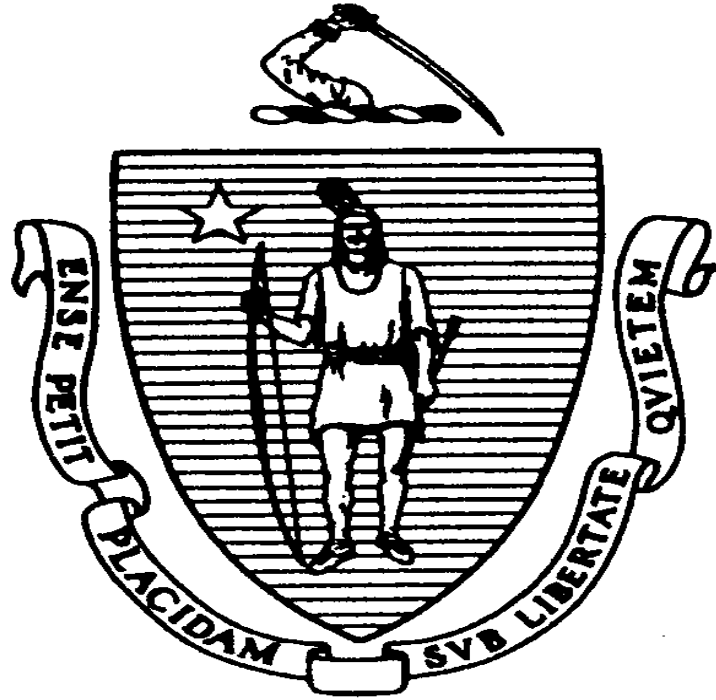


Policy and Statutory Restrictions Impact on Inmate Placement

Massachusetts Department of Correction



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The Department of Correction (DOC) employs several criteria to determine an inmate's eligibility for placement in a work, education, or program related activity as well as in lower security level (minimum and pre-release) facilities. Some restrictions are mandated by statute, some are based on DOC policy and some fall into both categories. The first section of this document addresses statutory restrictions. The second section provides criteria¹ identified by DOC policy. The last section provides a summary of how many offenders fall into at least one of each area, such that the total number of offenders impacted by policy and/or statutory restrictions is less than the sum of inmates falling into each category.

The database for all criminally sentenced inmates active on December 10, 2003 in DOC jurisdiction was analyzed to determine the statistical impact of these policies and statutes. The analysis included all sentences, not just each offender's governing sentence.² As of December 10, 2003 there were **9,101 criminally sentenced inmates**³ in DOC jurisdiction. Of the 9,101 offenders, 580 (7%) were females and 8521 (94%) were males. Those 9,101 inmates were serving 31,526 sentences in total, averaging over three offenses and corresponding sentences per inmate.

Section 1: Statutory Restrictions

MANDATORY STATUTES RESTRICTING WORK-RELEASE:

Massachusetts statutes impose four types of restrictions on inmates' access to work release programming. First, some inmates are restricted for the entire term of their sentence. Second, some inmates are restricted for the entire term of their sentence, except upon recommendation of the superintendent. Third, some sentences impose restrictions during a mandatory term of a sentence. Fourth, some sentences permit work release access during a mandatory term of the sentence in the custody of an officer upon recommendation of the superintendent.

Appendix A provides a detailed list of those restrictions by statute

- 7,608 inmates were serving time for at least one statute that restricts work release access;
- 84% of the inmate population.

¹ The snapshot provided does not include all criteria considered in the classification and placement process of DOC inmates.

² The governing offense is based on the crime for which the inmate is serving his or her maximum sentence.

³ Not all criminally sentenced inmates in DOC custody have MGL statute information, which many of the policies and statutes are based upon. An example of these would be inmates serving time for Federal or out-of-state offenses (n=89 offenders).

18 MONTH TO PROXIMITY TO PAROLE ELIGIBILITY RESTRICTION

G.L. c. 127, § 49 provides in relevant part:

The commissioner of correction ... subject to rules and regulations established in accordance with the provisions of this section, may permit an inmate who has served such a portion of his sentence or sentences that he would be eligible for parole within eighteen months to participate in education, training or employment programs established under section forty-eight outside a correctional facility.

A. Inmates not yet within 18 months of parole eligibility

This population is precluded by G.L. c. 127, § 49 from participating in education, training or employment programs outside a correctional facility.

- 3,876 inmates were not yet within 18 months of their parole eligibility dates.
- 43% of the inmate population.

