

# PROBATION REFORM WORKING GROUP

REPORT  
AND  
RECOMMENDATIONS

JANUARY 31, 2011



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## I. INTRODUCTION

On May 24, 2010, in response to allegations of misconduct within the Massachusetts Probation Department, the Supreme Judicial Court (“SJC”) ordered an Independent Counsel to conduct an investigation into hiring and other practices within the Probation Department. On November 9, 2010, Independent Counsel Paul Ware released his report (“Ware Report”), which alleged serious irregularities in the Probation Department’s hiring and promotion processes.<sup>1</sup> In the wake of the Ware Report, the SJC created a Task Force on Hiring in the Judicial Branch (“SJC Task Force”) led by former Attorney General Scott Harshbarger.<sup>2</sup> The Ware Report also prompted state and federal investigations. On December 6, 2010, Governor Deval L. Patrick, Senate President Therese Murray, and House Speaker Robert A. DeLeo announced the formation of a working group of Legislative and Executive Branch officials to study ways to reform the Probation Department and to make recommendations for implementing its proposed reforms by the end of January. This report is the result of the Probation Reform Working Group’s efforts.

The Working Group recognizes that there are many competent and hardworking employees in the Probation Department. However, recent reports have undermined the public’s confidence in the Probation Department. While particular events may have prompted the creation of the Working Group, its goal is not to address any specific incidents or individuals, nor should it be assumed that the Working Group’s recommendations would necessarily have prevented any specific incident, as no system

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<sup>1</sup> PAUL F. WARE, REPORT OF THE INDEPENDENT COUNSEL (2010) [hereinafter WARE REPORT].

<sup>2</sup> Press Release, Pub. Info. Office, Supreme Judicial Court, Supreme Judicial Court Appoints Task Force Members to Review Hiring and Promotion Practices in Judicial Branch (Dec. 7, 2010), *available at* <http://www.mass.gov/courts/press/pr120710.html>. On January 19, 2011, the SJC Task Force released its *Initial Recommendations to the Court*.

can prevent all abuses. However, the Working Group believes that a system based on empowered management and reliable oversight, clear promotional systems, merit-based hiring, and efficient operations can help ensure a more effective probation system and improve public safety.

As important as having improved systems is cultivating a culture in which government employees aspire to comply with the rules because of their commitment to fulfilling the public trust. The Working Group concluded that existing systems in the Probation Department are improving under its new leadership, but substantial improvements are needed in the areas of management, promotion, hiring, and operations to ensure a probation system that reflects efficiency, effectiveness, and integrity. The Working Group recommends an ongoing review of all of these areas. The Working Group further recommends review and consideration of additional proposals related to consolidation of Probation and Parole and coordination of the Sheriffs' offices and the Department of Correction ("DOC")—subjects that the Working Group was unable to comprehensively explore given its limited time frame, but that must be included in any conversation about improving public safety.

## **II. THE WORKING GROUP**

In early December 2010, the Governor, Senate President, and House Speaker each appointed three members to the nine-member Working Group.<sup>3</sup> Beginning on December 14, 2010, the Working Group held numerous meetings and heard presentations from various experts in the field, parties affected by potential reforms, and other groups

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<sup>3</sup> See Appendix A for a list of Working Group members.

pursuing similar improvements. Topics discussed included probation, parole, the structure of the courts, the Civil Service system, use of risk and needs assessment tools, and best practices for community supervision from other states.<sup>4</sup> In addition, various members of the Working Group spoke individually with other interested parties.

Members of the Working Group received correspondence from various entities interested in providing input.<sup>5</sup> The Working Group also relied on numerous resources in developing its proposals, including reports from the Supreme Judicial Court, the Court Management Advisory Board, Community Resources for Justice, the Council of State Governments, the American Probation and Parole Association, and the Executive Office of Public Safety and Security.<sup>6</sup>

The members of the Working Group approached their mandate with an open mind and a desire to learn and insisted on taking a forward-looking approach. The Working Group determined that it would evaluate the efficiency and cost-effectiveness of the Probation Department, assess the Probation Department's mission and the extent to which that mission has been realized under the current governance structure, and ascertain whether an alternative structure would better serve that mission. Based on that analysis, the Working Group presents the following recommendations and suggested areas for further review.

### **III. RECOMMENDATIONS REGARDING PROBATION REFORM**

In assessing the current structure of community supervision in Massachusetts, the Working Group examined various aspects of the Probation Department, including the

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<sup>4</sup> See Appendix B for a list of presenters.

<sup>5</sup> See Appendix C for a list of correspondence the Working Group received.

