

SUMMARY OF S.2080 WITH COST INFORMATION

Section	Summary	Cost Estimate ¹
1, 1A	Sex offender registry board to notify local police upon offender's release from custody. Registration at police station must be done within 2 days of release.	Minimal direct costs.
1B	Calls for electronic notification system to inform state police when a person is convicted of an offense requiring DNA submission.	Additional costs; difficult to estimate.
2, 2A, 3	Expands who may take DNA samples and immunity from civil liability to buccal swab collection.	Minimal savings.
4	Allows criminal penalties for a person who fails to provide a DNA sample within 1 year of conviction, adjudication, or release.	Minimal direct costs. ²
4A	Allows governor to remove Parole Board members for cause, after notice and hearing.	No direct costs.
4B	Increases the number of appointees for parole board search panel from 5 to 9.	Minimal direct costs.
4C	Adds to parole board search panel nominees from DA Association, CPCS, PLS, and law enforcement.	No direct costs.
4D	Adds parole board nominee with experience in adolescent development/psychology.	No direct costs.
4E	Adds parole board nominee who is a victim witness advocate.	No direct costs.
4F	Requires one parole board member to be a victim witness advocate.	No direct costs. ³
5	Gives parole board duty to administer/oversee mandatory post-release supervision of all state prisoners created by Section 34.	Approximately \$6-\$11.5 million per year. ⁴ See Section 34.

¹ While many provisions will result in some immediate additional costs to Massachusetts taxpayers, the bulk of the staggering costs that will result from the passage of S.2080 will not accrue immediately or even in the next few years. The impact of the most expensive provisions of S.2080, along with the savings produced by Sections 6 through 20, will not be felt until the law is fully in effect due to the *ex post facto* principle, the fact that mandatory minimum sentence reductions are not retroactive, and the cumulative effect that the provisions will have on prison overcrowding and the growing budget of the Department of Correction. Any claim that S.2080 is cost-neutral lacks foresight and is dangerously misleading.

² While direct costs are minimal, additional convictions resulting from the amendment to the current law, which requires a "refusal" to provide a DNA sample and does not set a 1 year deadline, will be potentially costly.

³ However, significant costs may be incurred as a result of fewer prisoners being released on parole due to the negative vote of the victim witness advocate Parole Board member. The risk of extra costs is especially high with regard to prisoners serving life sentences in light of Section 30 of S.2080, discussed below, requiring a 2/3 positive vote for release.

⁴ Approximately 1,700 prisoners are released each year at the conclusion of their sentence without supervision. Even assuming that the average length of supervision is only 1 year, rather than the 2 year maximum term permitted, the increased costs are considerable. To handle these new post-release supervision parolees and maintain current parole officer caseloads, based on the Parole Board's estimate of the cost to supervise one parolee for one year, implementing this section could require an additional \$8.5 million per year (\$5,000 cost of supervision x 1,700 people). Alternately, dividing the Parole Board's budget of \$19 million by the 3,365 parolees it supervised in 2009 yields an average cost per parolee of \$5,600. Calculating the costs of mandatory post-supervision using this figure means that adding another 1,700 people could result in additional annual costs of 9.5 million. The Senate Ways and Means Committee estimates a \$2,500 cost per parolee per year, yielding potential yearly costs of \$4.25 million.

The annual cost of re-incarcerating post-release supervision parolees who violate a condition of their supervision must then be added; Section 34 allows the Parole Board to re-incarcerate based on both criminal and non-criminal violations of post-release supervision. Per the Department of Correction (DOC), the average cost per year to house a prisoner in FY2010 was \$45,917.05. DOC, "Frequently Asked Questions about the DOC", available at

