

**Reentry Matters: Why States Should Consider A State-Wide, State Funded
Reentry Program¹**

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INTRODUCTION

According to the United States Department of Justice, approximately sixty-eight percent of individuals who are released from incarceration are rearrested within three years.³ This is the phenomenon of recidivism and referred to as the “revolving door” of the criminal justice system.⁴ The lack of a centralized system to access reentry services is a main factor contributing to high rates of recidivism.⁵ Thus, a better system for reentry is vital because the current system is failing to properly equip formerly incarcerated individuals for this stark transition back into society.⁶ People of color and individuals who lack financial, social, and familial resources are the most prone to the challenges that are present upon release and need access to viable reentry plans in order to lead productive lives.⁷ Inconsistency in reentry resources makes it challenging for people to establish a stable and self-sustaining lifestyle.⁸

Most reentry programs are decentralized, run by nonprofit or private organizations; with varied scope and efficacy. Many depend on unreliable state grants, federal grants, or private fundraising.⁹ Although these specialized reentry enterprises provide important and effective

³ Mariel Alper & Matthew Durose, *2018 Update on Prisoner Recidivism: A 9-Year Follow-Up Period (2005-2014)*, U.S. DEPT. OF JUST. BUREAU OF JUST. STAT. (2018).

⁴ Bull, Laura E., *The Revolving Door of Recidivism* (2020). *Classical Conversations*.
<https://firescholars.seu.edu/ccplus/12>

⁵ Jonathon Jones & Benjamin Forman, *Reducing Recidivism in Massachusetts with a Comprehensive Reentry Strategy*, 1-19, (Jan. 2016), <https://massinc.org/wp-content/uploads/2016/01/Reentry-Policy-Brief.pdf>

⁶ Marie St. Fleur & John Larivee, *The Mass. Legislature Should Act to Dramatically Increase its Investment in Reentry Programs*, WBUR (June 29, 2018), available at:

<https://www.wbur.org/cognoscenti/2018/06/29/massachusetts-recidivism-marie-st-fleur-john-larivee>

⁷ See Matt Clarke, *Long-Term Recidivism Studies Show High Arrest Rates*, Prison Leg. News (May 3, 2019), <https://www.prisonlegalnews.org/news/2019/may/3/long-term-recidivism-studies-show-high-arrest-rates/>.

⁸ C.E. Kubrin, E.A. Stewart, “Predicting who reoffends: The neglected role of neighborhood context in recidivism studies” *Criminology*, 44 (2006), pp. 165-197.

⁹ John Larivee & Marie St. Fleur, *The Mass. Legislature Should Act to Dramatically Increase its Investment in Reentry Programs*, WBU Cognoscenti (June 29, 2018), Thus, many individuals were often forced to rely on privately-funded reentry organizations whose success rested on their ability to raise money or obtain grants.

services, they lack a coordinated structure, which creates uncertainty and a lack of transparency.¹⁰ The instability in the current, decentralized systems creates additional struggles in the community, as even employers face challenges trying to forge partnerships with a myriad of private reentry programs that may come and go as funding wanes and waxes.¹¹ This paper proposes using Massachusetts as a model for creating an infrastructure that addresses recidivism on a systemic level by creating comprehensive, consistent, and connected resources through a state-wide, state-funded, reentry network.¹² Our thesis is that once a state builds a comprehensive state-wide; state-funded reentry network, it can then create an effective jail to jobs pipeline for those leaving prison or jail. The current system requires disadvantaged people coming out of prison and jail to self-navigate various disconnected systems, while this proposed Massachusetts model sets forth a “one-stop shop” approach to attain all fundamental resources for those coming out of prison and jail.¹³ Our vision is for people to have a state-funded; state-wide, one-stop shop to advise those reentering about all of the private and public reentry services available and to provide judges with information about reentry programs or resources as alternative to prison at the time of bail, sentencing, or probation revocation hearings. In this sense, I believe reentry should begin at the time of arraignment. In an ideal world, the court would be connected with the Criminal Justice Support Centers (CJCS) and fund effective reentry organizations to enroll their defendants into reentry programs, thus offering a solution rather than

¹⁰ *Id.*

¹¹ *Id.*

¹² Criminal Justice Task Force, State-Wide Reentry Network, NORTHEASTERN UNIVERSITY SCHOOL OF LAW: CENTER FOR LAW, EQUITY, AND RACE, (2022) <https://law.northeastern.edu/wp-content/uploads/2023/01/clear-cjtf-state-reentry-flyer.pdf>.

¹³ Criminal Justice Task Force, Jail to Jobs Pipeline, NORTHEASTERN UNIVERSITY SCHOOL OF LAW: CENTER FOR LAW, EQUITY, AND RACE, (2022) <https://law.northeastern.edu/wp-content/uploads/2023/01/clear-cjtf-jail-to-jobs-proposal.pdf>

further perpetuating the revolving-door cycle of recidivism. And, in an ideal world, this process would begin at arraignment.

Every state is encouraged to develop a reentry system based on our 6-prong approach as an economic strategy to reduce recidivism by focusing on rehabilitation and cost-effective methods to set formerly incarcerated individuals up for success.¹⁴ The first prong includes the use of a Navigator, beginning at arraignment or in prison and continuing post-release to guide the individual through the various resources available for them to stay out of prison. The second prong includes contingency management options for those with Substance Use Disorder. The third prong expands private and public reentry services to the pre-stages of the criminal system by creating solutions for the individuals criminal behavior, rather than leading them back to recidivate.¹⁵ The fourth prong ensures formerly incarcerated individuals are involved in the reentry system design process because they have lived experience to do so. The fifth prong includes working with EOPS or the executive branch of government to require essential reentry resources—photo identification card, health insurance, a job or job training program, access to eligible welfare benefits, housing placement, mental health treatment, and substance use disorder treatment are provided to every person leaving prison or jail.¹⁶¹⁷ The final prong includes the development of a “Jail to Jobs” Pipeline that would link employers to ideal employees who may be overlooked because of their criminal record, yet would be successful on their road to reentry with stable employment. Each of

¹⁴ Criminal Justice Task Force, State-Wide Reentry Network, NORTHEASTERN UNIVERSITY SCHOOL OF LAW: CENTER FOR LAW, EQUITY, AND RACE, (2022) <https://law.northeastern.edu/wp-content/uploads/2023/01/clear-cjtf-state-reentry-flyer.pdf>.

¹⁵ Community Correction Centers Offer New Pre-Trial Options, *Massachusetts Lawyers Weekly*, at 2 (2019). <https://masslawyersweekly.com/2019/05/09/community-corrections-centers-offer-new-pre-trial-options/>

¹⁶ Other countries are doing all of this and more. See *Inside Norway's Halden Prison*, The Story Inst., available at: <https://www.thestoryinstitute.com/halden> (The Halden Prison in Norway has seen great success from an alternative approach, which has led to decreased recidivism and increased rehabilitation.)

¹⁷ Cat Wise, Leaving Prison Without a Government ID Can Block Access to Housing, Jobs and Help, PBS (2020), available at: <https://www.pbs.org/newshour/nation/leaving-prison-without-a-government-id-can-block-access-to-housing-jobs-and-help> (last visited Jan 4, 2023).

these prongs are included in the plan for Massachusetts as realistic solutions to multiple problems that are unresolved across many states.

I. CURRENT REENTRY SYSTEMS ARE INSUFFICIENT AND LEAD TO INCREASED RECIDIVISM RATES

Imagine being released from incarceration, on a chilly morning with \$20 and a “good luck” outside of the prison gates,¹⁸ without transportation, healthcare, an identification card, or anything else needed to survive.¹⁹ If you are lucky, you may be able to purchase a bus ticket and a meal. In many states, individuals with a criminal record are banned from government food benefits²⁰, and family members living in public housing are prohibited from allowing anyone with felony convictions on the premises, leaving many at the mercy of the public housing authorities and their broad discretion.²¹

These are only a few of the many challenges faced by those coming out of prison or jail, some of whom are under community supervision, commonly known as parole or probation.²² Compared to the 2.3 million adults incarcerated in the United States, there are more than 4.5 million individuals (1 in 55 adults) under community supervision.²³ These individuals are

¹⁸ Correctional facilities are often inaccessible by public transportation.

¹⁹ Elianne Paley, *Transportation After Incarceration: Where the Rubber Meets the Road for Sustainable Reentry*, Policy Research Associates (2021).

²⁰ *No More Double Punishments: Lifting the Ban on SNAP and TANF for People with Prior Felony Drug Convictions*, Center for Law and Social Policy (Apr. 2022).