<sup>6</sup> See Appendix D for a list of resources the Working Group reviewed.

management structure and authority, promotional practices, hiring practices, and operations. The Working Group identified significant deficiencies in the existing structure and under the existing practices. Some members of the Working Group believe that the court's management is not clearly empowered with oversight of hiring, promotion, assignment, and termination decisions. Promotions do not appear to be uniformly based on performance. The hiring process is subject to abuse and corruption. Operations are not structured to maximize efficiencies and improve outcomes. Accordingly, the Working Group presents the following recommendations to improve management, promotions, hiring, and operations within the Probation Department and to strengthen the Department's role as a meaningful guarantor of public safety for the Commonwealth and its citizens.

**A. MANAGEMENT**

If the Probation Department is to effectively carry out its community supervision responsibilities and earn the public's confidence, it must be motivated by a clear mission that is supported by a strong, organized management structure. Ronald Corbett, Jr., the former Acting Administrator of Probation and newly-appointed Acting Commissioner of Probation,<sup>7</sup> echoed the importance of these values. He identified reducing recidivism, enhancing compliance with court orders, and meeting the informational needs of the court as the main missions of the Probation Department, with contributing to the legal education of the community as a secondary mission. He emphasized that probation officers must find a balance between accountability and rehabilitation for their probationers by functioning as "both cops and counselors."

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<sup>7</sup> Based on the SJC Task Force's *Initial Recommendations to the Court*, Mr. Corbett was named Acting Commissioner of Probation on January 21, 2011.

To pursue these important missions, the Working Group recommends that the following actions be taken immediately to clarify and improve the management structure and processes of the Probation Department.

**1. Clarify Authority of Chief Justice of Administration and Management Over Employment Decisions**

Regardless of whether the Probation Department remains in the Judiciary or is ultimately incorporated into an executive agency, many of the past abuses at the Department can be attributed to legislation giving the Commissioner of Probation “exclusive authority” over employee hiring, promotion, assignment, and termination decisions, with unclear oversight authority vested in the Chief Justice for Administration and Management (“CJAM”). The Ware Report cited this statutory framework as a contributing factor to abuses in the Probation Department’s hiring practices.<sup>8</sup>

The Fiscal Year 2002 (“FY 2002”) budget, enacted December 1, 2001, made two significant changes that enhanced the authority of the Commissioner of Probation over hiring decisions. First, Outside Section 52 of the FY 2002 budget amended Mass. Gen. Laws ch. 276, § 83, to no longer require the approval and consent of the CJAM for employment decisions.<sup>9</sup> Second, the FY 2002 budget introduced language in line item 0339-1001 of the Probation Department’s appropriation, giving the Commissioner the “*exclusive authority* to appoint, dismiss, assign and discipline probation officers,” notwithstanding any general or special law to the contrary.<sup>10</sup> The same “exclusive authority” language has been repeated in every general appropriation act since, up to and including the Fiscal Year 2011 (“FY 2011”) budget.

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<sup>8</sup> See WARE REPORT, *supra* note 1, at 65–67.

<sup>9</sup> St. 2001, ch. 177, § 52.

<sup>10</sup> *Id.*, line item 0339-1001 (emphasis added).



However, the FY 2011 budget took an initial step to curtail the Commissioner's powers by giving the Commissioner a five-year term, instead of the unlimited term that previously was permitted under Mass. Gen. Laws ch. 276, § 98.<sup>11</sup> The Working Group recommends further steps be taken to subject the Commissioner's appointment powers to more explicit judicial oversight. Specifically, the "exclusive authority" language in line item 0339-1001 should be eliminated, and Mass. Gen. Laws ch. 276, § 83, should be restored to make appointments, dismissals, and assignments "subject to the approval and consent of the chief justice for administration and management," similar to language that exists in Mass. Gen. Laws ch. 276, §§ 98–99.<sup>12</sup> The Working Group recommends the prompt enactment of modest corrective legislation to reflect these suggested changes.<sup>13</sup> Clarifying the authority of the CJAM will provide a check on potential abuses and, it is hoped, contribute to the hiring and promotion of the most deserving officers, to the benefit of the probationers, the court, and the public alike.

## **2. Allow Transferability of Probation Department's Budget**

According to Chief Justice Mulligan, the ability to transfer funds between court departments to meet the changing needs of the various departments is a critical management tool. However, while the FY 2011 budget allows the CJAM to transfer funds between certain court departments, it limits the CJAM's ability with respect to the Probation Department. Specifically, Outside Section 181 of the FY 2011 budget allowed the CJAM to transfer only up to 5% of funds appropriated to the Probation Department. Such a limitation prevents the CJAM from allocating resources where they are needed

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<sup>11</sup> See St. 2010, ch. 131, § 103.

<sup>12</sup> A similar change is needed in Mass. Gen. Laws ch. 218, § 6.

