

A REVIEW OF MURDER CONVICTIONS
IN MASSACHUSETTS IN THIS CENTURY

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REPRESENTATIVE THOMAS P. KENNEDY

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Contact: Frank Falacci

Administrative Aide 722-2560

Chairman Thomas P. Kennedy announced today the availability of a Post Audit and Oversight Committee report entitled, "A Review Of Murder Convictions In Massachusetts In This Century", emanating from Post Audit's earlier review of the Department of Correction's furlough program in 1987.

Kennedy stated the report concludes that in the first half century a great majority of first and second degree murderers spent long years in prison, and in many cases were never released prior to their death. In more recent decades, added Kennedy, there are mechanisms in place which ultimately reduce the years a convicted murderer spends behind bars.

However the report points out that sixty-five first degree murderers were executed during the first half of the century. Although commutations and pardons were granted in those years, they did not necessarily result in the convicted murderer serving an unusually short term. The report further illustrates the number of reversals of convictions for first degree murder have increased in the last 25 years.

Chairman Kennedy said copies of the report are available upon request at the Committee's office, Room 146 in the State House.



The Commonwealth of Massachusetts

House of Representatives

Committee on Post Audit and Oversight
STATE HOUSE, BOSTON, MA 02133

ROBERT A. CERASOLI
REPRESENTATIVE
3RD NORFOLK DISTRICT
54 RUSSELL PARK
QUINCY, MA 02169
HOME TEL.: 471-3859

Chairman

STATE HOUSE OFFICE
ROOM 146
BOSTON, MA 02133
TEL.: 722-2560

TO: Representative George Keverian
Speaker of the House and Honorable
Members of the House of Representatives

As Chairman of the House Post Audit and Oversight Committee, I am pleased to present this report entitled, A Review of Murder Convictions in Massachusetts for your consideration. This investigation emanated from Post Audit's review of the Department of Correction's Furlough Program in 1987. This report is based upon a specific proposal that I submitted to the Committee in search of an answer to a question consistently asked during the Furlough hearings. Specifically, how much time do first and second degree murderers serve in prison?

The Committee recognizes the need to understand the sentencing experiences of convicted first and second degree murderers in Massachusetts. Toward that end, we have endeavored to analyze the final dispositions of all individuals convicted of murder in this century.

We concluded that in the first half century a vast majority of first and second degree murderers spent long years in prison, and in many cases were never released prior to their death. In more recent decades, there are mechanisms in place which ultimately reduce the years a convicted murderer spends behind bars.

This report reviews original murder convictions and the final dispositions of the murder cases discovered. The perspective is historical, and it is up to the reader to conclude whether the current system provides the balance of justice that each citizen expects from its government.

Respectfully submitted,

Robert A. Cerasoli
ROBERT A. CERASOLI
Chairman

FOREWARD

The House Post Audit and Oversight Bureau was established by section 282 of Chapter 351 of the Acts of 1981. The Bureau conducts performance and program audits under the direction of the House Committee on Post Audit and Oversight.

This report is a comprehensive review of the sentencing experiences of all those individuals identified as having been convicted of first or second degree murder in this century. Once convicted, each first degree murderer received a sentence of death or life without parole. All second degree murderers received life sentences and were eligible for parole.

I wish to thank the staff at MCI-Cedar Junction for their personal assistance and patience while we reviewed their records during this audit. Staff at MCI-Norfolk and MCI-Framingham were also very cooperative and helpful. The staff at the Department of Correction's central records department, and the staff at the State Archives, were of great assistance as we attempted to determine sentencing outcomes of so many convicted murderers. And finally, I wish to express my gratitude for the assistance received from the staff at the Office of the Clerk-Magistrate of the Suffolk Superior Court in verifying information concerning post conviction relief granted murderers convicted in the Suffolk Court.

This study was conducted with the assistance of James Barretto, Esq., Melissa Constable, Steven Durante, Elizabeth Hayward, James Mayo, Leslie Schreckinger, and Wade Welch, Esq.

Fran Brown
Assistant Director

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INTRODUCTION

I. RATIONALE

The purpose of this report is to assess the sentencing experiences of individuals convicted of murder in the first or second degree in Massachusetts, and to review the effects of commutations, pardons and paroles on lengths of sentences served. This study also seeks to evaluate the role of law enforcement agencies and the Courts in processing new trials and judgments granted as a result of appeals for post conviction relief.

Following the national attention in 1987 paid to the issue of furloughing convicted first degree murderers, specific inquiries were made by Representative Robert A. Cerasoli of Quincy, Chairman of the House Post Audit and Oversight (HPAO) Committee, concerning the number of years capital offenders spent incarcerated in Massachusetts prisons. Representative Cerasoli requested that the HPAO Bureau conduct a formal study in order to determine the numerical value in calendar years of a death or life sentence for a conviction of murder in Massachusetts, and the circumstances which allow capital offenders to be released from prison. The Chairman's request was in the broadest of terms, since he hoped to calculate sentencing outcomes of all those convicted of murder in this century.

In general, state statutes have prescribed that a person convicted of murder in the first degree receive a sentence of death or life in prison without parole. A person convicted of murder in the second

degree, also receives a life sentence, but, is eligible for parole and reintegration into society.

The information regarding convicted criminals, including murderers, is protected from public inspection under the (CORI) Criminal Offender Record Information law contained in M.G.L.A. c. 6, section 172.

Previously, on June 29, 1987, the House Post Audit and Oversight Committee exercised its authority to subpoena all pertinent information relative to William Horton under M.G.L.A., section 63, Chapter 3. On March 8, 1988, Department of Correction Commissioner, Michael V. Fair, informed Chairman Cerasoli, that his most recent request for access to CORI records of all first and second degree murderers, falls within the scope of the subpoena served on the Department of Correction in June of 1987.

On July 5, 1988 a subpoena was presented to Albert H. Whitaker, Jr., Archivist of the Commonwealth, requesting access of all records in the possession of the State Archives pertaining to the Department of Correction, state prisons, files of the wardens, and the files of individual capital offenders stored at the Archives.

In November of 1989, the Committee entered into an agreement with Clerk-Magistrate Daniel F. Pokaski of the Suffolk Superior Court to review a sampling of case dispositions of those individuals convicted of murder during the past two decades and sentenced in Suffolk Superior Court, but whose convictions were later reversed, either on motions for new trial, on appeal, or writ of error, and for whom judgment of acquittal was entered, new trials ordered, or a lesser sentence imposed.

II. HISTORICAL BACKGROUND

A. Massachusetts Early Law

Since the inception of the Commonwealth, the crime of murder has been declared a capital offense. Chapter 94, section 4 of the Massachusetts Body of Liberty of 1614 reads:

If any person commit any wilfull murther, which is manslaughter, committed upon pre-meditated mallice, hatred, or crueltie, not in a mans necessarie and just defense, nor by mere casultie against his will he shall be put to death.

Although the punishment for "smiting", or "killing" is ecclesiastically derived, the definition of murder as "manslaughter, committed upon premeditated malice, hatred, or cruelty", copies English law. According to a law review entitled, "The Early History of Murder and Manslaughter", the English statutes of the late Sixteenth and early Seventeenth Centuries divided culpable homicide into two substantive offenses: "Murder and Manslaughter, or Chance Medley," the former characterized by "malice aforethought".

Since 1641, the laws encompassing the act of murder in the Commonwealth have remained virtually unchanged. The Capital Laws enumerated in 1672 maintain the exact same wording as the Body of Liberties, with the omission of the phrase "which is manslaughter committed".

Chapter 17 of the 1697 Acts and Resolves of the Province of Massachusetts Bay states:

That whosoever shall commit wilful murder, upon premeditated malice or hatred, and be thereof convicted, the person or persons so offending shall be put to death.

Chapter 44 of the 1784 Acts and Resolves of the Province of Massachusetts Bay further specifies conditions for the conviction and punishment of murderers:

That whosoever shall commit wilful murder of malice aforethought, and being thereof convicted before the Justices of the Supreme Judicial Court, shall suffer the pains of death.

Chapter 69 of the same year amended the statute by annulling the distinction between "petit treason" and murder. Petit treason, adopted from English law, was originally distinct from murder in that it was limited to a crime committed by a wife in killing her husband, or a servant his lord or master, or an ecclesiastic his lord or ordinary. The Chapter added...

all cases wherein heretofore any person or persons whould have been or taken to have committed the crime of petit treason, such person or persons shall be deemed and taken to have committed the crime of murder only...

In 1804, the Legislature enacted Chapter 123 of the Acts entitled, "Providing for the punishment of the crimes of murder, man-slaughter, felonious maims and assaults, and duelling; and for the prevention thereof", stating:

That if any person shall commit the Crime of Wilful Murder, or shall be present, aiding and abetting, in the commission of such Crime, or not being present, shall have accessory thereof before the fact, by counselling, hiring or otherwise procuring the same to be done, every such offender, who, in the Supreme Judicial Court, shall be duly convicted of either of the felonies and offenses aforesaid, shall suffer the punishment of death.

Section 15 of Chapter 133 of the Acts of 1836 abolished the plea of "benefit of clergy" in the case of murder. Originally, the plea of the benefit of the clergy was invoked to escape the death penalty. As suggested by its title, the plea was used to exclude the clergy, monks,

and nuns from the punishment. Since literacy was largely confined to the clergy, the eligibility of an offender to plead his clergy was determined by his ability to read. Moreover, since literacy was invariably tested by the ability of the accused to read the first verse of the fifty-first psalm, many illiterates escaped the gallows by memorizing the words of "the neck verse".

Have mercy upon me, O God, according to thy loving-kindnesses according unto the multitude of thy tender mercies blot out my transgressions.

B. Murder in the First or Second Degree

The first distinction between first and second degree murder in Massachusetts was legislated in 1858. A bill "in Relation to the Crime of Murder" (H.123) read:

Section 1. Murder committed with deliberately premeditated malice aforethought, or in the commission of (sic) an attempt to commit any crime punishable with imprisonment for life, or committed with extreme atrocity or cruelty, is murder in the first degree.

Section 2. Murder not appearing to be in the first degree is that in the second.

Section 3. The degree of murder is to be found by the jury.

Section 4. Whoever is guilty of murder in the first degree shall suffer the punishment of death for the same, subject, however, to such conditions regarding the time and manner of executing sentence, and the custody or imprisonment of the convict prior thereto, as shall have been otherwise provided by law.

Section 5. Whoever is guilty of murder in the second degree shall be punished by imprisonment in the state prison for life.

With the inclusion of a Section 6 reading, "Nothing herein shall be construed to require any modification of the existing forms of indictment", the bill passed into law on March 27, 1858.

Chapter 207 of the Revised Laws of 1902 condensed the statute into two sections, rather than six. Prior to 1898, the means of execution for convicted murderers, or, post-1858, first-degree murderers, was hanging.

C. The Advent of the Electric Chair

The means of execution was changed in 1898 with the advance of technology. Chapter 326 of that year's laws stated:

The punishment of death shall, in every case, be inflicted by causing to pass through the body of the convict a current of electricity of sufficient intensity to cause death, and the application of such current must be continued until such convict is dead.

The electrocution procedure is as follows: The executioner straps the prisoner into the electric chair and attaches one metal electrode to his leg and another to his head. The executioner then throws a switch, sending lethal electric current through the prisoner's body. An initial voltage of 2000 volts and a current of 5 amperes is used. Then the voltage is lowered to 500 volts and twice raised to 2000 volts. In less than three minutes, the prisoner is declared dead.

The first execution by electric chair in Massachusetts took place on December 17, 1901. The last execution occurred on May 9, 1947. Between January 1, 1900 and May 9, 1947, eighty-seven men and one woman were convicted of murder in the first degree. The final disposition of the men convicted is as follows:

- 65 Electrocutions
- 1 Died in prison
- 2 Original convictions revoked, and found not guilty in subsequent trials.
- 19 Death sentences commuted to Life in prison

...of these 19:

- 13 Released under parole conditions
- 4 Died in prison
- 2 Pardoned

One woman was found guilty of murder in the first degree and sentenced to death, although her death sentence was commuted to life in prison on the eve of her scheduled execution.