B. Inmates within 18 months or beyond their parole eligibility dates

This population of 4,021 inmates are eligible under G.L. c. 127, § 49 to participate in education, training, or employment programs outside a correctional facility. However, some of these inmates may nonetheless be ineligible by operation of other statutory restrictions.

- 2,232 inmates (25% of the inmate population) were within 18 months of their parole eligibility dates;
- 1,789 inmates (20% of the inmate population) were beyond their parole eligibility dates.

INMATES SUBJECT TO BOTH STATUTORY AND 18 MONTH PROXIMITY TO PAROLE ELIGIBILITY RESTRICTIONS

7,608 inmates were serving sentences under a statute imposing a restriction on access to work release. In order to be eligible for access to work release, the inmate would have had to have completed the mandatory portion of the sentence, and also be within 18 months or beyond the inmate's parole eligibility date.

- 3,367 inmates were serving sentences under a statute imposing a restriction on access to work release and were not yet within 18 months of parole eligibility.
- 3,193 inmates were serving sentences under a statute imposing a restriction on access to work release, but were within 18 months or beyond their parole eligibility dates.
- 509 inmates were not subject to a restriction on access to work release, but were not within 18 months of their parole eligibility dates.

Combining the total number of inmates potentially restricted by either a statutory restriction or the 18-month proximity to parole eligibility restriction, yields a total of 8,117 inmates (89% of the population) with restrictions. Of the 8,117 restricted inmates, 7,608 were subject to a mandatory statute and 509 were not subject to a mandatory statute, but were not within 18 months of parole eligibility.

The analysis shows that 3,876 inmates (43% of the inmate population) were not within 18 months of their parole eligibility dates. Adding the 795 inmates serving first degree life sentences (with no parole eligibility dates), a total of 4,671 inmates (51% of the inmate population) were subject to restrictions.

Section 2: Policy Restrictions

SEX OFFENDERS:

DOC policy (103 DOC 446 Sex Offender Management) has restricted sex offenders from lower security level facilities until program requirements specific to sex offenders have been met. Further, sex offenders statutorily face civil commitment of 1 day to life following completion of a criminal sentence. As such, they are considered a risk to escape and therefore their placement in a minimum security level facility is considered a threat to public safety.

See Appendix B for a complete listing of the relevant statutes, that define an inmate as a Sex Offender.

- 1,673 inmates had at least one or more sex offenses as defined by policy;
- 18% of the inmate population.

SECURITY THREAT GROUP (STG) MEMBERS:

The DOC manages a large inmate population of Security Threat Group (STG) members, associates and/or suspected members. The department developed a process by which STG members are restricted from a minimum security level facility by policy (103 DOC 514 Security Threat Group Management) unless they agree to renounce their membership in the STG and the DOC accepts their renouncement. This process prevents access to the community by offenders who remain committed to security threat group activity and values.

- 513 inmates were validated as Security Threat Group members as defined by policy;
- 6% of the inmate population.

This policy has been revised and implementation of the revised policy is imminent. Placement of offenders will be driven by behavior/inmate conduct and not by affiliation.

SECURITY RISK RATING:

The DOC routinely reviews each offender's security risk and has developed a rating system whereby placement restrictions exist for offenders with certain ratings. Although these ratings have not been formed in a policy, inmates with an escape history are reviewed by the institutional Inner Perimeter Security Team to assess their risk. A temporary rating is then assigned. Necessary

documentation is then forwarded to the Office of Investigations for rating validation. Inmates who are assigned a rating of A and B cannot go below security level 4 (a medium security level facility).

- 328 inmates were rated as having the equivalent of a Security Risk Rating A or B;
- 4% of the inmate population.

This policy is also under review. The goal is to incorporate this variable into the development of a new objective point based classification instrument.

1ST DEGREE LIFE SENTENCES:

Inmates serving life without Parole are restricted from level 2 or below by virtue of their sentence. As they have no parole eligibility or release date, they are ineligible by statute for placement in community based programming. While there is no statutory or policy mandate that restricts these inmates from a minimum security level facility, the placement of these offenders, who have committed violent crimes and have no prospects for parole/release, in a community correction facility is considered a threat to public safety.

- 795 inmates were serving a First Degree Life sentence
- 9% of the inmate population.

PUBLIC SAFETY SECURITY PROGRAM (PSSP):

The Public Safety Security Program establishes a procedure that complies with a directive from the then Governor, William F. Weld, which required that any inmate currently serving a sentence with a parole eligibility for Murder (2nd degree), Manslaughter, Mayhem, Armed Assault with intent to Murder, or a sex offense must have the approval of the Massachusetts Parole Board prior to being considered for a transfer to a minimum security level correctional facility by the Department of Correction.

