure that if they pass a bill they pass one that's sane, that's smart, that's thoughtful and reflective of the views of the entire community and that has a little sense about second chances in it. We all fall short, the question is how can we find a way to be both tough on crime and smart

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# "3 STRIKES" IS THE WRONG WAY FORWARD FOR MASSACHUSETTS



A lot is on the line and we need your help. Massachusetts lawmakers are under intense pressure to pass a "3 strikes and you're out" proposal that would make our already harsh sentencing laws even more punitive.

In November, each branch of the state legislature hurriedly passed legislation that would, among other provisions, expand "mandatory maximum" sentences for people with certain criminal histories who are convicted of new crimes.

That's right—mandatory maximum sentences.

Please ask legislative leaders to reconsider these overly harsh sentencing proposals.

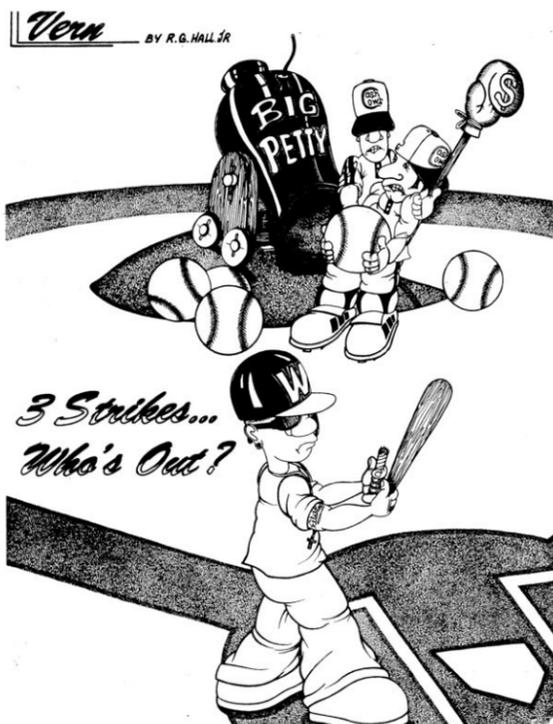
Unless we take bold and steady steps, "3 strikes" would tie judges' hands and require them to impose the maximum possible sentence on any defendant with past felony convictions charged as a "habitual" offender—such as stealing something with a value over a \$250 threshold.

It should never even be a possibility that a judge could be forced to lock somebody up for years for an offense like stealing an iPod or an expensive pair of shoes. On top of that, the law would push back any chance of parole, and in many cases strip it away entirely. That's not only wrong, but with a price tag of nearly \$50,000 a year to taxpayers, we can't afford it.

Please tell Massachusetts lawmakers that mandatory maximum sentences are the wrong way to go.

- ACLU of Massachusetts

**FIND A COMPLETE LIST OF ELECTED OFFICIALS AND THEIR CONTACT INFORMATION ON PAGE 7**



Artist: Richard G. Hall, Jr.

## NAACP / NEAC (NEW ENGLAND AREA CONFERENCE) ON PROPOSED HABITUAL OFFENDERS LAW (HOUSE BILL NO. 3811, SENATE BILL NO. 2080)



**Atty. Stephanie Soriano-Mills**

The NAACP supports a careful and thoughtful review of the Massachusetts criminal justice system at anytime which seeks to protect its citizens, hold people accountable for their offenses, and emphasizes education and rehabilitation programs, and programs which seek to reduce recidivism.

All indications are that the amendments to the Habitual Offenders statute in S.2080 and H.3828 are an over-reaction to the Domenic Cinelli case. While this was a tragic and unfortunate situation, it should not set the stage for over-reaction and legislation based simply on taking punitive action which has little promise of protecting Massachusetts citizens. These punitive measures will dramatically increase the length of prison sentences for a wide range of offenses, some of which are non-violent in nature and they are fiscally unsustainable. By all authoritative statistics, violent crime is down in Massachusetts. This ought to be a time at which reasoned judgment and careful review of facts and statistical analysis lead to sound criminal justice reform.

### RESOURCE ALLOCATION

The amendments to the Habitual Offender statute will dramatically increase the length of prison sentences and the changes will overwhelm the criminal justice system. Currently, overcrowding of Massachusetts prisons is at about 144%. The Massachusetts Department of Correction has projected an annual growth of more than 2.5% per year through 2019, without the imposition of the 3 Strikes bill. Therefore, even without the 3 Strikes bill, Massachusetts is facing increased DOC costs of approximately \$100 million, excluding the \$100,000 per cell to construct new prisons.

There are approximately 11,800 people incarcerated in the Massachusetts prisons. Of these, about 5,500 prisoners are serving time for crimes that would qualify as 3 Strikes crimes. Based on a conservative analysis of sentencing data provided by the Massachusetts Sentencing Commission, between 150-250 of these offenders would likely be sentenced under 3 Strikes. Even if each of these prisoners serves an average of 10 additional years, this will result in an additional 1,500 – 2,500 prisoners once the law has fully taken effect. Therefore, 3 Strikes will cost taxpayers between \$75- \$125 million per year, not including the capital costs required to construct new prisons.

If the approximately 1,700 prisoners released each year without supervision were subject to mandatory post-release supervision for nine months, the minimum term allowed under this proposed bill, it would cost Massachusetts approximately \$8.5 million. The annual cost to supervise one parolee is \$5,000. Massachusetts would need to hire an additional 49 parole officers, costing \$1.75 million per year. The annual cost of re-incarcerating parolees who violate a condition of post-release supervision is conservatively

estimated at approximately \$2 million per year. This estimate is based on a projection that 15% of the parolees are re-incarcerated each year and serve an additional 2 months.

Reasonable estimates range from \$35,000 to \$47,000 per year to imprison an inmate in Massachusetts. Massachusetts is currently spending approximately \$10,000 per year (grades k-12) in education per student. Many respected criminology and sociology studies have shown a direct relationship between low levels of education attainment and rates of incarceration. So, comparing these two costs only, Massachusetts could expect to reap massive savings by dramatically enhancing its educational system.

In 2010, 49% of males and 41% of females entered Massachusetts DOC with less than a 9th grade reading level.

In 2010, 47% of males and 37% of females entered Massachusetts DOC with less than a 6th grade math level.

Clearly, more resources should be spent in primary and secondary education. We could then expect a long term benefit in reduced crime and incarceration. However, to address the short term problem of crime, more resources should be spent on education in prison, job training, rehabilitation and drug rehab. These programs will dramatically reduce recidivism. Studies have shown that longer prison sentences do not reduce recidivism. The NAACP strongly supports more reformatory measures rather than more punitive measures.

### THE 3 STRIKES PROPOSITION

The proposed legislation would require a mandatory sentencing for exhaustive list of felonies, some of which are non-violent in nature. The sentencing would require 25 years imprisonment, without the possibility of parole for the third offense. Court sentencing is generally not been lenient and it has not been generally seen a problem. In the case of a trial, judges come to understand all of the circumstances of the crime and the convicted felon's history. So the judge is in the best position to set the sentence and to protect the citizenry.

The senate has created a list of over 25 potential felonies that would require a mandatory 25 years in prison without the possibility of parole after the third conviction. These offenses include such crimes as breaking into an empty building, breaking into an empty car, assault and battery while a restraining order is in place, and etc. These felonies are serious and can be dealt with through the current Habitual Offender law should the Commonwealth so choose. Now, however, the judge has the discretion at sentencing. The proposed bill takes this discretion away from the judge and a person, under these circumstances, will be sentenced to 25 years in prison without the possibility of parole. This is an extreme measure not rooted in justice and which Massachusetts cannot afford.

**Continued on Page 5**

# WE CAN DO BETTER – WE DESERVE BETTER



Families Against Mandatory Minimums (FAMM) is a national organization that works to repeal mandatory minimum sentencing laws at the state and federal level. We oppose mandatory minimums because they force judges to impose pre-determined – and often disproportionately long – sentences without allowing them to consider the individual who stands before the court.