No executions have occurred in Massachusetts since 1947. In 1951, the Legislature enacted Chapter 203 to make murder in the first degree punishable by death or imprisonment for life without parole. This statute requiring life without parole for a conviction of murder in the first degree has withstood constitutional attack as cruel and unusual punishment under the Eighth and Fourteenth Amendments to the United States Constitution and under art. 26 of the Massachusetts Declaration of Rights.

...whoever is guilty of murder in the first degree shall suffer the punishment of death, unless the jury shall by their verdict, and as a part thereof, upon and after consideration of all the evidence, recommend that the sentence of death not be imposed, in which case he shall be punished by imprisonment in the state prison for life. ...

In no event shall a person convicted of murder in the first degree be eligible for parole.

D. The Capital Punishment Debate

The Commonwealth of Massachusetts failed to execute anyone from 1947 to 1972, when the Supreme Court passed its landmark judgment in *Furman v. Georgia* (408 US 238). The June 1972 Supreme Court ruling has become the touchstone for the constitutional analysis of the death penalty. In sum, two justices of the five judge majority expressed the

view that capital punishment was, per se, unconstitutional as cruel and unusual punishment.

The other three held that capital punishment as currently administered violated the Constitution because of its arbitrary imposition on a small percentage of eligible defendants due to the lack of standards to guide the discretion of the juries and judges. (excerpted from DA for Suffolk v. Watson)

The Opinion of the Justices to the House of Representatives (372 Mass 912, 1977) yielded an even stronger ruling:

...art. 26 of the Declaration of Rights -- No magistrate or court of law, shall ... inflict cruel or unusual punishments -- forbids the imposition of the death penalty in this Commonwealth in the absence of a showing on the part of the Commonwealth that the availability of that penalty contributes more to the achievement of a legitimate State purpose...than the availability in like cases of the penalty of life imprisonment.

This ruling declared unconstitutional House Bill 3373 of 1977, "An Act to Provide for Capital Punishment", even though it was modeled after the legislation upheld by the U. S. Supreme Court in 1976. The Supreme Judicial Court in referring to Furman noted that "the Supreme Court held that the Eighth Amendment invalidated a sentence of death pronounced under state statute which allowed the jury untrampled discretion in choosing between death and life imprisonment...That decision had the effect of nullifying the provisions which required that a defendant convicted of murder in the first degree should be executed unless the jury... recommends the death penalty be not imposed. After Furman...in any case in which the jury previously had the recommending power has been held to require imposition of a sentence of life imprisonment, and not to permit imposition of a death penalty."

In 1979, Governor King signed a law, Chapter 488 of the Acts of 1979, providing for the execution of first degree murderers in Massachusetts. According to Chapter 488, those convicted of first degree murder could only suffer death pursuant to the procedures set forth therein: On return of a guilty verdict, a presentencing hearing would be held before the same jury to determine the punishment. The jury would take into consideration any mitigating or aggravating circumstances at this time. Death could only be imposed in those cases where one or more of the enumerated statutory aggravating offenses existed beyond reasonable doubt. These circumstances included, but were not limited to, the murder of a police officer and murder committed during a rape, for example. If death were imposed, the Supreme Judicial Court would automatically review the case.

The District Attorney for Suffolk District filed a complaint in the Supreme Judicial Court, seeking a determination of the constitutionality of Chapter 488 of the Acts of 1979, with the Commonwealth and the judges of the Superior Court named as defendants.

In sum, the Justices ruled as follows:

- In light of contemporary standards of decency, the death penalty is unconstitutionally cruel under article 26 of the Declaration of Rights of the Massachusetts Constitution.
- In light of the arbitrariness and discrimination inherent in the application of capital punishment, the death penalty is unconstitutionally cruel under article 26. (The court held, based on studies, that the imposition of the death penalty was still discriminatory vis a vis blacks.) (Furman inspired statutes were not seen as curative.)
- With two concurring Opinions, the imposition of a death sentence which will rarely be carried out and only after months and years of uncertainty is cruel and unusual in violation of article 26.

- The phrase "cruel and unusual" as used in article 26 of the Declaration of Rights of the Massachusetts Constitution has a meaning distinct from the phrase "cruel or unusual" in the 8th Amendment to the United States Constitution, and that under article 26, a punishment may not be inflicted, if it be either cruel or unusual.

One judge dissented on the grounds that the Court, by ignoring traditional standards of review, had infringed on the legislative prerogative to define crimes and establish the terms of punishment.

The majority opinion in this case, paved the way for death penalty proponents to propose an amendment to the Constitution, allowing the Legislature to enact laws authorizing the state courts to impose the death penalty. In 1980 and 1982, the amendment was approved in two successive legislative terms meeting in Constitutional Convention. The constitutional amendment was ratified by the Massachusetts voters on November 2, 1982. From a total of 2,103,780 ballots cast: 1,131,668 voters were in favor of the death penalty, 748,549 opposed the amendment, and 223,563 voters left the question blank.

The amendment added a second and third sentence to article 26...

no provision of the constitution, however, shall be construed as prohibiting the imposition of the punishment of death. The General Court may, for the purpose of protecting the general welfare of the citizens, authorize the imposition of the punishment of death by the courts of law having jurisdiction of crimes subject to the punishment of death.

As a direct result of the amendment's ratification, the Legislature approved death penalty enabling legislation, which Governor King signed into law in December of 1982. (Chapter 554 of the Acts of 1982)

Despite the constitutional amendment to article 26, the constitutionality of section 2 of Chapter 265 of the General Laws, as

most recently amended by Chapter 554 of the Acts of 1982, was challenged. In *Commonwealth v. Abimael Colon-Cruz* (393 Mass.150, 1984), the court questioned whether the law complied with the Constitution of the United States and Massachusetts. The court found that the law violated article 12, of the Declaration of Rights of the Massachusetts Constitution. It was declared that, the provisions of the statute burdened state constitutional rights against self-incrimination and the right to a jury trial, in that, the death penalty may only be imposed after a trial by jury. To avoid the death penalty, defendants are discouraged from asserting their right not to plead guilty and their right to a trial by jury.

Although the defective provision for imposing the death penalty remains "on the books", the unconstitutionality of the present statute prohibits the execution of any and all first degree murderers, who received a sentence of death. Still, twenty-two first degree murderers who received death sentences originally are in custody. All have indications on their records of post conviction relief due to a commutation, a vacated sentence, an amended sentence by the Appeals Court, or a revised and revoked sentence.

III. METHODOLOGY

This study reviews the prison records of the Department of Correction (DOC) seeking the names of individuals convicted of murder in Massachusetts and their history of incarceration.

DOC maintains files of all prisoners who have gone through the Massachusetts penal system. The records are kept strictly in an alpha by name file without regard as to type of conviction, sentence, parole, pardon, commutation or allotted time served. The only way to retrieve

information concerning the sentences served by convicted murderers is to search for each inmate's original record of incarceration which cites the inmate's identity, conviction(s) and sentence(s). Since capital offenders convicted of murder are always sentenced to a maximum security facility, it was only necessary to review the records maintained or stored at MCI-Cedar Junction (formerly MCI-Walpole) in order to identify that portion of the male prison population serving sentences for murder. Although women convicted of murder are technically supposed to be sentenced to a maximum security facility, it is not possible to do so because no such facility exists for the state's female prison population. A female offender is sent to MCI-Framingham regardless of the seriousness of her crime.

In order to conduct this investigation, records maintained at MCI-Cedar Junction, MCI-Norfolk, MCI-Framingham, the State Archives, the Department of Correction's central records department, recorded appeals from conviction, and a sampling of original conviction and post conviction court records at the Suffolk Superior Court were canvassed. Approximately 60,000 criminal records at the prisons were inspected. One thousand seven hundred and three original murder convictions were identified. Of the original 1,703 murderers identified, 136 were convicted prior to the turn of the century. Since 1900, 1,567 murderers in this study were convicted of murdering 1,754 victims. Earlier studies by criminologists, news clips and historical accounts documenting the fate of convicted murderers were also reviewed.

A. Field Work

1. MCI-Cedar Junction

Catalog index cards (Exhibit 3) are used at MCI-Cedar Junction (Walpole) to document the inmate's name, prison identification number, conviction date, crime(s), count(s), sentence(s), and brief general information about each prisoner sentenced to this institution. The index cards are in alphabetical order and divided into two sets of files. One grouping involves inmates sentenced to MCI-Cedar Junction from the early 1950's to the present. The older catalog files contain original records from the old Charlestown prison and cover a span of time from the late 1870's to the late 1940's. Since prisoner information is in alphabetical order, it was necessary to look at every catalog index card. All index cards containing a conviction for murder were photocopied. Approximately 36,000 inmate records were reviewed at MCI-Cedar Junction. The design format of the inmate catalog cards has barely changed in this century, which made reviewing the prison records a simple, but tedious task (see Exhibit 5).

MCI-Cedar Junction in Walpole is the only maximum security prison in Massachusetts. Technically, all capital offenders are supposed to be sentenced to MCI-Cedar Junction but, as a matter of practice, youthful offenders who have committed serious crimes do not serve their time at MCI-Cedar Junction. Women convicted of murder are sentenced to MCI-Framingham because the Walpole institution cannot house a female population. Most capital offenders serve only an early portion of their sentence at MCI-Cedar Junction. The standard practice is to transfer inmates to medium security facilities elsewhere in the state,

in order to accomodate those most recently convicted of murder, or other serious crimes in a maximum security facility.

2. MCI-Norfolk

Since it is the practice of the Department of Correction to transfer convicted murderers to other prison facilities, MCI-Norfolk was visited in order to follow up on information gathered at MCI-Cedar Junction. The field visits to the Norfolk facility were not especially fruitful, since little new information was documented. The review of the Norfolk prison records was somewhat complicated by the fact that for a number of years, convicts transferred to the Norfolk prison facility from Walpole were given new Norfolk prisoner identification numbers. This made the tracking of murderers transferred to MCI-Norfolk more difficult. DOC has abandoned this practice and all inmates now retain their original prisoner identification numbers throughout their incarceration.

3. MCI-Framingham

All references to women convicted of murder were obtained at MCI-Framingham. The records were cataloged on cards similar to the ones used at MCI-Cedar Junction (Exhibit 4). Only one woman had her original murder conviction among the old Charlestown prison records stored at MCI-Cedar Junction. She was also the only woman ever scheduled for execution in the electric chair. The records at MCI-Framingham also included men who served a portion of their sentence in Framingham during a DOC experimental co-ed program. Some of these men were serving sentences for murder. Assuming that the files at the Framingham institution were well maintained, it was quickly apparent

that very few women have been convicted of murder in the state of Massachusetts.

4. Department of Correction

Photocopies of the prisoner identification cards of the individuals who had conviction(s) of murder noted comprised the primary data used in this sentencing review. Many of these ID cards had release dates posted, as well as dates of commutation, pardon, date of death, parole, deportation, execution, or escape. Prison records that did not have final outcomes documented were separated and follow-up searches were made at the central office of the Department of Correction and through DOC's records stored at the State Archives. DOC provided access to their database, computer print-outs of convicted felons, files, and microfiche resulting in much success in retrieving information pertaining to releases from prison.

5. State Archives

The Department of Correction's records stored at the State Archives were very organized. Records included materials that were several centuries old. Log books contained the names, ID numbers, ages, birthplaces, crimes committed, and release dates of most of the earliest criminal offenders. The records were historically interesting since entries noted the crime of murder on the high seas (federal offense), the "killing of indians", and listed two murderers with only single names (Pomp and Bristol). Pre-1900 murderers who were hanged for their crimes did not always have their names entered into the prison log books. Hangings usually took place within days of conviction. This may account for the skimpy prison paperwork involving murderers who were hanged. Some folders contained very detailed notes,

news clippings, and lists of first degree murderers which were maintained by the warden.

6. Post Conviction Relief in the Courts

Information and records maintained by DOC noted that numerous original convictions and sentences were later reduced to second degree murder or manslaughter with the accompanying sentences being reduced also. In order to determine what process allowed for these changes to occur, a search was conducted to review recorded appeals on behalf of over three hundred convicted murderers. Aside from commutation and pardon, a number of mechanisms exist under Massachusetts law which, if successfully invoked, have the effect of reducing the sanction of life imprisonment without parole following conviction for first degree murder.

