



**Women & Incarceration Project**  
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## **Decarcerating Women from MCI-Framingham: A Realistic Prospect Today<sup>1</sup>**

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Massachusetts' primary prison for women, MCI-Framingham, is in a sad state of disrepair. In response, the Massachusetts Department of Correction (DOC) wants to spend \$50 million to build a new women's prison. However, a large majority of the 166 women currently held at MCI-Framingham could be released under existing policies.<sup>2</sup> *No new legislation is needed to begin decarceration immediately.* Many more women could be released, and future incarceration prevented, if the Legislature passes several bills that have been introduced in the 2021–2022 session. The DOC proposal to spend \$50 million on a new women's prison would be an egregious misuse of resources.\*

### **The current population of MCI-Framingham: January 1, 2021**

**Only 166 women are in custody at MCI-Framingham.**<sup>3</sup> The proposed new prison would therefore spend over \$300,000 per woman in construction costs, on top of \$162,000 per woman per year in operating costs.<sup>4</sup> The number of women in custody has decreased by 75% over the past decade.<sup>5</sup> Today, it fluctuates from month to month but has remained under 200 for almost all of the past year. Of these 166 women:

**Thirty (30) women are being held pre-trial.** These women have not been convicted of a crime; they are in prison waiting to go on trial or to resolve their case through a plea bargain.<sup>6</sup> Some women are held for a probation or parole violation (which includes a variety of technical violations such as missing an appointment with a probation or parole officer) or for a dangerousness hearing. Most are too poor to afford even small amounts of cash bail.

Since 2018, the number of women awaiting trial has decreased dramatically. That year, Massachusetts passed the Criminal Justice Reform Act which incorporated the 2017 Supreme Judicial Court ruling that a defendant's financial resources must be taken into account in

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\* This paper focuses on MCI-Framingham because that prison is the subject of debate. Women are also incarcerated in several county and regional jails throughout the state if they are waiting to go on trial or serving less than two and a half years. The majority of those jails are well below capacity. Until March 2021, women were also incarcerated at the South Middlesex Correctional Center, the DOC prison for women classified as minimum security or pre-release. That prison is now at 0% capacity.

determining bail amounts.<sup>7</sup> In 2018, there were 182 women held before trial;<sup>8</sup> in 2019, there were 45 women;<sup>9</sup> and in 2020, there were 30 women.<sup>4</sup> With appropriate support, such as reminders to appear in court, most women held before trial can be released without requiring cash bail under the Criminal Justice Reform Act.<sup>10</sup>

**Approximately 17 of the 30 women being held before trial are mothers of children under age 18.** Upon conviction, these mothers may be eligible for a community-based sentence under the Primary Caretakers Act of 2018.<sup>11</sup> If a woman who meets the eligibility criteria was convicted in Suffolk County and her defense attorney did not ask for a community-based sentence, she may be able to have her sentence reviewed by contacting the District Attorney's Integrity Review Bureau, a first-in-the-nation program to review cases, convictions, and sentences.<sup>12</sup>

**One (1) woman is being held on civil commitment.** Women are sometimes civilly committed by a judge because of substance use or mental illness. Twenty-seven (27) women have been civilly committed to MCI-Framingham as of November of this year.<sup>13</sup> They have not been tried or convicted of a crime.<sup>14</sup> Since 2016, no woman who is civilly committed is supposed to be in prison but rather sent to a Department of Public Health treatment facility, unless she is also being held on criminal charges. In those cases (called “dual status commitments”), if a woman can afford to post bail, then she can go to a treatment facility instead of prison, reinforcing inequality and violating the spirit of the law.<sup>15</sup>

**One hundred thirty-five (135) women are serving sentences after being convicted.**<sup>16</sup> Of these women:

**Approximately 90 women are diagnosed with a serious mental illness;<sup>17</sup> 66 live with at least one disability; and 90 live with a chronic illness.**<sup>18</sup> The Criminal Justice Reform Act of 2018 established medical parole, through which a terminally ill or permanently incapacitated person can be granted compassionate release from prison or jail. Women with dementia, advanced cancer, severe mobility limitations or long-standing and intractable mental illness could qualify for medical parole under the provisions spelled out in this law. The Legislature mandated expedited medical parole reviews in December 2020 and again in July 2021. The DOC has not yet carried out all of these reviews.<sup>19</sup> In fact, in 2020, only 29 people were released statewide using medical parole—and all were men.<sup>20</sup>

**An estimated 95 women have experienced sexual violence or abuse.**<sup>21</sup> One of the few studies of women serving life sentences found that 80% of respondents reported having experienced physical abuse, 77% having experienced sexual abuse, and 84% having witnessed violence at home.<sup>22</sup> Given the pervasive nature of gendered and sexual violence

in the lives of criminalized women and in the circumstances leading up to their incarceration, clemency should be used to release many women.

