

Alternatives to Incarceration for Women in Massachusetts: An Opportunity and a Challenge¹

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The Commonwealth of Massachusetts is facing a critical juncture.

On the one hand, the Department of Correction (DOC) and the Division of Capital Asset Management and Maintenance (DCAMM) are seeking to open a new women's prison.

On the other hand, incarceration is costly - \$117,109 per woman at MCI-Framingham in FY 2019. Communities of color suffer disproportionately high rates of incarceration. Incarceration is ineffective in terms of rehabilitation and is harmful to the physical and mental health of prisoners (Massachusetts Department of Correction, 2020; [Sered et al., 2021](#)). For those reasons, community-based alternatives to incarceration (ATIs) are supported by scholars, faith leaders, formerly incarcerated women and community stakeholders alike (van Wormer & Persson, 2010; Tadros et al., 2019; Harris & Gilhuly, 2017).

In this memo we offer a guide to types of alternatives to incarceration, a map of points of diversion where the incarceration trajectory could be interrupted, and a list of core principles that can help policy-makers assess the value of various policies, programs and practices.

Many of the ATIs identified in this memo already exist in Massachusetts and could be expanded. With an existing foundation to build on, the Commonwealth's biggest challenge is the lack of a coherent system to sustain diversion from incarceration at all points of the legal process. While there is no single perfect model for ATIs, we can identify core principles that are essential for any ATI to succeed (see below).

Massachusetts has a historic opportunity to take a national leadership role, implement significant fiscal savings, build on the demonstrated achievements of community-based services, and address social and racial inequalities throughout the criminal justice system. To those ends, we recommend that the executive, legislative, and judicial branches establish a mutual goal to develop and implement a coherent, sustained and funded decarceration agenda rather than moving ahead on plans to open a new women's prison. This agenda must include attention to quality research and input from women who are directly affected by the criminal legal system.

¹ This memo is part of a series of documents addressing issues of women and incarceration. See also "[Debunking the Myth of Gender-Responsive Treatment in Prison](#)".

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Policies, Practices and Programs

The term “alternatives to incarceration” (ATIs) is used somewhat loosely to describe approaches including home supervision (e.g. electronic monitoring), restorative justice, treatment programs, drug and other specialty courts, justice reinvestment in communities, supportive housing, community service, periodic detention and more. All of these measures are implemented differently in various states.

To help make sense of the rapidly changing landscape of ATIs, we offer this typology sorting ATIs into three interrelated approaches: policies, practices, and programs.

Policies that minimize the role of the criminal justice system in people’s lives have the greatest potential to reduce incarceration and build healthy communities. For women, this includes passing, funding, and enforcing laws that address the conditions of poverty, racism, and gendered violence that typically propel women into contact with the criminal justice system.

Recognizing the extent to which drug laws lead women into the criminal justice system, we support policies that reduce women’s incarceration by legalizing or decriminalizing use of psychotropic and pain-relieving substances.