Justice cannot be pre-packaged ahead of time, to be handed out years later to anonymous defendants. Instead, justice demands that each person be judged based on his or her acts, prior record, need for treatment and likelihood of rehabilitation.

In Massachusetts, FAMM works to repeal mandatory minimum sentences for drug offenses.

Our drug sentencing laws require the courts to treat addicts and low level offenders the same as kingpins. As a result, drug offenders make up over one-fourth of all state prisoners and can serve sentences as long as 20 years, even for non-violent crimes and even as first-time offenders.

“Three strikes” or habitual offender laws are even worse. They require mandatory maximum sentences. Last spring, FAMM testified against three habitual offender bills, including the Governor’s, at the Judiciary Committee’s public hearing. We warned that the bills were far too broad, casting too wide a net that would result in maximum sentences even for those who do not deserve them – and at a staggering cost to taxpayers.

The bills passed by the House of Representatives and the Senate are both more narrow than the original bills first considered. However, both bills

are still too broad. They still go far beyond what legislators claimed the bills would do – which was to target only repeat violent offenders.

However, FAMM urges you to keep in mind that the Senate’s bill includes many other issues besides habitual offenders. We strongly support some of those issues:

Reducing mandatory minimum sentences for 15 drug offenses; Making drug offenders now in prison eligible for parole, work release and earned “good time,” which reduces a prisoner’s sentence; Reducing the size of school zones, which result in harsher sentences for those who commit drug crimes in urban neighborhoods than for those who commit the very same offenses in suburban or rural communities; Increasing the amount of certain drugs that are needed for a “trafficking” conviction; Increasing the earned good time that prisoners can earn; Allowing terminally ill prisoners to be paroled; Including a “Good Samaritan law” for drug overdoses, which would protect from prosecution both the person who calls for help and the drug user; Allowing an addict’s family to obtain naloxone (Narcan) to treat heroin overdoses.

We understand why many of our friends and allies are urging the Legislature to vote down a final sentencing bill. However, FAMM doesn’t think that we should be forced to choose between a bad sentencing bill and no sentencing bill. Surely the public deserves better than that!

Let’s push for a bill that we want – one that keeps any new habitual offender law as narrowly tailored as possible, and that includes the long-overdue reforms to mandatory minimum drug sentencing laws.

- Barbara J. Dougan

Massachusetts Project Director - (FAMM)  
Families Against Mandatory Minimums  
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[www.famm.org](http://www.famm.org)

three reasons: in 1994, three strikes legislation passed mandating a 25 year minimum sentence for a third strike and a double sentence for the second offense sentencing more than 42,000 2nd and 3rd “strikers”; mandatory parole supervision for everyone leaving prison resulting in 57% of all people paroled being returned to prison for **technical violations, not new crimes**, and no change in the wasteful draconian mandatory minimum sentences for people convicted of drug crimes.

California provides important lessons for Massachusetts. If the Conference Committee writes a new Bill incorporating the most destructive sections of the Bills passed in the Senate and the House, we are destined to repeat California’s cruel and costly history.

The number of prisoners in Department of Correction (DOC) custody is now at an all-time high. Overcrowding averages 143 percent over capacity. The DOC has reported that parole releases have dropped by 56 percent in 2011, mostly due

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# COALITION FOR EFFECTIVE PUBLIC SAFETY (CEPS)

## Who We Are

Advocates, program providers, parolees, formerly incarcerated men and women, friends and relatives of prisoners, and human rights activists have joined forces to promote and safeguard the human rights of all people across the Commonwealth of Massachusetts.

## Why We Joined Forces

In the winter of 2011 the Massachusetts parole system went into crisis when a parolee shot and killed a police officer. We saw an urgent need to safeguard parole policy and practices in the interest of public safety. Because parole functions interdependently with sentencing policies, conditions of confinement, and reentry policy and practices, we broadened our mission to include those components of the justice system.

## Our Goal

In order to create a public safety system that benefits everyone, we will design a new system of justice predicated on human and civil rights, so prisoners will reintegrate from a corrections system that makes people better, not bitter!

## Our Guiding Principles to Help Us Meet That Goal

- Critical analysis, evidence-based best practices, and compassion must guide public safety policy and practices as well as our own collective work
- A grassroots base that includes people and communities most impacted by mass incarceration must underlie an effective coalition.
- The restorative justice principle that every person can change and deserves the chance to do so must guide our work.
- We recognize that our criminal justice system has historically failed the poor, people of color and those who have struggled for equal protection under the law. Therefore, we stand against the institutionalization of racism, discrimination, and torture.

## Join with Us

- Educate the media and the public about how public safety policies and practices which harm prisoners and parolees impact the safety of everyone;
- Monitor Parole Board hearings and decisions;
- Advocate for progressive public safety policies and practices.

## Call to Action!

To learn more about CEPS and take part in the Coalition’s work, contact us at:

Nancy Ahmadifar, CEPS Outreach Committee

**Email:** [ahmadifarn@gmail.com](mailto:ahmadifarn@gmail.com)

**Website:** see [www.smartoncrimeMA.org](http://www.smartoncrimeMA.org)

**Postal address:** c/o CJPC/Baker House, 411 Washington St., Dorchester 02124

# A RECKLESS, CRUEL AND COSTLY PATH FOR MASSACHUSETTS



Lois Ahrens

Many people are aware that last year federal judges ordered the state of California to reduce its prison population by 33,000 prisoners, a decision upheld by the U.S. Supreme Court. Despite building 23 major prisons in the past 25 years, California could not build enough cages for the more than 162,000 men and women it imprisons. In response to the court order, California is undergoing a “realignment” of prisoners from state prisons to county jails. Now, of course, counties are demanding more money to build new jails and expanding existing ones.

California’s prisons are hugely overcrowded for

# SKYROCKETING COSTS CAUSED BY S.2080 AND H.3818

INFORMATION FROM PRISON LEGAL SERVICES

## “THREE STRIKES” PROVISIONS IN S.2080 & H.3818

The amendments to the habitual offender statute in S.2080 and H.3818, or “three strikes” provisions, will dramatically increase the length of prison sentences and will overwhelm the criminal justice system.