**Fifty-seven (57) women are 45 years old or older; 46 women are 50 years old or older.**<sup>23</sup> A secondary analysis of national data found that only 4% of women who were 45 years or older at the time of their release from prison were rearrested within three years of release.<sup>24</sup> In addition, an incarcerated 50-year-old is considered an “older” person because of the poor conditions in prison and because of the social determinants of health that affect people before they become incarcerated. These findings suggest that most of the middle-aged and elderly women incarcerated in Massachusetts are also appropriate candidates for release.

Although the Massachusetts Constitution gives clemency power to governors,<sup>25</sup> in the 20 years between 2001 and 2021, only three women have been released through clemency.<sup>26</sup>

**Many women who are at risk from the COVID-19 pandemic can and should be released from prison.** The FY22 state budget mandates that the DOC “shall release, transition to home confinement or furlough individuals in the care and custody of the department who can be safely released, transitioned to home confinement or furloughed with prioritization given to populations most vulnerable to serious medical outcomes...,” as did the FY21 budget before it.<sup>27</sup> Among those considered especially vulnerable to infection, severe illness and death from COVID-19 are individuals who have chronic lung disease, HIV, mental illness, dementia, substance use disorder, overweight or obesity, diabetes, and disabilities.<sup>28</sup> Many women meet these criteria; as explained above, many have disabilities and chronic health conditions, and two-thirds have a serious mental illness. Yet despite ongoing waves of infection and new variants of COVID-19, the DOC still does not have a functioning Ombudsman’s office to carry out this critical work of releasing people from prison.

Finally, still other women may be eligible for parole. Parole, however, is underutilized and people approved for release on parole can nonetheless languish in prison for years.<sup>29</sup>

As this discussion shows, **a large majority of the 166 women currently at MCI-Framingham could be released under existing policies:** bail reform as enacted in the Criminal Justice Reform Act of 2018; the Primary Caretakers Act; the provision of the Section 35 law prohibiting civil commitment of women to prison; medical parole; clemency; release because of COVID-19; and parole. *No new legislation is needed to begin doing this immediately.*

**Many more women could be released if the Legislature passes several bills this 2021-2022 session, including but not limited to:**

- An Act regarding decarceration and COVID-19 to require people meeting Centers for Disease Control criteria such as being over age 50 or having certain medical conditions to be reviewed for release, as well as people incarcerated for technical violations of parole or meeting other non-medical criteria;
- An Act to reduce mass incarceration to make every incarcerated person eligible for a parole hearing after 25 years; and An Act to reform parole supervision in the interest of justice to prohibit incarcerating people on parole for technical violations—which account for almost 90% of people on parole sent to prison;<sup>30</sup>
- An Act relative to treatment, not imprisonment to prohibit incarcerating people on probation if they relapse and test positive for drug use;
- An Act to promote the health and safety of people in the sex trade to decriminalize sex work, and An Act to stop profiling transgender people and low-income women to repeal the archaic laws against “common night walking and street walking;” and,
- An Act relative to harm reduction and racial justice to decriminalize possession of drugs.

**There may remain a small number of women who cannot be released under any of these policies.** It is important to note that Massachusetts law does not require people sentenced to the legal custody of the DOC to be housed in prisons.<sup>31</sup> Community-based facilities ranging from re-entry housing to various secure settings are permissible options under current Massachusetts law.

**Massachusetts has numerous avenues to release women immediately and opportunities to enact legislation this session to prevent women from being incarcerated.** Although the DOC, courts, parole boards and governors have not used these avenues as extensively as allowed by law—or indeed, as mandated by law—they are effective means to substantially reduce the number of women in state prison. Expanded use of existing policy tools will continue the downward trend in the number of women sent to prison and with that, reduce the perceived need for new prison or jail space. Together, these policy tools can bring about the decarceration of women from MCI-Framingham.

## Notes

<sup>1</sup> This paper is a collaborative effort by the Women and Incarceration Project. Contact [cwhhrwip@gmail.com](mailto:cwhhrwip@gmail.com) with questions.