²¹ 24 CFR § 966.4, *See also, Evictions & Lockouts in Public, Section 8, and HUD Housing*, People’s Law Lib. of Maryland.

²² Mariel Alper & Matthew R. Durose, *2018 Update on Prisoner Recidivism: A 9-Year Follow-Up Period (2005-2014)*, U.S. Dept. of Just. Bur. Just. Stat., available at: <https://www.bjs.gov/content/pub/pdf/18upr9yfup0514.pdf>.

²³ *Id.*

required to comply with conditions which exacerbate the aforementioned collateral consequences following their release from incarceration.²⁴

II. THE COSTS OF RECIDIVISM

Recidivism is expensive and these costs come in the form of fiscal consequences to the state and its taxpayers, as well as social consequences for the reentering individual and their community.²⁵ For the individual themselves, if they recidivate, they are left without an income, their family is left without their financial support, and society misses out on the individual's potential financial contributions to the community.²⁶ Studies show costs for reentry services are substantially less than the cost of incarceration, therefore investing in a reentry system proves to be a logical path towards better allocating state resources to decrease recidivism.²⁷

A. Economic Costs

Massachusetts spends over \$1 billion annually on correctional facilities.²⁸ According to the Bureau of Prisons, the cost of incarcerating one individual in fiscal year 2020 was \$120.59 per day, equating to a substantial \$39,158 per year.²⁹ In 2015, Massachusetts was one of eleven states that spent more on jails and prisons than on public higher education.³⁰ In 2015 alone, Massachusetts spent 594 million dollars on prison expenditures, with an average of \$55,000 per inmate.³¹ This

²⁴ James M. Binnal, *Divided We Fall: Parole Supervision Conditions Prohibiting "Inter-Offender" Associations*, 22 U. Pa. J.L. & Soc. Change 25 (2019). See also Lauren E. Glaze & Thomas P. Bonczar, *Probation and Parole in the United States, 2010*, U.S. Dept. Just.: Bur. Just. Stat. at 7, available at: <https://www.bjs.gov/content/pub/pdf/ppus10.pdf> (indicating that in 2000, just over 450,000 former inmates entered the United States parole system, while in 2010, 565,300 people entered the United States parole system).

²⁵ Laura Bull, *The Revolving Door of Recidivism*, Classical Conversations, 12, Southeastern University (2020).

²⁶ *Id.*

²⁷ John Roman & Aaron Chalfin, *Does it Pay to Invest in Reentry Programs for Jail Inmates?*, Justice Policy Center, THE URBAN INSTITUTE (2006).

²⁸ Benjamin Forman & Michael Widmer, *Getting Tough on Spending: An Examination of Correctional Expenditure in Massachusetts*, MASSINC (May 2017).

²⁹ *Annual Determination of Average Cost of Incarceration Fee*, The Federal Register (September 2019).

³⁰ *Changes in State Funding*, American Academy of Arts & Sciences, The Lincoln Project: Excellence and Access in Public Higher Education at 9. (2015).

³¹ Chris Mai & Ram Subramanian, *The Price of Prisons: Examining State Spending Trends*, VERA Institute of Justice (May 2017).

expenditure greatly exceeds the yearly budget for correctional facilities, leaving the legislature to pass large, mid-year supplemental budgets to cover excess spending.³² The amount of money Massachusetts spends annually to house incarcerated individuals is drastically disproportionate to what it would cost to set them up with the necessary skills, trainings and educational opportunities to increase their success when reintegrating into society.³³ By reallocating resources and focusing funds on wrap-around reentry services, states can decrease the number of individuals recidivating and drastically eliminate their costs.³⁴

B. Social Costs

Fiscal estimates do not consider the social costs of incarceration and recidivism.³⁵ The formerly incarcerated person, their families, and their surrounding communities incur costs from lost wages of the incarcerated person; adverse health effects; child welfare costs for youth with incarcerated parents; and increased rates of homelessness for formerly incarcerated people.³⁶ One study estimated that these social costs yield aggregate expenses exceeding \$500 billion annually.³⁷ This report estimates that these social costs make up six percent of the gross domestic product (GDP) and are eleven times larger than corrections spending.³⁸

³² *Id.*

³³ Ben Forman and Micahel Widmer, *Revisiting Correctional Expenditure Trends in Massachusetts*, MassInc., (May 2018).

³⁴ *Id.*

³⁵ Michael McLaughlin et al., *The Economic Burden of Incarceration in the United States*, Florida State University, Institute of Justice and Research Development (2016).

³⁶ *Id.*

³⁷ *Id.*

³⁸ The failures of our current systems can be seen through housing and public health crises. The crisis known as “Mass and Cass” in Boston is at the crossroads of Massachusetts Avenue and Melena Cass Boulevard, has become the home of many individuals who are battling addictions, unhoused, and have nowhere else to go, many of whom have had prior interactions with the criminal legal system. The lack of social supports for vulnerable community members leaves them further at risk for relapse, homelessness, and recidivism. *See* Danny McDonald & Craig Walker, *12 Hours at Mass. and Cass*, Bos. Globe (Oct. 9, 2021).

Communities suffer when re-entering individuals face social barriers upon reentry such as employment and housing restrictions.³⁹ Reintegration is complex and challenging, and failing to provide proper resources and support to individuals facing reentry increases the risk of them resorting to illegal means of making ends meet or relying on substance use to cope with challenges.⁴⁰ Lower recidivism rates equate to greater public safety across communities because it will reduce crime and can assist in filling job shortages.⁴¹ Thus, not only is focusing on reentry more cost-effective than reincarceration, but it is more effective in preventing future crimes and promoting greater public safety.⁴²

II. Reducing Recidivism by beginning reentry initiatives prior to release

The current criminal justice system is designed with a punitive focus, rather than a rehabilitative one.⁴³ The focus of the penal system should be preparing individuals to live healthy, successful and productive lives upon the end of their sentence.⁴⁴ This preparation should begin at the time of arrest and before they even begin serving their sentence, through skills and job training programs, and then continued upon release through the reentry team.⁴⁵ The stigma surrounding criminal records continues to fuel employment barriers which prevent formerly incarcerated individuals from obtaining stable employment.⁴⁶ Thus, Massachusetts is working to

³⁹ Kamala Mallik-Kane & Christy A. Visher, *Health and Prisoner Reentry: How Physical, Mental, and Substance Abuse Conditions Shape the Process of Reintegration*, URBAN INSTITUTE: JUST. AND POLICY CNTR. (February 2008).

⁴⁰ John Malcolm & John-Michael Seibler, *Protecting Public Safety or Encouraging Recidivism?* The Heritage Foundation (Mar. 7, 2017).

⁴¹ Matt Dummermuth, *Reducing Recidivism in Released Offenders Improves Public Safety*, U.S. DEPT. JUST. OFFICE JUST. PROGRAMS (June 10, 2019).

⁴² *Id.*

⁴³ John Malcolm & John-Michael Seibler, *Protecting Public Safety or Encouraging Recidivism?* The Heritage Foundation (Mar. 7, 2017).

⁴⁴ *Id.* See also, Adiah Price-Tucker et al., *Successful Reentry: A Community-Level Analysis*, Harvard Inst. Politics (Dec. 2019).

⁴⁵ *Id.* Ideally, reentry programming should become part of the bail hearing process. Reentry programs could be an alternative sentence, part of the decision whether or not to revoke probation, or court ordered pending trial or a change of plea. We envision judges thinking about reentry programs at every stage of the process.

⁴⁶ Tiffany Baffour et al., *Exploring Employer Perceptions of Hiring Ex-Offenders*, CRIMRXIV (Oct. 2021).

re-frame prison systems with a rehabilitative focus, rather than a punitive one; one that teaches individuals how to succeed without crime, through education and training.

A. The Benefits of Education and Training on Recidivism Rates.

Investing in prison education programs can reduce national spending, decrease recidivism rates, and boost our economy.⁴⁷ The United States economy loses an estimated \$60 billion per year to the loss of labor from incarcerated individuals.⁴⁸ Research shows that individuals who are engaged in educational programming while incarcerated are forty-eight percent less likely to return to prison upon release.⁴⁹ Individuals who receive training during incarceration experience increased income opportunities; lower unemployment rates; greater political engagement; and increased health outcomes upon release.⁵⁰ Beginning in 2023, all individuals with a criminal record as well as those currently incarcerated, will become eligible for Pell Grants through the FAFSA application.⁵¹ Pell Grants are special funding that is not required to be paid back.⁵² Expanding access to postsecondary education will assist in lower state reincarceration spending; RAND reports that for every \$1 investment into prison education programs, there is a \$4-5 dollar reduction in incarceration costs during the first three years following release⁵³ and incarcerations

⁴⁷ Recently, the Community Justice Support Centers were awarded a \$900,000 three-year grant from the DOJ Bureau of Justice Assistance for a High-Tech Career Reentry Path (HTCRP) Project. This project has partnered with Benjamin Franklin Cummings Institute of Technology for its Computer Information Technology Program to provide education and training to put this job into action. The CJTF will assist by determining the educational requirements and training needed to move from entry-level positions in IT to higher level positions in the biotech field, develop curriculum, and address any barriers.

