

“It Fell Through the Cracks,” The Defunding of Crucial Services and Programs for People Incarcerated in Massachusetts

By Lois Ahrens, Director, The Real Cost of Prisons Project.

What follows is a long, sad story with, spoiler alert, no happy ending. After many years of organizing, in 2022 both houses of the Massachusetts legislature passed No Cost Calls legislation which provided no cost calls and emails to people incarcerated in jails and prisons in Massachusetts. After months-long delay, the bill was sent to Governor Charlie Baker for his signature. Baker did not sign the bill. Instead, at the last minute, he proposed an amendment to expand the scope and availability of “dangerousness” as a basis for pretrial detention, an unrelated issue, but a top priority of Baker’s.

Baker’s machinations and the Senate’s spinelessness doomed the bill.

Another No Cost Calls bill was introduced by Sen. Cynthia Creem and Rep. Chynah Tyler in the 2023 session, and in November 2023, Governor Healey signed a revised version of the bill into law. In addition to ending exorbitant charges for calls, the revised bill ended the 11% commissions paid to sheriffs and the DOC on all purchases in prison and jail commissaries paid by incarcerated people in Massachusetts.

Commissions (aka “kickbacks”) on phone calls and commissary purchases generated hundreds of thousands of dollars a year for sheriffs’ departments and the DOC. These commissions exacerbated the already inflated prices prisoners were charged in commissaries. Every incarcerated person, with funds often provided by family and friends, purchases daily necessities such as food, drinkable water, clothing, and appliances from Keefe Commissary Network, the sole vendor. In 2023, commissions amounted to \$1,087,260 and paid for programs and services not funded by the \$800-plus million Department of Correction annual budget. (Less than 2% of that budget funds programs for prisoners in the DOC.) On its face, the anticipated price reductions were a needed change, but the unintended consequence was that the Inmate Benefit Funds programs as well as law libraries in prisons and jails, which for the last 15 years have been funded by commissary commissions, suddenly lost their funding. (Prior to that, funding was provided by DOC).

The original No Cost Calls bill protected the Law Libraries and the Inmate Benefit Funds and included this language:

(b) Any service, benefit or program for incarcerated people to which commissary commissions were specifically designated in fiscal year 2022, including, but not limited to, the Inmate Benefit Funds, The Law Library and the Central Program Account in the state prison system, shall be funded

by the department of correction and the sheriffs at not less than the level of funding in fiscal year 2022.

This provision was removed from the version of the bill that was ultimately enacted. Apparently, Senator Creem and advocates working on no cost calls believed that law libraries and benefit funds were extraneous to the no cost calls legislation and sought to keep the bill focused on no cost calls. As a result, they unwittingly eliminated the funding stream for the Law Libraries and Inmate Benefit Funds. Perhaps they did not know that the Inmate Benefit Funds paid stipends for people working prison jobs and for religious services, or that in 2023, it was commissions that paid \$242,561 for tablets for prisoners in Souza-Baranowski, Framingham, Bridgewater, MASC, and even for the DOC Central Office. Commissions paid for \$43,306 in recreation equipment, \$7,565 for garden equipment and seeds, \$25,000 for library books, for the BRAVE program for emerging adults at Gardner and much more. Commissions paid for the on-line resources needed for law libraries, including \$119,400 for Lexis-Nexus, \$81,628 for Westlaw, \$3,861 for law books, and \$37,000 for Comcast for on-line legal resources.

I was made aware of this change in the legislation by several people working to pass the No Cost Calls bill. As soon as I learned what was about to happen, I contacted Gordon Haas, longtime Chairman of the Norfolk Lifer's Group, a group of people serving life sentences at MCI Norfolk. Gordon and I and several men incarcerated in MCI Norfolk and Shirley had worked together for almost two decades. As director/founder of the Real Cost of Prisons Project, I have worked to ensure that incarcerated people in Massachusetts and around the country had a home on the RCPP website for their reports and other incisive writing. I also email their reports to legislators and advocates, providing them with insights and data they would otherwise not have. For many years, Gordon has been tracking the income and expenses generated by commissary commissions. He sounded the warning about what the loss of the funding stream would mean for the life of people who are incarcerated. I became the advocate and messenger sounding the alarm. But our warning was not heeded. It was too late. "It fell through the cracks," I was told by Bonnie Tenneriello of Prisoners' Legal Services.

