

On behalf of the Charles Hamilton Houston Institute for Justice at Harvard Law School, I write to register our strong opposition to H.1434, "An Act relative to the establishment of a women's pretrial facility in Middlesex County." Since the Houston Institute's inception in 2005, we have focused on highlighting the growing evidence base that supports alternatives to incarceration and detention for many individuals in the Commonwealth who are court-involved. Not only are alternatives to detention humane and cost-effective for many of these individuals, who pose no threat to the public, but they strengthen families and improve overall community safety.

Across the country, states are recognizing the counter-productive effects of mass incarceration, and enacting common sense solutions that keep non-violent offenders within their communities and families. Yet, inexplicably, the Commonwealth seems bent on moving down a path of harsh punishment and overuse of detention, even as these have been widely discredited. We find the state's continued over-reliance upon the least effective and most expensive intervention—incarceration—extremely troubling. We strongly urge the Commonwealth to follow the example of other states that are pursuing more enlightened, cost-effective policies for addressing our public safety and justice needs.

Indeed, knowing what we know, we are now in a position to shape policies that show much greater promise of restoring lives and communities. While the idea behind creating a new Middlesex facility would in theory correct the current horrible plight of Middlesex women who cannot make bail, we are particularly concerned about the proposal that would exacerbate an already skewed use of pre-trial incarceration. Much of our concern grows from the unfortunate historical legacy we have of incarcerating women in Massachusetts. Here I cite my colleague Dr. Kaia Stern, Founder of the Harvard Prison Project, who has noted:

When Framingham prison opened its doors in November 1877 as the Massachusetts Reformatory for Women, "Prisoner Number One," a woman named Hannah Sullivan, was classified as "feeble minded" and locked up for being homeless and drunk. Today, the primary causes of women's incarceration across the United States can be traced to poverty, addiction and domestic abuse. In Framingham, suicide rates among women exceed national averages. African American and Latina women are proportionally overrepresented, and 99.9 percent of all the women incarcerated there are survivors of domestic violence. Nearly three quarters of them are single mothers who have never committed a violent crime, who struggle with addiction, and who have received mental health diagnoses habitually treated by psychotropic drugs. Imprisoned mothers are deemed unfit.

At the time of that writing, Dr. Stern, who has been a student or teacher in prisons for more than 20 years, was concerned about the use of Framingham to "house" – a euphemism if ever there has been one – women awaiting trial in the ATU. She was concerned about the same overcrowding that in theory prompts this legislation. But Dr. Stern came to a definitively different conclusion about the direction we need to turn. "Our sisters and mothers and daughters in prison," writes Stern,

...are human reflections of our public health crisis. The solution is *not* more “female beds.” The solution is to create more cost-effective alternatives to jail for people who pose no risk to public safety. The women awaiting trial at Framingham prison should be in their communities, working and taking care of their children. The women who need drug treatment deserve drug treatment without being condemned as criminal.

Massachusetts stands at a crossroads today. We have an opportunity to reclaim our state’s proud tradition of adopting enlightened and humane policies; policies that are subsequently adopted by other states after us. The state needs to correct its record of disparate treatment of women. We certainly have grave concerns about the over reliance on pre-trial detention as a tool. Today, it is being used in the Commonwealth to incarcerate women disproportionately, particularly women of color. Thus, this tool is worse than blunt; it has become a weapon of community and family destruction, one which ripples across generations.

We at the Houston Institute believe in what we call community justice. It is a simple proposal that our public policies can and must be designed to meet the real needs of the communities in which we live rather than the perceived needs of policy makers acting at great remove from those affected. The irony, of course, is that H.1434 would propose to narrow the distance between women being held pretrial and their families and communities. But this apparent remedy fails to address the actual problem, which is the over-reliance on pretrial detention. This proposal does nothing to address that. In fact, by creating more beds closer to home, it may actually serve to increase pressure to fill the beds. We know from past experience that the old adage “if you build it, they will come” unfortunately rings true when it comes to building new penal facilities.

As Dr. Stern points out, the women being held are members of families, many of which may already have a male resident incarcerated. By removing these mothers, sisters and daughters, we threaten to destabilize our families and communities rather than strengthen them. The language of the bill seems simple and to the point, but its silence on the issues surrounding the use of pretrial detention is deafening. What is left unsaid is the very conversation we should be having about how best to serve the women being detained, few of whom are violent. As to flight risk, the very reason they are being detained is because they do not have the resources to make bail, thus making any risk of flight minimal.

I urge the committee to think long and hard about approving this cryptic legislation without engaging in the larger and long overdue conversation about the state’s overreliance upon incarceration and detention, particularly for populations that pose no serious safety risk. This is a conversation that states across the country are engaging in, and making common sense, fiscally sound decisions to limit incarceration to those who endanger the community. Few of these women do. Incarcerating them at current levels is endangering their children and destabilizing communities. One hopes we have learned something – many things – since the dark day in 1877 when Hannah Sullivan was incarcerated for what today we recognize as conditions we can otherwise address.

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