

## Changes weighed on prison sentences Patrick reviews mandatory terms

The Boston Globe

By Andrea Estes, Globe Staff | April 15, 2007

Governor Deval Patrick has launched a comprehensive review of the state's mandatory sentencing laws, an effort endorsed by the attorney general and the chief justice of the state trial courts to help stop the "revolving door" in the state's prison system.

"People come out more dangerous than when they went in," Patrick told the Globe last week, explaining his administration's focus on fundamentally changing the philosophy of the criminal justice system.

Administration officials say that the mandatory minimum sentences, which eliminate judges' discretion in certain cases, drive up the cost of corrections and make it less likely that prisoners will participate in programs that could help them reenter society when they are released.

Because those prisoners cannot get out early for good behavior, critics say, they have little incentive to participate in programs while in prison. And they are barred by law from enrolling in work release, rehabilitation, or furlough programs outside their institution, according to Mary Elizabeth Heffernan, an undersecretary for public safety. Once they wrap up their sentence, she added, they are sent back into society unsupervised.

The effort to revamp these laws is part of a larger administration policy aimed at preparing criminals for life after prison, including changes to a program that allows employers to review the criminal records of potential employees.

Without a comprehensive plan to reintegrate the thousands of criminals who get out of Massachusetts prisons each year, Heffernan said, many will return to crime. Administration statistics indicate that nearly half commit a crime during their first year after release.

"The concept of the revolving door -- the governor and the secretary want to look at how we stop that," Heffernan said, referring to Public Safety Secretary Kevin Burke. "People are moving away from the breaking-rocks portion of the program. This administration is going to take a more thoughtful and appropriate look at what works and what doesn't."

Attorney General Martha Coakley said last week that minimum mandatory sentence are necessary in some cases for consistency: "If you sell a certain amount [of drugs], this is the penalty you'll get, whether you live in a poor part of town or a rich part of town."

"But it's also important to build in a way to make sure people have postrelease supervision, a time for reentry back into society in which people have some supervision and presumably access to services,

whether it is job training or addiction services," said Coakley, who served as Middlesex district attorney for eight years before her election last year. "Everyone agrees the Commonwealth has suffered from the lack of any meaningful postrelease supervision. A lot of it was done in the name of being tough on crime."

Robert Mulligan, chief justice for administration and management of the trial courts, said last week that most judges would prefer eliminating mandatory sentences altogether, a step that Heffernan said the administration is not currently contemplating.

Public safety officials are talking to the Massachusetts District Attorneys Association to come up with something that would be acceptable to prosecutors. No specific proposals have been chosen or legislation drafted, she said. "It's just one part of a whole array of things we're looking at around reentry."

The administration is also looking at restricting which information is released to employers under the Criminal Offender Record Information, or CORI, law, which has made it difficult for released prisoners to find work.

Mandatory sentences were enacted in the early 1990s as a response to the perceived leniency of some judges and a complex sentencing system that was difficult to decipher. Now, people convicted of drug trafficking, carrying a gun without a permit, and some drunken-driving infractions are sentenced to prison terms that require them to serve a minimum amount of time, without any possibility of parole.

Under current law, for example, those found guilty of possessing at least 200 grams of cocaine automatically receive a mandatory minimum sentence of 15 years. If they are caught within 1,000 feet of a school or park, the mandatory sentence increases by two years.

Coakley estimates that a third to 40 percent of the state's prisoners are serving mandatory minimum sentences.

If a judge issues a sentence greater than the minimum, the prisoner becomes eligible for programs once the minimum has been served. But many judges, bristling at their loss of discretion, have responded to the restrictions by imposing only the minimum, prosecutors and judges say, and criminals are freed as soon as their mandatory sentence is up.

Only in cases that involve an additional crime are the prisoners potentially subject to probation after their release.

"If a defendant is sentenced to a minimum mandatory sentence for possession of controlled substances and that is all they are serving, with no other charges, there is nothing hanging over them when they get out," said Heffernan.

Mulligan led a legislatively appointed commission that concluded in March 2003 that minorities were disproportionately hit with mandatory minimums, especially school zone violations.

"Most minorities don't live in suburban or rural areas," explained Mulligan. "They live in urban areas

where they're always within 1,000 feet of a school."

Among other things, the commission recommended that all sentences include a period when prisoners could apply for parole, but the recommendations were never adopted.

"I'm sure the overwhelming majority of superior and district court judges would support eliminating the mandatory minimum and allowing for discretion," he said.

Patrick said Coakley will bring ideas for changes in mandatory minimum sentencing to the state's new anticrime council, which he created last week in response to the surge in gang and gun violence across the state.

Coakley said that legislation filed by Senator Cynthia Stone Creem would create a sort of hybrid mandatory minimum: prisoners could apply to the Parole Board for release after serving two-thirds of their mandatory minimum sentence.

Under the bill, paroled prisoners could be returned to prison immediately if they violate any of the terms of their release.

Plymouth District Attorney Timothy J. Cruz, a Republican who opposes any weakening of CORI laws, said he is not necessarily opposed to changing minimum mandatory sentences as long as freed prisoners are subject to supervision.

"Myself and the other DAs would happily look at any proposal that would try to effectuate supervision upon release," he said. "That's incredibly important to make reentry work."

Last week, Patrick filed a separate bill that would require all released prisoners to be supervised for at least nine months.

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