### The Department of Correction Already Faces a Budgetary Crisis

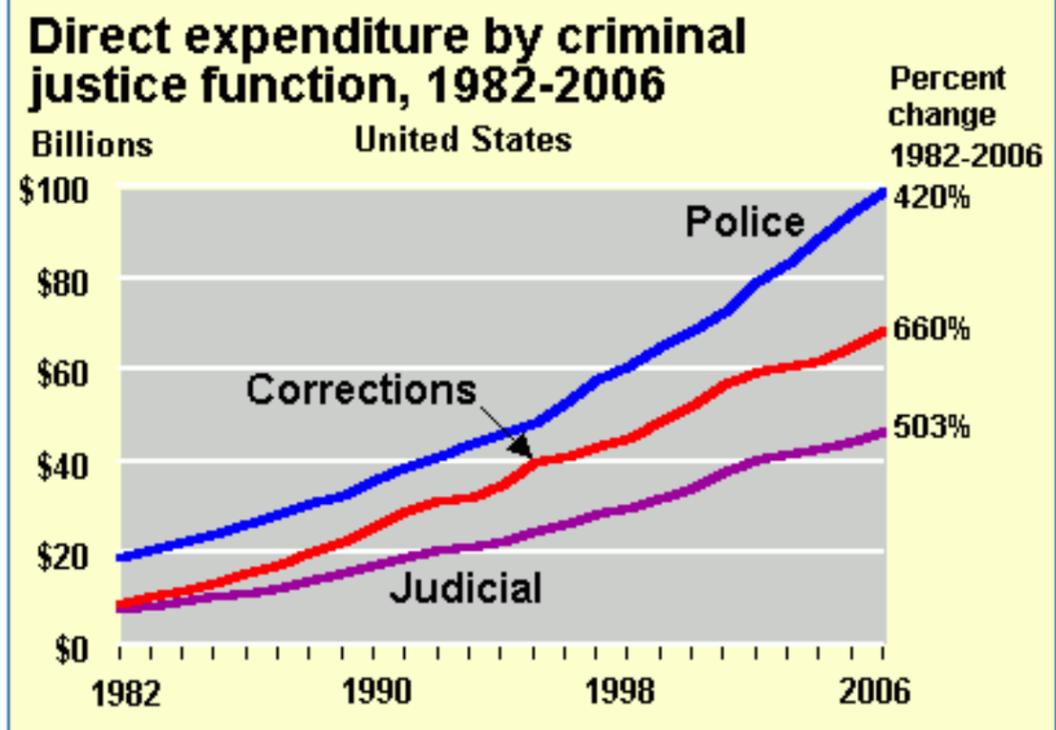
The number of prisoners in Department of Correction (DOC) custody is now at an all-time high. Overcrowding averages 143% of design capacity, with a unit at MCI Framingham at 345%. The DOC has projected annual prison population growth of 2.7% from 2009 to 2019. Due to a 56% reduction in parole releases in 2011 as compared to 2010, the DOC also projected in December 2011 that it would have an additional 550 prisoners by the end of the year. Applying the DOC’s average annual cost of approximately \$46,000 to house a prisoner, the cost to taxpayers resulting from the drop in parole releases is over **\$25 million per year** (550 people x \$46,000 per year). This does not include the capital costs of new prison construction. **Therefore, even without the passage of S.2080 and H.3818, the Commonwealth is facing a rapidly-increasing DOC budget that already stands at over \$530 million for fiscal year 2012.**

### Subsection (b) Alone of the “Three Strikes” Provisions Could Cost \$75-125 Million Per Year

There are currently over 5,000 of the DOC’s 11,800 prisoners serving sentences for one of the listed crimes in Subsection (b) of S.2080 and H.3818. Each year about 1,500 new prisoners are sentenced to state prison for a Subsection (b) crime. Based on an analysis of data in the Massachusetts Sentencing Commission’s “Survey of Sentencing Practices FY 2010,” 150-250 of these prisoners could be sentenced under Subsection (b) of Section 46, some to life without parole.<sup>2</sup>

Even if each prisoner ‘only’ serves an average of 10 additional years when sentenced pursuant to Subsection (b), this will result in 1,500-2,500 more DOC prisoners once the law has fully taken effect. Therefore, **Subsection (b) could cost taxpayers between \$75-125 million per year once the law has fully taken effect**, not including the capital costs of building new prisons required to accommodate the expanding prison population.

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### NAACP / NEAC Position on Proposed Habitual Offenders Law HB.3811 & SB.2080 Continued from Page 3

Many convicted felons have pleaded guilty in their first and/or second case in a plea bargain. In those cases, an understanding was reached as to sentencing. It was unforeseen by the court, the prosecutor, and the convicted felon that upon a third conviction, mandatory sentencing would attach based on the two previous convictions. Some defendants would not have pleaded guilty if they had known all the circumstances. A recent Supreme Court decision has found a similar circumstance to be unconstitutional.

With the proposed legislation, convictions in other states and the federal court also count against the defendant. The nature of some crimes and rules of evidence vary widely from state to state. So, convictions in other states and the federal system should not be considered in the mandatory sentencing in Massachusetts.

### MANDATORY POST-RELEASE SUPERVISION FOR PAROLEES

There are currently approximately 1,700 prisoners released each year without supervision. If these prisoners were subjected to mandatory post-release supervision for nine months (the minimum term allowed under this provision) it would cost the state approximately \$8.5 million. The annual cost to supervise one parolee is \$5,000.

Mandatory post-release supervision will undoubtedly lead to a dramatic increase in parole violations; many for minor offenses, such as failure to report, failed drug tests and curfew violations. So the re-incarceration rate will jump tremendously. Massachusetts taxpayers should not have to shoulder this additional burden when there is no evidence that communities will be safer as a result of this provision.

### OTHER PROVISIONS

The bill also proposes a change in the statute so that a person can be charged with “enterprise crime.” This is a federal statute that deals with organized crime and “mobs” per se. A mere neighborhood friendship can lead to an arrest because of an association that is not criminal. The statute would likely lead to overreaching by police officers when dealing with young people. The NAACP strongly opposes this provision, as written. The proposed statute needs more clarity to define what is meant by an “enterprise.”

The NAACP supports the Governor’s portion of the bill that calls for the reduction of the school zone footage to 100 feet and eliminates the mandatory minimum for drug dealing charges. Statistics will show that the mandatory minimum sentence imposed on non-violent drug offenses impacts people of color at alarming rates. Further it exacerbates the problem of our already overburdened prison system with non-violent offenders.

Due process and privacy protections of the constitution will likely be breached by the following two provisions:

- Wiretapping of suspects for certain alleged crimes
- Expanded criminal liability for not providing a DNA sample.

### CONCLUSION

The NAACP, New England Area Conference, is opposed to the three versions of the proposed Habitual Offenders legislation as written, offered by House of Representatives, the Senate and the Governor. If passed, the legislation would place a tremendous burden on the taxpayers and would do little to protect the citizens. Crime is reduced by enhancing the quality of elementary and secondary education. Also improving the quality and number of drug treatment facilities, and implementing youth programs would certainly reduce crime and violence in the neighborhoods throughout the Commonwealth. Once a person has been incarcerated, the emphasis should be on drug rehabilitation (if needed) education and rehabilitation, and job training and skill development.

Lastly, there is no evidence to suggest that courts have been soft on crime or that prosecutors are not seeking and obtaining enhanced sentences for violent crimes, when needed. There has been no public discussion from district attorney offices across the state that the 3 Strikes bill is needed because court leniency.

- *Stephanie A. Soriano-Mills*, Chair, Legal Redress Committee, NAACP, New England Area Conference

- *William H. Robinson, Jr.*, Chair, Political Action Committee, NAACP, New England Area Conference

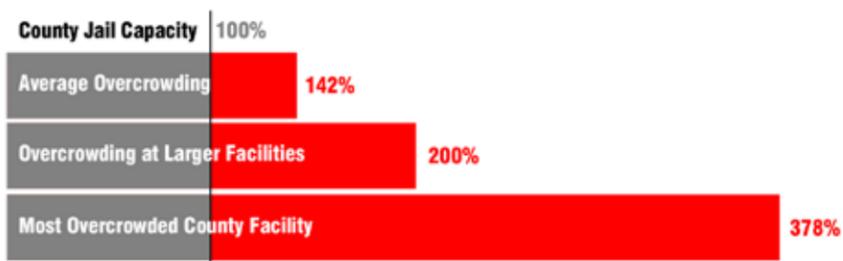
- *Juan M. Cofield*, President, NAACP, New England Area Conference

# THE DEPARTMENT OF CORRECTION ALREADY FACES A BUDGETARY CRISIS



The number of prisoners in Department of Correction (DOC) custody is now at an all-time high. Overcrowding averages 143% of design capacity, with a unit at MCI Framingham at 345%. The DOC has projected annual prison population growth of 2.7% from 2009 to 2019. Due to a 56% reduction in parole releases in 2011 as compared to 2010, the DOC also projected in December 2011 that it would have an additional 550 prisoners by the end of the year. Applying the DOC's average annual cost of approximately \$46,000 to house a prisoner, the cost to taxpayers resulting from the drop in parole releases is over \$25 million per year (550 people x \$46,000 per year). This does not include the capital costs of new prison construction. Therefore, even without the passage of S.2080 and H.3818, the Commonwealth is facing a rapidly-increasing DOC budget that already stands at over \$530 million for fiscal year 2012.