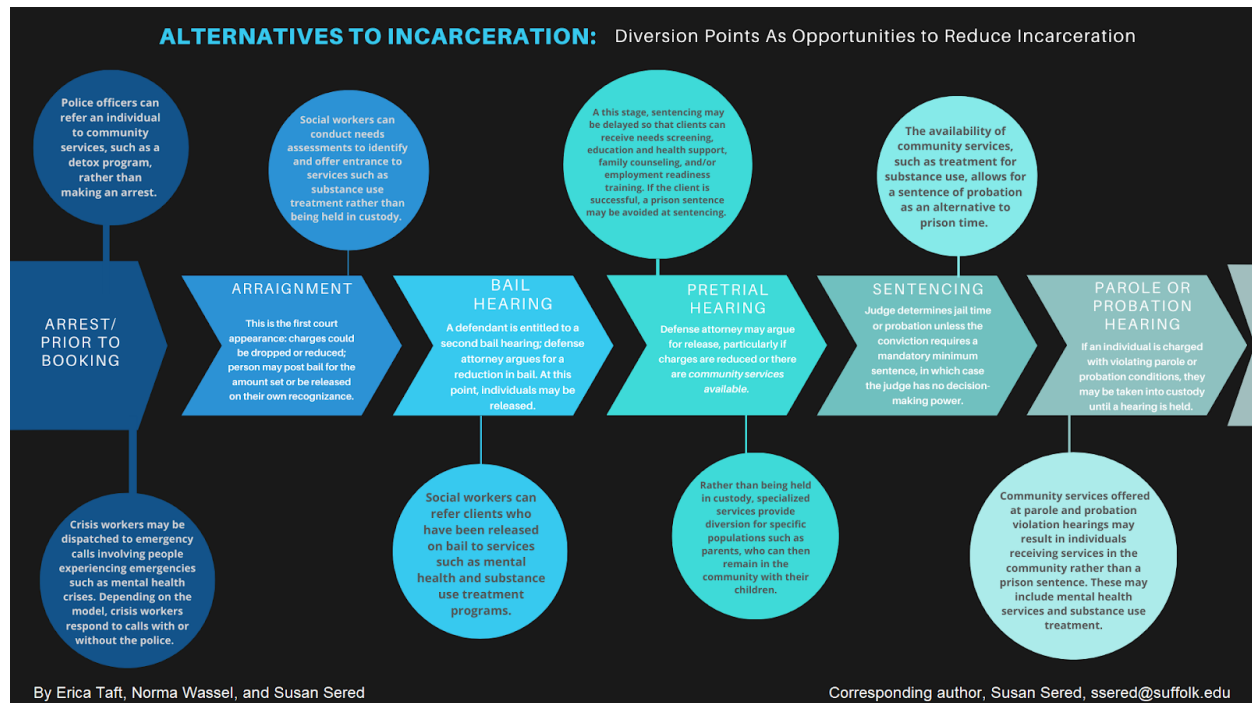
Practices include measures such as sending social workers or medical personnel as the primary responders to mental health and substance use 911 calls, refraining from checking women’s outstanding cases and warrants when they call for assistance in the wake of victimization by domestic partners or strangers, and interrupting the school to prison pipeline by minimizing the presence of police in educational institutions.

Programs include a wide variety of residential and outpatient treatment and educational services. This large field encompasses for-profit, not-for-profit and public facilities and services. Few have been rigorously assessed, even fewer have been assessed for mid- and long-term outcomes. Some are community-run and some are similar to incarceration in that they coerce individuals to remain in a closed facility.

Points of Diversion: A Continuum of Policies, Practices and Programs

This section maps out some of the many points at which policies, practices and programs could divert women from the carceral path and offers brief examples to illustrate each point. The model we present is consistent with the proposal laid out by the [Executive Office of the Trial Court \(2020\)](#) for tracking mental health and substance use interventions at the different points in the Massachusetts legal process.

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- **Avoiding criminal justice involvement:** The first points of diversion comprise policies and practices aimed at minimizing women’s interactions with police and the criminal justice system. These include decriminalization or legalization of pain reducing substances and of sex work.
- **Prior to police involvement:** One of the best models in the country is in Oregon, where the Crisis Assistance Helping Out On the Streets ([CAHOOTS](#)) program dispatches mobile crisis intervention teams consisting of a medic and crisis worker to emergency calls involving mental health crises. Several police departments across Massachusetts have implemented [co-response programs](#), in which a clinician accompanies police officers to help respond to mental health related crises. A more comprehensive policy (Amendment #71 to H4860 “Alternatives to Policing”) mandating that a team of social workers with expertise in mental/behavioral health and substance misuse respond to certain 9-1-1 calls will be refiled this session in the Massachusetts legislature by Rep. Sabadosa and others.
- **Prior to booking:** Massachusetts New Bedford Police Department operates a Law Enforcement Assisted Diversion program ([LEAD](#)) that allows police officers to offer entrance to rehabilitation or other appropriate services rather than booking them. Forty-five individuals have been diverted to substance use services rather than criminal charges since its start in 2018. While the concept holds promise, we are cautious about putting this level of discretion in the hands of police officers who may be influenced by race or gender in deciding whom to divert. We also are

concerned that many of the programs used for diversion have not been thoroughly assessed and do not meet the criteria we lay out below.