Upon being convicted of murder in the first degree, an appeal is automatically entered in the Supreme Judicial Court. On appeal, the Supreme Judicial Court has extremely broad power. In general, under its extraordinary power of review pursuant to c. 278, section 33E, the Court has the authority to reverse the conviction, affirm it, or to direct the entry of a finding of guilty to a lesser included offense, such as murder in the second degree or manslaughter. The Court can also order a new trial or order a new trial on a lesser included offense. The Appeals Court, the Commonwealth's intermediate Appellate Court, also has the authority to review certain post conviction motions filed by convicted murderers.

Post conviction relief is also available at the trial level. Following conviction, a trial judge under Rule 25 (b) (2) of the Massachusetts Rules of Criminal Procedure (Mass. R. Crim. P. 25) enjoys

authority, not dissimilar from the Supreme Judicial Court's authority discussed above, to reduce a jury verdict of first degree murder to a lesser degree of guilt, such as murder in the second degree, where the evidence is insufficient as a matter of law to sustain a conviction of first degree murder. Additionally, under Mass. R. Crim. P. 30, the trial judge retains the authority to order a new trial when the interests of justice require it.

A trial judge also has the authority to revise and revoke a sentence following conviction under the provisions of Mass. R. Crim. P. 29. While the rule itself by its terms does not restrict its application to non-capital cases, given the clear mandate of the Legislature in c. 265, section 2, the rule's provisions appear not to apply to convictions for murder. On many DOC murder records there were entries noting a revised and revoked sentence. It was not possible to discover any actual revised and revoked sentences pursuant to Mass. R. Crim. P. 29. However, it was possible to discover post conviction relief provided by a trial judge pursuant to Mass. R. Crim. P. 25 and Mass. R. Crim. P. 30, and motions for relief granted by the Appeals Court and the Supreme Judicial Court. It can only be assumed that the terms 'revised and revoked' are used casually on the DOC records and do not reflect a precise legal meaning. Nonetheless, it was possible to determine that a murderer had in fact received a post conviction reduction of his conviction or sentence, as the dates noted corresponded to relief granted under the rules cited above, or granted at the Appeals Court or Supreme Judicial Court level. Although more than three hundred appeals were reviewed, it was not possible to exhaust the search. For the purpose of noting post conviction

reductions in original sentences where the terms 'revised and revoked' are used by DOC, they are used in this murder format in sections VII and VIII of this report.

7. Suffolk Superior Court

Department of Correction records and information identified on the prisoner index cards noted that numerous original murder convictions and sentences were later reduced to second degree murder or to manslaughter with the accompanying sentences being reduced also. In order to determine, in part, the frequency with which any of the above procedures result in the avoidance by a convicted murderer of serving out his or her original sentence, an examination was conducted of a sampling of original Suffolk Superior Court case files of defendants who, according to DOC records, had been released despite having been convicted of first degree murder.

This examination revealed that in the majority of cases, the SJC had reversed the defendant's conviction for a variety of reasons ... ranging from the improper admission of evidence at trial to incorrect jury instructions. In many of these cases, where retrial was ordered, the defendants either pleaded to or were later convicted of a lesser crime than murder in the first degree.

On occasion, defendants were never re-tried for various reasons. For instance, where a defendant's conviction for murder in the first degree was reversed because there was insufficient evidence as a matter of law to go to the jury, retrial is prohibited by the Double Jeopardy Clause of the United States Constitution. In some cases, defendants originally convicted of murder in the first degree escaped the sanction of life imprisonment without parole, when their convictions were

reduced to a lesser degree of guilt by the trial judge pursuant to a trial judge's authority under Rule 25 of the Massachusetts Rules of Criminal Procedure.

In still other cases, the Commonwealth itself moved to dismiss. In one case, as a result of the granting of the defendant's Motion to Suppress, evidence without which a conviction could not be obtained was suppressed, thus making retrial impossible.

B. Statistical Information

Information on the 1,703 convicted murderers was entered into a customized computer program to analyze the prison experiences of all the identified murderers. A total of 39 column identifications were utilized.

The categories include:

Name, ID number, degree of murder, number of counts, death or life sentences, education, religion, height, weight, sex, race, birthplace, date committed to prison, date released from prison, jail credits accrued prior to conviction, time served for murder(s), current custody status, deaths in prison, commutations, pardons, pardons under parole conditions, paroles, deportations, executions, escapes, and various categories of post conviction actions such as vacated, revised or revoked sentences, and reversed verdicts. (see Exhibit 1)

Original murder conviction information was entered into a database program in order to retrieve post conviction experiences and trends based on the statistical information documented. Murder convictions in this century were divided by degree, decade and gender. Convictions prior to the turn of the century involved degree of murder, including convictions prior to the distinction in degree of guilt, and

gender. Whenever post conviction facts are cited, they always apply to the murderer and the decade in which he was originally convicted. For example, a man is convicted of first degree murder in 1926 and is sentenced to death, he receives two commutations and is paroled after serving twenty years. The two commutations are credited to the murderer, even though the second commutation may have been granted in another decade. Actual samples of completed murder history data forms are illustrated in Exhibit 2.

In addition to the statistical information tabulated concerning sentencing experiences, there are graphs and charts in the exhibit portion of this report which illustrate final dispositions by half century and quarter century, the ages, religions, educational levels, birthplaces, and comparisons by decade of murder convictions to population (Exhibits 6 through 14). It was not possible to determine an accurate picture of the racial mix because, the information was not always noted, or in many other cases, the entry described complexions (dark, light, sallow) rather than race. It was possible to verify that very few murderers return to prison because they commit another murder after release (only 14 could be identified). Nonetheless, there were 25 first degree murderers and 46 second degree murderers identified as serving sentences for committing more than one homicide in this century. Although not part of this study, records also revealed that many murderers were serving concurrent sentences for other violent crimes.

IV. TWENTIETH CENTURY EXECUTIONS

Available records indicate that at least eighty-eight first degree murderers were sentenced to death between January 1900 and May of 1947,

when the last person was executed. The sixty-five murderers who were electrocuted were all men. In 1912, one woman escaped the same fate on the eve of her scheduled execution, when the governor commuted her sentence to life in prison. Her co-defendant and paramour was not the beneficiary of the same good fortune. Nearly nineteen years later, her life sentence was commuted from life to twenty-five years to life, and she was then released on parole.

A. Time Served on Death Row

Time spent on death row by the sixty-five executed first degree murderers was very brief by today's standards. On average, a murderer was executed within 152 days of being convicted. Only one murderer spent more than a year on death row (417 days), and one murderer was executed within 37 days of conviction. Sixty-four convicted murderers were executed before the first anniversary of their convictions. The famous pair Sacco and Vanzetti spent 136 days on death row. These figures reflect the time between the original conviction for murder in the first degree and the actual execution of the capital offender. Jail credits (credits for time incarcerated prior to trial) were not noted on any of the records, since each of the first degree murderers was convicted to die in the electric chair.

B. Published Appeals

Of the sixty-five convicted murderers who were executed, forty had appeals of their convictions recorded. Only two appeals are recorded on behalf of the first dozen murderers who died in the electric chair. Appeals were not found on behalf of twenty-five murderers who were electrocuted.

C. Birthplace

Thirty-seven of the men executed for murder were born in the United States; twenty-five of the convicted murderers were born in Massachusetts. Twenty-six of those executed were immigrants. Six were from Italy, five from Russia, four from Poland, three from China, two from Canada, and one from each of the following countries: The Azores, Belgium, Cape Verde, Greece, Scotland and Turkey.

D. Age of Electrocuted Murderers

Half of the men electrocuted were between 19 and 27 years of age (33 executed murderers). The remainder were between 29 and 52 years of age (32 executed murderers). The youngest murderers to be sent to the electric chair were all 19 years old (4 executed murderers). The oldest was 52 years old. The average age of the men executed was 29 years old. Ten of the executed murderers were 21 or younger. Nine of those executed were 25 years old. Only two executed murderers were over fifty. Sixty of the sixty-five electrocutions were inflicted on men between 19 and 39 years of age. Only five men over forty faced the electric chair.

E. First Degree Murder Co-defendants

Two convicted first degree murderers who were brothers were electrocuted on the same day. There is an appeal of their convictions recorded.

A father and son were also convicted of first degree murder and executed together. The father had one appeal of his conviction recorded, the son had two.

Three Chinese immigrants faced the electric chair on the same day after being convicted of first degree murder.

The famous Sacco and Vanzetti had two appeals of their convictions recorded, and they were both executed on the same day.

An appeal to save the life of a first degree murderer, who was considered mentally retarded with an I.Q. of 53, was filed. The appeal was not successful, however, for the court ruled that, the accused was able to understand the difference between right and wrong, and the consequences of his crime.

V. WOMEN AS MURDERERS AND CRIMINALS

The history of women convicted of murder in Massachusetts is brief. In 1912, a woman was convicted of first degree murder for the hacking death of her husband, and sentenced to die in the electric chair. Since this woman's conviction, only 39 other women have been convicted of murder in Massachusetts. Of those, five were convicted of first degree murder; one had her first degree conviction reduced to second degree, one had her first degree conviction revised to manslaughter; one had two convictions of first degree murder and two convictions of second degree murder reduced to four counts of manslaughter. Despite the convictions of women for first degree murder, no woman in Massachusetts has been executed for murder in this century. Twenty-four women were convicted of second degree murder; four had their murder in the second degree convictions reduced to manslaughter; one received a second degree murder conviction with a sentence of 7 to 15 years, rather than life; one had her 'murder' assault commuted; and one was charged with armed assault with intent to murder, which was deemed murder in the second degree, later revised to "armed assault".

A Boston Post article written on May 9, 1927 contends that very few women have been executed in the country (not just in Massachusetts) even after having admitted to killing someone. According to the article, several murderesses have been acquitted or convicted of a lesser degree offense. The author argues that beauty scores heavily with the juries. He relates an incident in which a woman sentenced to death in Illinois escaped execution through the clamor of other women, who believed she had been discriminated against because, she was too homely to appeal to the sympathies of the jury.

Such a campaign saved a Massachusetts woman in 1912. A Boston Post newsclip by Lawrence R. Goldberg entitled, "Saved on Brink of Death Chair" begins, "No woman ever has been electrocuted for murder in Massachusetts, but one, a buxom, dark-eyed olive-skinned correspondence bride missed by less than six hours on Thursday, June 6, 1912."..."A fight on her behalf was launched throughout the country -- societies began to direct pressure upon Governor Foss to prevent her execution", under which he finally relented. Although it is unclear whether her looks inspired the campaign, there can be no doubt that her gender influenced the supporters: no efforts were made to save her paramour and co-defendant in the killing, who was executed as directed.

In Richard Deming's book, *Women: The New Criminals*, the author suggests that female offenders have traditionally received, and still receive, preferential treatment by the criminal justice system. He cites as his reason that men are both chauvinistic and paternalistic, and treat women accordingly, even in the courts. With regard to chauvinism, it is believed that a woman is less threatening than a man, and need not be locked up in the same manner. As pertains to

paternalism, officials are reluctant to separate women from their families -- thus, refusing to put women in jail or releasing them earlier.

This is not to suggest that as many women as men commit murder and are not counted, because they get away with it more easily. Men are more murderous. According to Deming, "experts concur that women traditionally have acted less aggressively than men simply because of cultural pressure." For example, as children, girls are taught not to fight, while boys are encouraged to fight. The social pressure helps to explain the great disparity in the numbers of men and women who commit murder. According to a DOC report entitled "A Statistical Description of Residents of Mass. Correctional Institutions on January 1, 1988", 311 persons were serving sentences for murder in the first degree. Of these, three were women, a percentage of all first degree murder convicts of less than one percent! 391 persons were serving time for murder in the second degree. Of these, nine, or 2.3% were women. 368 inmates in the state prison system were serving out sentences of manslaughter. Fifteen, or 4%, were women. Massachusetts seems to be below the national average in the numbers of women convicted of violent crimes against the person. In 1985, the number of national arrests for murder and non-negligible manslaughter was 15,777. Of these, 82.6% were men and 17.4% were women. The current Massachusetts figures tally to 92.8% men and 7.2% women.

