MAMH
Massachusetts Association
for Mental Health

March 5, 2021

The Honorable Senator William Brownsberger
Chair, Special Commission on Department of Correction and Sheriff's Department Funding
Massachusetts State House, Room 319
Boston, MA 02133

The Honorable Representative Michael Day
Chair, Special Commission on Department of Correction and Sheriff's Department Funding
Massachusetts State House, Room 136
Boston, MA 02133

RE: Behavioral Health Care in Correctional Settings

Dear Chair Brownsberger, Chair Day, and Honorable Commissioners:
Thank you for the opportunity to submit testimony regarding behavioral health care provided in Massachusetts correctional institutions. The Massachusetts Association for Mental Health has a long history of working to improve conditions for individuals with behavioral health conditions living in institutional settings and to prevent such institutionalization in the first place. For example, in the 1970s, MAMH served as the organizational plaintiff in the Brewster vs. Dukakis litigation seeking the right to community based treatment for people confined to Northampton State Hospital in unconstitutional conditions. Currently, I serve as the co-chair of the Middlesex County Restoration Center Commission alongside Sheriff Peter Koutoujian, seeking to create behavioral health services that would prevent arrest and unnecessary hospitalization for people in crisis with mental health and/or substance use conditions.

People with behavioral health conditions are disproportionately represented in our jails and prisons: 45% of those held at the Billerica Jail and House of Correction have a mental health condition, and 80% of those individuals have co-occurring substance use conditions. At the DOC, 36% of male and 81% of female prisoners have open mental health cases, according to the DOC 2019 Prison Population Trends Report. Moreover, 25% and 75%, respectively, have serious and disabling mental health conditions. People with behavioral health conditions have a 68% recidivism rate, despite the fact that we know recidivism can be reduced by providing people with adequate and coordinated behavioral health care and social services.

Behavioral health and related services are therefore an essential element of any correctional budget conversation.

Massachusetts is one of only eight states with average costs per prisoner of greater than $50,000.[1] Correctional budgets can be reduced in the long term by investing in services and

[1] The Price of Prisons - The Price of Prisons - Prison spending in 2015 | Vera Institute

supports that can prevent arrest and facilitate successful reentry to the community for those with behavioral health conditions, who are some of the costliest to serve and the most likely to recidivate. The Sequential Intercept Model (SIM) provides a framework for viewing such programs through the lens of intercept points, or points of inflection within the criminal justice system where critical programs can stop people from progressing through that system. MAMH has published a white paper, which I have attached to my testimony,[2] reviewing the evidence for programs at every point in the SIM. Such programs that ought to receive additional investment in Massachusetts include:

- Crisis intervention teams and mobile crisis responders run by the Department of Mental Health's Jail Diversion Program;
- Restoration Centers to provide urgent and crisis behavioral health care plus wrap-around social services and supports; the Middlesex County Restoration Center Commission is developing a pilot project;
- Behavioral health specialty courts, which currently operate in only a select few district court houses in Massachusetts;
- Reentry supports like Medication-Assisted Treatment (which is being piloted by a handful of Sheriff's offices in Massachusetts but is not ubiquitous across our correctional institutions), peer bridging, and Community Support Program for Justice-Involved Individuals, which MassHealth seeks to gain approval from the federal Medicaid agency to roll out statewide;
- Forensic Assertive Community Treatment, which is currently unavailable in Massachusetts;
- Community-based competency restoration programs like the one I have worked to implement in Washington State as the court-appointed monitor in the *Trueblood* case; and
- Permanent supportive housing, which addresses the most common challenge within social determinants of health for those who have behavioral health conditions and are justice-involved: instability in their housing.

These critical investments will save money in the long-term in correctional budgets by reducing prison and jail populations. One potential way to produce revenue for such investments would be by eliminating the Medicaid Inmate Exclusion Policy, which bars prisoners from being eligible for Medicaid and the accompanying federal matching funds. MassHealth is exploring asking the federal government to agree to a waiver to some portion of this policy in their 1115 Waiver renewal proposal this year.

In addition to these critical investments that can be expected to produce significant return on investment, I want to also point out some critical failures in our correctional behavioral health care system that are also incredibly costly to the state, prisoners, their families, and our social compact.

First, you are likely aware that the Department of Justice issued a report in November 2020 describing seriously unsafe conditions and egregious constitutional violations in the operation of

[2] https://www.mamh.org/assets/files/Updated-Literature-and-Resource-Review_November-2019_vfinal.pdf.

mental health watch in Department of Correction facilities. Suicides are more prevalent in jails than in prisons, perhaps because of the initial shock of the losses that accompany incarceration. Indeed, the National Institute of Corrections reports that suicide is the leading cause of death for people detained in jail in the United States, accounting for more than 30 percent of deaths. In 2015, Massachusetts was found to have the fourth highest rate of suicide in the country in state prisons, at 30 per 100,000 prisoners.[3] This preventable loss of life of individuals in the care and under the constant watch of the Commonwealth represents a deep failure of the DOC and the county facilities and their staff to act effectively on problem that has long been a matter of public record.

Our correctional institutions in Massachusetts have a wide variety of approaches to implementing the most basic suicide prevention strategy – including the promulgation and implementation of effective suicide prevention policies. The Middlesex Sheriff's Office has a completely overhauled policy based on a national expert review which may be a useful model. MAMH has worked with Senator Eldridge, Representative Fluker Oakley, and others to file legislation this session to tackle the specific problem at the DOC. Suicide prevention is a critical element of any correctional budget, and our correctional institutions must be held accountable to developing and implementing effective suicide prevention policies.

Bridgewater State Hospital is another large budgetary component which operates under Department of Correction control. MAMH has long supported a bill filed every legislative session to move Bridgewater State Hospital to Department of Mental Health control to increase the clinical oversight of a healthcare setting. Massachusetts stands out as the only state in the Nation to relegate its forensic hospital care to prison management. Every other state operates secure forensic hospital care under the direction of the state mental health authority (SMHA). MAMH is further troubled by the problem of competency restoration, where individuals who are deemed not competent to stand trial languish in institutional settings like Bridgewater State Hospital or even in traditional correctional facilities sometimes for years in a state of limbo. We must find a way to serve these individuals in the least restrictive setting possible by establishing a system of community-based competency restoration for those individuals who are not dangerous to themselves or others. These people do not need to be warehoused in state hospitals, jails, or prisons that either lack the capacity to treat the medical, mental health, neurological, and/or cognitive impairments that compromise the person's competency or are more traumatic deprivations of normal activities of daily living than is necessary. Moreover, it is less expensive to provide competency restoration care in the community.

Finally, a major challenge in correctional budgets in Massachusetts is our treatment of people who pose a danger to themselves by nature of substance use conditions. Massachusetts is the only state in the nation that sends these people to correctional institutions rather than health care settings. We must find a way to save money in correctional budgets by shifting services into our health care system, especially when it comes to the Section 35 program.

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[3] Margaret Noonan et al., Bureau of Justice Statistics, Mortality in Local Jails and State Prisons 2000-2013 Statistics Tables (2015) available at https://www.bjs.gov/content/pub/pdf/mljsp0013st.pdf.

I urge you to make these critical investments in health and social services that can be expected to reap great savings in correctional budgets in the long-term. And I beg you to consider the long overdue need to square with our shared values and social compact the Commonwealth's sad status as the only state consigning people with critical health conditions to correctional care.

Sincerely,

Danna Mauch PhD
President and CEO, Massachusetts Association for Mental Health