# INCREASED COURT AND COUNTY JAIL COSTS, COURT DELAYS, AND COUNTY JAIL OVERCROWDING



The amendments to Chapter 279, §25 will substantially increase costs of pre-trial jail time, case processing, and trials because defendants facing maximum terms of incarceration as habitual offenders will opt to go to trial rather than plead guilty. Similar to DOC facilities, county facilities are already overcrowded, with an average of 142% of design capacity. The larger county facilities are at over 200% of design capacity with the most overcrowded facility at 378%.

# SUBSECTION (B) ALONE OF THE "3 STRIKES" PROVISIONS COULD COST \$75-125 MILLION PER YEAR

There are currently over 5,000 of the DOC's 11,800 prisoners serving sentences for one of the listed crimes in Subsection (b) of S.2080 and H.3818. Each year about 1,500 new prisoners are sentenced to state prison for a Subsection (b) crime. Based on an analysis of data in the Massachusetts Sentencing Commission's "Survey of Sentencing Practices FY 2010," 150-250 of these prisoners could be sentenced under Subsection (b) of Section 46, some to life without parole.<sup>2</sup>

**\$75-125 Million**

Even if each prisoner 'only' serves an average of 10 additional years when sentenced pursuant to Subsection (b), this will result in 1,500-2,500 more DOC prisoners once the law has fully taken effect. Therefore, Subsection (b) could cost taxpayers between \$75-125 million per year once the law has fully taken effect, not including the capital costs of building new prisons required to accommodate the expanding prison population.

39 new parole officers would need to be hired to supervise 1,700 people, using the Parole Board's 2009 report setting parole officer caseloads at 44 parolees per officer.

People subject to probation supervision as part of their sentence will have both probation and parole officers, causing duplicative and wasteful overlap.

# CHANGING PAROLE ELIGIBILITY FROM 15 TO 25 YEARS COULD COST APPROX. \$7 MILLION PER YEAR

**\$460,000 = 1 prisoner at \$46,000 per year for 10 yrs.**

In general, Massachusetts taxpayers will pay nearly half a million dollars for each prisoner sentenced to 10 extra years (10 years x \$46,000).

**32 people serving an average 5 extra years x \$46,000 per year = \$7.4 Mill.**

Assuming that changing parole eligibility from 15 years to 15-25 years would entail that the average offender serves 5 more years, the change would give rise to 160 additional people in DOC custody once the law has fully taken effect. The resulting cost would be approximately \$7.4 million per year once the law has fully taken effect (32 people serving an average of 5 extra years x \$46,000 per year).

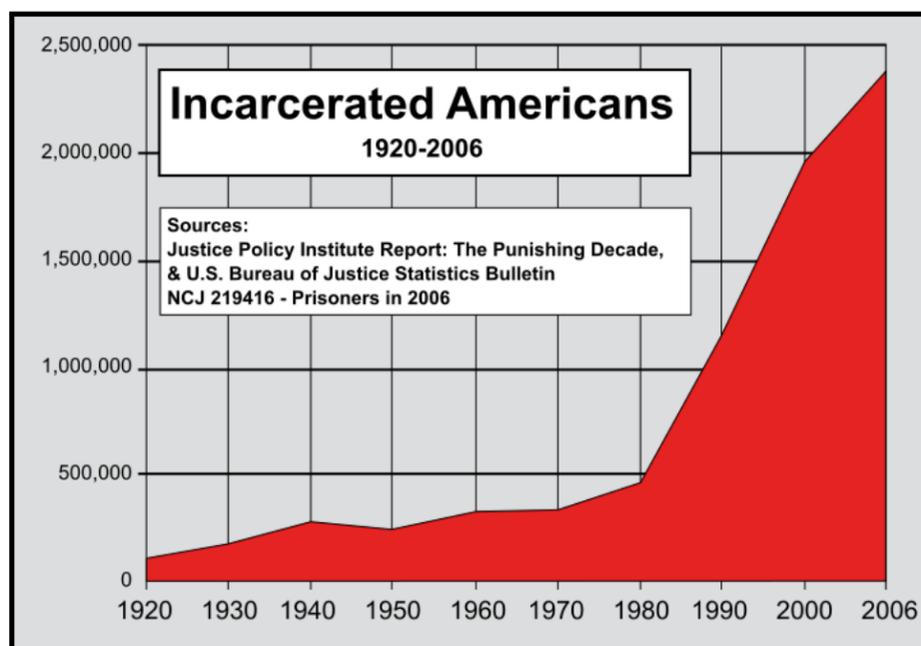
# MANDATORY POST-RELEASE SUPERVISION COULD COST APPROX. \$6-11.5 MILLION PER YEAR

**1,700 people x \$5,000 annual cost of supervising one parolee = \$8.5 Mill.**

Roughly 1,700 people are released from DOC custody each year at the conclusion of their sentences without supervision. If all 1,700 people were subject to mandatory post-release supervision for 1 year, half of the maximum 2 year term permitted, it would cost taxpayers approximately \$8.5 million per year based on the Parole Board's estimate that the annual cost of supervising one parolee is \$5,000 (1,700 people x \$5,000 annual cost).

Mandatory post-release supervision parolees can be re-incarcerated for violating a condition of supervision based on criminal or non-criminal conduct. If, every year, 15% of the 1,700 people placed on mandatory post-release supervision are re-incarcerated for 2 months, this will result in additional costs of approximately \$2 million per year (255 people x \$7,600 cost of 2 months).

Information from Prison Legal Services. Complete Costs analysis of proposed "3 Strikes" Legislation on pages 5 and 8.



FIND MORE INFORMATION AND WAYS TO TAKE ACTION AT  
**BLACKSTONIAN.COM/3STRIKES**  
**STOPTHREESTRIKES.ORG**

# GOV. DEVAL PATRICK PROPOSAL

Gov. Patrick himself initiated the legislation with 2 proposals.

1. H.40 – An Act relative to criminal sentencing
2. H.3441 – An Act to provide law enforcement with tools to prevent youth violence