<sup>13</sup> See Appendix E for proposed legislation.

and hampers the CJAM's ability to effectively run the Trial Court, including the Probation Department.

The Working Group discussed and examined the idea of full budget transferability at length. Members of the Working Group believe that under the current structure, in which the Probation Department resides in the Judiciary, the CJAM should be empowered with a greater level of transferability over the Probation Department's budget. Some members suggest that the CJAM should have full budget transferability, to ensure the effective use of the Trial Court's limited resources. Some members feel that transferability should be limited to the savings realized from the improvements recommended in this report and in the future. Other members believe that any discussion of transferability should take place in the context of budget discussions.

### **3. Formalize Authority of Acting Commissioner of Probation**

Since the release of the Ware Report, Ronald Corbett, Jr., has been responsible for managing the Probation Department. The Working Group agrees with the SJC Task Force in its view that permanent and stable leadership is essential to the functioning of the Probation Department. As such, the Working Group supports and commends the CJAM's decision to appoint Mr. Corbett to a two-year term as Acting Commissioner of Probation as recommended by the SJC Task Force. Furthermore, the Working Group supports the SJC Task Force's recommendation that a comprehensive and rigorous recruitment process be instituted for the next Commissioner, who will be appointed to the statutory five-year term when Acting Commissioner Corbett's term expires in January 2013.

#### **4. Lift Hiring Freeze for Limited Purpose of Appointing Top Deputies**

Under the current organizational structure of the Probation Department, the Commissioner of Probation is assisted in his management duties by eight deputy commissioners. In the wake of the release of the Ware Report, three deputy commissioners were suspended.<sup>14</sup> One of those deputy commissioners resigned her post on January 18, 2011, and disciplinary proceedings against the other two deputy commissioners will commence at the end of January. In addition, three other deputy commissioner positions are currently vacant.<sup>15</sup> As such, only two of the eight deputy commissioner positions are currently held by employees in good standing.<sup>16</sup>

A strict hiring freeze was implemented in the Trial Court in October 2008 as a result of spending cuts necessitated by the worsening economic climate and reduced resources.<sup>17</sup> The continuation of this hiring freeze prevents any of the deputy commissioner or other management positions from being filled with individuals who are not already employed in the Department.

To implement the Probation Department's improved mission and management structure, strong leadership must be demonstrated in all of the top management positions. These deputy commissioner positions need to be filled, and the Acting Commissioner must be able to hire the best individuals to fill them. This process will require the ability to recruit and consider both internal and external candidates. Accordingly, the Working Group recommends that the Trial Court's hiring freeze be temporarily lifted for the

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<sup>14</sup> See Statement of the Justices of the Supreme Judicial Court Relative to the Report of the Independent Counsel, 2 (Nov. 18, 2010), available at <http://www.mass.gov/courts/sjc/docs/statement-of-justices-report-of-independent-counsel-111810.pdf>.

<sup>15</sup> Office of the Comm'r of Prob., Organizational Chart.

<sup>16</sup> See *id.*

<sup>17</sup> COURT MGMT. ADVISORY BD., FOURTH ANNUAL REPORT: 2008, 2 (2009).

limited purpose of allowing the Acting Commissioner to fill all vacant deputy commissioner positions to create a strong leadership team that can effectively implement the necessary reforms.

### **5. Install Advisory Board to Oversee Probation Department**

The problems that the Probation Department has experienced reveal the need for increased transparency and oversight of the overall management of the Department. While the hiring, promotion, and other rules in place were not optimal, the circumvention of those rules by unsupervised management and other individuals contributed significantly to the failure in the hiring process. Furthermore, the Working Group's analysis of hiring in the Probation Department has revealed inefficiencies in the day-to-day operations of the Department that could be improved. For example, while the national average caseload for a community supervision officer is 106 offenders, in Massachusetts, the average probation officer supervises only 40 probationers at a time.<sup>18</sup> Chief Justice Mulligan noted that efficiency evaluations could lead to increased and more cost-effective caseloads and suggested the filing of periodic reports to provide the data necessary to conduct these evaluations.

To these ends, during this period of transition, the Working Group recommends that the SJC appoint an Advisory Board to oversee the reforms and progress of the Probation Department. The Advisory Board, whose membership should collectively possess expertise in criminal justice, public policy, and management, should supervise and advise the Department by collecting regular reports from the Department, making recommendations to the Department, and working with the Department to develop and

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<sup>18</sup> CRIME & JUSTICE INST., PRIORITIES AND PUBLIC SAFETY II: ADOPTING EFFECTIVE PROBATION PRACTICES 8 (Bos. Found. 2010).

implement reform measures. The Working Group recognizes and commends the assistance that the Court Management Advisory Board has provided to the SJC and the CJAM since its creation in 2003, but believes that an Advisory Board whose attention and resources focus specifically on the Probation Department will have a beneficial impact as well.