The text of two women's records at MCI-Framingham are interesting in both the descriptions of their crimes, the sentences imposed and the time served. In 1949 a woman was sentenced to 7 to 10 years for, "assaulting and beating () with intent to murder him by drowning

him in Harris Pond,...and by such assaulting & beating did murder said ()" She was paroled after serving less than five years in prison. In 1932 a woman was sentenced to five years for, "assaulting & beating & killing ()" Under a remarks section on her record it notes: In 1933 she was indentured to a married couple in Seneca Fall, N.Y. and her three month old daughter was taken by her family.

Review of more than 28,000 prisoner ID cards at MCI-Framingham revealed that earlier in this century, women were sentenced to prison for offenses that are historically interesting. Below are some of the crimes, the sentences, and the year committed:

Larceny of groceries & gasoline valued @ \$2.00.....	5 yrs.	1933
Abandoning child resulting in a burden on the public...	5 yrs.	1928
Neglect of employment & to provide for herself.....	2 yrs.	1935
Being a married woman & did have sex with..., then and there not her husband.....	5 yrs.	1940
Vagabond.....	2 yrs.	1917
(the above woman died in prison at the age of 31)		
Defective Delinquent (age 40).....	Life	1929
(paroled after serving nearly 15 years)		
Refusal to pay taxi fare.....	2 yrs.	1935
Larceny of a fountain pen.....	5 yrs.	1928
Being a tramp.....	2 yrs.	1935
Neglect of Illegitimate Child.....	1 yr.	1922
(the above woman died in prison at age 24)		
Violation of the True Name Act.....	2 years	1920

Other earlier charges involved: shoplifting, adultery, theft, fornication, desertion, common nightwalking, co-habitation, assault,

stubbornness, being idle & disorderly, escaping from indenture, being lewd and lascivious, and abortion. In general, crimes committed by women were not violent. Suprisingly, women were sent to prison for drunkenness; one woman was sent to prison nineteen times in twenty-five years for alcohol problems, receiving commitments ranging from six months to one year for each offense. Another woman had twenty-six commitments in thirty-two years involving alcohol abuse. It is doubtful that these two cases involved criminal commitments, the assumption is that they were not, although the answer is not known.

Discussion of the above cases concerning the circumstances under which women were sent to prison is not intended to imply that men did not serve time in prison for similar offenses during the same period. The criminal records retrieved at MCI-Cedar Junction pertained to those inmates sentenced to a maximum security facility for serious felonies, and did not include anyone serving a prison sentence for minor offenses.

VI. MURDER CONVICTIONS PRIOR TO 1900

A. Murder convictions between 1689 and 1858

Thirty-nine men were identified as convicted for the murder of forty victims. Thirty-five death sentences were documented. Nine were granted commutations. Nineteen were hanged and three died while incarcerated. Seven received pardons and served over nine (9.30) years on average. The final outcome of eleven could not be determined.

Four women were identified as convicted of murder prior to 1858. All four women were hanged.

B. First Degree Murder Convictions prior to 1900

Thirteen men were identified as convicted of the first degree murder of sixteen victims prior to 1900. All received a death sentence. Four men were hanged and four died while incarcerated. Five commutations were granted. Five men were pardoned and served over twenty-five (25.24) years on average in prison.

One woman was convicted of first degree murder with a death sentence imposed. She died while incarcerated.

C. Second Degree Murder Convictions prior to 1900

Eighty-two individuals were convicted of second degree murder and received life sentences. Eighty were men, the gender of two was not noted. Three commutations were granted. Twenty-five died while incarcerated. Forty-seven were pardoned after serving nearly seventeen (16.80) years on average in prison. Three were paroled after serving over eighteen (18.36) years on average in prison. The final outcome of seven murderers could not be determined.

VII. FIRST DEGREE MURDERERS (M.1°) IN THIS CENTURY

A. M.1° Convictions between 1/1/1900 and 12/31/1909

Thirteen men were convicted of first degree murder in this decade, all received death sentences. Nine were executed. Three died while incarcerated. Three of the first degree murderers received commutations of their sentences. One was pardoned after serving thirty-two (32.28) years in prison.

B. M.1° Convictions between 1/1/1910 and 12/31/1919

Sixteen men were convicted of first degree murder in this decade, all received death sentences. Thirteen were executed. One died while incarcerated. Two of the first degree murderers received one

commutation each, one received two commutations. One was paroled after serving thirty years (30.09) in prison. The final outcome of one could not be determined.

One woman was found guilty of murder in the first degree and sentenced to death. She received two commutations and was paroled after serving nearly nineteen (18.82) years in prison.

C. M.1° Convictions between 1/1/1920 and 12/31/1929

Eighteen men were convicted of first degree murder in this decade, all received death sentences. Sixteen were executed. One murderer received two commutations. One was paroled after serving over thirty-one (31.58) years in prison. The final outcome of one could not be determined, although his sentence was noted as vacated on his records.

D. M.1° Convictions between 1/1/1930 and 12/31/1939

Twenty-five men were convicted of first degree murder in this decade, all received death sentences. Eighteen were executed. Four of the first degree murderers received one commutation each, three others were granted two commutations each. One was pardoned after serving over twenty-three (23.11) years in prison. Four were pardoned under parole conditions after serving over twenty (20.26) years on average in prison. Two were paroled after serving twenty-three (23.20) years on average in prison. Two first degree murderers convicted in this decade were deported, each served more than twenty-three years in prison.

E. M.1° Convictions between 1/1/1940 and 12/31/1949

Twenty-one men were convicted of first degree murder in this decade, all received death sentences. Nine were executed. Two died while incarcerated. A total of eighteen commutations were granted to

twelve first degree murderers. Nine were paroled after serving nearly twenty-two years (21.70) on average in prison. The final outcome of one murderer could not be determined.

The final execution in Massachusetts took place in 1947.

F. M.1° Convictions between 1/1/1950 and 12/31/1959

Sixteen men were convicted for the first degree murder of eighteen victims in this decade. Eleven death sentences were imposed, as well as seven life sentences. Three died while incarcerated. Twelve first degree murderers were granted a total of eighteen commutations. Eleven were paroled after serving nearly twenty-one (20.77) years on average in prison. The final outcome of one could not be determined although, his record notes a 'revised' sentence. One murderer convicted of two counts of murder in the first degree (two death sentences) was recorded as in custody as of 1988. Another first degree murderer with two counts of murder was paroled after serving nearly twenty-five (24.47) years for his double homicide.

G. M.1° Convictions between 1/1/1960 and 12/31/1969

Seventy-six men were convicted for the first degree murder of eighty-three victims in this decade. Eighteen death sentences were imposed, as well as sixty-five life sentences. Five murderers died while incarcerated. A total of eighteen commutations were granted to seventeen first degree murderers. Of the twenty-nine murderers who were paroled; eighteen were commuted and paroled and served on average nearly sixteen (15.60) years in prison, two parolees had their original sentences 'revised and revoked' and served on average four (4.13) years in prison, and nine of these parolees had their sentences vacated and served less than eight (7.62) years in prison. The final disposition

of four first degree murderers could not be traced. Twenty-six are still in prison custody as of 1988; eleven have reduced sentences. Six were released by the courts. Three had their verdicts reversed, and served on average six years prior to release. Three are listed as on escape. Two first degree murderers with two counts of murder each are listed as still in custody.

H. M.1^o Convictions between 1/1/1970 to 12/31/1979

One hundred sixty-six men were convicted for the first degree murder of one hundred seventy-seven victims in this decade. Twenty death sentences were imposed, as well as one hundred fifty-seven life sentences. Eleven murderers died while incarcerated. One commutation was granted to a murder who died in prison. Of the eight murderers who were paroled; four had their original sentences vacated and served nearly fifteen (14.53) years on average, three had their original sentences 'revised and revoked' and served just over eight (8.25) years on average, and one convict who was paroled after six (6.20) years had his original conviction amended by the Appeals Court noted on his record. Eight murderers convicted in this decade were listed as on escape. One had his verdict reversed. Five were bailed and eight were released. The current status of nine murderers could not be sorted out, although none are listed as in custody. One hundred seventeen murderers convicted in this decade are still in custody as of 1988, however, records indicate that nineteen of these murderers have had post conviction actions resulting in a reduction of their original sentences. Ninety-eight appear to be serving out their original first degree murder conviction. Eight of the ten first degree murderers with two counts of murder each are still in custody. One served nearly nine

years before his sentence was 'revised and revoked', although he is listed as on escape also.

Three women were convicted of first degree murder in this decade, all received life sentences. One was paroled after her sentence was vacated and she served over seventeen (17.08) years. One woman was released on bail. The third woman is still incarcerated with no change in the status of her original conviction noted.

I. M.1° Convictions between 1/1/1980 and 4/1/1988

One hundred forty-three men have been convicted for the first degree murder of one hundred forty-eight victims during this portion of the 1980's, all have received life sentences. One murder has died while incarcerated. Two have been paroled; one had his sentence 'revised and revoked' and served over four (4.41) years before parole, the other was paroled after serving over seven (7.51) years but, his early parole circumstances could not be determined. Three were released on bail. The current status of four murderers could not be sorted out, although none are listed as in custody. One hundred thirty-one murderers convicted during this period are still in custody, although eleven of these murderers are now serving sentences that have post conviction reductions.

During this same period five women were convicted for the first degree murder of six victims. Three women are still in custody, although one woman is now serving a sentence that has had a post conviction reduction. One has been released and served less than a year once her sentence was 'revised'. One woman is listed as not in custody, although the circumstances of her release are not clear. Her original conviction involved two counts of murder in the first degree

and two counts of murder in the second degree, which have been reduced to four counts of manslaughter (The case involved arson).

VIII. SECOND DEGREE MURDERERS (M.2°) IN THIS CENTURY

A. M.2° Convictions between 1/1/1900 and 12/31/1909

Sixty-eight men were convicted of second degree murder in this decade and received life sentences. Sixteen second degree murderers received commutations of their sentences. Twenty-four died while incarcerated. Twenty-one were pardoned after serving nearly seventeen (16.70) years in prison on average. Of the nineteen who were paroled; sixteen were commuted and paroled and served nearly fifteen (14.64) years on average, three were simply paroled and served over twenty (20.40) years on average in prison. The final outcome of four murderers could not be determined. Two brothers convicted of second degree murder in this decade were paroled and then deported after serving nearly twenty-six years in prison each.

B. M.2° Convictions between 1/1/1910 and 12/31/1919

Ninety-six men were convicted of second degree murder in this decade and received life sentences. Fifteen murderers received commutations of their sentences. Thirty-four died while incarcerated. Thirty-two received pardons after serving more than eighteen (18.38) years on average in prison. Three were pardoned under parole conditions after serving more than twenty-nine (29.31) years on average. Of the sixteen who were paroled; thirteen were commuted and paroled and served over fourteen (14.14) years on average in prison, three others were simply paroled and served nearly twenty-nine (28.92) years on average. Three of the second degree murderers who were paroled were also deported after serving nearly thirty years on average

in prison. The final outcome of eleven second degree murderers convicted in this decade could not be determined.

Four women were convicted of second degree in this decade, all received life sentences. One woman died while incarcerated, one was pardoned after spending thirty years in prison, and two women were paroled; one had her sentence commuted and served nearly sixteen (15.62) years in prison, the other woman was paroled after less than five (4.35) years, although there are no reasons noted for this early release.

C. M.2° Convictions between 1/1/1920 and 12/31/1929

Seventy-four men were convicted of second degree murder and received life sentences in this decade. Nine second degree murderers received commutations. Fourteen murderers died while incarcerated. Sixteen murderers received pardons after serving less than thirteen (12.41) years on average in prison. Twenty-one were pardoned under parole conditions after serving nearly twenty-two (21.76) years on average in prison. Of the fifteen murderers who were paroled; nine were granted commutations and paroled after serving nearly eighteen (17.75) years on average in prison, six were simply paroled and served over twenty-nine (29.16) years on average in prison. Two of the sixteen men who received pardons were also deported. Five of the twenty-one murderers who were pardoned under parole conditions were also deported and one parolee was deported also. The final outcome of eight second degree murderers could not be determined.