## EVOLUTION OF THE MASSACHUSETTS "3-STRIKES" HABITUAL OFFENDER BILL



SENATE BILLS

HOUSE BILLS

2054

3811

NOV. 7, 2011

NOV. 15, 2011

AMENDMENTS

AMENDMENTS

2059

3818

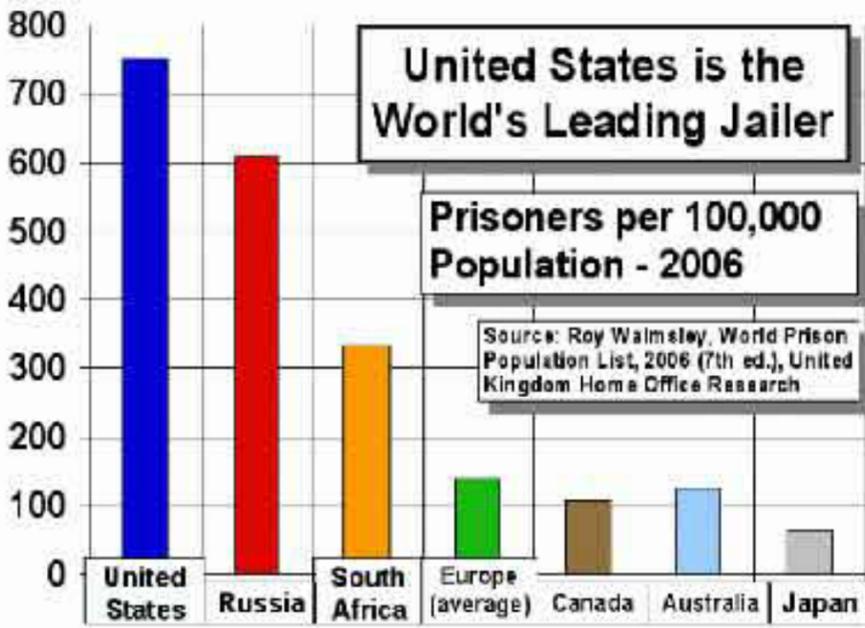
NOV. 10, 2011

NOV. 16, 2011

AMENDMENTS

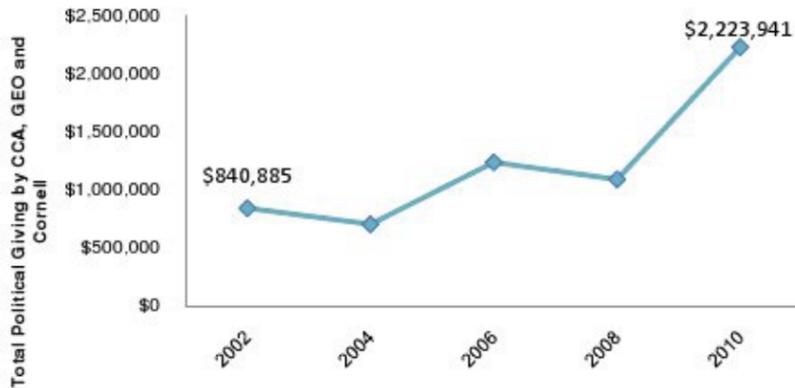
2080

NOV. 21, 2011



### POLITICAL GIVING BY MAJOR PRIVATE PRISON COMPANIES

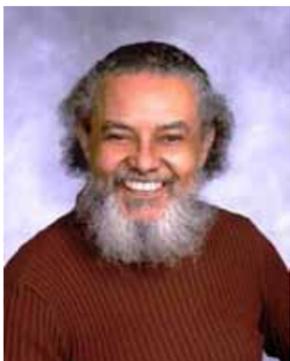
State political giving by these private prison companies has been increasing over the past five major election cycles.



Source: National Institute on Money in State Politics, "Correctional facilities construction & management/for-profit Contributions to All Candidates and Committees," accessed May 3, 2011. [www.followthemoney.org/database/IndustryTotals.phtml?f=0&s=0&b\[\]=C7000](http://www.followthemoney.org/database/IndustryTotals.phtml?f=0&s=0&b[]=C7000)

## Massachusetts Black and Latino Legislative Caucus

[www.mablacklatinolegislativecaucus.com/](http://www.mablacklatinolegislativecaucus.com/)



Majority Whip Byron Rushing  
Democrat, Boston (South End)



Rep. Gloria L. Fox  
Democrat, Roxbury



Rep. Benjamin Swan  
Democrat, Springfield



Sen. Sonia Chang-Diaz  
Democrat, Boston



Rep. Linda Dorcena Forry  
Democrat, Dorchester



Rep. Cheryl A. Coakley-Rivera  
Democrat, Springfield



Rep. Jeffrey Sanchez  
Democrat, Jamaica Plain



Rep. Russell Holmes  
Democrat, Boston



Rep. Carlos Henriquez  
Democrat, Dorchester



Rep. Marcos A. Devers  
Democrat, Lawrence

The MA Black & Latino Legislative Caucus has been on the forefront of the proposed "3 Strikes" Habitual Offender legislation. On Nov. 16th, 2011, the House members of the Caucus voted in unison against the proposal (then HB 3811, now HB 3818) along with progressive white legislator allies (Representatives; Malia, Brownsberger, Andrews, Balser) The final House vote was 142 in favor with 12 opposing. The Senate voted unanimously in favor on Nov. 10th.

MBLLC  
617.722.2688

## Prof. Ogletree Continued from Page 2

about it? We haven't seen that yet and we're not going to stop fighting until we see that here in the Commonwealth.

- Prof. Charles Ogletree

Remarks from Jan. 24th State House Press Conference



Artist: Richard G. Hall, Jr.

## KATHLEEN DENNEHY ON "3 STRIKES"



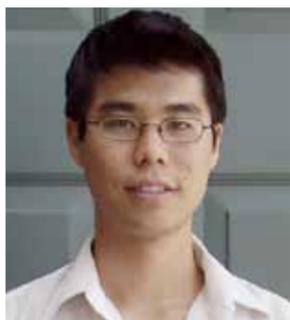
Kathleen Dennehy

Former Massachusetts Corrections Commissioner Kathleen Dennehy said the bills before this state's Legislature are too broad and would increase costs and crowding at jails and prisons which are already at 143 percent capacity.

"We're at a critical juncture here," Dennehy said. "We need smarter choices for safe communities. We need to consider all the facts before we advance yet another tough-on-crime piece of legislation. We need a rigorous assessment of the costs and impacts associated with this."

From: 3 Strikes Bill Strikes Nerve Among Many in Mass By Deborah Becker 1/25/12 - WBUR  
<http://www.wbur.org/2012/01/25/three-strikes-bill>

## AARON TANAKA OF THE BWA ON "3 STRIKES"



Aaron Tanaka

WHILE STATES such as California are scrambling to reduce prison populations and spending, Massachusetts cannot afford to rush into a three-strikes regime ("Don't rush 'three strikes' before getting all the facts on crime," Editorial, Jan. 3). We should leave the power of harsh sentencing to the judges, not some automatic system that disregards the details of the

## Costs - Continued from Page 5

### OTHER COSTLY PROVISIONS FOUND ONLY IN S. 2080

#### Mandatory Post-Release Supervision Could Cost Approximately \$6-11.5 Million Per Year

Roughly 1,700 people are released from DOC custody each year at the conclusion of their sentences without supervision. If all 1,700 people were subject to mandatory post-release supervision for 1 year, half of the maximum 2 year term permitted, it would cost taxpayers approximately **\$8.5 million per year** based on the Parole Board's estimate that the annual cost of supervising one parolee is \$5,000 (1,700 people x \$5,000 annual cost).

Mandatory post-release supervision parolees can be re-incarcerated for violating a condition of supervision based on **criminal or non-criminal** conduct. If, every year, 15% of the 1,700 people placed on mandatory post-release supervision are re-incarcerated for 2 months, this will result in additional costs of approximately **\$2 million per year** (255 people x \$7,600 cost of 2 months).

39 new parole officers would need to be hired to supervise 1,700 people, using the Parole Board's 2009 report setting parole officer caseloads at 44 parolees per officer.

People subject to probation supervision as part of their sentence will have both probation and parole officers, causing duplicative and wasteful overlap.

#### The Elimination of Parole Eligibility at 15 Years for Those Serving Multiple Life Sentences Could Cost Approximately \$9 Million Per Year

If 10 of the 32 people serving second degree life sentences are serving multiple life sentences and must serve an additional 20 years due to the elimination of parole eligibility, this would result in an additional 200 people in DOC custody once the law has fully taken effect.<sup>3</sup> As such, the elimination of parole eligibility for people serving multiple second degree life sentences will cost the Commonwealth approximately \$9.2 million per year once the law has fully taken effect (10 people serving on average 20 extra years x \$46,000 per year).

Between 2000 and 2009, the group of Massachusetts prisoners age 65 and older increased by 84%. This trend of aging inmates is sure to continue as sentences get longer and longer. Older prisoners require more costly medical care, often at least \$100,000 per prisoner per year. Keeping older prisoners, who are statistically least likely to reoffend, incarcerated without any possibility of parole will dramatically increase costs as the prison population ages.

#### Changing Parole Eligibility for Prisoners Serving Second Degree Life Sentences from 15 Years to a Court-Determined Parole Eligibility

offender, the wishes of the victims, or the evidence of rehabilitation. We can be smart on crime by tackling drug addiction, fighting poverty, improving reentry services, and challenging a culture of violence. Beating our chests and promoting Draconian and unthinking laws only reveals the Legislature's tendency for political pandering over sensible solutions. They did the right thing with criminal-records reform last year. Let's not turn back the clock on our own progress.