The Advisory Board should initially exist for two-years, coinciding with the new Acting Commissioner's tenure. After two years, when the essential reforms are significantly underway or completed, the necessity and advisability of installing a permanent Advisory Board should be evaluated.

#### **B. PROMOTION**

The importance of strong leadership and hardworking, committed employees within the Probation Department cannot be overstated. The task of supervising offenders who are living in the community is central to the Commonwealth's mission and responsibility to ensure the highest possible level of public safety. Only the most qualified and highest performing employees can be entrusted with this task.

The Human Resources Department of the Administrative Office of the Trial Court ("AOTC") maintains and administers the *Personnel Policies and Procedures Manual* that governs the Probation Department.<sup>19</sup> The manual provides guidelines for applications, job postings, the approval process, and salary adjustments relative to promotions in the Trial Court.<sup>20</sup> However, these guidelines are quite general, allow significant latitude, and provide little guidance regarding processes for evaluating applicants and ensuring

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<sup>19</sup> Massachusetts Court System, Human Resources, <http://www.mass.gov/courts/admin/hr.html> (last visited Jan. 31, 2011).

<sup>20</sup> See generally HUMAN RES. DEP'T, PERSONNEL POLICIES AND PROCEDURES MANUAL § 6.000, available at <http://www.mass.gov/courts/admin/hr/tableofcontents.html>.

objectivity. Paul Dietl, Chief Human Resources Officer at the Commonwealth's Human Resources Division (HRD), shared various procedures for promoting employees with the Working Group. He identified the ideal promotion system as one based on performance because such a system rewards high-performing employees and allows for managerial discretion. According to Mr. Dietl, many measurable qualities, including intellectual aptitude and case outcomes, are integral to an employee's effectiveness and success, and these qualities should be measured over time to ensure that the best employees are promoted.

For these reasons, the Working Group recommends that the *Personnel Policies and Procedures Manual* be amended pursuant to Mass. Gen. Laws ch. 211B, § 8, to institute a promotion system in the Probation Department that advances the highest performing employees. This will require implementation of outcome-based evaluations of probation officers, which are discussed in more detail in Part III.D.1.

### **C. HIRING**

The Working Group considered numerous approaches to hiring that are currently in use in Massachusetts and elsewhere. The Working Group believes that the following tools are well-suited to fit the Probation Department's unique needs and recommends that they be incorporated into the Department's hiring process.

#### **1. Institute Merit-Based Exam**

The *Personnel Policies and Procedures Manual* also governs hiring in the Probation Department.<sup>21</sup> The manual provides, "It is the policy of the Trial Court that all appointments be made solely on the basis of merit. The practice and appearance of

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<sup>21</sup> See Massachusetts Court System, Human Resources, *supra* note 19.

nepotism or favoritism in the hiring process are to be avoided.”<sup>22</sup> The manual gives general guidelines for hiring in the Trial Court and other specific guidelines that apply to the Probation Department, including job posting requirements and screening, interview, and approval processes.

It is clear that the Probation Department’s approved hiring procedures were not being followed. The Working Group discussed a number of ways to improve the Department’s hiring system. Paul Dietl and Michele Heffernan, HRD Deputy General Counsel, spoke to the Working Group about several hiring models and tools, including the Civil Service system, entrance exams, and performance-based evaluations.

The Working Group recommends an approach to hiring procedures in the Probation Department that incorporates the best aspects of several different systems.<sup>23</sup> First, the Working Group recommends that an entry-level exam be required for all initial hires into the Probation Department. This exam should be developed by HRD with extensive input from Probation Department management so that the exam is carefully tailored to the specific knowledge and skills required. Different exams should be developed for different positions requiring substantially unique skills; for example, individual tests should be developed for adult probation officers, juvenile court probation officers, and probate court probation officers.

Second, the Working Group recommends that applicants’ scores on these exams be banded. Rather than simply awarding a position to the highest scorer, management

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<sup>22</sup> PERSONNEL POLICIES AND PROCEDURES MANUAL, *supra* note 20, § 4.304.

<sup>23</sup> The Working Group recognizes that other entities and organizations continue to develop recommendations for an improved hiring system in the Probation Department and advises that those recommendations be considered in any future reforms.

should be provided a list of the top scorers on each exam. This type of score banding would increase the diversity of the applicant pool.

Third, the top scorers on the exam should be evaluated through interviews. Such a process will ensure that managerial discretion is permitted to play some role in the hiring process so that things like interpersonal, communication, and organizational skills, as well as professionalism, can be evaluated in person.

