

Why Is The DOC Giving Away My Money... And Your Money, Too? By James Keown

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The central mission of the Massachusetts Department of Correction is to rehabilitate the people in the agency's care and custody. The department's requirement to provide education and vocation classes, as well as programs that deal with core criminal factors like substance use, violence, criminal thinking are enshrined in law. Another important element of rehabilitation required by state law is the ability to communicate with people outside of prison through phone calls, video visits, and electronic messaging. Most incarcerated people will be freed one day and community connections represent an important element in helping people successfully transition out of prison and live a meaningful life without crime.

Prior to 2023, prisons and jails charged rates for communication services that far exceeded what companies charged for the same offerings in the free world. The high cost was driven in part by commissions paid to the DOC by private companies in exchange for being awarded contracts. These commissions were used by the DOC to pay for items as diverse as basketballs to overtime for correction officers. The commissions allowed the agency to reallocate money previously spent on rehabilitation and recreation items and direct the funds into added staffing -- mostly security staffing. The surcharges funding the commissions acted as a virtual crime tax assessed on incarcerated people and the people who supported them.

Crime tax commission programs are an often ignored symptom of 'Tough on Crime' policies that led to mass incarceration in Massachusetts and around the country. The financial scheme was rooted in a belief that it was not enough for people to pay for their crime by serving a sentence. They (more often, their loved ones) must also pay by literally funding their rehabilitation by purchasing goods and services from state vendors who are allowed to operate state-sanctioned monopolies that generate commissions to the DOC.

The Legislature passed a measure in 2023 designed to eliminate all charges for making calls, attending virtual visits, and sending electronic messages in the hope of improving the ability for people inside to remain connected to loved ones and friends in the free world, thereby eliminating the state's crime tax. The DOC asked for implementation of the law to be delayed from August 2023 until December 2023 so the agency could work with their vendors to rework contracts to align with the law's requirements.

The DOC contracts with a private corporation called Keefe to provide an electronic messaging service as part of the department's commissary contract and another private corporation called Securus to provide phone and video visit services. (Both companies are owned by huge private equity firms.) Before the new law, Keefe charged \$0.25 for every electronic message sent through its service. Keefe retained \$0.13 from each message and paid the DOC \$0.12. Securus

charged \$0.13 per minute for phone calls -- \$0.079 went to Securus and \$0.051 went to the DOC. Both contracts were entered into using the state's standard contract form, which allows agencies to renegotiate contracts, and even end them, if the Legislature passes a measure affecting an agreement.

Something strange happened, however, when the DOC renegotiated their contract with Keefe and Securus. Rather than renegotiate the two contracts to seek the "best value" for the commonwealth, as required by the standard contract form; the department awarded both companies windfalls. Since the new law went into effect on December 1, 2023, the DOC has paid its vendors almost \$12 million dollars for communication services. Currently, the agency pays the two vendors the same rate the companies were previously receiving minus the commission. In other words, the DOC is paying \$0.13 for every electronic message sent and \$0.79 for every call placed.

Compare the DOC's strategy to how Sheriff Paul Heroux negotiated for the same services offered to those held in the Bristol County Jail and House of Correction. Bristol County also contracts with both Keefe and Securus. Rather than use two vendors for communication services, Sheriff Heroux bundled electronic messaging, phone, and video visits under a new agreement with Securus. (Keefe still provides commissary services for the county.) Bristol County also negotiated a lower overall rate of \$0.072 per minute for calls. Included in this per minute charge is a \$0.013 fee for e-messaging. So, Sheriff Heroux was able to not only get a messaging rate at one-tenth of what the DOC is paying, but he was able to embed it in a phone rate \$0.007 less expensive than the DOC's rate.

A savings of about half a cent per minute may not sound like much, but it adds up quickly. If the DOC would have negotiated the same deal for the department that Bristol County signed, the commonwealth's citizens would have saved \$1.3 million dollars since the law began. And the ongoing savings would be about \$90,000 per month.

The DOC did something equally egregious when it came time enact another part of the 2023 law. In addition to the communication service changes, the Legislature barred the DOC from accepting commissions for products sold to incarcerated people through the agency's commissary. The commissary, or canteen as it is commonly called, sells everyday products like soap, deodorant, toothpaste, paper, pens, envelopes, stamps, and snacks. The commissary is the only store where incarcerated people are allowed to shop, and outsiders cannot send any products to family and friends in custody.

Two months before the Legislature adopted the statute ending commissions, Keefe negotiated to claw back 3% of the 14% commission the company paid the DOC. Keefe, which is allowed to raise prices once a year under the contract, had presented the department with two options:

allow Keefe to make significant price increases or allow Keefe pay a lower commission rate of 11% and make "modest" price increases. It is important to note that while the contract allows Keefe to recommend price increases, the DOC does not have to accept them, but Keefe is still required to offer all of the products agreed to under the contract. The agreement makes clear that there are "no exceptions." The 3% give back to Keefe was essentially a gift made by the DOC to its vendor.

The following March, Keefe went ahead and raised prices on products again under what the DOC called an "informal agreement." Most of the price increases were by more than 10%, many were by 20%. Four months later, the restrictions on commissary commissions went into effect. Instead of lowering prices to reflect an end to the surcharge as the Legislature intended, the DOC allowed Keefe to keep the extra money. Another gift from the DOC.

Presently, the DOC is paying Keefe more than \$100,000 each month from the accounts of incarcerated people as part of the ongoing commission surcharge (11% on all products). It is interesting to note that while the DOC failed to negotiate a better deal for the commonwealth on communications services, the department at least got its vendors, including Keefe, to drop their commission surcharges when the DOC's money was on the line. But when it was the money of incarcerated people (much of which comes from family and friends), the DOC simply allowed their vendor to continue charging higher prices.

Last August, I filed suit against the DOC for failing to properly implement the changes to commissary signed into law in 2023. The department is vigorously fighting the lawsuit. One of the key questions the court is asked to answer is to determine what the point is of having a commissary. The DOC argues that it is merely a transactional service and incarcerated people can either buy or not buy. I say that the core items of the commissary -- toiletries, medications, and stationary items -- are essential to everyday life.

I also state that the commissary, like communication services, is an important part of the rehabilitation continuum. The DOC is required to offer programs that prepare incarcerated people "to assume the responsibilities and exercise the rights of a citizen of the commonwealth." The purchase of goods and services unquestionably falls under this definition. No matter how hard the DOC may attempt to deny it, the fact is that the commissary provides lessons daily inside prison. Unfortunately, the curriculum, as negotiated by the DOC, teaches economic oppression for marginalized people, rather than financial literacy for returning citizens.

It's an expensive lesson for me... for you... for all the communities to where many of us will one day return.