- 3,427 inmates were serving at least one PSSP offense;
- 38% of the inmate population.

This initiative is also under review. The rescission of this practice has been proposed, as the use of an objective point based system and an appropriate risk assessment instrument eliminates the need for this process.

COMBINED “POLICY” RESTRICTIONS:

Numerous inmates fall into more than one of the above restrictive criteria. Thus, the total number of individual inmates restricted based on the DOC policies or practices listed above, did not equal the sum of each inmate group.

- 4,455 of the 9,101 inmates in DOC jurisdiction on December 10, 2003, were subject to being restricted based on one or more of the above policies;
- 49% of the inmate population.

Section 3: Statutory and Policy Restrictions

4,021 inmates were WITHIN 18 months or past their parole eligibility date. Of those 4,021 inmates, the following were restricted by DOC policy:

- 891 Sex Offenders
- 185 Security Threat Group members
- 126 Security Risk Rating A or B
- 1,549 PSSP offenders

In total, 1,727 inmates (19% of the inmate population) were not restricted in terms of their PE date, but had *one or more* of the above listed restrictions by DOC policy. Only 104 of these 1,727 inmates were restricted solely by DOC policy.

3,193 inmates were serving a sentence for at least one mandatory statute restriction (though not necessarily restricted by the provisions of the statute as of December 10, 2003), but were within 18 months or past their parole eligibility date. Of those 3,193 inmates, the following inmates were restricted by DOC policy:

- 891 Sex Offenders
- 143 STG Members
- 107 Security Risk A or B
- 1,496 PSSP

In total, 1,623 inmates (18% of the inmate population) were not restricted in terms of their PE date, but were serving a sentence restricted by a mandatory statute (though not necessarily restricted by the provisions of the statute as of December 10, 2003), and had at least *one or more* of the above listed restrictions by DOC policy.

Of the 4,455* inmates restricted due to at least one of the listed DOC policies:

- 1,759* had more than 18 months to their PE date, meaning that they would be restricted from work release programming due to the statutory restriction imposed.
- An additional 1,727* of the 4,455 inmates were *within or past* their PE date
 - 564 were within 18 months of their PE date
 - 1,163 were past their PE date

*The discrepancy in total is due to first degree lifers and others having definitional/jurisdictional variances.

- 4,170 (94%) of the 4,455 inmates restricted by policy were serving a sentence for at least one mandatory restriction statute (though not necessarily restricted by the provisions of the statute as of December 10, 2003).

Summary

When all the listed restrictions are teased out, there remains a core group of inmates, regardless of DOC policies, that will be restricted from work-release and other community based programming by MGL statutes. Accordingly, 3,876 (43%) had greater than 18 months to their parole eligibility date. Additionally, a portion of inmates restricted by a mandatory sentence are never eligible for work release programming (i.e. first degree lifers, etc.). If one adds the 795 inmates serving a first degree life sentence to the 3,876 inmates with more than 18 months to their PE date, then, at least, 4,671 inmates, or more than 51% of the inmate population as of December 10, 2003, were restricted by statute from work-release.

From a different perspective, 1,759 (39%) of the 4,455 of inmates restricted due to one of the DOC policies listed were restricted from work-release by statute, because they had greater than 18 months to their PE date. Additionally, 4,170 (94%) of the 4,455 inmates restricted by policy were serving sentences for at least one or more mandatory statutes with work-release restrictions. Furthermore, only 104 inmates were within or past 18 months of their PE date, had no other mandatory restrictions, but were restricted from placement in a lower security facility by DOC policy. Because the mandatory statutory restrictions are so numerous and have different levels of impact, it is difficult to gauge exactly how many inmates were impacted and to what degree, as of December 10, 2003, without going through individual records. As noted in the report, many of the DOC policy restrictions have been revised or are in the midst of revisions, which may impact the eligibility of some offender's placement in minimum security level facilities.

APPENDIX A

WORK RELEASE RESTRICTIONS BY STATUTE

I. WORK RELEASE PROHIBITED DURING ENTIRE TERM

A. Murder (first degree).

B. Sex offenders. “No sex offender, or sexually dangerous person . . . shall be eligible for any program outside a correctional facility authorized under section 48 or any other work release program authorized by law.” c. 127 § 49, 4th sentence.