Oversight of this process by the CJAM and the Advisory Board is imperative.<sup>24</sup> While the Working Group acknowledges that some managerial discretion is necessary to an effective hiring process, the Probation Department's checkered history of implementing hiring procedures requires strict supervision of and adherence to consistent procedures.

## **2. Impose Disclosure Requirements to Ensure Transparency**

In addition to a revised hiring process, tools must be put in place to ensure transparency. The Working Group recommends two steps to ensure that applicants' familial relationships and recommendations are disclosed to prevent the appearance of impropriety.

First, the Working Group recommends that the AOTC explore the feasibility of adopting the disclosure requirements of Executive Order 444 for individuals applying for employment in the Probation Department.<sup>25</sup> Specifically, AOTC should explore whether applicants should be required to disclose the names of all immediate family members who serve the Commonwealth as employees or elected officials, as required by Executive

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<sup>24</sup> See *supra* Part III.A.5.

<sup>25</sup> See Establishing Within the Executive Branch the Disclosure of Family Relationships With Other State Employees, Mass. Exec. Order No. 444 (Jan. 9, 2003), available at <http://www.law.lib.state.ma.us/source/mass/eo/eotext/EO444.txt>.



Order 444. AOTC should further examine whether these disclosures should be available for public inspection.

Second, the Working Group agrees with the Ware Report's assertion that recommendations play a legitimate role in the hiring process when submitted and received honestly and transparently.<sup>26</sup> As such, the Working Group supports the Ware Report's suggestion that all recommendations in support of applicants for positions in the Probation Department, whether communicated by letter, email, telephone, in person, or otherwise, be memorialized and available for inspection by the CJAM upon request.<sup>27</sup> Some members of the Working Group believe that the names of recommenders should be available for public inspection. Most importantly, the Working Group echoes the Ware Report's sentiment that a cultural change within the Probation Department will lead to recommendations that are treated as what they are: mere recommendations.<sup>28</sup>

#### **D. OPERATIONS**

During the course of its meetings and deliberations, the Working Group also identified a number of structural and managerial obstacles that have impaired the Probation Department's overall effectiveness. Many of these deficiencies can be improved by changes in policy and practice at the management level and increased cooperation with other state agencies.

##### **1. Require Outcome-Based Reporting on Effectiveness of Probation Supervision**

Early in its deliberations, the Working Group realized that it would be difficult to accurately judge the effectiveness of the Probation Department as a whole, of specific

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<sup>26</sup> WARE REPORT, *supra* note 1, at 47.

<sup>27</sup> *See id.*

<sup>28</sup> *See id.*

probation programs, or of individual probation officers due to the lack of any reliable, objective data on the outcomes of probation cases. The absence of such reporting or efforts to obtain objective measurements is symptomatic of the insularity and lack of transparency that has characterized the Probation Department's operations, from hiring practices to cooperation with other state agencies.<sup>29</sup>

Acting Commissioner Corbett told the Working Group that this deficiency has frustrated his initial reform efforts and that he has begun to institute objective measurements. For example, Acting Commissioner Corbett provided the Working Group with a December 2010 report entitled *GPS Sex Offender Recidivism Study*, reporting on the outcomes of the Probation Department's electronic monitoring programs.<sup>30</sup> The study compared sex offenders subject to GPS monitoring to probationers with similar criminal records who were not subject to monitoring and found that 9.7% of probationers without monitoring were arraigned for a subsequent sex offense within a two-year period, whereas only 5.6% of those subject to GPS monitoring were arraigned within two-years, thus demonstrating overall positive results of the monitoring program.

The Working Group recommends that the Probation Department continue the efforts begun by Acting Commissioner Corbett to collect data and make regular public reports, using objective measurements, on the effectiveness and outcomes of its programs, services, and levels of supervision, including comparisons of different offices and regions. Performance evaluations of individual employees should also incorporate these objective measurements and performance standards. These reporting requirements can be assumed voluntarily or mandated by legislation.

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<sup>29</sup> See *infra* Part III.D.2.

<sup>30</sup> STEPHEN BOCKO ET. AL, OFFICE OF THE COMM'R OF PROB., MASSACHUSETTS PROBATION SERVICE: GPS SEX OFFENDER RECIDIVISM STUDY (2010).

## **2. Improve Communication and Data-Sharing Among Agencies**

The Working Group heard from several sources, including Acting Commissioner Corbett, about the importance of collaboration, communications, and data-sharing between the Probation Department and other state agencies, primarily the Parole Board, the Department of Correction (“DOC”), and the Sheriffs, as well as treatment providers, community advocates, and the law enforcement community. Public safety depends on collaboration among the various professionals working in the criminal justice arena to address complex problems such as domestic violence, drug and alcohol abuse, and job training. Conversely, the current lack of cooperation leads to inefficient, duplicative, or inconsistent services performed by Probation and other state and local agencies.