⁴⁸ Kathleen Bender, *Education Opportunities in Prison are Key to Reducing Crime*, Ctr. Am. Progress (Mar. 2, 2018), available at <https://www.americanprogress.org/article/education-opportunities-prison-key-reducing-crime>

⁴⁹ *Towards a New Framework for Achieving Decarceration: A Review of the Research on Social Investments*, Executive Session on the Future Justice of Policy, The Square One Project, (Oct. 2021).

⁵⁰ Adiah Price-Tucker et al., *Successful Reentry: A Community-Level Analysis*, Harvard Inst. Politics (Dec. 2019).

⁵¹ S. 2667 (116th): FAFSA Simplification Act of 2019

⁵² Camilla Watson, *The Future of Lower-Income Students in Higher Education: Rethinking the Pell Program and Federal Tax Incentives*. Florida State University Law Review, Volume 45, Issue 4, (2018).

⁵³ *Social and Economic Well-Being*, The RAND Corp.: Correctional Education, (2022). Available at <https://www.rand.org/well-being/justice-policy/portfolios/correctional-education/policy-impact.html>

costs across the United States are believed to decrease by a combined \$365.8 million per year.⁵⁴ However, current prison programs do not take the comprehensive approach needed to guarantee successful employment.⁵⁵

B. Criminal Records Impose Barriers in Accessing Employment

In the United States, nearly one in three adults has a criminal record.⁵⁶ Criminal convictions serve as extreme barriers for those searching for employment post-release.⁵⁷ This can occur due to ongoing struggles with substance use and mental health issues, as well as lack of education or diminished physical health.⁵⁸ Many formerly incarcerated individuals have overcome these barriers and possess highly marketable skills, yet still face barriers to finding employment due to exclusionary employment laws.⁵⁹ The average unemployment rate among those who were formerly incarcerated is 27% higher than the total unemployment rate in the United States across any period in the country's history.⁶⁰

Often, insurance companies will not provide commercial crime insurance to businesses if their employees have a criminal record, thus many remain unemployed because employers avoid hiring individuals with criminal records. Commercial crime policies cover losses for acts such as robbery, theft, extortion, and fraud by employees. Former Governor Cuomo addressed this issue

⁵⁴ Cara Brumfield et. al., *Investing in Futures: Economic and Fiscal Benefits of Postsecondary Education in Prison*, Vera Institute of Justice, (2019).

⁵⁵ Kathleen Bender, *Education Opportunities in Prison are Key to Reducing Crime*, Ctr. Am. Progress (2018).

⁵⁶ Melissa Ader, *The Worker Justice Project: A Blueprint for a Comprehensive Criminal Employment Law Practice*, 44 *Harbinger* 67, 76 (2020).

⁵⁷ Dallan Flake, *When Any Sentence is a Life Sentence: Employment Discrimination Against Ex-Offenders*, 93 *Wash. U. L. Rev.* 45, (2015).

⁵⁸ *Id.*

⁵⁹ Elena Saxonhouse, *Unequal Protection: Comparing Former Felons' Challenges to Disenfranchisement and Employment Discrimination*, 56 *Stanford Law Review* 1597, 1611, (2004).

⁶⁰ Andrew M. Weaver, *Survey of Illinois Law: Section 5.2 of the Criminal Identification Act: The Expungement and Sealing of Illinois Criminal Records*, 43 *S. Ill. U. L.J.* 889, 890 (2019).

in New York by passing legislation to bar insurers from excluding commercial crime insurance to companies who hire people with criminal records.⁶¹ New York legislation thus prevents insurance issuers from precluding commercial crime policies, even if they hire an employee with a criminal record. The federal government has also stepped in to address this problem. The Biden Administration will provide a six month surety bond that essentially insures the company for loss, theft and fraud for the first six months that the company employs those with a prior record.⁶² Instead of eliminating applicants based on their prior bad acts, this paper proposes skills-based or *fair-chance hiring*, to evaluate applicants based on their qualifications and fill the substantial job shortage felt across many industries.⁶³ CJTF, working with the Dept of Probation and the CJRCs, is helping to build a project titled “The Jail to Jobs Pipeline” whose goal is to connect companies and industries in need of employees to the individuals reentering searching for employment.⁶⁴

One of the leading programs aimed at beginning the reentry transition during incarceration and then continuing post-release training is “The Last Mile” which has successfully assisted participants to build marketable personal and professional skills to obtain stable and satisfying employment.⁶⁵ The goal of The Last Mile is to develop skills in technology and business, two fields that are in desperate need of workers, and turn these valuable skills into lifelong careers.⁶⁶ The Center for Employment Opportunities (CEO), is another leading program

⁶¹ Joel Stashenko, *No Insurance Limits for NY Employers who Hire Ex-Convicts, Says New Regulation*, PropertyCasualty360, (2016). Available at <https://www.propertycasualty360.com/2016/12/30/no-insurance-limits-for-ny-employers-who-hire-ex-convicts-says-new-regulation/> .

⁶² Cite Catherine

⁶³ *Id.*

⁶⁴ Criminal Justice Task Force, *Jail to Jobs Pipeline* (2022).

⁶⁵ The Last Mile, *Our work* (2021) Available at <https://thelastmile.org/our-work>

⁶⁶ *Id.*

in post-prison employment and has expanded across 11 states.⁶⁷ Their focus is providing those released with paid “job-readiness training” to gain immediate experience into a career with public enterprises such as state housing authorities or state department of transportation agencies. The social enterprise phase is financed with state contracts paid for by the state agencies employing these people to do trash removal, landscaping, cleaning out apartments, etc. With the opportunity to work on crews at these job sites, formerly incarcerated people develop meaningful job skills and earn salaries to sustain a successful life. Later, they are placed in private industry with on going workshops, financial literacy, and communication practices.⁶⁸

The medical field is another industry that is facing a severe shortage of workers.⁶⁹ To meet the growing need of healthcare workers, Johns Hopkins Hospital has established a set of hiring procedures to hire a larger percentage of people with prior criminal records.⁷⁰ Johns Hopkins adopted a three-pronged approach to developing their workforce: engage incumbent workers by providing skills to move into jobs that offer higher wages, excite youth to pursue health care as a career and provide development opportunities, and hire from non-traditional sources and therefore provide opportunities for those with a limited work history].⁷¹ The changes incorporated by John Hopkins to better assist in the hiring process of individuals with records include removing the box.⁷² Thirty-five states have “ban-the-box” laws, which help mitigate

⁶⁷ Massachusetts is the seventh state to adopt the Last Mile program. See “Baker-Polito Administration Brings Coding Program, The Last Mile” *Mass.gov*, Massachusetts Department of Correction, 22 Dec. 2022, <https://www.mass.gov/news/baker-polito-administration-brings-coding-program-the-last-mile-to-the-massachusetts-department-of-correction>.

⁶⁸ Center for Employment Opportunities: Our Model and Our Mission, <https://www.ceoworks.org/our-model> (last visited Jan 23, 2023).

⁶⁹ Pamela Paulk, *The Johns Hopkins Hospital Success in Hiring Ex-Offenders*, Johns Hopkins Medicine, (Sept. 2016). Available at: <https://www.diversityincbestpractices.com/medialib/uploads/2016/09/Paulk-Presentation-Hiring-Ex-Offenders-09142016.pdf>

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

employment discrimination on the basis of a criminal record by prohibiting the questions about convictions on the job application, thus an employer can not inquire about past convictions until the job offer stage, after they have already deemed the individual to be an ideal candidate otherwise.⁷³ Once the individual is provided a conditional offer of employment, a background check is conducted and then filed away with HR, and the manager is not notified of the criminal history unless a dispute arises.⁷⁴ Once hired, the individual is assigned a coach to help them throughout their transition.⁷⁵

Follow up studies conducted by Johns Hopkins have revealed numerous success stories.⁷⁶ A five-year study of almost 500 ex-offenders hired showed a lower turnover for the first 40 months of employment versus non-offender employees.⁷⁷ A close study followed 79 employees with serious criminal records for three to six years and found that 73 of them were still employed with Johns Hopkins by the end of the study and only one had involuntarily been terminated.⁷⁸ Thus, expungement and sealing courts should be a priority because if a criminal record is preventing someone from obtaining employment, how can they be expected to be productive members of society?⁷⁹

C. Expungement and Record Sealing as a Tool

⁷³ Suzanne Lucas, *What Employers Must Know About Hiring Convicted Felons*, Liveaboutdotcom, (Dec. 2019).