After repeated action alerts, emails and phone calls calling attention to what the loss of funding would mean, language was included in S.1493/H.2325 by Sen. Creem and Rep. Fluker Oakley to try to restore funding for the libraries and Inmate Benefit Accounts.

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The bill was assigned to the Public Safety Committee, co-chaired by Sen. Walter Timilty and Rep. Carlos González, where it died. Like every other criminal reform bill that died in committee, there is no record of how the members voted.

This is the link to one of many of Gordon Haas' reports on Law Libraries and Inmate Benefit Funds. <https://www.realcostofprisons.org/writing/haas-income-and-expenses-for-law-libraries-benefit-fund-and-program-account.pdf>. The report details the programs commissary commissions funded.

The end of commissions on commissary purchases was to go into effect on July 1st, 2024 when the No Cost Calls bill was enacted. On several occasions, Haas and the Norfolk Inmate Council sent pleas to the legislators calling attention to the funding problem. [Open Letter to Legislators concerning the end of funding for law libraries and the Inmate Benefit Funds and Program Funds](#). I emailed Gordon Haas's letter to dozens of legislators.

Like every other aspect of this convoluted story, the legislature's intention to lower commissary prices did not result in lower prices. Soon after July 1, when the statute went into effect, people inside who were expecting a reduction in commissary prices saw that prices did not reflect the expected reductions. I immediately began receiving emails from people inside. What they said was the commissary prices did not drop. They soon learned that Keefe, the only commissary vendor, simply ignored the law. Keefe kept the full prices they had charged prior to July 1, thereby 1st reaping even greater profits since they no longer were paying commissions to the DOC. With the full profits, Keefe is netting a huge windfall, while programs supported by commissions are now defunded. The DOC stood by and did nothing.

The clear language of the statute that went into effect July 1, 2024, demands that DOC use "contracting opportunities that reduce the cost of such items." As such, all commissions and financial incentives were eliminated that, at bare minimum, should have reduced all prices by at least 11%.

James Keown incarcerated at MCI Shirley filed this grievance, one of many: "Grievance: On July 6, 2024, I submitted an Informal Complaint noting that the prices of canteen, clothing, and appliances were not lowered as required by MGL c. 127 ss 171."

Keown's grievance was denied. Keown writes, "KCN (Keefe Commissary Network) feels

they are in compliance with state legislation." Keown wrote to me: "The matter at hand is not what Keefe "feels," it is what the DOC determines. By denying my grievance, the DOC is co-signing the actions of Keefe. This means that the commissioner agrees that Keefe does not need to follow MGL c. 127 ss 171."

Here is another DOC response, this one to Gordon Haas: "Effective July 1, 2024, the Department of Correction is no longer receiving commissions for commissary services as required by legislative language. Keefe Commissary Network states that they are in compliance with the pricing requirements of said language. Should any further budget language be issued, then the Department will adjust and abide accordingly." Gary Temple, Director of Support Services, DOC."

In the days after July 1, when people were expecting reductions on the cost of everything sold in the commissaries, I received more emails saying commissary prices had not gone down. Once again, I wrote to Sen. Creem as well as to dozens of other legislators, attorneys, and advocates. With four exceptions (Rep. Lindsay Sabadosa, Patrick Prendergast, chief of staff for Rep. Michael Day, Jared Freedman, Sen. Jo Comerford's chief of staff, and Rachel Roth of the Keeping Families Together Coalition), I received no response.