The lack of information-sharing and collaboration on the part of the Probation Department is characteristic of its isolation under previous management. The Department is disconnected not only from the CJAM, but also from the houses of correction, the state prisons, and the Parole Board. The Working Group also learned how this problem is exacerbated by sentencing practices, whereby judges sentence defendants to a term of probation to be served consecutive to, or “from and after,” a term of incarceration—whether because the judges feel constrained by mandatory minimum sentences, are concerned that a defendant will not be paroled, or for other reasons. The result is that offenders may be released from incarceration to the supervision of probation officers who have no access to their institutional records.

The simple expedient of sharing information among the probation officer responsible for any given individual, the parole officer responsible for the same individual, the house of correction at which the individual was incarcerated, and the DOC

can go a great distance to increase efficiency. This shared information can be used to inform decision-making regarding the level of supervision and services needed and to prevent the duplication of services. The Working Group sees no legal impediment to correcting this problem immediately through better working relationships among these entities. The Working Group applauds Acting Commissioner Corbett's recent actions to begin formalized collaboration with the Parole Board, urges the management of the Probation Department to continue and expand this type of arrangement, and urges the DOC, the Sheriffs, the Parole Board, and the Department of Criminal Justice Information Services to facilitate such data-sharing to the fullest extent possible given available resources. The Working Group also recommends that legislation be enacted to require this type of information-sharing.

### **3. Increase Resource-Sharing Among Agencies**

Based on the information the Working Group obtained, efficiencies can be gained through the sharing of resources between the Probation Department and the Parole Board. The Working Group heard, for example, that due to sentences of probation imposed "from and after" terms of incarceration, it is possible for the same individual to be supervised by both a parole officer and a probation officer. It also appears that staffing and services provided by the Office of Community Corrections are underutilized and lack the flexibility to be put to optimal use in meeting the treatment and supervision needs of both probationers and parolees. The Working Group recommends that the Probation Department and Parole Board work together to identify areas where resources can be shared and duplication can be avoided and recommends legislation be enacted to implement such improvements.

#### **4. Require Consistent Use of Risk and Needs Assessment Tools**

The Working Group heard compelling evidence that state-of-the-art evidence-based risk and needs assessment (“RNA”) tools are available to criminal justice agencies to help predict a criminal defendant’s likelihood to commit future crime and to match the appropriate interventions needed to mitigate the risk of re-offense. While these tools do not provide a crystal ball to accurately predict every defendant’s future behavior, the Working Group is persuaded that, used consistently and across the board, RNA tools can vastly improve the allocation of limited correctional resources by identifying when prison sentences are most useful, when intensive supervision is advisable, and when low-level supervision will produce the best result.

According to John Larivee, CEO of Community Resources for Justice (“CRJ”), the Probation Department makes some use of a rudimentary, “first generation” risk assessment tool, which was first implemented in the late 1980s but never updated. The Parole Board, since 2009, has used what was described to the Working Group as a “third generation” tool. The Working Group recommends, in addition to the data-sharing discussed above, that the Probation and Parole departments implement common RNA tools so that resources are allocated optimally and consistently across all criminal cases.

#### **IV. RELATED ISSUES FOR FURTHER CONSIDERATION**

In addition to the areas discussed above related to management, promotions, hiring, and operations, the Working Group heard proposals that it believes warrant further review and consideration, including recommendations for consolidating the various agencies charged with community supervision and enhancing coordination of the

Sheriffs' offices and the DOC. Given more time, the Working Group believes that agreement regarding these recommendations may have been possible.

#### **A. CONSOLIDATION OF PROBATION AND PAROLE**

The Working Group heard several perspectives on the idea of consolidating Probation and Parole. Some supported the consolidation of Probation and Parole within the Executive Branch; some believed that Probation should remain in the Judicial Branch; and others believed that the location of Probation did not matter as long as the proper systems were in place.

In January 2010, Governor Patrick introduced legislation that would consolidate adult probation and parole in a new agency within the Executive Branch,<sup>31</sup> placing all correctional, supervision, and re-entry responsibilities under the Executive Office of Public Safety and Security ("EOPSS") in the Executive Branch (as it is in 37 other states)<sup>32</sup> and creating a unified public safety system. Similarly, Mr. Larivee pointed out that CRJ has called for consolidation of all corrections functions within the Executive Branch since its 1991 report on corrections and sentencing in Massachusetts.<sup>33</sup> During his presentation to the Working Group, Larivee emphasized the importance of

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<sup>31</sup> An Act Reforming Community Supervision of Criminal Defendants and Offenders by Establishing the Department of Community Supervision Within the Executive Office of Public Safety and Security, H.B. 4830, 186th Gen. Ct., Reg. Sess. (Mass. 2010), filed January 27, 2010. Under Governor Patrick's proposal, the probation functions associated with the Juvenile Court and the Probate and Family Court would remain in the Judiciary.