⁷⁴ Pamela Paulk, *The Johns Hopkins Hospital Success in Hiring Ex-Offenders*, Johns Hopkins Medicine (2016).

⁷⁵ *Id.* Massachusetts could follow this model for companies hire a coach with the CJSC's to get the resources an individual with a criminal record would need to find employment, or use the reentry coordinators to provide coaching through navigators to help those with criminal records get the resources they need.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Adiah Price-Tucker et al., *Successful Reentry: A Community-Level Analysis*, Harvard Inst. Politics (Dec. 2019).

When an individual is charged with a crime, their case file becomes public record, and anyone is able to look at the file by visiting the court clerk.⁸⁰ Expungement or record sealing can allow a person with a conviction or arrest record to erase, or at least conceal that fact and present a clean record.⁸¹ More than two-thirds of states have enacted statutes which permit adult criminal convictions to be sealed or expunged.⁸² Generally, the standard for expungement requires a judge's discretion to hear the facts of the individual's case and determine "what is in the best interest of justice."⁸³ However, there has been increasing interest in expanding statutory provisions which would automatically clear an individual's criminal record without them having to petition the court and pay a fee.⁸⁴ After a record is expunged, the law provides that those who have had their records expunged cannot be held guilty of perjury or giving a false statement by reason of the person's failure to acknowledge such a record in response to any inquiry made of him or her for any purpose.⁸⁵

Generally, prosecutors and judges fear that expungements will be granted inappropriately and worry that destroying criminal records could result in increased risk to the community.⁸⁶ However, this paper proposes employing retired judges to run an expungement and sealing session in district court.⁸⁷ Expungement eliminates the record, while sealing makes the

⁸⁰ Thomas Feiter, *Expunged vs Sealed: What's the Difference?* Fighter Law, (2013).

⁸¹ Amy Kimpel, *Paying For a Clean Record*, 112 J. Crim. L & Criminology 439, 447, (2022).

⁸² J.J. Prescott & Sonja Starr, *Expungement of Criminal Convictions: An Empirical Study*, 133 Harv. L. Rev. 2460, 2472, (2020).

⁸³ G.L. c. 276, § 100K(b).

⁸⁴ National Conference of State Legislatures (NCSL), *Automatic Clearing of Records*, Criminal Justice Program, (2021).

⁸⁵ Greater Boston Legal Services, *Sealing and Expungement of Criminal Offender Record Information (CORI)*, Re-Entry Project, (2018) Available at: <https://www.masslegalhelp.org/cori/know-your-rights-booklet.pdf> .

⁸⁶ Katherine O' Brien, *Top 10 Reasons Why Expungements Are Objected to in NJ*, Law Offices of Katherine O' Brien, (May 2017).

⁸⁷ After Incarceration: The Role of the Attorney in Reentry, SOCIAL LAW LIB., COMMUNITY JUSTICE SUPPORT CENTERS, (Dec. 6, 2022), https://us02web.zoom.us/rec/play/8c7ftEw8F88dnoUk6gDVcpfYb3X5Gc3vjx-Z83-t6WJ_mmKQc4kaqBdY1upS61uH-97ApMqow-z-DBp.AkfZRKWN73nTpDP0?continueMode=true&_x_zm_rtaid=AjdSsI1pQRSCfvBck4hmJg.1672414967853.cda42a628aa1ca3d4cf9330c564517fc&_x_zm_rhtaid=314

record confidential, so it can be hidden from employers, but remains visible to judges. For this reason, judges prefer sealing.⁸⁸⁸⁹ Employing retired judges will eliminate lingering concerns around the safety of essentially “clearing” criminal records because these judges have the tried and true ability to assess the associated advantages and disadvantages of the petitioner's request to seal or expunge.⁹⁰ Judges can determine the benefits of retaining the records by viewing the relevant facts of the individual's case, such as the seriousness of the offense, the stigma around the offense, the petitioner's age at the time of the offense, and how much time has passed since the offense. A retired judge would be trusted among their peers to make these weighted decisions.⁹¹ Expungement and sealing courts would provide a liberal system for individual determinations that evaluate the story and consider risks on a case-by-case basis.⁹² States could hold expungement courts in any location, whether it be at a university, virtually, or a session of the courts.⁹³

III. THE ULTIMATE SOLUTION : A State-Wide, State-Funded Reentry Network

Massachusetts is currently implementing the following model of reentry and this paper encourages others to follow: the creation of a state-wide, state-funded network offering reentry services for all formerly incarcerated individuals, federal or state, regardless of their

⁸⁸ The Difference Between Expungement and Sealing, *Bay Area Legal Services*, <https://bals.org/help/resources/what-difference-between-expungement-and-sealing> (last visited Jan 24, 2023).

⁸⁹ This presents an opportunity for law schools to develop clinics for sealing and expungement courts and train students to represent individuals who need their records sealed or expunged.

⁹⁰ *Commonwealth v. Pon*, 469 Mass. 296, 316 (2014).

⁹¹ *Id.*

⁹² After Incarceration: The Role of the Attorney in Reentry, SOCIAL LAW LIB., COMMUNITY JUSTICE SUPPORT CENTERS, (Dec. 6, 2022), https://us02web.zoom.us/rec/play/8c7ftEw8F88dnoUk6gDVcpfYb3X5Gc3vix-Z83-t6WJ_mmKQc4kaqBdY1upS61uH-97ApMqow-z-DBp.AkfZRKWN73nTpDP0?continueMode=true&_x_zm_rtaid=AjdSsI1pQRSCfvBck4hmJg.1672414967853.cda42a628aa1ca3d4cf9330c564517fc&_x_zm_rtaid=314

⁹³ *Free Adult Expunction and Juvenile Record Sealing Clinic*, Riogrande Legal Aid (May 2022). (Texas has begun “Social Justice Court Nights” at to offer pro-bono representation that includes free, virtual appointments for Expungement and Juvenile Record sealing)

parole or probation status.⁹⁴ A connected network can decrease barriers to attainment of sufficient employment, housing, and skills necessary to navigate society post-incarceration.⁹⁵ Reentry services begin at the time of arrest, and continue to be available in prison, with access to education, training, and all essential reentry resources accessible to them through a Navigator upon release to set them up for success upon arrival back into the community.⁹⁶ This community support network will be expansive, with assignments to community navigators who will be trained by the Office of Community Justice Support Centers (CJSC), who will collaborate with probation officers and create a direct access to resources pertinent to substance use recovery.⁹⁷ This model is Massachusetts-based with specific organizations relative to the area, but the approach provides other states a viable roadmap to create their own models.⁹⁸ In Massachusetts, this model begins at arraignment and continues to assist defendants once they leave prison or jail.⁹⁹ While this model is a work in progress, it can still be an example of what might be possible.

a. How Massachusetts established State-Wide and State-Funded Reentry: through legislation and funding secured in the state budget to carry out the expansive resources effectively

⁹⁴ Ben Forman, *Justice Reinvestment Gets Seed Funding in Budget*, Commonwealth Magazine, (Aug 3, 2019) (For fiscal year 2019, the Massachusetts legislature inserted language into the annual budget line for OCC, which authorized OCC to provide reentry services to all residents of Massachusetts who were leaving jail or prison. Specifically, the enacting legislation stated, “the Office of Community Corrections shall provide reentry services to all persons, regardless of probation or parole status.”)

⁹⁵ Jeremiah Mosteller, *Why Reentry Programs are Important*, Hope for Prisoners (Dec. 13, 2018) (Studies show eight fundamental areas that impact success or failure of establishing a law-abiding life: transportation; clothing, food, and amenities; financial resources; documentation; housing; employment and education; health care; and support systems, which are most important in the first days immediately following release.)

⁹⁶ Criminal Justice Task Force, *State-Wide Reentry Network* (2022).

⁹⁷ Criminal Justice Task Force, *State-Wide Reentry Network* (2022).

⁹⁸ *Id.*

⁹⁹ Community Correction Centers Offer New Pre-Trial Options, *Massachusetts Lawyers Weekly*, at 2 (2019).