For purposes of the Sex Offender Registry Board, c. 6, § 178C, and as set forth in 103 DOC 446, a sex offender is defined as “An inmate (1) who has been convicted of a sex offense defined by M.G.L. c. 6, § 178C; or (2) who has been adjudicated as a youthful offender or as a delinquent juvenile by reason of a sex offense defined by M.G.L. c. 6, § 178C; or (3) who has been committed pursuant to M.G.L. c.123A.”ⁱ The following statutes are set forth in c. 6, § 178C:

Statute	Offense
Chapter 265	
§ 13B	Indecent A&B on Child
§ 13F	Indecent A&B on Mentally Retarded
§ 13H	Indecent A&B
§ 22	Rape
§ 22A	Rape of a Child
§ 23	Rape of a Child
§ 24	Assault with Intent to Rape
§ 24B	Assault with Intent to Rape a Child
§ 26	Kidnapping (of a child)
§ 26C	Enticing a child with Intent to Commit Sex Crime ⁱⁱ

Chapter 272

§ 2	Enticing into Prostitution
§ 3	Drugging Person for Sex

- § 4A Inducing a Minor into Prostitution
- § 4B Deriving Support from Minor Prostitute
- § 16 Open and Gross Lewdnessⁱⁱⁱ
- § 17 Incest
- § 28 Dissemination of Pornography
- § 29A Posing a Child Nude
- § 29B Dissemination of Child Pornography
- § 29C Possession of Child Pornography
- § 35A Unnatural Acts with Child

Chapter 274

- § 6 Attempt to commit a sex offense (as listed above).

II. WORK RELEASE PROHIBITED DURING ENTIRE TERM, EXCEPT UPON RECOMMENDATION OF THE SUPERINTENDENT. Pursuant to c. 127, § 49, inmates sentenced under the following statutes are prohibited from work release during the entire term, except upon recommendation of Superintendent, and provided that they are within 18 months of parole eligibility:

- A. **Lifers** – anyone serving a life sentence with parole eligibility
- B. **Others** - Persons convicted under the following statutes:

Statute	Offense
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Chapter 265

- | | |
|-------|--|
| § 2 | Murder (second degree) |
| § 14 | Mayhem |
| § 15 | Assault with Intent to Murder |
| § 15A | Assault & Battery by Means of a Dangerous Weapon |
| § 15B | Assault by Means of a Dangerous Weapon |

- § 16 Attempted Murder
- § 17 Armed Robbery
- § 18 Armed Assault with Intent to Murder or Rob
- § 18A Armed Assault in a Dwelling
- § 19 Unarmed Robbery
- § 20 Unarmed Assault
- § 21 Stealing by Confining
- § 25 Attempted Extortion
- § 26 Kidnapping

Chapter 272

- § 34 Crime against Nature (Sodomy)
- § 35 Unnatural Acts

III. WORK RELEASE PROHIBITED DURING MANDATORY TERM^{iv}

Statute	Offense	Mandatory Term
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Chapter 94C

§ 32(b)	Class A after prior	5 yrs.
§ 32A(b)	Class B after prior	3 yrs.
§ 32A(c)	Cocaine	1 yr.
§ 32A(d)	Cocaine w/ prior	5 yrs.
§ 32B(b)	Class C w/ prior	2 yrs.
§ 32E(a)	Marijuana trafficking	
(1)	50-100 lbs.	1 yr.
(2)	100- 2,000 lbs.	3 yrs.
(3)	2,000-10,000 lbs.	5 yrs.
(4)	10,000+ lbs.	10 yrs.
§ 32E(b)	Cocaine trafficking	
(1)	14 - 28 grams	3 yrs.
(2)	28 - 100 grams	5 yrs.
(3)	100 - 200 grams	10 yrs.
(4)	200+ grams	15 yrs.
§ 32E(c)	Heroin trafficking	

(1)	14 - 28 grams	5 yrs.
(2)	28 - 100 grams	7 yrs.
(3)	100 - 200 grams	10 yrs.
(4)	200+ grams	15 yrs.
§ 32F(a)	Class A to minor	5 yrs.
(b)	Class B to minor	3 yrs.
(c)	Class C to minor	2 yrs.
(d)	Cocaine to minor	5 yrs.
§ 32J	Dist. near School	2 yrs.

Chapter 265

§ 15A(a)	A + B DW Elderly-2nd	2 yrs.
§ 15B(a)	ADW Elderly-2nd	1 yr.
§ 18(a)	Armed Ass Elderly-2nd	2 yrs.
§ 18C	Home Invasion	10 yrs.
§ 19(a)	Unarmed Robbery Elderly-2 nd	2 yrs.
§ 43	Stalking	1 yr.