<sup>2</sup> These policies are bail reform; the Primary Caretakers Act; provisions of the Section 35 law prohibiting civil commitment of women to prison; medical parole; clemency; release because of COVID-19; and parole.

<sup>3,4</sup> All state data in this paper are as of January 1, 2021 from the following source unless otherwise noted: Massachusetts Department of Correction. (2021, May). *Prison population trends 2020*. Mass.gov. <https://www.mass.gov/doc/prison-population-trends-2020/download>

<sup>5</sup> These are real decreases, not just the result of moving some women from prison to county jails.

- <sup>6</sup> See Sered, S. S. (2014, May 27). *Guilty until proven innocent*. Susan Sered, PhD. <http://susan.sered.name/blog/guilty-until-proven-innocent/>
- <sup>7</sup> *Brangan v. Commonwealth*, 80 N.E.3d 949 (Mass. 2017).
- <sup>8</sup> Massachusetts Department of Correction. (2019, March). *Prison Population Trends 2018*. Mass.gov. <https://www.mass.gov/doc/prison-population-trends-2018/download>
- <sup>9</sup> Massachusetts Department of Correction. (2020, April). *Prison Population Trends 2019*. Mass.gov. <https://www.mass.gov/doc/prison-population-trends-2019/download>
- <sup>10</sup> Massachusetts Bail Fund. (n.d.). *About the Massachusetts Bail Fund*. <https://www.massbailfund.org/about.html>
- <sup>11</sup> The DOC provides limited information about women in custody; we therefore extrapolate from United States Bureau of Justice Statistics reports, which are the best source of nationally representative data. Applying national figures to Massachusetts, we estimate that approximately 58% of women at MCI-Framingham are likely to have children under age 18 years. See Maruschak, L. M., Bronson, J., & Alper, M. (2021). *Parents in Prison and their Minor Children-2016*. Bureau of Justice Statistics. The Primary Caretakers Act applies to parents whose convictions do not carry a mandatory minimum sentence (Mass. Gen. Laws ch. 279, § 6B).
- <sup>12</sup> Suffolk County District Attorney's Office. (n.d.). *Integrity Review Bureau*. <https://www.suffolkdistrictattorney.com/irbfaqs>
- <sup>13</sup> Massachusetts DOC public records request communication, November 17, 2021.
- <sup>14</sup> For more on this issue see Sered, S. S. (2014, July 8). *Civil commitment: If you build it they will come*. Susan Sered, PhD. <http://susan.sered.name/blog/civil-commitment-if-you-build-it-they-will-come/>
- <sup>15</sup> Mass. Gen. Laws ch. 123, § 35. See also Section 35 Commission. (2019, July 1). *Section 35 Commission Report* [PowerPoint Slides]. Mass.gov. Slide 14, footnote 5. <https://www.mass.gov/doc/section-35-commission-report-7-1-2019/download>
- <sup>16</sup> When considering the offense for which women have been convicted, it is important to understand that sentencing criteria often rest on a misperception that “violent” and “non-violent” crimes are clearly distinct and that crimes deemed violent are always more serious than other crimes. See [Women and Violent Crime: Do the Facts Justify Building a New Women's Prison in Massachusetts?](#)
- <sup>17</sup> Massachusetts Department of Correction. (2021, May). *Prison population trends 2020*. Mass.gov. <https://www.mass.gov/doc/prison-population-trends-2020/download>, p. 17. Sixty-seven percent of the DOC female jurisdiction population on January 1, 2021 had a serious mental illness. The definition of serious mental illness can be found at <https://www.mass.gov/doc/data-dictionary-1/download>, p. 8.
- <sup>18</sup> The DOC does not provide numbers for chronic illness and disability. However, national data show that 49% of incarcerated women report at least one disability, and 67% report at least one chronic illness. See Maruschak, L. M., & Berzofsky, M. (2015). *Medical problems of state and federal prisoners and jail inmates, 2011–12*. Bureau of Justice Statistics. <https://bjs.ojp.gov/content/pub/pdf/mpsfpi1112.pdf>; Mignon, S. (2016). Health issues of incarcerated women in the United States. *Ciência & Saúde Coletiva*, 21(7). <https://doi.org/10.1590/1413-81232015217.05302016>; Bronson, J., & Maruschak, L. M. (2015). *Disabilities among prison and jail inmates, 2011–12*. Bureau of Justice Statistics. <https://bjs.ojp.gov/content/pub/pdf/dpji1112.pdf>; Vera Institute of Justice. (2016, August). *Overlooked: Women and jails in an era of reform*. <https://www.vera.org/downloads/publications/overlooked-women-and-jails-fact-sheet.pdf>
- <sup>19</sup> See the discussion below of the FY21 and FY22 budget requirements to release people from DOC custody because of COVID-19.
- <sup>20</sup> Massachusetts Department of Correction. (2021, May). *Prison population trends 2020*. Mass.gov. <https://www.mass.gov/doc/prison-population-trends-2020/download>
- <sup>21</sup> Harlow, S. W. (1999, April). *Prior abuse reported by inmates and probationers*. Bureau of Justice Statistics Selected Findings. <https://bjs.ojp.gov/content/pub/pdf/parip.pdf>
- <sup>22</sup> The Sentencing Project. (2019). *Women and girls serving life sentences*. <https://www.sentencingproject.org/publications/women-girls-serving-life-sentences/>
- <sup>23</sup> As of February 8, 2021. Massachusetts DOC public records request communication, February 8, 2021.