To establish the first state-wide, state-funded reentry network in Massachusetts, initiatives from stakeholders across the board were necessary to make a centralized program a reality.¹⁰⁰ In 1996, a state task force found that the lack of options between probation and incarceration left a concerning gap in the criminal justice system and recommended developing the Office of Community Corrections (OCC).¹⁰¹ The OCC was developed to establish a more effective system for criminal justice sentencing.¹⁰² The OCC worked in conjunction with the DOC, county sheriffs, the parole board, and the probation department.¹⁰³ Their duties include maintaining services for supervision such as accountability of daily schedules, regular reporting structures, and treatment through substance use counseling, employment training, and community service opportunities.¹⁰⁴

Until recently, the OCC was an underutilized agency which lacked the necessary funding to adequately assist with generalized reentry. Its services were limited to serving only those on parole and probation, consequently leaving out a significant population of individuals who did not qualify for conditional release.¹⁰⁵ This led to insufficient programming and inconsistent knowledge regarding available resources.¹⁰⁶ Most individuals were deterred from seeking services from OCC because they operated punitively, functioning as drug testing centers to enforce conditions of parole or probation with the court system, while also imposing

¹⁰⁰ *Id.*

¹⁰¹ *Learn About the History of the Office of Community Corrections*, Mass.Gov, available at: <https://www.mass.gov/info-details/learn-about-the-history-of-the-office-of-community-corrections#overview->.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Brian A. Callery & John J. Laviree, *Returning Inmates: Closing the Public Safety Gap*, Community Resources for Justice, at 5, (Jan. 2001).

¹⁰⁶ Benjamin Forman & Michael Widmer, *Getting Tough on Spending: An Examination of Correctional Expenditure in Massachusetts* 16-17; John Larivee & Marie St. Fleur, *The Mass. Legislature Should Act to Dramatically Increase its Investment in Reentry Programs*, WBU Cognoscenti (June 29, 2018).

consequences for violations such as requirements to attend classes or appointments, therefore creating further obstacles to maintaining employment.¹⁰⁷

Massachusetts passed legislation in 2019, redirecting OCC's responsibilities to expand reentry and allocated additional funding for this purpose in the state budget.¹⁰⁸ OCC centers were renamed the Community Justice Support Centers (CJSC) in hopes of revitalizing the organization and allowing for more expansive outreach of support services.¹⁰⁹ Thus, reentry services were expanded to *all* state and federal formerly incarcerated persons in Massachusetts returning from incarceration, regardless of parole or probation status.¹¹⁰ However, although CJSC was theoretically authorized to provide expansive reentry services, sufficient funds were not granted to effectively provide the services described.¹¹¹

Northeastern University's Criminal Justice Task Force (CJTF) created a subcommittee focused on reentry in 2020.¹¹² The Task Force drafted a proposal for reentry funding to

¹⁰⁷ Brian A. Callery & John J. Laviree, *Returning Inmates: Closing the Public Safety Gap*, Community Resources for Justice, at 5, (Jan. 2001).

¹⁰⁸ *Massachusetts Legislature FY2020 Final Budget*, § 0339-1003, Commonwealth of Massachusetts (2019). (“not less than \$130,000 shall be expended to evaluate the caseload of parole and probation officers, hire new officers accordingly and expand programs and services at community corrections centers...”).

¹⁰⁹ *Community Corrections Centers are now Community Justice Support Centers*, Social Law Library (June 30, 2021). (training event to reshape community justice process). Note: It should be noted that this statewide model utilizes funding allocated through the legislature and the judiciary, as the Massachusetts Probation Department is part of the court system. However, we recognize that many other states receive reentry funding from the executive branch through the Department of Corrections or Probation to allocate to their own reentry models. Our model is meant to serve as one possible funding option, as states receive funding by other means. For example, Virginia has formed a coalition of reentry service providers funded by the Virginia General Assembly, which is overseen by the Department of Criminal Justice Services. Maine partners with the Department of Correction and relies on charitable donations to fund their reentry networks.

¹¹⁰ *Massachusetts Legislature FY2020 Final Budget*, § 0339-1003, Commonwealth of Massachusetts (2019). (“0339-1003..... For the office of community corrections...the office shall submit... (v) plans for increasing the use of community corrections centers by the courts, the department of correction and the county sheriffs’ offices; provided further, that the executive director may make funds from this item available for rehabilitative pilot programs that incorporate evidence-based corrections practices; and provided further, that the office may provide re-entry services programs, which shall not operate as intermediate sanctions programs as defined under section 1 of chapter 211F of the General Laws, to any person released from incarceration including, but not limited to, any probationer or parolee..... \$57,292.”). It is worth emphasizing that this language is broad enough to include both state and federal prisoners.

¹¹¹ Criminal Justice Task Force, *State-Wide Reentry Network* (2022).

¹¹² Criminal Justice Task Force, *NORTHEASTERN UNIVERSITY SCHOOL OF LAW* (2022).

<https://law.northeastern.edu/academics/centers/criminal-justice-task-force/> (last visited Jan 3, 2023). (This task-

implement the legislation and the funding was approved in 2022, making Massachusetts the first state with a state-wide, state-funded reentry network.¹¹³ Now armed with the necessary funding, all CJCS offices can work together to establish a statewide system with consistent programming to reduce recidivism and increase the rates of successful reentry based on well-established methods.¹¹⁴

The goal of a community-based model is to utilize a navigator to be a support to those released from prison or jail, and increase their chances of effectively reintegrating into society by connecting them with available jobs, housing, healthcare, and services.¹¹⁵ Communities see advantages such as lower rates of crime and decreased taxpayer spending for each person that successfully reintegrates.¹¹⁶ Rather than a “community mentor”, the Navigator model will specialize in problem solving through various post-incarceration challenges, serve as a link to all essential reentry resources, and act as a trustworthy liaison to help communicate with local services and the probation department.¹¹⁷

Prong 1: Navigators Support & Keep Accountability with probation conditions such as SUD testing:

The goal of the navigator program is to begin a relationship prior to release, to effectuate better communication, and to ensure a smoother transition upon release.¹¹⁸ CJSC, who will be

force includes representatives from the judicial, legal and public policy communities and collaborates to facilitate communication to establish training for navigators in the reentry program and training for judges in restorative justice and confronting racial injustices.)

¹¹³ *Id.* This funding is the result of advocacy by the Criminal Justice Task Force’s Subcommittee on Reentry, headed by Massachusetts Appellate Court Justice Sydney Hanlon (ret.) and Superior Court Judge Rosalind Miller (ret.), who worked on this initiative with State Senator Will Brownsburger,.

¹¹⁴ *Collaboration Between System and Community that Reduces Incarceration*, Community Justice in Massachusetts Training, Social Law Library, (2022).

¹¹⁵ Marie Skubak Tillyer & Brenda Vose, *Social Ecology, Individual Risk, and Recidivism: A Multilevel Examination of Main and Moderating Influences*, Journal of Criminal Justice Vol. 39, Issue 5, (Sept.-Oct. 2011).

¹¹⁶ Adiah Price-Tucker et al., *Successful Reentry: A Community-Level Analysis*, Harvard Inst. Politics (Dec. 2019).

¹¹⁷ Criminal Justice Task Force, Siobhan Fanning, CENTER FOR LAW, EQUITY AND RACE AT NORTHEASTERN UNIVERSITY SCHOOL OF LAW (2022).

¹¹⁸ *Id.*

hiring and training the navigators, plans to rely on the inter-faith community and other local partners to recruit volunteer community members who are willing to commit to the role for approximately eighteen months.¹¹⁹ Ideally, the first six months of the eighteen-month period will occur while the individual is incarcerated, by phone or in person, to best prepare and plan prior to their release.¹²⁰ Navigators will be able to communicate with the individual's probation officer, determine the needs of the individual, and assist them in finding housing, employment, and medical or mental health providers in order to ensure that these needs are met without delay.¹²¹ This early interaction between mentor and mentee could also provide the opportunity for mentors to help individuals get set up with a pre-release program in the jail or prison to make their transition into the community easier. Currently, CJSC is working to create virtual training resources that can be implemented in all CJSC locations to recruit and train community volunteer members so that anyone, regardless of their background, can serve as a Navigator.¹²² CJSC plans to work with volunteers to create second chance hiring programs and will host community events tailored to the

¹¹⁹ After Incarceration: The Role of the Attorney in Reentry, SOCIAL LAW LIB., COMMUNITY JUSTICE SUPPORT CENTERS, (Dec. 6, 2022), https://us02web.zoom.us/rec/play/8c7ftrEw8F88dnoUk6gDVcpfYb3X5Gc3vjx-Z83-t6WJ_mmKQc4kaqBdY1upS61uH-97ApMqow-z-DBp.AkfZRKWN73nTpDP0?continueMode=true&_x_zm_rtaid=AjdSsI1pQRSCfvBck4hmJg.1672414967853.cda42a628aa1ca3d4cf9330c564517fc&_x_zm_rhtaid=314

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.* CJSC obtained a grant from State Justice Institute to create an online training program for the community trained navigators. CJSC has created three training modules which will be used in the recruiting and training of volunteers to serve as community-based mentors throughout Massachusetts.