Two women were convicted of second degree murder and received life sentences in this decade. One woman died while incarcerated, and the

other was granted a commutation and paroled after less than five (4.65) years in prison.

D. M.2° Convictions between 1/1/1930 and 12/31/1939

Eighty men were convicted of murder in the second degree and received life sentences in this decade. Twelve of these murderers received commutations. Fourteen died while incarcerated. Eighteen were pardoned under parole conditions after serving nearly eighteen (17.75) years in prison on average. Of the thirty-eight murderers who were paroled; twelve were commuted and paroled after serving nearly nineteen (18.62) years on average in prison, twenty-six were simply paroled and served over twenty-three (23.16) years in prison on average. The final outcome of ten second degree murderers could not be determined. One of the eighteen murderers who was pardoned under parole conditions was also deported.

Only one woman was convicted of second degree murder and received a life sentence in this decade. She was pardoned under parole conditions after serving more than seventeen (17.28) years in prison.

E. M.2° Convictions between 1/1/1940 and 12/31/1949

Eighty-two men were convicted of the second degree murder of eighty-seven victims and received life sentences in this decade. Thirty-one second degree murderers convicted in this decade were granted commutations. Six murderers died while incarcerated. Of the sixty-six murderers who were paroled; thirty were commuted and paroled and served nearly fifteen (14.56) years on average in prison, the thirty-six others who were paroled, but not commuted, served nearly twenty (19.57) years in prison on average. The final outcome of ten second degree murderers could not be determined. Second degree

murderers with more than one conviction served over twenty-one (20.65) years for their double homicides. One double murderer was paroled after serving nearly twenty-five years in prison and upon parole, he was deported.

Only one woman was convicted of second degree murder and received a life sentence in this decade. She received a commutation and was released after less than five (4.59) years in prison.

F. M.2° Convictions between 1/1/1950 and 12/31/1959

Seventy-seven men were convicted of the second degree murder of eighty-four victims and received eighty-three life sentences (one received a sentence of 25 years to life) in this decade. Twenty-three second degree murderers received commutations. Four murderers died while incarcerated. Of the sixty-four murderers who were paroled; twenty-three were commuted and paroled after serving over eleven (11.27) years on average in prison, the forty-one others were simply paroled after serving nearly sixteen (15.81) years on average in prison. The final outcome of six murderers could not be determined, although one had a vacated sentence noted on his record.

Three women were convicted of second degree murder and received three life sentences in this decade. All three women were paroled after serving slightly over six (6.12) years in prison. Each woman received a commutation.

G. M.2° Convictions between 1/1/1960 and 12/31/1969

One hundred twenty-four men were convicted of the second degree murder of one hundred thirty-four victims and received life sentences in this decade. Twenty-eight second degree murderers convicted in this decade received commutations. Six murderers died while incarcerated.

Of the eighty-nine murderers who were paroled; twenty-eight were commuted and paroled and served nearly twelve (11.53) years on average in prison, sixty-one were simply paroled after serving over fourteen (14.37) years on average in prison. The final outcome of three murderers could not be determined, although each had reductions in his sentence recorded. Fifteen of the second degree murderers convicted in this decade are listed as in custody. Three are listed as on escape. Four are out on bail and four are released and not in custody. The second degree murderers convicted of more than one homicide served nearly sixteen years on average before parole. One murderer with two convictions was paroled after more than nineteen years in prison and then deported.

One woman was convicted of second degree murder and received a life sentence in this decade. She received one commutation and was paroled after nearly eight (7.99) years in prison.

H. M.2° Convictions between 1/1/1970 and 12/31/1979

Two hundred fifty-eight men were convicted of the second degree murder of two hundred seventy-six victims and received life sentences. Twelve died while incarcerated. Six murderers convicted in this decade have been granted commutations. Of the forty-six murderers who have been paroled; thirty-three were paroled after serving nearly fourteen (13.74) years in prison on average, five were commuted and paroled and served over nine (9.36) years in prison on average, one was paroled following a vacated sentence and served nearly five (4.56) years, seven had 'revised and revoked' sentences prior to parole and served nearly six (5.60) years on average in prison. The final outcome of six could not be determined, although none are in custody. Three were listed as

on escape. Six were bailed, and nineteen were released. One hundred sixty-six murderers are listed as still in custody.

Six women were convicted of the second degree murder of six victims. All received life sentences. One woman was paroled after serving more than six (6.30) years in prison, one has been released, and one is listed as bailed. Three women convicted in this decade are still in custody.

I. M2° Convictions between 1/1/1980 and 4/1/1988

One hundred seventy-five men were convicted of the second degree murder of one hundred ninety-four victims. Three have died while incarcerated. One was paroled after serving over six (6.42) years in prison. One is listed as on escape. Three have been released and three are out on bail. The final outcome of three murderers could not be determined. One hundred sixty-one are still in custody, of these murderers, five have had their original sentences reduced.

Eleven women have been convicted of the second degree murder of thirteen victims. All received life sentences. Ten women are still in custody. The one woman who is not in custody had her original sentences reduced to manslaughter after her murder convictions were reversed, and she pleaded guilty to manslaughter.

IX CONCLUSION

During the first half of this century those individuals convicted of murder, whether it was in the first or second degree, paid for their crimes by serving long prison terms prior to release. Many others died in prison, thereby serving a life sentence in its truest sense, and sixty-five first degree murderers were executed. Although commutations and pardons were granted, they did not result in the convicted murderer^{er}

being released from prison after serving an unusually short prison term. Obviously, a murderer^e convicted in the first half of this century faced a grim future behind bars.

Clearly the number of reversals of convictions for first degree murder have increased in the last twenty-five years. It is clear that much of this increase may be traced to the dramatic expansion of the rights of the criminal defendant by the United States Supreme Court and the Supreme Judicial Court during this same period. Because the reasons for reversals are so varied, it is difficult to generalize. And to be sure, many of the reversals may be attributed to circumstances beyond the control of the criminal justice system. When evidence is lost or witnesses are no longer available, little can be done to successfully retry a defendant. However, to the extent that some of the convictions can be attributed to prosecutorial or judicial error, common grounds for reversals on appeal, flaws within the criminal justice system may be blamed.

The computations of sentencing outcomes presented in this report reflect public attitudes, changes in laws, opinions concerning capital punishment, the issue of cruel and unusual punishment, the expansion of rights of defendants, and attitudes toward rehabilitation. Murder convictions have increased dramatically and post conviction experiences have changed with time also.

EXHIBIT 1

MURDER HISTORY DATA ENTRY FORM

ID #: 2nd Comer: N Last Name: First Name:		Age: Height: Weight: Sex: Race: Religion: Born in USA: Education: Place of Birth:	
MURDERS COMMITTED Murder 1: 0 Murder 2: 0 No Degree: 0 # Counts: 0			
Death Sentences: Life Sentences: Date Committed: Date Discharged: Jail Credits: Time Served:	In Custody: N Died in Prison: N Paroled: N # Times Commuted: Pardoned: N Parole Conditions: N Sentence Vacated: N Revised/Revoked: N	Released: N AC Amends: N Verdict Reversed: N Bailed: N Deported: N Executed: N On Escape: N Outcome Unknown: N	

GLOSSARY FOR MURDER HISTORY DATA ENTRY FORM

- | | | | |
|--------------------|---|------------------|--|
| ID# and Name | = Murderer's Identity | | |
| 2nd Comer | = Prior Murder conviction | Revised/Revoked | = DOC notation on records reflecting |
| Murder 1, Murder 2 | = # of 1st or 2nd Degree Murder Convictions | | post conviction relief granted at the trial court level usually. The terms are used casually. An exact meaning is not apparent other than the fact that the defendant has prevailed in reducing his sentence. |
| No Degree | = Murder prior to 1858 | | |
| # Counts | = Total Number of Convictions | | |
| Race | = Not computed in study | | |
| Death Sentences | = Number of Sentences Imposed | | |
| Life Sentences | = Number of Sentences Imposed | Released | = Released from prison, usually by the court, few details supplied. |
| Date Committed | = Beginning of Incarceration | | |
| Date Discharged | = Date Murderer left Prison | AC Amends | = Appeals Court amends original conviction |
| Jail Credits | = Days in jail prior to conviction | | |
| Time served | = Computation from Commitment Date to Discharge Date plus jail credits | Verdict reversed | = Post Conviction verdict reversal |
| In Custody | = Currently listed as incarcerated | Bailed | = Bailed pending court appearance expected to favor the defendant |
| Died in Prison | = Never released prior to death | Deported | = Deported through Immigration |
| Paroled | = Discharged through parole process | Executed | = Executed or Hanged |
| # Times Commuted | = Total number of Commutations | On escape | = Not in Custody of DOC |
| Pardoned | = Executive Pardon | Outcome Unknown | = Not in custody, but reason unknown. Earlier murderers had references to state prison farms, insane asylums, and prison camps & hospitals as their last entry. More recent cases where final outcome is not known, little detail noted on the record. |
| Parole Conditions | = Pardoned under Parole Conditions | | |
| Sentence Vacated | = SJC, with broad power to do so, reviews murder conviction and sentence. Sentence may be reversed, affirmed, reduced, or a new trial | | |

EXHIBIT 2

MURDER HISTORY DATA ENTRY FORM

ID #: 2nd Comer: N Last Name: First Name: Lena	Age: 33 Height: Weight: Sex: F Race: W White Religion: Cath Born in USA: N Education: Place of Birth: Italy	
MURDERS COMMITTED Murder 1: 1 Murder 2: 0 No Degree: 0 # Counts: 1		
Death Sentences: 1 Life Sentences: Date Committed: 02/05/1912 Date Discharged: 11/26/1930 Jail Credits: 0 Time Served: 18.82	In Custody: N Died in Prison: N Paroled: Y # Times Commuted: 2 Pardoned: N Parole Conditions: N Sentence Vacated: N Revised/Revoked: N	Released: N AC Amends: N Verdict Reversed: N Bailed: N Deported: N Executed: N On Escape: N Outcome Unknown: N

MURDER HISTORY DATA ENTRY FORM

ID #: 2nd Comer: N Last Name: First Name: John	Age: 23 Height: 66 Weight: 110 Sex: M Race: W White Religion: Cath Born in USA: Y Education: 12 Place of Birth: Mass	
MURDERS COMMITTED Murder 1: 1 Murder 2: 0 No Degree: 0 # Counts: 1		
Death Sentences: 1 Life Sentences: Date Committed: 09/24/1949 Date Discharged: 08/30/1973 Jail Credits: 0 Time Served: 23.95	In Custody: N Died in Prison: Y Paroled: N # Times Commuted: 1 Pardoned: N Parole Conditions: N Sentence Vacated: N Revised/Revoked: N	Released: N AC Amends: N Verdict Reversed: N Bailed: N Deported: N Executed: N On Escape: N Outcome Unknown: N

EXHIBIT 3

Name		Richard		Con. No.		Mass. Correctional Institution South Walpole	
Alias							Naturalized?
Offense Murder 1st							Life 1st 7ra.
When Sentenced 7-17-86				When Committed 7-17-86			
Where Sentenced Hampshire				County Hampshire		Religion Catho.	
Expiration of Minimum Sentence MIN:NONE MAX:LIFE				DOB: 6-30-37		Occupation	
Eligible for parole NONE				Birthplace MA			
Education GCD: NONE			Intemperate?		No. of Children NONE		
Age 49	Height 5'8" in.	Weight 175	Hair Brown/Grey	Eyes Hazel	Complexion Medium		
Name of Father (Deceased)			Birthplace		Residence		
Name of Mother (Deceased)			Birthplace		Residence		
Name of Wife Single				Residence			
Remarks: JC:-538- SE:01-25-85 T/Concord 7-18-86							

EXHIBIT 4

Name		LOUISE <i>FORIA</i>		No.	Mass. Correctional Institution Framingham	
Alias Murder / 1st Manslaughter						Naturalized? 1/18/20
Offense						Sentence 12-20 MCLW yrs.
When Sentenced 1/31/84			Sent. revised 10-25-87		When committed 1/31/84	
Where Sentenced Plymouth Sup.			Plymouth		County Religion	
Expiration of Minimum Sentence 2-11-95 MAX 2-11-2003			Occupation			
Eligible for parole 2-11-91		Birthplace 676738		Residence , MA-		
Education (G) 11-25-74		Intemperate?		No. of Children		
Age 44	Height 5' 1 in.	Weight 123	Hair brn	Eyes hazel	Complexion white-fair	
Name of Father			Birthplace unk	Residence deceased		
Name of Mother			unk	Residence deceased		
Name of Wife			unk	Residence Mich.		
Remarks: 11808101/SEA/3/29/88 JG:353 SE:2/12/83 12/2/85 <i>transferred</i>						
<i>Minimum</i>						

front
of
card

Williams

STATE PRISON.