5A	Makes it lawful to prescribe certain drugs to people at risk of opiate overdose, and their family members, friends, or helpers.	Likely some health care and criminal justice-related savings; difficult to estimate.
6	Reduces mandatory minimum for repeat offenders of distribution of Class A substances from 5 to 3½ years.	Approximately \$16-\$32 million in savings from all mandatory minimum sentence and weight reductions. ⁵
7	Reduces mandatory minimum for distribution of Class B drugs from 3 to 2 years.	Part of \$16-\$32 million savings. See Section 6.
8	Reduces mandatory minimum for repeat offenders of distribution of Class B substances from 5 to 3½ years.	Part of \$16-\$32 million savings. See Section 6.
9, 10	Reduces mandatory minimum for distribution of Class C drugs from 2 years HOC to 18 months; retains mandatory minimum prison term of 2 years.	None for state prisons. Some savings for county facilities; difficult to estimate.
11	Reduces mandatory minimum for trafficking 100-2000 lbs marijuana from 3 to 2 years.	Part of \$16-\$32 million savings. See Section 6.
12	Reduces mandatory minimum for trafficking marijuana 2000-10,000 lbs from 5 to 3½ years	Part of \$16-\$32 million savings. See Section 6.
13	Reduces mandatory minimum for trafficking marijuana over 10,000 lbs from 10 to 8 years.	Part of \$16-\$32 million savings. See Section 6.
13A	Raises minimum amount of cocaine/phenmetrazine for trafficking from 14 to 18 grams.	Part of \$16-\$32 million savings. See Section 6.
14	Changes weight range for trafficking cocaine/phenmetrazine from 14-28 grams to 18-36 grams; reduces mandatory minimum from 3 to 2 years.	Part of \$16-\$32 million savings. See Section 6.
15	Changes weight range for trafficking cocaine/phenmetrazine from 28-100 grams to 36-100 grams; reduces mandatory minimum from 5 to 3½ years.	Part of \$16-\$32 million savings. See Section 6.
16	Reduces mandatory minimum for trafficking cocaine/phenmetrazine 100-200 grams from 10 to 8 years.	Part of \$16-\$32 million savings. See Section 6.
17	Reduces mandatory minimum for trafficking cocaine/phenmetrazine 200+ grams from 15 to 12 years.	Part of \$16-\$32 million savings. See Section 6.
17A	Raises minimum amount of heroin/morphine/opium for trafficking from 14 to 18 grams.	Part of \$16-\$32 million savings. See Section 6.

<http://www.mass.gov/eopss/agencies/doc/faqs-about-the-doc.html>. If 15% of these parolees are revoked each year and incarcerated for two months, it could increase costs by \$2 million each year (255 people x \$7,600 cost of 2 months).

⁵ In 2010, 697 people were convicted and received mandatory minimum sentences for drug offenses. See Sentencing Commission, "Survey of Sentencing Practices FY 2010," *Executive Summary*, p.V, available at <http://www.mass.gov/courts/admin/sentcomm/fy2010survey.pdf>. The sentence reductions in Sections 6 through 20 would reduce each mandatory minimum sentence by 1 to 3 years. However, though *minimum* possible sentences change, judges retain the discretion to give higher sentences. The greatest mandatory minimum reductions apply to the longest sentences, which relatively few people are serving. *Once Sections 6 through 20 are in full effect*, if half of the prisoners received 1 year reductions to their sentences, it would result in a savings of \$16 million per year (349 people x approx. \$46,000 cost per prisoner). If all 697 prisoners were sentenced to 1 year less, that would save \$32 million. This is a substantial amount and a positive reform, but does not come close to offsetting the long-term costs of other alarming provisions in S.2080.