Access to resources can be inconsistent through nineteen different CJSC offices in the state of Massachusetts, each within a different community, which all have very different opportunities and resources to offer. In an effort to combat this lack of coordination amongst the various communities and community resources across the state, Northeastern University School of Law has created a Criminal Justice Task Force, which includes a reentry sub-group that works with the State Department of Correction; the head of Reentry for Massachusetts State Department of Correction; former sheriffs; former Department of Correction personnel; and formerly incarcerated persons.

One way this is being accomplished currently is through the mapping of available organizations and agencies offering resources and support for reentry in each community. The task force's reentry sub group hopes to build upon directories already in existence to fill in any remaining gaps in these communities, while also expanding the directories to all communities across the state

specific needs of those returning from prison, such as job fairs, housing fairs, and job skills training programs.¹²³

Due to racial disparities in incarceration rates, navigators can be especially impactful in many communities of color, particularly among Black and Latinx populations.¹²⁴ Many formerly incarcerated Black and Latinx individuals find their surrounding environment to be devastated by the enlarged social effects of mass incarceration.¹²⁵ Navigators can provide an alternative for those who have limited access to resources and planning, regardless of one's socioeconomic status or familial and community support.¹²⁶

CJCS will recruit, train, and supervise community volunteer members to become navigators for prisoners.¹²⁷ Community-based navigators, unlike probation or parole officers, are free to pursue a straightforward relationship built on advocacy and support, which will foster trust and engagement.¹²⁸ This further supports public safety by increasing access to treatment and decreasing potential conflicts, such as those that may arise with police.¹²⁹ Individuals can instead turn to their personal navigators, who are not mandatory reporters and are not connected to the criminal justice system.¹³⁰ Incarceration leads many individuals to have a distrust for law

¹²³ Because OCC is an extension of the probation department, they are able to access the resources which probation utilizes, including housing contracts and other service providers. These large-scale community events enable CJSC to record the number of providers and individuals who participate in these events as evidence of the success of the programs and services offered which assists in requesting additional funding from the state legislature.

¹²⁴ Adrienne Lyles-Chockley, *Transitions to Justice: Prisoner Reentry as an Opportunity to Confront the Counteract Racism*, Hastings Race & Poverty L.J., Vol. 6, 259 (2009).

¹²⁵ *Id.*

¹²⁶ After Incarceration: The Role of the Attorney in Reentry, SOCIAL LAW LIB., COMMUNITY JUSTICE SUPPORT CENTERS, (Dec. 6, 2022), https://us02web.zoom.us/j/8c7f7Ew8F88dnoUk6gDVcpfYb3X5Gc3vjx-Z83-t6WJ_mmKQc4kaqBdYlupS61uH-97ApMqow-z-DBp.AkfZRKWN73nTpDP0?continueMode=true&_x_zm_rtaid=AjdSsI1pQRSCfvBck4hmJg.1672414967853.cda42a628aa1ca3d4cf9330c564517fc&_x_zm_rtaid=314

¹²⁷ *Id.*

¹²⁸ Adiah Price-Tucker et al., *Successful Reentry: A Community-Level Analysis*, Harvard Inst. Politics (Dec. 2019).

¹²⁹ *Id.*

¹³⁰ *Id.*

enforcement.¹³¹ Studies illustrate that contact with community corrections, even indirectly, can perpetuate the cycle of recidivism.¹³² A navigator can communicate on their mentee's behalf, so formerly incarcerated individuals can take advantage of services available rather than avoiding agencies out of fear of returning to incarceration.¹³³

This collaboration increases public safety and encourages strong community relationships which leads to a smoother transition back into society.¹³⁴ Transition can be challenging, particularly for those under community supervision.¹³⁵ In Massachusetts, courts generally expect individuals on probation to remain free of drugs and alcohol, attend recovery programming, become employed, secure housing, and acquire insurance after being incarcerated.¹³⁶ A community navigator program and updated drug testing system can maintain obligations of parole or probation and enhance success for individuals who may lack a strong support system.¹³⁷ Most agencies, like the OCC in Massachusetts, have high caseloads that prevent individuals from receiving the personalized attention they require.¹³⁸ Probation officers often have unmanageable

¹³¹ *Towards a New Framework for Achieving Decarceration: A Review of the Research on Social Investments*, Executive Session on the Future Justice of Policy, The Square One Project, (Oct. 2021).

¹³² *Id.*

¹³³ Adiah Price-Tucker et al., *Successful Reentry: A Community-Level Analysis*, Harvard Inst. Politics (Dec. 2019). Because many individuals leaving incarceration have been traumatized by their experiences and have a justifiable distrust for government and agency workers, many hope to never interact with law enforcement or a government agency again. Through the utilization of community volunteers, navigators can act as a representative of reentering individuals, to assist in obtaining the resources they need for successful reentry, without the individuals themselves having to interact with these agencies.

Interview with Leslie Walker, Northeastern University School of Law graduate and former Director of Prisoners' Legal Services of Massachusetts, June 7, 2021.

¹³⁴ Matthew A. Koschmann and Brittany L. Peterson, "Rethinking Recidivism: A Communication Approach to Prisoner Reentry" *Journal of Applied Social Science*.
https://journals.sagepub.com/doi/pdf/10.1177/1936724412467021?casa_token=OiCS3t8L6sEAAAAA:26tXpEalOeW4FLlqljF_y-UO7EUtoPq-vITPB6KwVEHed7CK8HXZDRDKPRnWISRTTZenvsYcApI0A

¹³⁵ *Id.*

¹³⁶ *Learn About Your Probation Sentence*, MASS.GOV, <https://www.mass.gov/service-details/learn-about-your-probation-sentence> (last visited Jan 3, 2023).

¹³⁷ *Policy Reforms Can Strengthen Community Supervision*, PEW TRUSTS, (2020).
<https://www.pewtrusts.org/en/research-and-analysis/reports/2020/04/policy-reforms-can-strengthen-community-supervision>.

¹³⁸ *Id.*

caseloads, for example, in Brockton, a Massachusetts probation officer can be supervising up to 90 people at a time.¹³⁹ Inadequate levels of supervision and unreasonable requirements from parole and probation are another factor hindering successful reentry.¹⁴⁰ Technical violations such as missing an appointment with your supervising officer, fraternizing with others who have a criminal record, any drug use, or failing to pay a fine are all violations that can lead to rearrest.¹⁴¹ A community navigator could help communicate with supervising officers and avoid violations, as a disturbing twenty-six percent of new prison admissions are due solely to non-criminal technical violations.¹⁴²

Prong 2: Using Contingency Management to Address Substance Use Disorder

Many people reentering are simultaneously battling substance use disorders and sobriety.¹⁴³ Testing and monitoring is mandated to maintain parole or release, and studies show that unless the substance use treatment received during incarceration is maintained upon return to the community, chances are individuals will relapse and possibly recidivate as a result of their drug use.¹⁴⁴ The court may order completion of one or more treatment programs, which either take several months to complete or individuals are required to make inconvenient visits to in-

¹³⁹ Dan Cathey & Chris Miller, *Research Adult Probation and Parole*, NEW MEXICO SENTENCING COMMISSION, 2, (2007) ; *see also* Interview with Diane M. Barry, Ass. Chief Probation Officer, Plymouth Superior Court (January 2, 2023).

¹⁴⁰ Doherty, Fiona, *Obey All Laws and Be Good: Probation and the Meaning of Recidivism*, Georgetown Law Journal, Vol. 104, No. 2, pg. 317, 2016.

¹⁴¹ Carrie Pettus-Davis & Stephanie Kennedy, *Going Back to Jail Without Committing a Crime: Early Findings From a Multi-State Trial*, Inst. Just. Res. & Dev. (Feb. 2020) (describing a man who spent a decade in prison for nonviolent drug offense and upon release managed to get life back on track and get job he loved; probation officer will not accommodate his work schedule for drug testing.)

¹⁴² *Probation and Parole Systems Marked by High Stakes*, Public Safety Performance Brief, Pew Trusts (September 25, 2018).

¹⁴³ Adiah Price-Tucker et al., *Successful Reentry: A Community-Level Analysis*, Harvard Inst. Politics (Dec. 2019).