Offense: *Murder in the second degree* Sentence: *Life*

When Sentenced: *November 25, 1904* Where Sentenced: *Boston*

Where Committed: *November 25, 1904* Cause: *Suffolk*

Occupation: *Sailor* Religion: *Protestant*

Residence: *On boat*

Birthplace: *West India* Race: *African* No. of Children: *X*

Education: *Little* Height: *5 (4 1/2) in.* Weight: *128* Hair: *Black* Eyes: *Maroon* Complexion: *Br. Mulatto*

Name of Father: Name of Mother: Name of Wife: *X*

Remarks: *Removed to S.A. Jail from June 6, 1905. Returned to prison Oct 25, 1905. Removed to S.A. Jail from Dec 30, 1907. Returned to prison Jan 15, 1912*

EXHIBIT 5

back
of
card

PUNISHMENTS.

Date	Offense	Days
<i>Aug. 13¹⁹¹²</i>	<i>Fighting in shop</i>	<i>9/2</i>

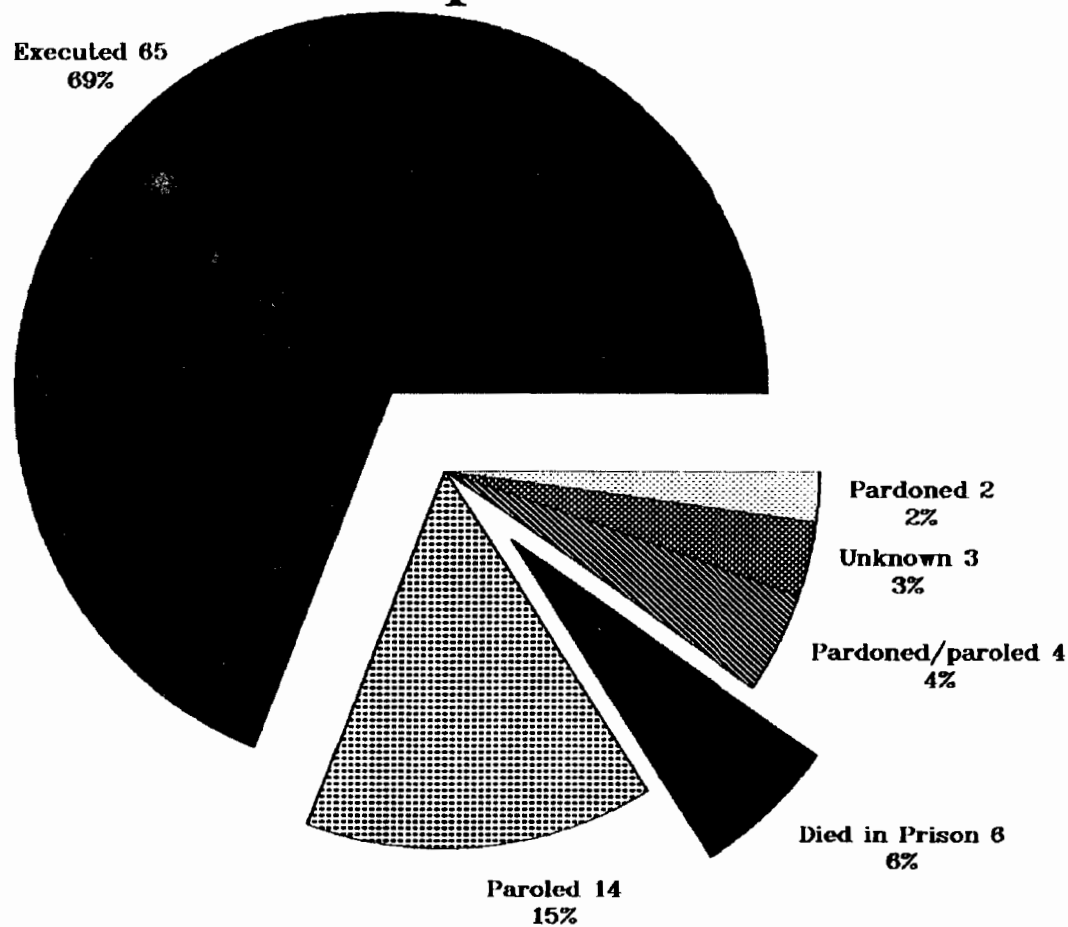
Previous Record:

When Discharged: *November 29, 1913* How Discharged: *Pardoned*

front

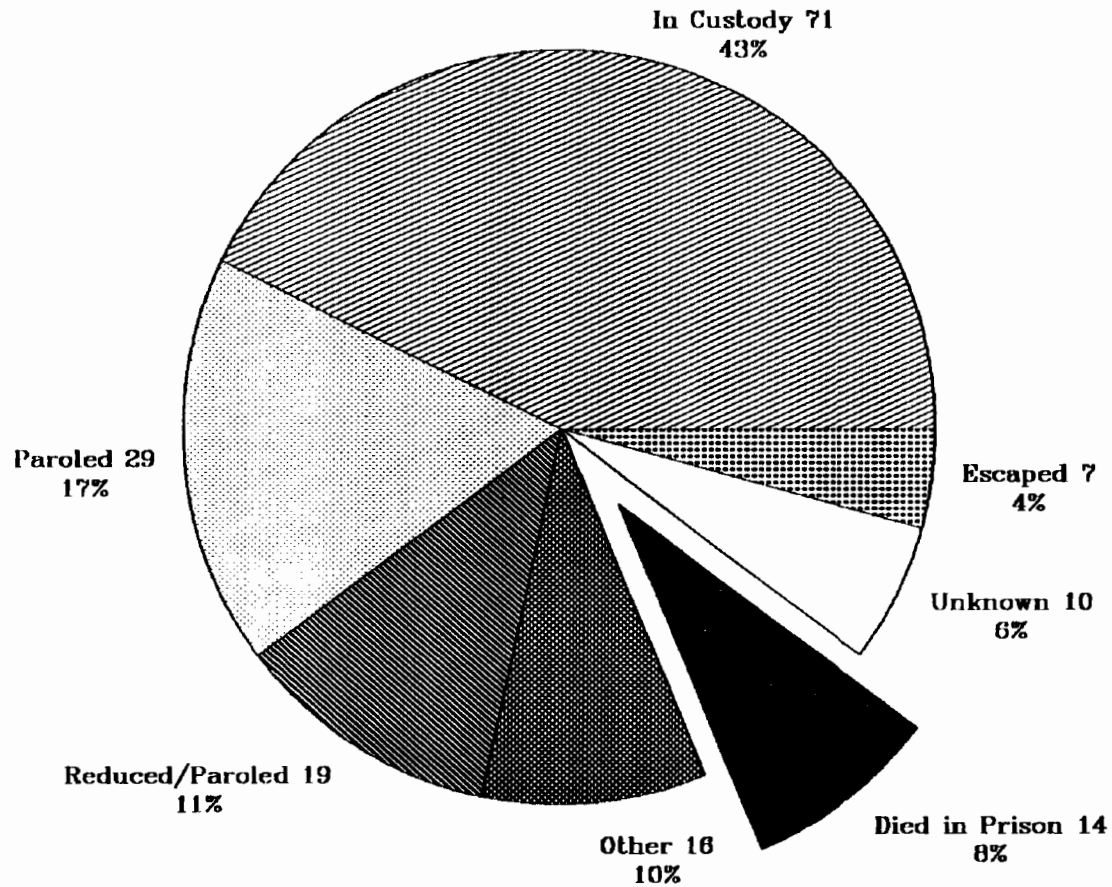
Name	Richard		Cnn. No.	Mass. Correctional Institution South Walpole	
Alias	Naturalized?				
Offense	Murder 1st			Life 1st yrs.	
When Sentenced	7-17-86	When Committed	7-17-86		
Where Sentenced	Hampshire	County	Hampshire		Religion Catho.
Expiration of Minimum Sentence	MIN: NONE MAX: LIFE	DOB:	3-30-37		
Eligible for parole	NONE	Birthplace	MA		
Education	GCD: NONE	Intemperate?	No. of Children		NONE
Age	49	Height	5 3/4 in.	Weight	175
		Hair	Brown/Grey		Eyes Hazel
		Complexion	Medium		
Name of Father	(Deceased)		Birthplace	Residence	
Name of Mother	(Deceased)		Residence		
Name of Wife	Single		Residence		
Remarks:	IC: -538- SE: 01-25-85 T/ Concord 7-18-86				

First-Degree Murderers Final Dispositions



1900-1949

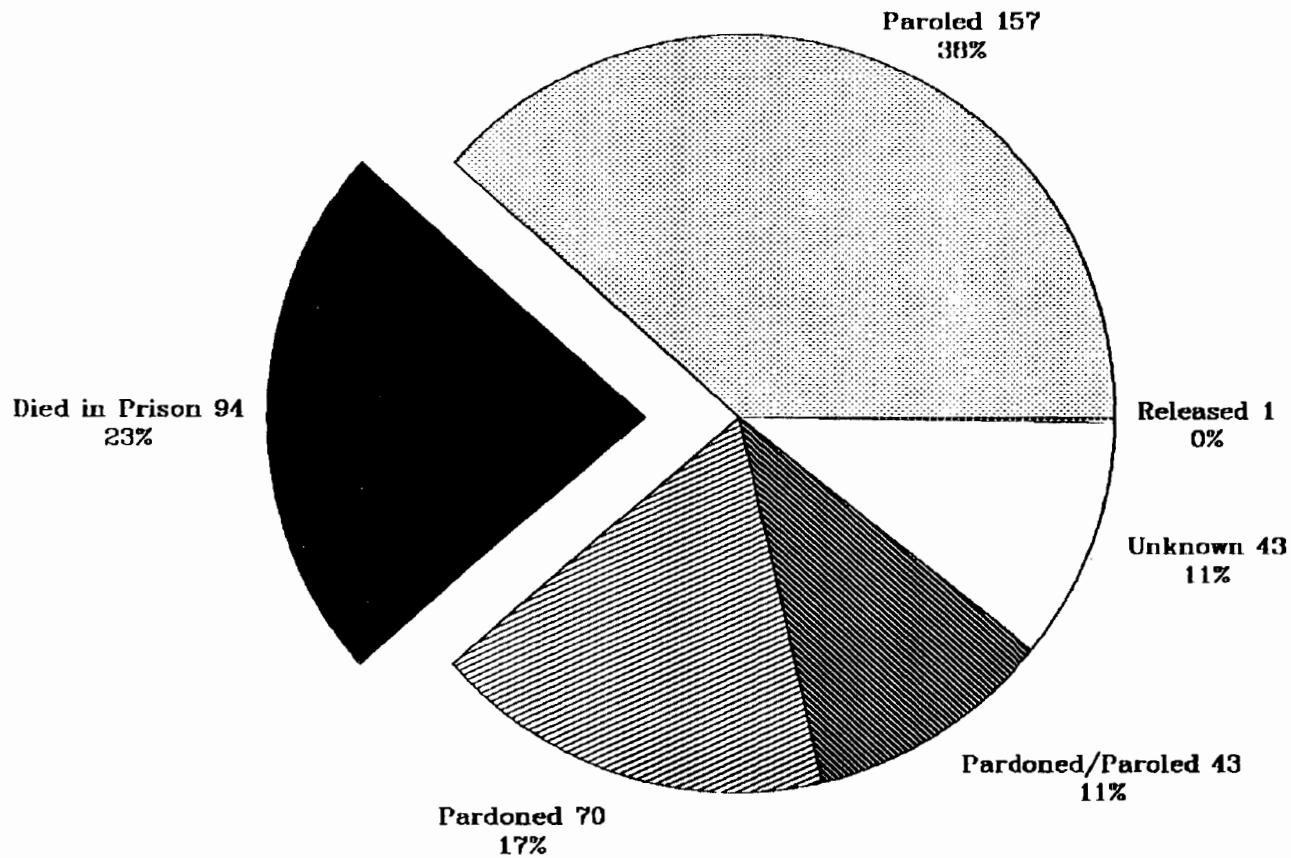
First-Degree Murderers Final Dispositions