18	Changes weight range for trafficking heroin/morphine/opium from 14-28 grams to 18-36 grams; reduces mandatory minimum from 5 to 3½ years. Changes weight range of trafficking heroin/morphine/opium from 28-100 grams to 36-100 grams; reduces mandatory minimum from 7 to 5 years.	Part of \$16-\$32 million savings. See Section 6.
19	Reduces mandatory minimum for trafficking heroin/morphine/opium 100-200 grams of heroin/morphine/opium from 10 to 8 years.	Part of \$16-\$32 million savings. See Section 6.
20	Reduces mandatory minimum for trafficking heroin/morphine/opium 200+ grams from 15 to 12 years.	Part of \$16-\$32 million savings. See Section 6.
20A & 20B	Allows for discretionary participation in work-release by drug offenders serving mandatory minimum sentences.	Potential savings; difficult to estimate. ⁶
21	Reduces school zone from 1000 to 500 feet from school property.	Potential savings; difficult to estimate. ⁷
21A	Adds amnesty from prosecution for people seeking medical assistance for someone experiencing a drug related overdose.	Minimal savings.
21B	Gives Commissioner of Correction duty to promulgate regulations for reentry programs.	No direct costs.
22	Adds new section requiring transfer of medical and mental health records when prisoners are transferred between facilities.	Potential savings on health care and liability, but difficult to estimate.
23	Makes provision for medical parole release.	Potential for major savings only if used by Parole Board. ⁸

⁶ Direct savings from allowing a subset of prisoners out on work-release during the day are minimal. However, various studies correlate participation in work-release programs with a significant drop in recidivism rates. See Executive Office of Public Safety, “Implementing a Reentry Program According to Best Practices” available at <http://www.mass.gov/eopss/docs/eops/publications/eops-grantee-tools.pdf>. In a February 2011 report, the DOC states that recidivism rates from its pre-release facilities where work-release programs are accessible average 14%. See DOC, “A Look at the Department of Correction Pre-Release Facilities,” available at <http://www.mass.gov/eopss/docs/doc/research-reports/briefs-stats-bulletins/inmate-pre-release-brief.pdf>, at pp.4-5. This is about three times lower than the overall recidivism rate for DOC prisoners provided in a January 2011 report. See DOC, “Recidivism Rates 2006 Release Cohort,” available at <http://www.mass.gov/eopss/docs/doc/research-reports/briefs-stats-bulletins/recidivism-rates-2006-release-cohort.pdf>. Therefore, savings from the likely reduction in recidivism resulting from prisoners accessing work-release programs who were previously statutorily prohibited from participation could be significant.

⁷ In fiscal year 2010, there were 147 people serving sentences for school zone drug violations. See Sentencing Commission, “Survey of Sentencing Practices FY 2010,” p.31, available at <http://www.mass.gov/courts/admin/sentcomm/fy2010survey.pdf>. This section would reduce sentences for some subset of these people, depending on the concentration of school zones in particular areas.

⁸ Between 2000 and 2009, the group of Massachusetts prisoners age 60 and older increased 80%, from 325 to 584 individuals. See DOC, “Age of Custody Population 2002-2011,” p.2, available at <http://www.mass.gov/eopss/docs/doc/research-reports/briefs-stats-bulletins/age-custody-pop-2002-2011.pdf>. This trend is sure to continue as other provisions of this bill increase sentence lengths and reduce parole eligibility. An older prison population requires more costly medical care, often at least \$100,000 per year per prisoner for elderly prisoners. California estimates that the average yearly cost of health care for the oldest prisoners who needed substantial amounts of specialty health care was \$42,000. See California State Auditor, “California Department of Corrections and Rehabilitation: Inmates Sentenced under the Three Strikes Law and a Small Number of Inmates Receiving Specialty Health Care Represent Significant Costs,” May 2010 Report 2009-107.2, p.40, available at <http://www.bsa.ca.gov/pdfs/reports/2009-107.2.pdf>. The 72 California prisoners who died in custody in 2007-08 incurred over \$8.8 million in constitutionally-required healthcare costs. Id. at pp.38-40. This tremendous expenditure could have been shifted to Medicaid, a more efficient means of providing healthcare, by releasing those prisoners who met parole criteria.