¹⁴⁴ *The Surgeon General's Report on Alcohol, Drugs, and Health*, Substance Abuse and Mental Health Services Administration from Washington DC, Ch. 4. (November 2016).

person facilities for drug testing.¹⁴⁵ The current drug testing system includes random drug-testing to be performed in the presence of a probation officer.¹⁴⁶ Drug tests are only scheduled a day or two in advance, thus many people struggle to find last-minute childcare, transportation, or time off of work.¹⁴⁷ Missing a drug test or appointment with a probation officer is a technical violation and could result in probation being revoked and reincarceration.¹⁴⁸ Drug tests must be shipped to a testing facility, taking days to reach results.¹⁴⁹ This approach is not only humiliating and demeaning for those subjected to the testing, but also not time- or cost-effective.¹⁵⁰

In an attempt to alleviate drug testing burdens, this paper proposes the use of technology-based Contingency Management (CM) interventions as an alternative to punitive drug testing.¹⁵¹ This efficient, discrete, and cost-effective model includes daily testing and rewards for negative screens. For the purposes of this paper, we will be discussing the CM program DynamiCare.¹⁵² DynamiCare promotes rewarding behavior to reinforce health habits rather than punish negative behavior, it is run through a mobile application with GPS monitoring¹⁵³ that allows for remote drug testing, appointment tracking, direct payment of financial rewards for positive behaviors, in

¹⁴⁵ Deborah Becker, *Judges can require drug users on probation to remain drug-free*, WBUR NEWS (2018).

¹⁴⁶ Carrie Pettus-Davis & Stephanie Kennedy, *Going Back to Jail Without Committing a Crime: Early Findings From a Multi-State Trial*, Inst. Just. Res. & Dev. (Feb. 2020).

¹⁴⁷ Elizabeth Flock & Ashley Remkus, *How Court-Ordered Drug Testing Poses Impossible Choices*, PBS (2020).

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Contingency Management*, DYNAMICARE HEALTH, available at: <https://www.dynamicarehealth.com/contingency-management> (last visited Jan 3, 2023).

¹⁵² *DynamiCare Health for Health Plans*, DYNAMICARE HEALTH, available at: <https://www.dynamicarehealth.com/for-health-plans> (last visited Jan 3, 2023).

¹⁵³ Members may utilize the mobile application via cell phones, which allow for facial recognition to verify their identity, as well as a time and geographical location stamp for verification. It should also be noted that for those who do not have access to a cell phone upon release from prison or jail, may be able to obtain a free or discounted phone through the Obama Phone (Lifeline Assistance) program, which partners with phone carriers in each state. *See, Lifeline program for low-income consumers*, Federal Communications Commission: Telecommunication Access Division (2022), available at: <https://www.fcc.gov/general/lifeline-program-low-income-consumers> (last visited Jan 3, 2023).

addition to online recovery coaching and counseling services.¹⁵⁴ Through the use of a saliva test cup and breathalyzer, DynamiCare members are able to conduct their drug screenings from any location and once they receive a daily or random notification alerting them a test is due.¹⁵⁵ The individual then records a breathalyzer test over video in the mobile application, using the automated testing equipment and DynamiCare verifies the results.¹⁵⁶ For successful completion of substance tests and attendance at appointments, individuals are rewarded with money—typically ten dollars per day—that is deposited on a “smart” debit card which tracks spending and denies purchases that may jeopardize healthy behavior.¹⁵⁷ DynamiCare encourages individuals to make positive choices and further incentivizes a healthy lifestyle through monetary rewards to help with housing, transportation, or other needs.¹⁵⁸

DynamiCare, combined with the community-based navigator program, could alleviate judges’ hesitation to release someone with a history of substance use disorder, by allowing testing and remote treatment, so parolees are monitored without imposing a requirement to leave work or risk violating probation by missing an appointment.¹⁵⁹

The navigator program is the first step in humanizing the faces of reentry by creating a cost-effective method to monitor substance use while providing a professional and trained reentry

¹⁵⁴ *DynamiCare Health for Health Plans*, DYNAMICARE HEALTH; DynamiCare’s platform allows access to recovery coaching, as well as a number of other resources, including self-guided meditation and therapy models. These options allow a wide array of resources and methods for individuals to access to meet their individual needs and preferences.

¹⁵⁵ *Id.*

¹⁵⁶ *Can People Cheat the Substance Tests*, DynamiCare FAQs, DYNAMICARE HEALTH, (2019), available at <https://dynamicarehealth.helpscoutdocs.com/article/32-cheat-substance-tests> (last visited Jan 3, 2023).

¹⁵⁷ *Id.*

¹⁵⁸ Emily Murray, *Contingency Management Test To Pay Drug Users in California*, Addiction Center (2021), <https://www.addictioncenter.com/news/2021/10/contingency-management-test-pay-drug-users-california/> (last visited Jan 3, 2023).

¹⁵⁹ *Our Results*, DYNAMICARE HEALTH, <https://www.dynamicarehealth.com/our-results> (last visited Jan 3 2023). The success of this innovative approach provides an alternative to waiting for an open bed in residential Treatment program and decreases risk of recidivism for technical violations due to drug testing. Judges and probation officers would have peace of mind and provide an alternative option for judges rather than relying on sentencing someone struggling with substance use to jail or prison.

resource¹⁶⁰ However, creating this as part of the new system will take various measures of institutional support.¹⁶¹ The first step has been completed by securing annual funding.¹⁶² Massachusetts is now looking for a director to pilot the program and to hire employees to develop job-training and counseling services.¹⁶³

Prong 3: Using the Rich Network of Private Reentry Programs and the Expanding Reentry Resources to the Pre-Trial Stages of a Criminal Case

As noted earlier, like other states, Massachusetts currently has a wealth of privately -funded reentry organizations. However, these private organizations are uncoordinated and vary in their focus, scope and efficacy. The Massachusetts model plans to coordinate with existing reentry private organizations. First, each of the 19 CJSCs will provide those coming to the CJSCs with an updated, accessible, and accurate list of the current private and public options available. Second, these options could be recommended as non-incarceration alternatives by CJSC and the probation department, for judges at bail, sentencing, or probation revocation hearings.¹⁶⁴

In an ideal world, the private reentry programs would be included in a state-funded reentry model. An inmate leaving prison would go to a local Community Justice Support Center and learn about all reentry resources, including privately-funded reentry programs. In addition, in this ideal world, probation officers, upon advice of CJSC reentry coordinators, would recommend to a judge

¹⁶⁰ See, Criminal Justice Task Force, NORTHEASTERN UNIVERSITY SCHOOL OF LAW (2022). Available at <https://law.northeastern.edu/academics/centers/criminal-justice-task-force/> (last visited Jan 3, 2023).

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ After Incarceration: The Role of the Attorney in Reentry, SOCIAL LAW LIB., COMMUNITY JUSTICE SUPPORT CENTERS, (Dec. 6, 2022), https://us02web.zoom.us/rec/play/8c7ftEw8F88dnoUk6gDVcpfYb3X5Gc3vjx-Z83-t6WJ_mmKQc4kaqBdY1upS61uH-97ApMqow-z-DBp.AkfZRKWN73nTpDP0?continueMode=true&_x_zm_rtaid=AjdSsI1pQRSCfvBck4hmJg.1672414967853.cda42a628aa1ca3d4cf9330c564517fc&_x_zm_rhtaid=314

¹⁶⁴ Judge may order the defendant in lieu of bail to undergo as a condition of release the more comprehensive pre-trial treatment program at a Community Corrections Center. See Community Correction Centers Offer New Pre-Trial Options, *Massachusetts Lawyers Weekly* (2019).

that eligible defendants are placed in private reentry programs at court expense as part of bail conditions, an alternative to incarceration at the time of sentencing, or a second-chance option at a probation revocation hearing. This would nourish and support existing privately funded reentry programs to continue to function. In Massachusetts, there has been some experimentation with this idea. As Massachusetts expanded reentry services to the pre-trial arena, the CJSCs have been tasked with examining private and public reentry programs that could help defendants beginning at arraignment.¹⁶⁵ Pilot programs have been implemented to reduce recidivism through program, employment, and probation strategies for young adults who are at a high risk or reoffending.¹⁶⁶ The state currently has a contract with a private reentry program, UTEC, which provided services to 18-24 year old gang-involved individuals.¹⁶⁷

Prong 4: Amplifying the Voices of the Formerly Incarcerated to Inform our Reentry Approach

Our model advocates prioritizing feedback and ideas from those who have been formerly incarcerated and using their learned experiences from reentering firsthand.¹⁶⁸ Their insight will increase trust within the community, provide needed real-world feedback, and create meaningful work for formerly incarcerated individuals.¹⁶⁹ Being a community advocate is often a substantial unpaid time commitment, but in Massachusetts, the newly-formed Chief Justice Ralph D. Gants

¹⁶⁵ Community Correction Centers Offer New Pre-Trial Options, *Massachusetts Lawyers Weekly* (2019).