In another misguided and ineffective attempt to fix this greedy maneuver by the Keefe commissary company, Sen. Creem tried to limit the cost of commissary by filing an "Outside Section" to the state budget bill. No one in the Legislature advised me of this bill, notwithstanding my many efforts to promote this legislation. I learned of it from Margaret Monsell of the MA Law Reform Institute.

This is the new language in the Outside Section (July 29, 2024):

Section 51 of chapter 28 of the acts of 2023, is hereby amended by striking out the first sentence.

SECTION 135. Said subsection (b) of said section 171 of said chapter 127, as amended by section 134, is hereby further amended by striking out the first sentence and inserting in place thereof the following 2 sentences:- The department of correction, state correctional facilities, state prisons, county correctional facilities and entities, sellers, suppliers or vendors contracting with such facilities shall charge an amount not to exceed 95 per cent of the market price for commissary items at non-correctional major retail stores in the commonwealth. The department of correction and county sheriffs shall maximize discounts procured from bulk purchasing of commissary items or other contracting opportunities that reduce the cost of such items and shall not receive commissions, revenue, or other financial incentives in any contract with a seller, supplier, or vendor of commissary items.

SECTION 249. Section 135 shall take effect on October 31, 2024.

This is the interpretation of the language by Margaret Monsell:

“Here is how I understand the law will change, assuming the governor signs it:

"DOC has the responsibility to determine what the market price is for the purpose of setting the commissary prices. By 10/31/24, the price of commissary goods cannot exceed 95 percent of the market price. *Whether or not the calculation of the market price happens on schedule will of course depend on DOC's cooperation.*
(Italics and underline, mine.)

Here we are, more than two years since the first No Cost Calls bill was introduced by Sen. Creem, blocked by Gov. Baker, and reintroduced by Creem and Fluker Oakley and signed by Gov. Healey. Based on the DOC response to grievances and their daily disregard of Massachusetts laws and policies, some big and some less big, it seems unlikely that they will create and enforce the mechanisms to sell commissary items at 95% of the market price as the law states.

Over more than two years, I, along with Gordon Haas, William Duclos, James Keown, and other incarcerated men, have worked to sound the alarm to many, many legislators, and “advocates.” Unfortunately, Sen. Creem and others never once thought to consult with those most affected. If they and others who write legislation consulted with the experts, that is, Gordon Haas and others, perhaps commissary would be guaranteed to be more affordable to incarcerated people and their loved ones and there would be mechanisms preventing DOC, the sheriffs and Keefe from circumventing the law. Perhaps legislators would understand the importance of law libraries to people deprived of their liberty and would have written legislation that creates the procedures and policies that ensure a funding stream for them. And maybe they would have understood what the end of funding for the Inmate Benefit Programs means for people inside struggling to help themselves and each other.

The result, as of now, is that there *is both no reduction in commissary costs and no funding for law libraries and Inmate Benefit Funds*. On September 27th, I learned that the Norfolk Inmate Benefit Fund is out of money. So far, there has been no indication *how or if* the DOC will fund law libraries or pay for the equipment, services, and programs in every prison, including stipends for over 70 workers just at Norfolk. Price gouging continues. Keefe is now earning the full price on everything purchased with an estimated an additional profit of \$1.2 million in the coming year. Commissions Keefe paid to the DOC, and which once supported the law libraries and the Inmate

Benefit Funds now go directly into Keefe's pocket. The DOC is silent on what will happen next.

A sorry postscript. Funding for No Cost Calls in the budget which Gov. Healey signed includes only \$10 million for no cost calls. The first cycle of funding was \$20 million. For the current budget, Gov. Healey recommended \$35 million. The House recommended \$35 million. The Senate recommended zero. The "compromise" was \$10 million, way less than what is needed. In the last supplemental budget, there was no increase in funding for calls. Once again, the daily lives of incarcerated people and their loved ones are at the mercy of legislators.