24, 25	Increases minimum amount of earned good time credit from 2 ½ to 5 days per month. Increases earned good time maximum from 7 ½ to 10 days per month.	Substantial savings, but difficult to estimate. ⁹
26	Adds bonus 10 days of good time for program completion	Some savings, but hard to estimate
27	Adds criteria for Parole Board to consider in deciding to grant parole.	If result is fewer approvals of parole, additional costs.
28	Requires parole board to either post decisions on the internet, or post an explanation of why that is not practicable.	Minimal direct costs.
29	Removes parole eligibility for people serving multiple life sentences; calls for the application of Section 45.	Approximately \$9 million additional costs per year. ¹⁰
30	Requires 2/3 vote in favor of parole release by the Parole Board members for prisoners serving life sentences rather than majority.	Additional costs due to fewer parole releases. ¹¹
30A	Parole board must provide written certification that it has notified DAs, law enforcement, and victims of parole hearing; notification applies to everyone sentenced to 5 or more years in prison.	Minimal direct costs.
31	Parole eligibility after 2/3 of maximum sentence for habitual offenders; no parole eligibility for habitual offenders sentenced under c. 279 § 25(b) of enumerated offenses.	Significant costs of increased sentences for every habitual offender. Part of \$75-125 million additional costs per year. See Section 46.
32	No parole, work release, furlough, or good time for habitual offenders sentenced under c. 279 § 25(b) of enumerated offenses	Part of \$75-125 million additional costs per year. See Section 46.
33	Parole board may delay hearing until 30 days before eligibility, with written statement of reasons	Minimal direct costs.

⁹ Earned good time credit is earned by partaking in work, educational, vocational, or rehabilitative programming. Providing incentives to participate in these programs improves public safety, as research shows that participation in educational and vocational programs could result in reductions of 7-9% in recidivism rates. DOC, “January 1, 2009 Inmate Statistics,” p.22, available at <http://www.mass.gov/eopss/docs/doc/research-reports/jan-1-population/112009.pdf>. However, such opportunities are not always available. The DOC currently spends only 2.4% of its budget on these programs. See DOC, 2009 Annual Report, p.78, available at <http://www.mass.gov/eopss/docs/doc/annual-report-2009-final.pdf>.

¹⁰ The DOC reports that 32 people received second degree life sentences in 2010. Department of Correction, “Prison Population Trends 2010,” August 2011, p.21, available at <http://www.mass.gov/eopss/docs/doc/research-reports/pop-trends/prison-pop-trends-2010.pdf>. If 10 of those 32 people are sentenced to *multiple* second degree life sentences and serve an additional 20 years due to the elimination of parole eligibility, this would result in an additional 200 people in DOC custody *once the law has fully take effect*. As such, the elimination of parole eligibility for people serving multiple second degree life sentences will cost the Commonwealth approximately \$9.2 million per year *once the law has fully taken effect* (10 people serving on average 20 extra years x approx. \$46,000 per year). This estimation does not account for the higher medical costs associated with aging prisoners or the capital costs of building additional maximum security prisons required to accommodate more prisoners serving life sentences.

¹¹ Requiring more affirmative votes by Parole Board members will further reduce the parole rate and increase the number of prisoners. Even under current law requiring a simple majority vote of the Parole Board, parole release rates have declined in 2011. Despite the fact that 44% of state prisoners have been approved for parole, the DOC estimates that actual parole releases were down 56% in 2011 compared to 2010 levels. Department of Correction, “Current Parole Admission and Release Trends at the Massachusetts Department of Correction,” December 2011, p.2, available at <http://www.mass.gov/eopss/docs/doc/research-reports/briefs-stats-bulletins/current-parole-trends-november-2011.pdf>. There were also zero positive votes reported in 2011 for people serving second degree life sentences. This means that over 500 extra prisoners remain in custody, at a cost of \$25 million per year.