¹⁶⁶ Justice Reinvestment in Massachusetts, Council of State Governments Justice Center, 16, (2017), https://csgjusticecenter.org/wp-content/uploads/2020/01/FINAL_JC_Justice-Reinvestment-in-Massachusetts_3.21.17.pdf

¹⁶⁷ Emerging Adult Reentry Project, UTEC (2022), <https://utecinc.org/emerging-adult-reentry-project/> (last visited Jan 24, 2023).

¹⁶⁸ Interview with Justice Sydney Hanlon, Mass. App. Ct., (Oct. 7, 2022) (on file with author) (noting subcommittee on reentry work to adopt reentry program using guidance from previously reentered individuals).

¹⁶⁹ *Id.*

Access to Justice Fund agreed to compensate formerly incarcerated individuals to advise CJSC on how to improve and implement evidence-based reentry programs.¹⁷⁰

Prong 5: Working with the Massachusetts Executive Office of Public Safety (EOPS)

Recently, Andrew Peck, the undersecretary for Criminal Justice in EOPS, in response to stakeholder advocacy, signed a memorandum of understanding (MOU) with the Department of Transportation to provide all eligible individuals released from state facilities to have a state photo ID card upon release. This issuance of the ID also includes automatic registration for people to vote. Northeastern University School of Law's Criminal Justice Task Force hopes to expand this idea by asking the Department of Public Health to enter into an MOU with EOPS to provide health insurance cards to every person leaving prison or jail. This could also be expanded with requests to the Department of Housing and Community Development (DHCD) to enter into an MOU requiring an initial housing placement for those beginning the reentry process. In an ideal world, the EOPS would connect the system, where prisons and jails would operate with the goal of reducing recidivism by focusing on rehabilitation and coordinate with CJCS efforts for reentry services once a person leaves. The vision would be for EOPS to operate a comprehensive reentry program behind bars and for CJSC to provide reentry services upon release. Hopefully, these would be coordinated efforts.

Prong 6: Creating a "Jail-to-Jobs" Pipeline

The "Jail-to-Jobs" pipeline seeks to address two national problems: recidivism and the labor shortage. Once a state has established a state-wide reentry network, a pipeline can be created to match the employers who need workers with those returning from jail who need jobs. This

¹⁷⁰ The Gants Fund will provide funding for five Reentry Fellows – individuals who have successfully navigated reentry after prison or jail, who will work with the Task Force to advise the Reentry Group about how to structure the statewide reentry network. Hopefully, upon success of this idea, the state Legislature will allocate funding for reentry fellows in the annual budget allotted to CJCS.

would begin by educating prospective employers on how to hire and train individuals returning from prison or released from jail. As discussed above, employers often refrain from hiring individuals with criminal records, however 25% of the Massachusetts population have a criminal record.¹⁷¹ In order for Massachusetts to thrive economically, we will need to unlock that labor pool. Ironically, obtaining and retaining employment is the number one predictor for successful reentry.¹⁷² Thus, a pipeline integrating these residents into the labor force can solve the labor shortage and see reduced rates of recidivism in Massachusetts.

Proposal for the Federal Government:

In addition to adopting these practices on a state level, our prison system could see lower rates of recidivism on a national level.¹⁷³ In addition to the Federal Government's recent progress expanding Pell grants, the following actions should also be adopted to ensure each state has adequate and consistent reentry practices to reduce recidivism, crime, and prison costs across the country:

- i. Create funding to encourage states to develop a centralized state-wide, state-funded reentry network through judicial or executive branches, to be maintained across the state to provide comprehensive and consistent resources, navigators, and support services as described in the five prongs above.
- ii. Encourage states to develop legislation, like "ban-the-box" laws and provide funding for Expungement Courts, or expungement sessions in existing courts, to remedy major barriers that prevent people re-entering society to obtain employment because of their criminal records.

¹⁷¹ The Criminal Population in New England: Records, Convictions, and Barriers to Employment, Robert Clifford & Riley Sullivan, 13 (2017) citing Bureau of Justice Statistics (2015).

¹⁷² Adiah Price-Tucker et al., *Successful Reentry: A Community-Level Analysis*, Harvard Inst. Politics (Dec. 2019).

¹⁷³ Laura Bull, *The Revolving Door of Recidivism*, Classical Conversations, 12, Southeastern University (2020).

- iii. Create funding for administrative agencies and consider granting public housing waivers, when appropriate, to permit felons to live with people in public housing.
- iv. Provide funding for a "Jail to job Pipeline Project " in every state, where the federal government could provide money for meetings to convene all stakeholders on a regular basis to develop and implement a plan for this new infrastructure and architecture.
- v. Expand the federal surety bond program from 6 months to 18 months, to increase the ability for companies to obtain commercial crime insurance policies while employing individuals with criminal records.
- Vi Provide states with funding to convene a statewide reentry Roundtable which would meet monthly and include all the private and public reentry programs, the Department of Corrections, the Executive Office of Public Safety and other reentry stakeholders so that a coordinated reentry information network could be created to share ideas and program information.

CONCLUSION

Ignoring the needs of those reentering our communities is undeniably setting them up for failure.¹⁷⁴ Most states have uncoordinated, private or small public reentry networks, lacking continuity and communication.¹⁷⁵ Our communities need public, state-wide, state-funded networks to increase resource accessibility. Individuals are more likely to succeed upon reentry when they have someone assisting them through the process. The lack of outpatient treatment for those with substance-use disorders result in many people recidivating. Our solution to reentry and recidivism can be revolutionary, not just in Massachusetts but across the nation.

¹⁷⁴ Fiona Doherty, *Obey All Laws and Be Good: Probation and the Meaning of Recidivism*, Georgetown Law Journal, Vol. 104, No. 2, 302, (2016). Available at: <https://ssrn.com/abstract=2726740>

¹⁷⁵ *Id* at 298.

States should follow this model by first establishing a state-wide, state-funded network, offering reentry services for all individuals, regardless of their parole or probation status.¹⁷⁶ Prongs one and two are necessary to implement a community-based navigator program and expand the support network to include direct access to probation officers and resources pertinent to substance use recovery, in order to promote structure and accountability.¹⁷⁷ Prong three ensures reentry services are considered at the time of arraignment and continue to be incorporated after a person leaves prison or jail. Prong four encourages hiring formerly incarcerated people to work in reentry and design reentry strategies using their lived experiences.¹⁷⁸ The fifth prong mandates EOPS to equip any individual leaving prison or jail with the fundamentals, defined as essential reentry resources.¹⁷⁹ The sixth prong establishes a “Jail-to-Jobs” pipeline by collaborating stakeholders to fill jobs and employ the high percentage of individuals with a criminal record facing barriers to employment, which can decrease unemployment rates, decrease recidivism rates, decrease costs of recidivism, and boost the national economy.¹⁸⁰ The federal government should also provide funding to ensure successful reentry programming is available across the nation which will also reduce recidivism rates, rather than spending money on crime and incarceration.

Massachusetts has the opportunity to provide leadership at the pivotal intersection between reentry and further involvement in the criminal legal system. This reentry model will revolutionize

¹⁷⁶ For fiscal year 2019, the Massachusetts legislature inserted language into the annual budget line for OCC, which authorized OCC to provide reentry services to all residents of Massachusetts who were leaving jail or prison. Specifically, the enacting legislation stated, “the Office of Community Corrections shall provide reentry services to all persons, regardless of probation or parole status.

See also, Ben Forman, *Justice Reinvestment Gets Seed Funding in Budget*, Commonwealth Magazine, (Aug 3, 2019) (Reentry services expanded, commission to focus on corrections spending).

¹⁷⁷ Adiah Price-Tucker et al., *Successful Reentry: A Community-Level Analysis*, Harvard Inst. Politics (Dec. 2019).

¹⁷⁸ Criminal Justice Task Force, *State-Wide Reentry Network* (2022).

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

the way states support individuals struggling to avoid the criminal justice system. The road forward involves collaboration, cross-community partnerships, and investment of financial resources. This paper, which is both visionary and experimental, has described the promising first steps which we have taken toward the development of a robust state-wide, state-funded reentry network. With a state-wide and state-funded reentry network, all resources would be centralized and consistent. This is the most logical approach to reducing the financial and social cost of recidivism. While we recognize that we are still far from the vision we aim to one day achieve, we hope that this paper, which shares our experiences, challenges, and visions for the future, will launch the movement for other states to establish community relationships, engage stakeholders, and explore funding and legislative opportunities for advancing a state-wide, state-funded, peer-supported reentry initiatives.