- **Arraignment:** Programs such as [newSTART](#), currently implemented in New York, divert individuals facing misdemeanor jail sentences out of the system by offering a needs assessment and appropriate services to address root causes of arrests.
- **Bail and Pre-Trial Hearings:** The [JusticeHome](#) program in New York offers women charged with a felony a self-directed case management program to connect them with resources while they remain at home with their families.
- **Sentencing:** In Oregon a number of initiatives have reviewed and eliminated certain mandatory minimum sentencing statutes and reduced some charges to misdemeanors. In Massachusetts, the state [Sentencing Commission states](#) -- on the government website: “The Sentencing Commission does not endorse the use of mandatory minimum sentences.”

The Washington Department of Corrections’ [Parent Sentencing Alternative](#) allows parents of minor children to replace prison sentences with [community custody](#). While this program provides some treatment services and has had good outcomes over its 10 years, participants and advocates express concern that the DOC rather than a non-carceral institution runs the program.

The Massachusetts Primary Caretakers Act creates a mechanism for defendants to request a community-based sentence to accommodate their parental responsibilities. The Act provides the foundation to create a robust program with supportive services to keep families together.

- **Parole or Probation Violations:** [Adult Redeploy Illinois](#) is a state-funded program that allows local jurisdictions to implement community-based diversion programs at probation or parole violation hearings instead of returning people to custody. These programs offer services that help individuals avoid violating parole and probation requirements, and include community-based behavioral health services, vocational, educational, and life skills classes, job training programs, and substance use treatment.

Massachusetts recently received a major [federal grant](#) that (among other measures) will finance placing court-involved individuals in sober houses. This program has a great deal of potential, with the caveat that sober houses are not well regulated and range from monitored settings to overpriced rooming houses.

- **Re-entry:** [New Beginnings Reentry Services](#) in Dorchester has worked with the Department of Correction and community organizations to offer programs for formerly incarcerated women to ease reentry and reduce recidivism. They plan to open [Kimya’s House](#), which will be a residential facility for formerly incarcerated women that offers substance use counseling, employment aid, and educational services along with housing. [Brookview House](#) and

[We Can](#) are two other community-based organizations in Massachusetts that offer support to women in need of services.

Guiding Principles for Evaluating ATIs

Our research both nationally and in Massachusetts points to a concerning trend--a tendency to assume that anything called an “alternative to incarceration” is good for women. In reality, too many ATIs overuse blame, coercion and unnecessary restrictions in much the same way as jails and prisons.

In this section we offer a checklist of core principles to help policymakers identify programs and practices that should be endorsed or funded. The checklist grew out of interviews with formerly incarcerated women and their families, social workers, direct service providers, attorneys, healthcare providers, advocates and community activists, criminal justice diversion programs staff, and correctional and trial court staff and defense attorneys, among others.

Input from all of these groups emphasizes that women involved in the criminal justice system have the same basic needs as other people in challenging life situations. The need for safe and secure housing was the primary issue noted throughout our interviews. Many women end up going to shelters or back into abusive relationships when they don't have a place to live, and lack of housing can prevent women from being released during the court process, even when a judge is willing for her to be released. It is crucial for state agencies to reduce barriers (such as excluding individuals with CORIs) that prevent many women from obtaining housing and other services.

ATIs must facilitate provision of secure housing for women and their families, including immediate housing, transitional housing, post-release housing, and permanent housing.

ATIs must have realistic eligibility criteria appropriate for women involved in the criminal justice system, such as admitting women with CORIs, child welfare involvement, dual diagnoses, and so on.

ATIs must provide meaningful support for family unification including assisting women who have lost custody of their children due to their involvement with the criminal justice system.

ATIs must provide accessible and culturally appropriate health care services, including harm reduction measures.

ATIs must respect the range of racial, ethnic, gender and sexual identities of women.

ATIs must respect due process--allowing women access to an attorney who represents her interests at all stages of the legal process.

ATIs must refrain from placing women in settings in which they are deprived of physical and emotional autonomy.

ATIs must refrain from using threats of punishment to obtain compliance.

ATIs must ensure confidentiality and informed consent.

ATIs must allow for self-directed treatment and refrain from enforcing a particular ideology such as Twelve Steps or abstinence-only.

ATIs must conduct rigorous assessments of mid- and long-term outcomes.

ATIs must coordinate with other agencies, offices and institutions to ensure continuity of services and support for women.

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