34	Imposes mandatory post-release supervision for all state prisoners.	Part of \$6-\$11.5 million per year. See Section 5.
34A	Increased penalty for assault and battery on a public employee, when the conduct includes the attempt to disarm a police officer in the performance of police duties.	Increased costs for longer sentences.
35	Changes statute regarding assault and battery on family members, repeat offenders.	Minimal direct costs; difficult to estimate.
36	Adds new crimes of assault and battery by discharge of gun, assault and battery by brandishing gun, strangling/suffocation, enticement to murder.	Additional costs; difficult to estimate.
37, 38	First-offense larceny by check under \$250 punishable by fine.	Minimal savings.
39	Raises penalties for second offense of carrying dangerous weapons from 7 to 10 years, third offense from 7-10 to 10-15, fourth offense from 10-15 to 15-20.	Increased costs for longer sentences.
40	Adds increased penalty for possession of firearm, etc. by person convicted of crime punishable by at least 2 ½ years.	Increased costs for longer sentences.
41	Strikes purpose provision of interception of communications statute.	No direct costs.
42	Amending definition of wire communication.	No direct costs.
43	Adds extra offenses to definition of designated offense for interception of communications.	Minimal direct costs.
43A	Allows treatment of certain municipal/misdemeanor offenses as civil infractions; permits arrest and fine for failure to give true name/address.	Any savings offset by additional arrests.
44, 45	Requires the court to fix a minimum term of incarceration when sentencing second degree lifers between 15 and 25 years.	Approximately \$7 million in additional costs per year ¹²
46	Amends the existing habitual offender, or three strikes, statute to include a Subsection (a) applying to all felonies and Subsection (b) applying to 59 specified crimes. All convicted of a third strike must be sentenced to the maximum allowed by law. See Section 31 for parole eligibility.	The addition of M.G.L. c. 279, §25 Subsection (b) alone will cost at least an additional \$75-125 million per year. ¹³

¹² Massachusetts taxpayers will pay nearly half a million dollars for each prisoner sentenced to 10 extra years (10 years x approx. \$46,000). Again, the DOC reports that 32 people received second degree life sentences in 2010. DOC, "Prison Population Trends 2010," August 2011, p.21, available at <http://www.mass.gov/eopss/docs/doc/research-reports/pop-trends/prison-pop-trends-2010.pdf>. Assuming that changing parole eligibility from 15 years to 15-25 years would mean the average offender would serve 5 more years, the change would give rise to 160 additional people in DOC custody *once the law has fully taken effect*. The result will be approximately \$7.4 million per year *once the law has fully taken effect* (32 people serving an average of 5 extra years x approx.\$46,000 per year).

This estimation does not account for the higher medical costs associated with aging prisoners or the capital costs of building additional maximum security prisons required to accommodate more prisoners serving life sentences. Between 2000 and 2009, the group of inmates age 65 and older increased 84%, to 245 individuals. An older prison population requires more costly medical care, often at least \$100,000 per year per prisoner. This trend is sure to continue as sentence length increases. Keeping older prisoners, who are statistically least likely to reoffend, incarcerated without any possibility of parole will dramatically increase costs as the prison population ages. These costs will not all accrue immediately, but will result in huge increases over the long term.

¹³ There are currently over 5,500 of the DOC's 11,800 prisoners serving sentences for one of the listed crimes in S.2080's Subsection (b). Each year about 1,500 new prisoners are sentenced to DOC for a Subsection (b) crime. Based on analysis of data in the Massachusetts Sentencing Commission's "Survey of Sentencing Practices FY 2010," 150-250 of these prisoners could be sentenced under Subsection (b) of Section 46, some to life without parole. See Sentencing Commission, "Survey of Sentencing Practices FY 2010," *Figure 1: Sentencing Guidelines Grid* at p.3, *Table 24: Grid Cell Assignment*