Chapter 266

§ 25(a)	Larceny of Elderly-2nd	1 yr.
§ 27A	Car Theft-Ins.Fraud-2nd	1 yr.
§ 28(a)	Receipt Stolen Car-2nd	1 yr.

Chapter 268

§ 39	Perjury	1 yr.
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Chapter 269

§ 10(a)	Carrying Firearm	1 yr.
§ 10(c)	Possess Shotgun	1 yr.
§ 10(d)	Subs. Gun Offense-2nd	5 yrs.
	-3rd	7 yrs.
	-4th	10 yrs.
§ 10E(1)	Firearms Sales(3 plus guns)	3 yr.
§ 10E(2)	Firearms Sales (10-20 guns)	5 yrs.
§ 10E(3)	Firearms Sales (more than 20)	10 yrs.
§ 10F	Large Weapon Sales	2.5 yrs.
§ 10G(a)	Previous Firearms-2 nd	3 yrs.
§ 10G(b)	Previous Firearms-3 rd	10 yrs.
§ 10G(c)	Previous Firearms-4 th	15 yrs.

IV. WORK RELEASE PERMITTED DURING MANDATORY TERM ONLY IN CUSTODY AND UPON RECOMMENDATION OF THE SUPERINTENDENT^v

Statute	Offense	Mandatory Term
Chapter 90		
§ 23	Driving after DUI rev.	60 days
§ 24(1)(a)	DUI - 2 nd	14 days
	DUI - 3 rd	90 days
	DUI - 4 th	6 mos.
§ 24G(a)	Vehicular homicide	1 yr.
§ 24L(1)	DUI – injury	6 mos.

ⁱ Any inmate who has committed “a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority” is also considered a sex offender.

ⁱⁱ The definition of sex offense was amended by St. 2003, c. 77, § 3, effective Sept. 30, 2003. This offense has not yet been added to 103 DOC 446.

ⁱⁱⁱ Excluding single adjudication as a delinquent juvenile before August 1, 1992.

^{iv} The list of statutes that prohibit work release during the mandatory term does not include any of the sex offenders listed as prohibited during the entire term. It does however, include those other offenders who are listed as prohibited during the entire term, except upon recommendation of the Superintendent. Those statutes are included in the section of those prohibited during the mandatory term because the recommendation of the Superintendent cannot override the mandatory term. To be eligible for work release, the inmate must also be within 18 months of parole eligibility.

^v Person serving sentences pursuant to these statutes are permitted to participate in work release only in the custody of a Department of Correction officer and pursuant to a recommendation of the Superintendent. To be eligible for work release, the inmate must also be within 18 months of parole eligibility.

APPENDIX B

Sex Offense - The following offenses are defined as sex offenses by G.L. c. 6, § 178C:

Offense	Chapter and Section
Indecent assault and battery on a child under 14	M.G.L. c. 265, § 13B
Indecent assault and battery on a mentally retarded person	M.G.L. c. 265, § 13F
Indecent assault and battery on a person age 14 or over	M.G.L. c. 265, § 13H
Rape	M.G.L. c. 265, § 22
Rape of a child under 16 with force	M.G.L. c. 265, § 22A
Rape and abuse of a child	M.G.L. c. 265, § 23
Assault with intent to commit rape	M.G.L. c. 265, § 24
Assault of a child with intent to commit rape	M.G.L. c. 265, § 24B
Kidnapping of a child under the age of 16	M.G.L. c. 265, § 26
Enticing away a person for prostitution or sexual intercourse	M.G.L. c. 272, § 2
Drugging persons for sexual intercourse	M.G.L. c. 272, § 3
Inducing a minor into prostitution	M.G.L. c. 272, § 4A
Living off or sharing earnings of a minor prostitute	M.G.L. c. 272, § 4B
Open and gross lewdness and lascivious behavior (second and subsequent adjudication, but excluding a first or single adjudication as a delinquent juvenile before August 1, 1992)	M.G.L. c. 272, § 16
Incestuous marriage or intercourse	M.G.L. c. 272, § 17
Disseminating to a minor matter harmful to a minor	M.G.L. c. 272, § 28
Posing or exhibiting a child in a state of nudity	M.G.L. c. 272, § 29A
Dissemination of visual material of a child in a state of nudity or sexual conduct	M.G.L. c. 272, § 29B
Possession of child pornography	M.G.L. c. 272, § 29C
Unnatural and lascivious acts with a child under 16	M.G.L. c. 272, § 35A
Aggravated rape	M.G.L. c. 277, § 39
Any attempt to commit a violation of any of the aforementioned sections pursuant to section 6 of chapter 274 or a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority.	