<sup>32</sup> RESEARCH & PLANNING DIV., MASS. DEP'T OF CORR., SURVEY OF STATES: GOVERNMENT BRANCH FOR PAROLE AND PROBATION (2010). Rhiana Kohl, Ph.D., Executive Director of the DOC's Office of Strategic Planning & Research, presented a state-by-state analysis of parole and probation departments to the Working Group. Her study showed that 37 states (74%) place both parole and probation supervision under the Executive Branch, 12 states (24%) place parole under the Executive Branch and probation under the Judicial Branch, one state conducts probation supervision as a "county" function, and no states have both parole and probation under the Judicial Branch.

<sup>33</sup> BOSTON BAR ASS'N & CRIME & JUSTICE FOUND. TASK FORCE ON JUSTICE, THE CRISIS IN CORRECTIONS AND SENTENCING IN MASSACHUSETTS, REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON JUSTICE (Feb. 1991), available at <http://www.bostonbar.org/prs/reports/justice0291.pdf>.

coordination and information flow throughout the corrections system and the need for a sustainable model that will flourish independent of the individual commissioners and other officials involved. He also pointed out the efficiencies that could be achieved through consolidation, such as elimination of dual supervision of offenders on both probation and parole and the potential to focus funding on high-risk offenders.

Chief Justice Mulligan and Acting Commissioner Corbett shared that they believe probation should remain in the Judiciary. Acting Commissioner Corbett and others cited the existence of strong ties between the Probation Department and the Judiciary as an important factor weighing against consolidation. Acting Commissioner Corbett also pointed out, and others agreed, that simply creating a robust and effective management structure at the Probation Department could succeed in correcting the Department's flaws without the implementation of other significant changes. Those who support Acting Commissioner Corbett's position suggest that he should be given the opportunity to implement improvements at the Department before any movement of the Department to a different branch is considered.

Finally, others suggest that the locations of Probation and Parole are not fundamental to their effective functioning. CRJ's most recent report, entitled *Adopting Effective Probation Practices*, examines the current structure in Massachusetts as well as the models in other states.<sup>34</sup> The report describes the elements necessary for an effective and efficient criminal justice system, regardless of where it resides, but concludes that systemic reforms to the Probation Department are necessary for Massachusetts to make major strides in reducing recidivism and improving public safety.

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<sup>34</sup> See generally, PRIORITIES AND PUBLIC SAFETY II: ADOPTING EFFECTIVE PROBATION PRACTICES, *supra* note 18.

Thus, while the Working Group did not have sufficient time to fully analyze the consolidation approach, it recommends that the efficacy of consolidation be evaluated under the proposed information- and resource-sharing regimes outlined in Part III.D. and that further consideration be given to whether consolidation would be beneficial.

**B. COORDINATION OF SHERIFFS' OFFICES AND DEPARTMENT OF CORRECTION**

Sheriffs are independently elected and are responsible for running the jails and houses of correction. While Sheriffs' offices depend on state funding, they are independent of the DOC and not subject to the control of EOPSS. There is no formal mechanism for sharing information and transition planning between the Sheriffs and Probation similar to that which takes place between the DOC and Parole, nor is there an ability to transfer inmates readily between the Sheriffs and the DOC so that they receive the most appropriate custodial setting and programming. Sheriffs also use different risk assessment tools than those used by Probation and Parole. The Working Group determined that there is a need for enhanced communication and data-sharing between Sheriffs and other corrections and community supervision agencies, as well as consistent use of the same risk and needs assessment tools among the agencies. As such, the Working Group recommends that consideration be given to ways in which these agencies, under the direction and guidance of EOPSS, could coordinate and streamline their efforts to provide more efficient and comprehensive services.

**V. CONCLUSION**

The Working Group urges the Probation Department to promptly adopt the operational recommendations set forth in Part III and calls for the prompt enactment of



the legislation suggested in Appendix E to address the Probation Department's immediate and short-term deficiencies and to restore the public's confidence. The Working Group supports the filing of additional legislation, the implementation of regulations, and the adoption of policies to reform community supervision more generally and improve public safety while at the same time reducing spending on corrections. The Working Group also recommends further review of additional reforms that time constraints prevented it from fully exploring. Each member of the Working Group is committed to continuing to work on these issues and to collaborating with other groups to produce meaningful reform so that a positive culture marked by accountability can be restored.