- <sup>24</sup> Deschenes, E. P., Owen, B., & Crow, J. (2007). *Recidivism among female prisoners: Secondary analysis of the 1994 BJS recidivism data set*. National Institute of Justice. <https://www.ojp.gov/pdffiles1/nij/grants/216950.pdf>
- <sup>25</sup> Mass. Const. art. LXXIII, <https://malegislature.gov/Laws/Constitution#amendmentArticleLXXIII>. Each governor writes their own guidelines, meaning any future governors could take a much more expansive approach to clemency.
- <sup>26</sup> Deval Patrick (governor from 2007 to 2015) commuted one woman’s sentence for drug crimes. Jane Swift (acting governor from 2001 to 2002) pardoned two women, one for larceny, the other for forgery, assault and battery and possession of a Class B substance. See Quinn, G. (2014, November 10). *Governor Deval Patrick grants four pardons, commutation before leaving office*. MassLive. [https://www.masslive.com/politics/2014/11/governor\\_patrick\\_grants\\_four\\_p.html](https://www.masslive.com/politics/2014/11/governor_patrick_grants_four_p.html); Wade, C. M. (2017, February 20). *Governors, Parole Board granting few pardons*. The Salem News. [https://www.salemnews.com/news/state\\_news/governors-parole-board-granting-few-pardons/article\\_3a982666-7014-5b61-9868-25a54159eb38.html](https://www.salemnews.com/news/state_news/governors-parole-board-granting-few-pardons/article_3a982666-7014-5b61-9868-25a54159eb38.html)
- <sup>27</sup> The budget also calls for use of other release mechanisms, including expedited medical parole review and maximizing “good time” credits by eliminating requirements to participate in programming for those close to their release dates. See Line Item 8900-0001 of The General Court of the Commonwealth of Massachusetts. (2021, July 16). *FY 2022 Final Budget*. <https://malegislature.gov/Budget/FinalBudget>
- <sup>28</sup> Centers for Disease Control and Prevention. (2021, Oct. 14). *Underlying Medical Conditions Associated with Higher Risk for Severe COVID-19: Information for Healthcare Providers*. <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-care/underlyingconditions.html>
- <sup>29</sup> McKim, J. B. (2020, July 8). They've been granted parole. So why can it take years for them to get out of prison?. *Globe Magazine*. <https://www.bostonglobe.com/2020/07/08/magazine/theyve-been-granted-parole-so-why-can-it-take-years-them-get-out-prison/>
- <sup>30</sup> ACLU Massachusetts. (2021). *Reduce reincarceration for technical violations of parole: H.1798 & S.1600, Rep. Miranda & Sen. Jehlen*. [https://www.aclum.org/sites/default/files/field\\_documents/parole\\_bill\\_fact\\_sheet\\_091521.pdf](https://www.aclum.org/sites/default/files/field_documents/parole_bill_fact_sheet_091521.pdf)
- <sup>31</sup> Mass. Gen. Laws ch. 125, § 1. See also Braatz, E., and Clay, K. (2021). *What the law says: Understanding the legal definition of a prison*. The Suffolk University Center for Women’s Health and Human Rights Women and Incarceration Project. <https://sites.suffolk.edu/wiproject/files/2021/10/Interpreting-the-Definition-of-Correctional-Facility.pdf>