1950-1974

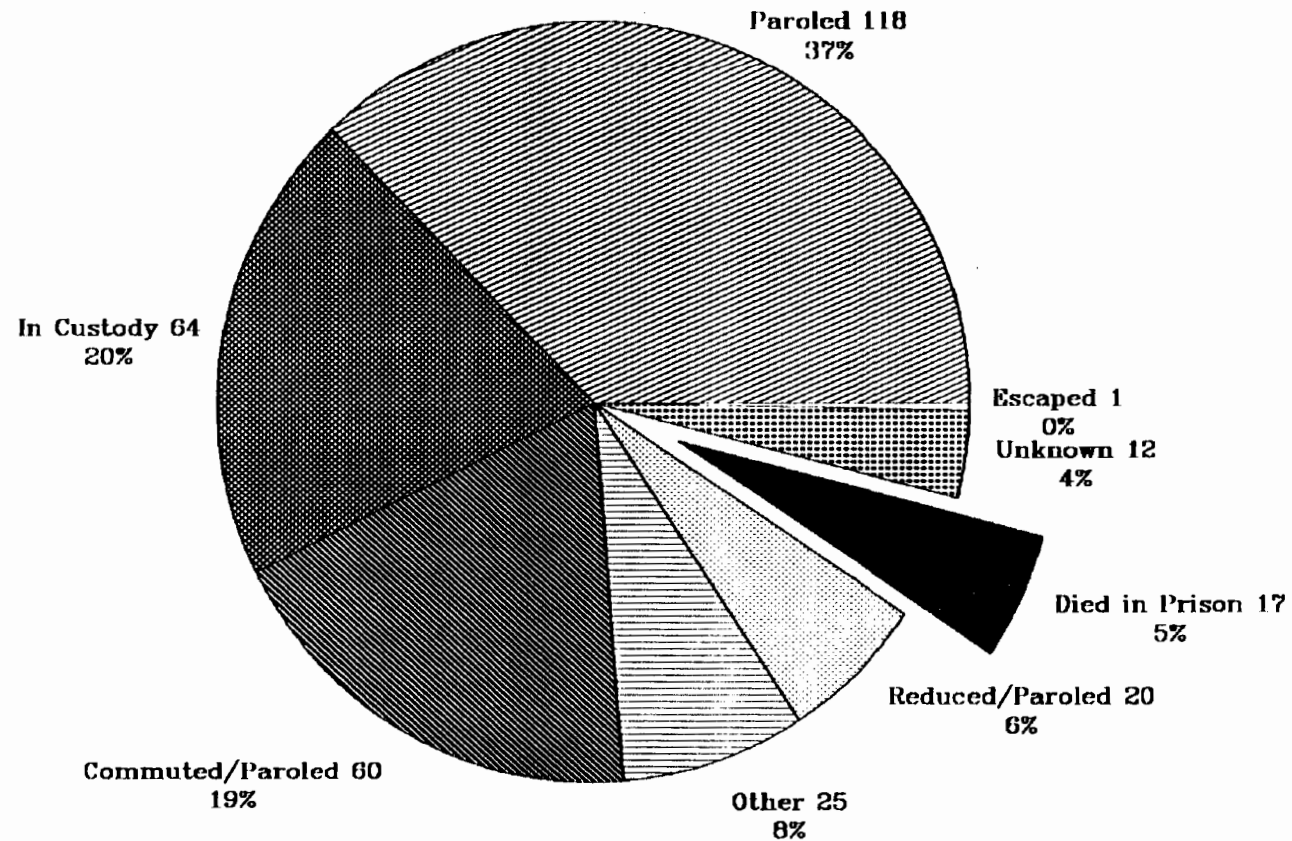
Second-Degree Murderers Final Dispositions