47	Duty of parole board to regulate post-release supervision effective immediately, regulations to take effect no more than 90 days later.	Part of \$6-\$11.5 per year. See Section 5.
48	Mandatory post-release supervision required for every felony committed on or after effective date of this act.	Part of \$6-\$11.5 per year. See Section 5.
49	Permits persons serving existing mandatory minimum sentences for drug offenses to be eligible for parole, work release, and good conduct deductions upon reaching the new mandatory minimum sentences set out in Sections 6 through 20.	Scale of direct savings dependant on whether Parole Board will grant parole releases.
49A	Mandates eight hours of training for Parole Board annually.	Minimal direct costs.
49B	Extends restraining order protections to animals.	Minimal direct costs.
49C	Establishes commission to study the development of a prioritization system for sex offender classification.	Some additional costs; difficult to estimate.
50	Effective date for Section 4 of this act 1/1/2013.	N/A
51	All other provisions effective in 90 days.	N/A
ESTIMATED TOTAL COSTS OF ALL S.2080 PROVISIONS ONCE THE LAW HAS FULLY TAKEN EFFECT		Approximately \$81-121 million in additional costs to taxpayers per year.

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by Court Department at p.37; *Criminal History Group* at p.70; *Selecting a Governing Offense*, p.71 (explaining that the statistics “may underestimate the number of defendants in the highest criminal history group”); and *Table 41: Governing Offense by Grid Cell Assignment and Incarceration Status, All Courts*, pp.86-87, available at <http://www.mass.gov/courts/admin/sentcomm/fy2010survey.pdf>. The range of 150-250 was estimated by assuming that all people convicted of a third strike would be in criminal history group D or E, and that all crimes of Levels 7-9 and 50% of Level 6 crimes would count as strikes. The range also includes a rough estimate of the number of people who have served at least one day in county facilities for their previous two “strikes,” under Subsection (b) of S.2080.

Even if each of these 150-250 prisoners serves ‘only’ an average of 10 additional years, this will result in an additional 1,500-2,500 DOC prisoners *once the law has fully taken effect*. Therefore, Subsection (b) could cost taxpayers between \$75-125 million per year (150-250 people x 10 extra years x approx. \$46,000 per year), not including the capital costs of building necessary new prison beds.

This estimate is consistent with the experience of other states. For example, in 2010 the California State Auditor concluded that the Three Strikes law had cost the state \$19.2 billion dollars over 9 years, but that the costs would have been \$10.7 billion if only serious and violent offenses counted as “strikes.” California State Auditor May 2010 Report 2009-107.2, pp. 21, 27, available at <http://www.bsa.ca.gov/pdfs/reports/2009-107.2.pdf>. Since Subsection (b) only includes 59 specified offenses, and adjusting for the size of the California prison population, a reasonable estimate of the costs to Massachusetts taxpayers is \$81 million per year. In fact, this may underestimate Massachusetts costs since the California law does not mandate life without parole.

Any additional increase in the Massachusetts prison population will also almost certainly require new prison construction. Even without the passage of new legislation, state prisons and jails are already overcrowded, the DOC has projected annual prison population growth of 2.7% from 2009 to 2019, and the Parole Board is releasing 56% fewer people than it did in 2010. DOC, “Summary of Ten-Year Prison Population Projections 2009-2019,” p.1, available at <http://www.mass.gov/eopss/docs/doc/research-reports/population-projections-summary-2009.pdf>; DOC, “Current Parole Admission and Release Trends at the Massachusetts Department of Correction,” December 2011, p.2, available at <http://www.mass.gov/eopss/docs/doc/research-reports/briefs-stats-bulletins/current-parole-trends-november-2011.pdf>. In its most recent report from December 2011, the DOC projected that by the end of 2011 it would have 550 additional prisoners because of the 56% reduction in parole releases compared to 2010 at a cost of over \$25 million for 1 year (550 people x approx. \$46,000). See *id.* The most recent jail construction cost the Commonwealth over \$223,000 per cell.