- Aaron Tanaka BWA Boston Workers Alliance  
Letter To The Editor Boston Globe

## Date of Between 15 and 25 Years Could Cost Approximately \$7 Million Per Year

In general, Massachusetts taxpayers will pay nearly half a million dollars for each prisoner sentenced to 10 extra years (10 years x \$46,000). **RECOMMENDATIONS - TO REDUCE COSTS, THE CONFERENCE COMMITTEE SHOULD:**

1. Adopt H.3818's version of Subsection (b) of Chapter 279, §25;
2. Adopt S.2080's version of Subsection (a) of Chapter 279, §25;
3. Remove less serious crimes from Subsection (b) of Chapter 279, §25;
4. Make habitual offenders sentenced to life imprisonment pursuant to Subsection (b) eligible for parole after serving 25 years;
5. Include an exception to the habitual offender provisions that can be used by judges in limited circumstances to remove a prior conviction from consideration as a "strike" in the interests of justice;
6. Eliminate any provision calling for mandatory post release supervision;
7. Adopt the reductions to the mandatory minimum sentences provided in S.2080 Sections 6-20;
8. Adopt the earned good time provision in S.2080 Sections 24, 25, 26 to help reduce overcrowding; and
9. Adopt the medical parole provision in S.2080 Section 23.

<sup>1</sup> See "Summary of S.2080 with Cost Information" for a more detailed analysis of the costs associated with S.2080.

<sup>2</sup> See Sentencing Commission, "Survey of Sentencing Practices FY 2010," Figure 1: Sentencing Guidelines Grid at p.3, Table 24: Grid Cell Assignment by Court Department at p.37; Criminal History Group at p.70; Selecting a Governing Offense, p.71 (explaining that the statistics "may underestimate the number of defendants in the highest criminal history group"); and Table 41: Governing Offense by Grid Cell Assignment and Incarceration Status, All Courts, pp.86-87, available at <http://www.mass.gov/courts/admin/sentcomm/fy2010survey.pdf>. The range of 150-250 was estimated by assuming that all people convicted of a third strike would be in criminal history group D or E, and that all crimes of Levels 7-9 and 50% of Level 6 crimes would count as strikes. The range also includes a rough estimate of the number of people who have served at least one day in county facilities for their previous two "strikes," under Subsection (b) of S.2080.

<sup>3</sup> The DOC reports that 32 people received second degree life sentences in 2010. Department of Correction, "Prison Population Trends 2010," August 2011, p.21, available at [www.mass.gov/eopss/docs/doc/researchreports/pop-trends/prison-pop-trends-2010.pdf](http://www.mass.gov/eopss/docs/doc/researchreports/pop-trends/prison-pop-trends-2010.pdf).



Artist: Richard G. Hall, Jr.

## Reckless, Cruel and Costly Path Continued from Page 4



to parole practices and policies promoted by the Patrick Administration. Even without the new law, Massachusetts faces increased DOC costs of approximately \$100 million dollars a year.

An analysis performed on sentencing data provided by the Massachusetts Sentencing Commission illustrates how costly implementation of a Three Strikes law would be to taxpayers: an annual financial burden of between \$75 to \$125 million could be added because between 1,500 to 2,500 prisoners could be sentenced to life with parole. As in California, the Commonwealth will have little choice but build new prisons. Taxpayers are now paying more than a \$1 billion a year simply to incarcerate men and women...more than is spent on public higher education.

### End Mandatory Minimums for People Convicted of Drug Offences

The Bill passed in the House includes **no** changes to mandatory minimum sentences for people convicted of drug offences, **no** edibility for parole, work release or earned good conduct credit and no change to the school zone sentencing "enhancements" which are disproportionately used by district attorneys in urban areas to extract plea bargains from people found with illegal drugs. The Senate Bill includes changes to school zones from 1000 feet to 500 feet, an ineffective change. It also includes decreases in drug weights, parole eligibility and reduced mandatory minimums for 15 drug offences. The Senate bill, of which one part of the three strikes law, is not as comprehensive as the Governor's Bill on drug sentencing reform. The Governor's bill would eliminate mandatory minimum sentences for drug offenses and reduce school zones from 1000 to 100 feet. The Governor's proposed legislation on mandatory minimum sentences deserves support from legislators and from people working on behalf of the more than 1,700 men and women currently serving mandatory drug sentences.

### No Mandatory Parole

The Governor's Bill and the Senate Bill both include mandatory post-release supervision. California's history of mandatory parole is instructive...if we want to learn. Without meaningful education, drug treatment, housing, job training and job creation, mandatory parole is a trap for someone on parole. Conditions of parole such as employment, drug treatment, parole and other fees and payment of child support are often difficult if not impossible to meet, even in a good economy. Massachusetts will keep paying \$47,000 a year to incarcerate the same prisoner over and over because the current system spends almost all its money on guards and to keep the prisons open— only 2.4 percent of the DOC budget is spent on programming. Education — the more one has, the more effective it is — has been proven to be one of the most successful ways of keeping people from returning to prison, but like other programs proven to rehabilitate,

they cannot exist without funds. The lack of education and programs for prisoners, combined with mandatory parole will result in the revolving door spinning even faster. Mandatory parole, longer sentences under three strikes and a prison system with no meaningful programs will mean more prisons and jails.

The Governor's Bill and to a lesser extent the Senate Bill, allow for compassionate release of terminally ill prisoners, although lifers are excluded. Currently Massachusetts has no medical release policy for sick and elderly prisoners although 36 other states do. In mid-January, the Massachusetts Division of Asset Management Corrections Master Plan issued new recommendations. In their plan they recommend, "...long range, the addition of new sub-acute care bedspaces in three separate, purpose-built facilities to provide treatments, adequate staffing and necessary programs in a more efficient, thorough and cost-effective manner." This plan projects the need for "long-term medical beds" for 905 men and women prisoners by 2020. Rather than meaningful, humane and cost-effective compassionate release, the Plan calls for building three prisons for aging and dying prisoners.

The same Corrections Master Plan states: "Without any capital improvements or modifications to operating procedures and policies, the shortfall to house the same populations is expected to climb to approximately 12,100 bed spaces by 2020. Based on the recommendation to gradually eliminate federal inmates and to reassign civil commitments to treatment settings, this shortfall could be reduced to approximately 10,250, requiring an estimated capital investment of \$1.3 to \$2.3 billion (*that is new prisons*) in today's dollars and an increase of estimated annual operating costs totaling as much as \$120 million." **This is without the addition of mandatory parole and three strikes!**

### Women Need Alternatives to Jail

Another recommendation of the CMP calls for the expansion and/or building of three "regional" jails for women which would include the Suffolk HOC, Framingham and the women's jail in Chicopee. In the Chicopee jail for example, 30% of the women are incarcerated for first time mandatory drug offences, 72% are serving time for non-violent offences and 84% have histories of drug addiction and 67% are there pre-trial. Once again, rather than seek less costly and more effective alternatives to incarceration such as bail reform, "re-entry" programs not operated by sheriff's departments, education, housing and job training for today's job market and an end to mandatory minimum sentences for people convicted of drug offences, the default is, again, more jails.

### Who is Driving Mass Incarceration and Our Opposition

Clearly, there are a lot of moving parts: The Governor's Bills, the House and Senate Bills, the Conference Committee Bill yet to be written and the Corrections Master Plan. There is of course, powerful organized support for the Bills including Attorney General Martha Coakley, district attorneys and the professional victim rights organizations. Important opposition to the habitual offender laws and the Corrections Master Plan comes from the lived experience of people who know that aggressive policing, stop and frisk, lack of access to effective legal representation

and barriers to housing and employment because of CORIs mean even greater vulnerability to lengthy sentences under three strikes. Included in the opposition are the small number of principled legislators who against the House Bill. Add to this, the voices of other opponents including prison abolitionists and reformers who know that more prisons, longer more punitive sentences do not make us safer. In fact, the opposite has been demonstrated: more incarceration creates more incarceration and less safe communities.