EXHIBIT 8



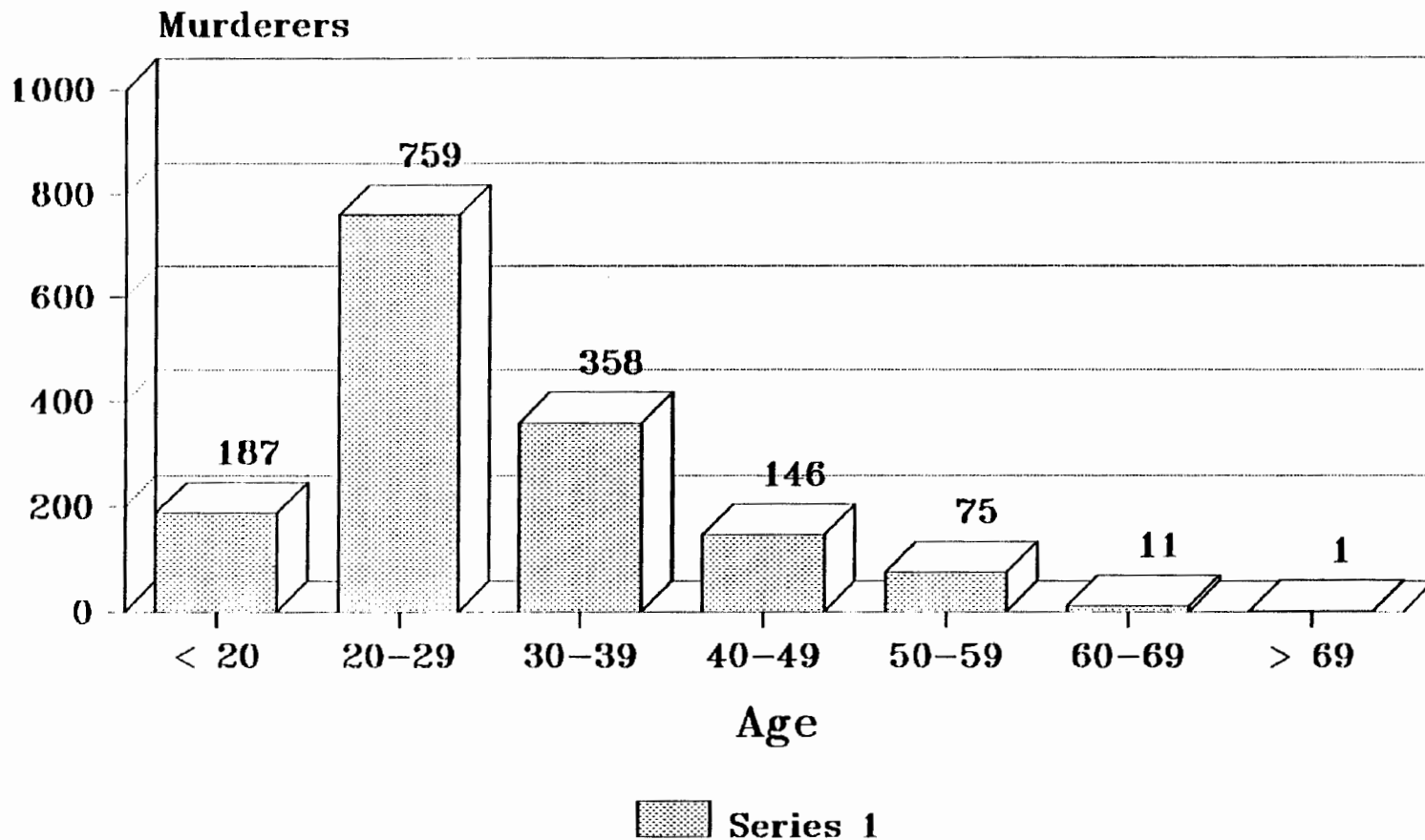
1900-1949

Second-Degree Murderers Final Dispositions



1950-1974

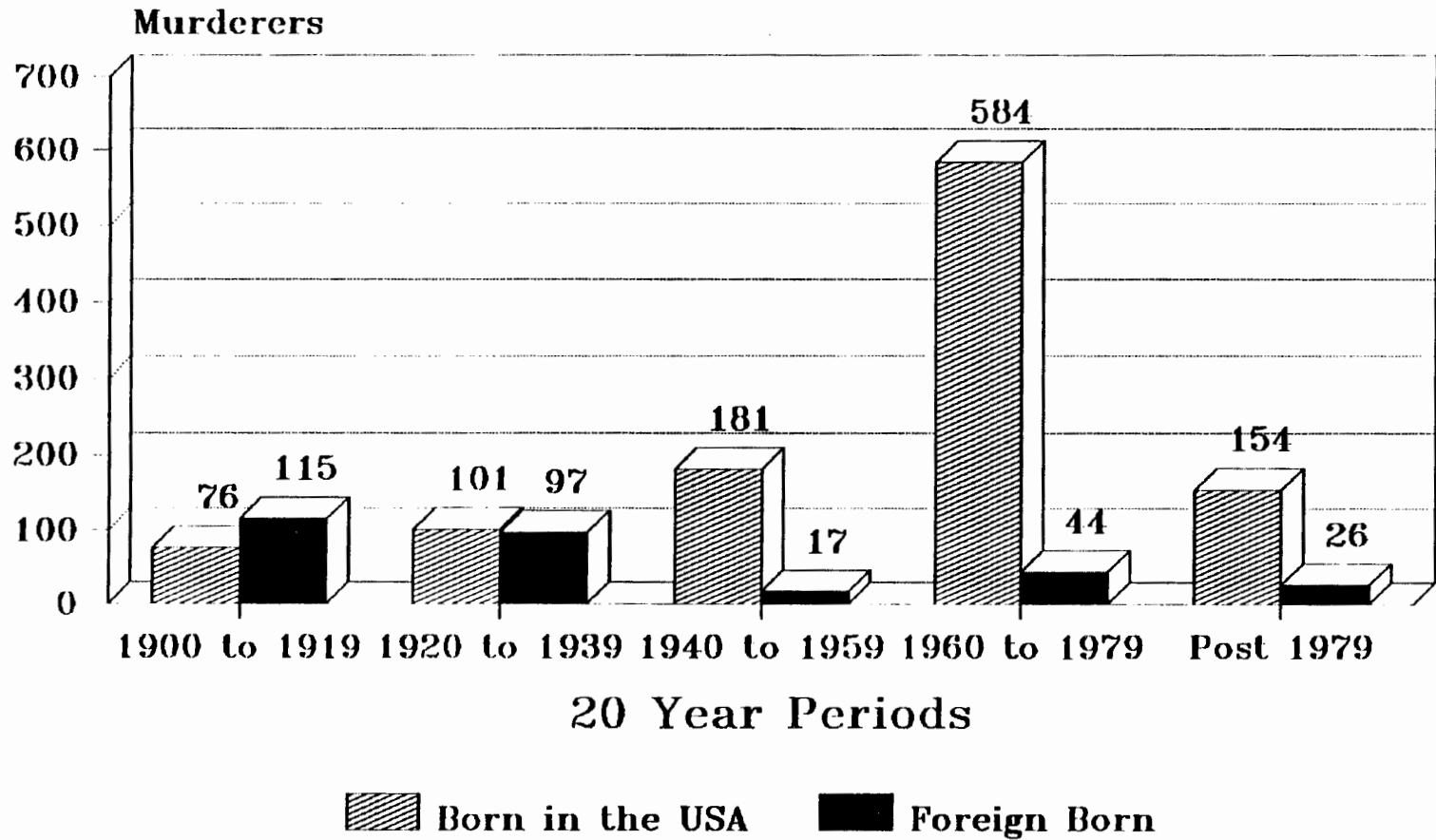
Age of Murderers Post-1899



1567 Murderers (30 Ages Unknown)

Birthplace of Murderers Post-1900

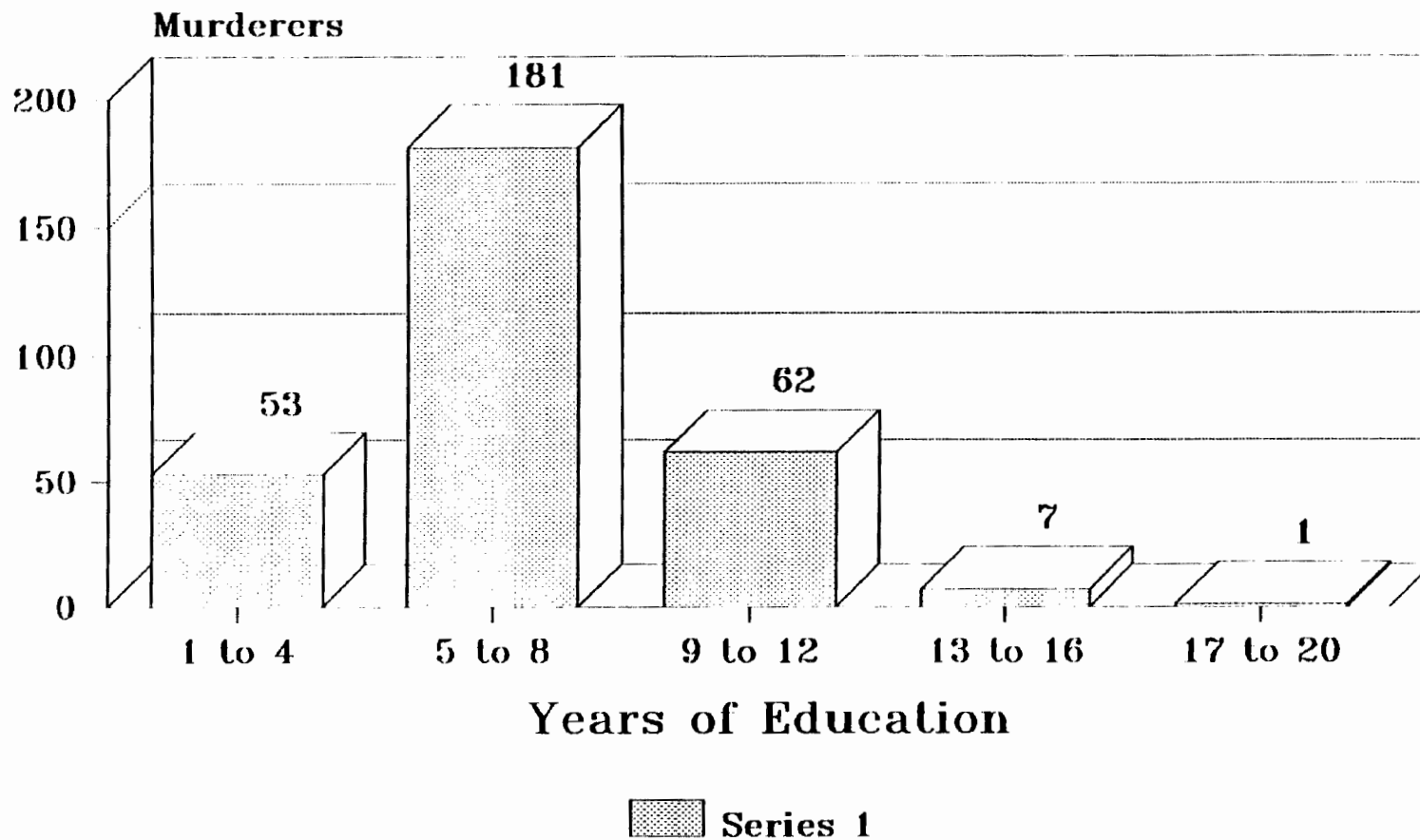
EXHIBIT 11



1495 Murderers

Education of Murderers 1900-1949

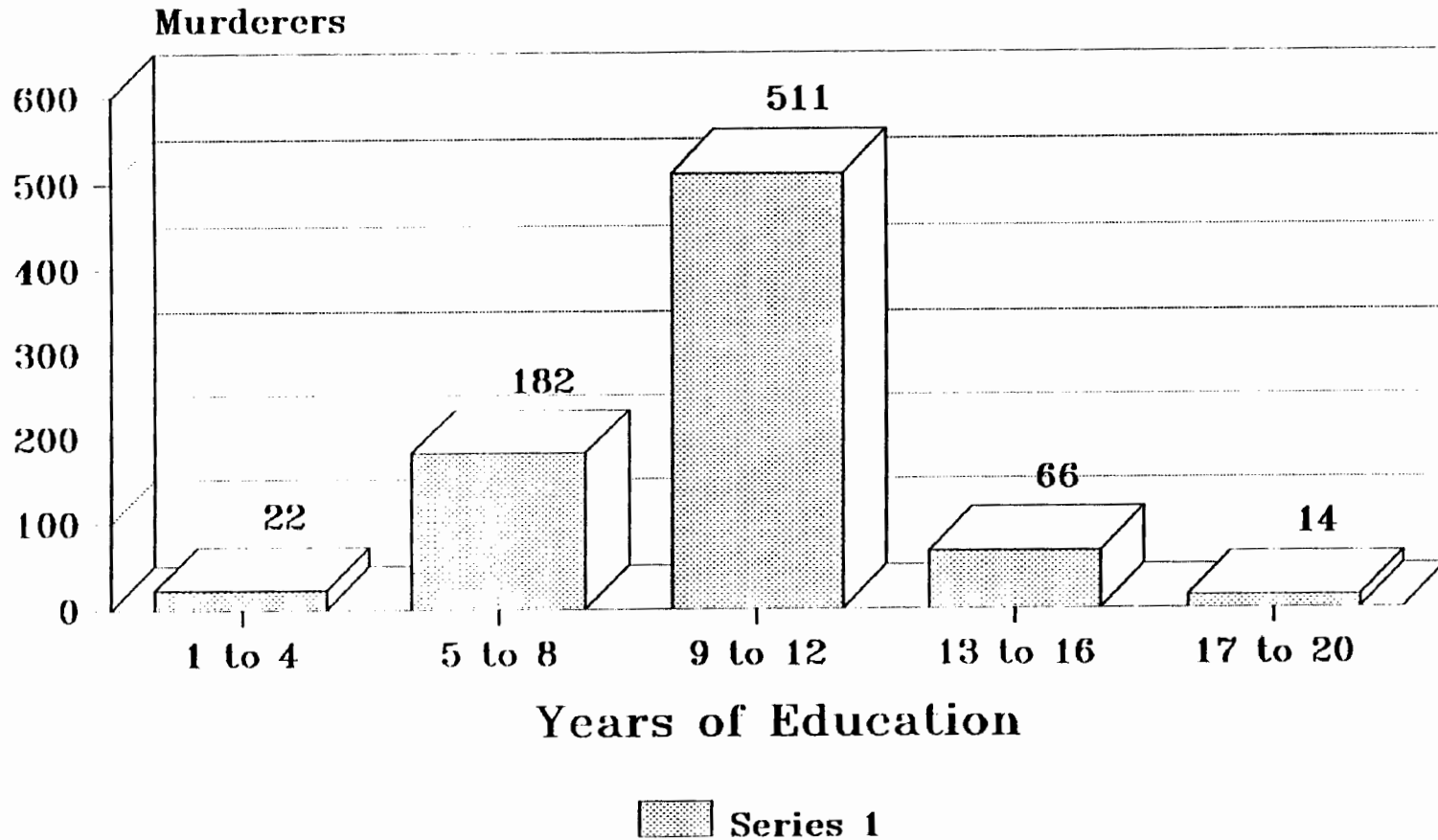
EXHIBIT 12



304 murderers

Education of Murderers Post-1949

EXHIBIT 13



795 murderers

EXHIBIT 14

COMPARISON

MASSACHUSETTS MURDER CONVICTIONS

AND POPULATION

CONVICTION

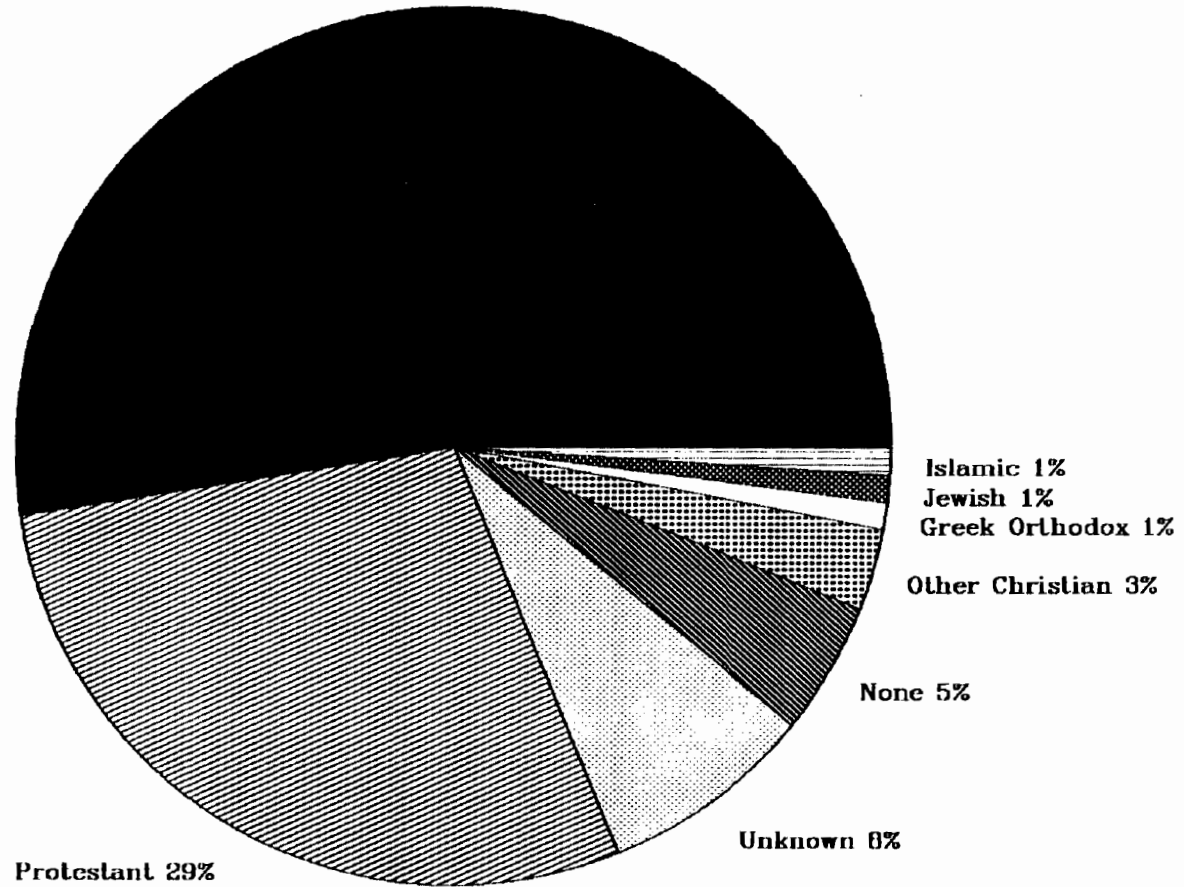
DECADE -	COUNTS -	% CHANGE -	POPULATION -	% CHANGE
1900	81		2.81 M.	
1910	117	+ 44.4 %	3.37 M.	+ 19.9 %
1920	94	- 19.7 %	3.85 M.	+ 14.2 %
1930	106	+ 12.8 %	4.25 M.	+ 10.3 %
1940	109	+ 2.8 %	4.32 M.	+ 1.6 %
1950	105	- 4.0 %	4.69 M.	+ 8.6 %
1960	218	+ 107.6 %	5.15 M.	+ 9.8 %
1970	462	+ 111.9 %	5.69 M.	+ 10.5 %
1980*	361		5.74 M.	

* 1980 through 1987

NOTE: This comparison involves murder convictions only. It does not include all murders committed in Massachusetts, since not all murders are solved and successfully prosecuted.

Religion of Murderers Post-1899

Catholic 52%



1567 Murderers

HOUSE POST AUDIT AND OVERSIGHT COMMITTEE

HOUSE POST AUDIT AND OVERSIGHT BUREAU

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