*Note: On February 3, 2011, Part III.A of this report was updated to accurately reflect the missions of the Probation Department as identified by Acting Commissioner Corbett.*

## WORKING GROUP MEMBERS

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## LIST OF PRESENTERS

- Ronald Corbett, Jr., Acting Administrator of Probation
- Timothy Dooling, Acting Executive Director of the Parole Board
- Robert Mulligan, Chief Justice for Administration and Management
- Rhiana Kohl, Ph.D, Executive Director of the Office of Strategic Planning & Research at the Massachusetts Department of Correction
- John Larivee, CEO, Community Resources for Justice
- Paul Dietl, Chief Human Resources Officer
- Michele Heffernan, Deputy General Counsel of the Human Resources Division
- Members of the Supreme Judicial Court Task Force on Hiring in the Judicial Branch, including Scott Harshbarger, Ruth Ellen Fitch, Bill Leahy, Susan Prosnitz, Harry Spence, and Stephen Wright
- Jack Cinquegrana, former President, Boston Bar Association
- Donald R. Frederico, President, Boston Bar Association
- Kathleen Joyce, Director of Government Relations, Boston Bar Association
- Ed P. Ryan, Jr., former President, Massachusetts Bar Association
- Martin W. Healy, Chief Operating Officer, Massachusetts Bar Association

## LIST OF CORRESPONDENCE

Letter from Matthew C. Regan, Former First Assistant Chief Probation Officer of Boston Municipal Court, to Governor Deval Patrick (Dec. 1, 2010).

Letter from Cynthia Stone Creem, State Senator, to Probation Reform Working Group Members (Dec. 14, 2010).

Letter from David J. Holway, President, National Association of Government Employees, to E. Abim Thomas, First Assistant Deputy Legal Counsel, Office of the Governor (Dec. 14, 2010).

Letter from the Justices of the Supreme Judicial Court to Governor Deval L. Patrick, Senate President Therese Murray & Speaker of the House of Representatives Robert A. DeLeo (Dec. 14, 2010).

Letter from Donald R. Frederico, President, Boston Bar Association, to Governor Deval L. Patrick, Senate President Therese Murray & Speaker of the House of Representatives Robert A. DeLeo (Dec. 16, 2010).

Letter from Donald R. Frederico, President, Boston Bar Association, to E. Abim Thomas, First Assistant Deputy Legal Counsel, Office of the Governor (Dec. 17, 2010).

Letter from Denise Squillante, President, Massachusetts Bar Association, to Governor Deval L. Patrick, Senate President Therese Murray & Speaker of the House of Representatives Robert A. DeLeo (Dec. 22, 2010).

Letter from Rita F. McCarthy, President, Massachusetts Chief Probation Officers Association, to E. Abim Thomas, First Assistant Deputy Legal Counsel, Office of the Governor (Jan. 11, 2011).

Letter from Roderick L. Ireland, Chief Justice of the Supreme Judicial Court, to Governor Deval Patrick, Senate President Therese Murray & Speaker of the House of Representatives Robert A. DeLeo (Jan. 21, 2011).

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## PROPOSED LEGISLATION

**Amends Line Item 0339-1001, section 6 of chapter 218 of the General Laws, and section 83 of chapter 276 of the General Laws to make the Commissioner of Probation's authority to appoint, dismiss, discipline, and assign, subject to approval by the Chief Justice for Administration and Management.**

SECTION 1. Line Item 0339-1001 of section 2 of chapter 131 of the acts of 2010 is hereby amended by striking out the words "that notwithstanding any general or special law or rule or regulation to the contrary, the commissioner, subject to appropriation, shall have exclusive authority to appoint, dismiss, assign and discipline probation officers, associate probation officers, probation officers-in-charge, assistant chief probation officers and chief probation officers; provided further,".

SECTION 2. Section 6 of chapter 218 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out, in lines 54 and 55, the words " , further, that the commissioner of probation" and inserting in place thereof the following words:- further, that the commissioner of probation, subject to approval by the chief justice for administration and management.

SECTION 3. Chapter 276 of the General Laws, as so appearing, is hereby amended by striking out section 83 and inserting in place thereof the following section:-

Section 83. Subject to appropriation, the commissioner of probation, subject to the approval by the chief justice for administration and management, may appoint, dismiss and assign such probation officers to the several sessions of the trial court as he deems necessary. In a court having 2 or more probation officers, the commissioner, subject to the approval of the chief justice for administration and management, may designate 1 probation officer to serve as chief probation officer and may designate other probation officers to serve as assistant chief probation officers, as he deems necessary for the effective administration of justice; provided, however, that the commissioner may suspend or discipline any such probation officer, who may appeal such suspension or discipline to the chief justice for administration and management or the commissioner may recommend the discharge of a probation officer to the chief justice for administration and management and the chief justice may discharge the probation officer after a hearing. The compensation of probation officers in the trial court shall be paid by the commonwealth according to schedules established in section 99B or in an applicable collective bargaining agreement.