Most people working against the habitual offender bills have witnessed the power of prosecutors. We see this in who they do and do not charge with crimes, the loading up of charges giving little choice to people without access to expensive lawyers but to accept plea bargains. Their power will increase if the habitual offender/three strikes bill is passed.

As Prisoners' Legal Services reminds us: "... District Attorneys' offices *presently* choose not to indict every defendant that qualifies for indictment as a habitual offender, a number of reasons related to the language of the statute and the goals of the prosecution can account for this exercise of discretion. **However, it is unreasonable to maintain that the number of convictions and the overall prison population will remain the same if the habitual offender provisions proposed in S.2080 or H.3818 are adopted.** In both bills, the provisions delay and eliminate parole eligibility, necessarily resulting in longer sentences, and greatly expand the class of people who can be indicted as habitual offenders. Moreover, the increased notoriety and politicization of the "three strikes" law will create more public pressure to pursue habitual offender indictments and convictions. Habitual offender indictments will be used as a tool by the prosecution to compel defendants to forgo a trial and plead guilty in exchange for dismissal of the habitual offender indictment."

### Now is the time to speak out!

Contact your legislators and tell them you oppose all of the habitual offender bills proposed by the House, the Senate and the Governor. Massachusetts does not need new, costly and destructive sentencing laws. We do not need mandatory parole. We do not need new jails for women and new prisons for aging and dying prisoners. Massachusetts does need an end to mandatory minimum drug sentences for people convicted of drug offences and we do need compassionate release for ALL aged and dying prisoners.

Lois Ahrens

Lois Ahrens is founder and director of the Northampton-based Real Cost of Prisons Project, a national organization. She is a member of the Coalition for Effective Public Safety (CEPS), which is working to stop Three Strikes. For more about the RCPP go to [www.realcostofprisons.org](http://www.realcostofprisons.org).



Artist: Richard G. Hall, Jr.

# COMPARISON OF SIGNIFICANCE OF HABITUAL OFFENDER PROVISIONS IN SB.2080 AND HB.3818

INFORMATION FROM PRISON LEGAL SERVICES

## QUESTION #1: WHO IS CONSIDERED A HABITUAL OFFENDER?

### What the Current Law Says

G.L.c.279, §25:

- A person who has previously been twice convicted of any of the 688 felonies that exist under Massachusetts law and sentenced to **three years or more in state prison** and is convicted of a **third** felony.
- Such person will be sentenced to state prison for the **maximum** term allowed for the third felony conviction.

### What is Proposed in Senate Bill 2080

SECTION 46, amending G.L.c.279, §25:

#### Subsection (a)

- A person who has previously been **twice** convicted of any of the existing 688 felonies and sentenced to **three years or more in state prison** and is convicted of a **third** felony.
- Upon the third conviction, the person must be sentenced to state prison for the **maximum** term allowed for the third felony.

#### Subsection (b)

- A person who has been previously been **twice** convicted of any of the **specified 59** offenses; and
- For both of those convictions has served **one day or more in any facility**, whether a county correctional facility or state prison; and
- Is convicted for a third time of one of the 59 offenses.
- Upon the third conviction, the person must be sentenced to state prison for the **maximum term of incarceration permitted by law for that third offense**; and
- He or she is **not eligible for parole**, work release or any deduction from his or her sentence for good conduct while serving the maximum term of incarceration for the third offense.
- The maximum term for 24 of the 59 crimes is life. Therefore, anyone sentenced as a habitual offender for any of those 24 crimes will serve life without parole. Under current law, the only crime carrying this penalty is 1<sup>st</sup> degree murder.

#### Subsections (c) and (d)

- Juvenile adjudications of delinquency do not count as prior convictions.
- Anyone pleading guilty to any of the 59 offenses must be informed by the court of the penalties for violating Subsection (b).
- However, no otherwise valid plea or conviction can be vacated because the court failed to give that information.

### What is Proposed in House Bill 3818

SECTION 3, amending G.L.c.279, §25:

#### Subsection (a)

- A person who has previously been **twice** convicted of any of the existing 688 felonies and sentenced to **one day or more in state prison** and is convicted of a **third** felony.
- Upon the third conviction, the person must

be sentenced to state prison for the **maximum** term allowed for the third felony.

#### Subsection (b)

- A person who has previously been twice convicted of any of the **specified 55\*** offenses; and
- For both of those convictions has served **one day or more in state prison**; and
- Is convicted for a third time of one of the 55 offenses.
- Upon the third conviction, the person must be sentenced to state prison for the **maximum term of incarceration permitted by law for that third offense**; and
- He or she is **not eligible for parole**, work release or any deduction from his or her sentence for good conduct while serving the maximum term of incarceration for the third offense.
- The maximum term for 22 of the 55 crimes is life. Therefore, anyone sentenced as a habitual offender for any of those 22 crimes will serve life without parole. Under current law, the only crime carrying this penalty is 1<sup>st</sup> degree murder. \* **H.3818 appropriately eliminates from the list of crimes in S.2080:** G.L.c.265, §13H; G.L.c.265, §13K(a1/2) and (d)-(f); G.L.c.266, §17; G.L.c.266, §18; G.L.c.269, and §12F(e).

#### Subsection (c)

- Juvenile adjudications of delinquency do not count as prior convictions.
- Anyone pleading guilty to any of the 55 offenses must be informed by the court of the penalties for violating Subsection (b).
- However, no otherwise valid plea or conviction can be vacated because the court failed to give that information.

## QUESTION #2: ARE HABITUAL OFFENDERS ELIGIBLE FOR PAROLE?

### What the Current Law Says

G.L.c.127, §133B:

- A habitual offender **is eligible for parole after serving 1/2** of the maximum sentence allowed for the third felony.

G.L.c.127, §133B:

- See above.

### What is Proposed in Senate Bill 2080

SECTION 31, amending G.L.c.127, §133B:

- A habitual offender under **Subsection (a) is eligible for parole after serving 2/3** of the maximum sentence allowed for the third felony.

SECTION 32, adding a paragraph to G.L.c.127, §133B:

- A habitual offender under **Subsection (b) is not eligible** for parole, work release or deductions from their sentences for good conduct.

### What is Proposed in House Bill 3818

SECTION 1, amending G.L.c.127, §133B:

- Same as in Section 31 of S.2080

SECTION 2, adding a paragraph to G.L.c.127, §133B:

- Same as in Section 32 of S.2080.

## Nancy Gertner Continued from Page 2

of “habitual offenders” – those convicted of any felony after two prior felony convictions, and those convicted a third time of certain listed crimes. In the first category, the bill amends the law which already mandates the maximum sentence on the third felony. It changes parole eligibility from half of a sentence to two-thirds. “Felony” sounds serious but there are 688 felonies in Massachusetts; most are non-violent.

Those in the second category convicted of one of the nearly 60 listed offenses after two prior convictions on the list (and who meet other requirements) also get the maximum punishment but now without parole. While the bills limit the no-parole category, the list is still too broad. The Senate version includes breaking and entering, a crime that homeless people are charged with when they seek shelter in an abandoned building. No parole may mean that these offenders are released without supervision, just a bus ticket.

If we are concerned about the inconsistent application of juvenile life without parole, we should be especially concerned about “three strikes.” The charging decision, the decision to plead to a lesser sentence, depends entirely upon the preferences of different district attorneys across the state. Make no mistake about it: With mandatory sentences, prosecutors sentence; judges do not.

States as different from Massachusetts as Mississippi and Texas are implementing smart prison reform. By reserving prison space for the most violent and instituting programs for low level offenders, Mississippi has cut its population by 22 percent, saving roughly \$450 million, according to one study. Texas enacted similar reforms in 2007, saving an additional \$2 billion. And the crime rates in both states have substantially declined.

Since violent crime has also fallen in Massachusetts, why is this bill necessary? The answer: Domenic Cinelli. Whatever the issues concerning Cinelli’s parole after concurrent life terms, he was out of prison for nearly two years before he tragically killed a police officer. It was a failure of supervision, which we will repeat if we spend limited dollars on imprisonment rather than reentry. To prevent future Cinellis, we should focus at best deny parole only to those serving multiple life sentences who remain violent—nothing more.

If this bill passes one thing will be clear: We will have chosen bumper-sticker politics that does nothing about crime, and costs millions, just when we can ill afford it. Unwilling to pay the price for exonerations or treatment, we are too willing to pay the cost to imprison.

Nancy Gertner is retired judge from the US District Court for the District of Massachusetts.

**SAY NO TO “3 STRIKES” IN MA  
SIGN THE PETITION ONLINE  
WWW.IPETITIONS.COM/PETITION/NOMA3STRIKES  
REMEMBER TO CALL YOUR LEGISLATORS & ELECTED OFFICIALS**

# BENJAMIN THOMPSON ON “3 STRIKES”



“We support being hard on crime, but also demand that our legislators be smart on crime,” said Benjamin F. Thompson, executive director of the Criminal Justice Policy Coalition.

Thompson cited California as evidence of the Legislature’s misdirected aim. That state passed the nation’s first and toughest three-strikes law in 1994, a year after a 12-year-old named Polly Klaas was abducted at knifepoint from her bedroom sleepover and killed by a recently paroled two-time convict.

Most dangerously, Thompson said, he worries about the message the bill might send a two-time offender who is about to be nabbed on a drug-related crime - and who is then staring down a police officer and the possibility of life in prison.

“Under three strikes, you turn some people into caged animals. You put them in the corner and say, ‘The next time you do something stupid, you have nothing to lose,’ ” Thompson said. “The nothing-to-lose-mentality is frightening to me.”

From: Parole overhaul still stuck in Legislature  
Activists campaign against strict ‘three-strikes’ plan  
By Stephanie Ebbert | GLOBE STAFF  
12/19/11

- Benjamin F. Thompson,  
Executive director of the Criminal Justice Policy Coalition

# SEN. WILL BROWNSBERGER ON “3 STRIKES”



**One Tough Vote**  
November 17, 2011

I took a tough vote last night that many might, at first glance, disagree with. I write to explain my vote.

**Sen. Will Brownsberger** I voted against the proposed “three-strikes” violent crime bill. Criminal justice is not baseball. There is nothing magic about the number three. Some offenders don’t deserve a second chance at all. Others should be allowed to keep trying to get life right. From where we sit, high on Beacon Hill, we aren’t in a very good position to distinguish among them.

We cannot escape the fact that public safety depends not only on laws, but also on the responsible actions of those charged with critical decisions. Governor Patrick got it right when he fired everyone involved in the release of Domenic Cinelli, who had gone on to murder a Woburn police officer, and sought to rebuild a more responsible parole board.

No one can disagree with the intention of the bill — to prevent the release of dangerous criminals who will continue to prey on the public. And no one can disagree that the system has failed gravely and unacceptably in some instances.

However, the bill we passed will actually defeat the goal of incarcerating more violent offenders, because it sweeps in too many lesser offenders. Prison is an expensive and finite resource — many prisons are already crowded and if with special rules we force them to hold lesser offenders, we effectively force them to release more violent offenders who don’t happen to fall within those rules.

The draft bill came before us with only one day for review. I worked with my colleagues to target it more sharply, but unfortunately, in the final minutes before the vote, it became clear to me that even the amended bill was deeply flawed. The debate about the bill focused on new maximum mandatory sentences for the rare habitual violent offenders — the people thrice convicted of crimes like rape, home invasion, and armed robbery. But the bill also made a subtle but dramatic change to the existing habitual offender statute which applies much more broadly.

Even as that feature of the bill dawned on me, I was unsure of the correct vote — I absolutely

want to protect future victims. I did not make my final decision until the very end of the debate, in fact until the time for voting had almost expired. While I deliberated to the last possible moment, I actually covered my eyes to avoid looking at how others were voting — I didn’t want to be tempted to make a political decision.

After voting, I inspected the final tally and found that I was one of only four white legislators to vote against the bill, with the other eight ‘no’ votes coming from people of color representing inner city districts. The vote was 142 to 12 in favor.

With the benefit of a night’s sleep and some more reading, I do have confidence that I made the right decision. The existing habitual offender statute states that someone who has been twice sentenced to a state prison for a term of three or more years will be sentenced to the maximum term for any third felony that they commit. The bill we approved last night will eliminate the three year requirement, so that an offender who had twice served any sentence in state prison is liable for the maximum penalty on their third strike.

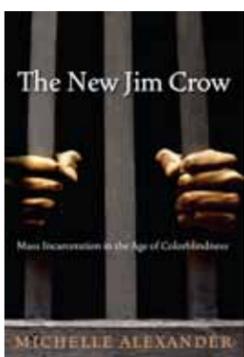
In high crime urban areas, where crime is sometimes perceived as a routine alternative to unemployment, this rule has the potential to greatly increase the number of young potentially salvageable men doing life sentences. For example, under the bill as amended, a person twice convicted of retailing cocaine and twice sentenced to state prison who was then convicted of an unarmed robbery would receive a mandatory life sentence. Some unarmed robberies are not serious offenses — any forcible grab of money or property is an unarmed robbery. A young man could turn 21 in prison doing life without ever having committed a crime of distinctive violence. That outcome wastes scarce prison resources that could, for example, be used to implement a longer sentence for a more violent offender who has only been caught once.

I cannot rule out voting for an improved version of the bill when it comes out of conference, but I’m not sure that a good version can be written. Our criminal code provides very wide sentencing ranges for many offenses, reflecting the fact that a wide range of conduct can fit with in the words of the offense definitions. If we take away discretion without reforming more of the criminal code, unintended consequences may be inevitable.

- Will Brownsberger — State Senator, Democrat, 2d Suffolk and Middlesex District



Artist: Richard G. Hall, Jr.



## READ THIS BOOK

**The New Jim Crow**  
Mass Incarceration  
in the age of  
Colorblindness

Michelle Alexander



Artist: Richard G. Hall, Jr.

## Comix from Inside

Artist: Richard G. Hall, Jr.

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www.mass.gov/governor/contact

## FIND YOUR LOCAL LEGISLATOR

Look up and contact your local State Representatives and State Senators  
www.malegislature.gov

## FIND YOUR DISTRICT ATTORNEY

Look up and contact your local District Attorney  
www.blackstonian.com/FindYourDA

# CONCERNED ORGANIZATIONS

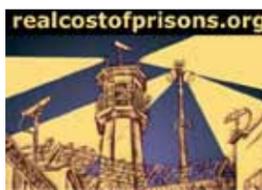


**Stop 3 Strikes in MA**  
stophreestrikes.org

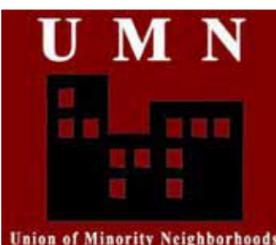
**Sign The Petition against 3 Strikes in MA**  
petitions.com/petition/noma3strikes



**EPOCA - Ex-Prisoners and Prisoners  
Organizing for Community Advancement**  
exprisoners.org | 508-410-7676  
5 Pleasant Street, 3rd Fl. Worcester, MA 01609



**Criminal Justice Policy Coalition (CJPC)**  
cjpc.org | info@cjpc.org | 617-697-4195  
CJPC/Baker House  
411 Washington St. Dorchester, MA 02124



**Prisoners' Legal Services (PLS)  
formerly Massachusetts Correctional Legal  
Services (MCLS)**  
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10 Winthrop Square Boston, MA 02110  
617-482-2773 | Fax: 617-451-6383



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