



Smart Justice

Means a Broad Array of Reforms

No single policy change will fix our broken criminal justice system. Comprehensive improvements to reduce system involvement, eliminate racial disparities, address addiction and mental health, and strengthen individuals and communities require us to make comprehensive changes. The following are a number of key areas that require reform, from policing through re-entry.

Racial Justice Data Transparency

We know Black and Latino residents of Massachusetts are incarcerated at nearly eight and five times the rate of whites, respectively -- disparities that are unconscionable. The only way to address racial disparities in the justice system is to document and analyze them. We can't manage what we don't measure. Data collection in our criminal justice system today is inadequate to inform future policymaking. Legislation and administrative reforms are needed to make sure agencies collect and publish data about people's interactions with the justice system, from encounters with police, including stops and arrests, all the way through prosecution, sentencing, supervision and release.

Repeal of Mandatory Minimum Drug Sentences

Mandatory minimum sentences for drug offenses are holdovers from the failed war on drugs. They take sentencing power from impartial judges and give it to prosecutors. Judges are forced to either impose lengthy sentences on people convicted of certain drug offenses or accept pleas leveraged with the threat of a mandatory minimum sentence. Mandatory minimums are a large part of the reason why more than 90% of prosecutions in Massachusetts end in plea agreements without trials—a serious threat to due process. These unjust sentencing laws also exacerbate racial disparities. Despite the fact that people of color and white people use and distribute drugs at comparable rates, and Blacks and Latinos make up less than 25% of the Commonwealth's population, people of color represent 75% of individuals serving mandatory minimum drug sentences. We must repeal mandatory minimums for all drug offenses and allow prisoners who are now serving such sentences to become eligible for parole.

Diversion & Treatment

Massachusetts could reduce recidivism and save money by diverting many more people from criminal prosecution. Most first time offenders pose no danger to the community; giving them a criminal record only makes it harder for them to become gainfully employed. It is wasteful and harmful to spend money prosecuting and supervising them. The criminal justice system is not the answer to public health issues. Diversion programs are essential for people who need treatment for drug addiction or mental illness.

Sensible Classification of Offenses

Not every indiscretion needs to be a crime, and far fewer should be felonies. For instance, common youth misbehaviors or minor motor vehicle offenses should not lead to criminal penalties, and statutory thresholds – such as for larceny – must be updated to avoid over-punishing relatively minor misdeeds.

Helping Young People

Children and young adults require special attention to keep them out of the justice system, and special treatment in it. In Massachusetts, we need to rethink the role of police officers in schools and ensure that common youth misbehaviors are not treated as crimes; raise the age of juvenile court jurisdiction to include 18, 19 and 20 year-olds in a more developmentally appropriate justice system; allow courts to consider age as a mitigating factor in cases involving young adults; and give young people second chances by allowing expungement of juvenile records.

Pre-Trial Reform – Bail, Risk Assessment

Every year thousands of individuals who are presumed innocent are held on bail. Cash bail is a kind of collateral; it's supposed to enable a person to be released and ensure they return to court on the next court date. However, for many people, bail simply serves to hold them hostage; they are kept behind bars pre-trial simply because they are too poor to pay even a small amount. Pretrial detention of the poor cruelly separates people from their families, schools, and jobs. Without appropriate assessments of an individual's ability to pay or their potential flight risk, bail is set with no consistency and disproportionately harms poor people and people of color. Risk assessment tools have the potential to be a valuable resource, but they must be closely evaluated for unintentional adverse impacts.

Prison Conditions – Programming, Classification, Solitary & Medical Release

People in prison should be preparing – and correctional institutions should be preparing them – to return to our communities. That's why it's critical to increase access to high quality educational programming and treatment for all incarcerated people, and to help people "step down" to lower security environments before they return home. We must also address the inhumane practice of isolating people in solitary confinement and put in statute a long-overdue mechanism – such as exists in 45 other states – to allow for the release of medically incapacitated prisoners.

Presumptive Parole

Only a tiny fraction of people who are parole eligible in Massachusetts actually end up being paroled. This fact generates two things: hopelessness, and longer, more costly prison stays. Presumptive parole incentivizes good behavior and engagement in educational, vocational, and rehabilitative programming by creating a sense that parole release is the individual's opportunity to lose. Having a system of presumptive parole will reduce recidivism, promote safety inside jails and prisons, and save money.

Fees & Fines

Too many poor people are locked up for failing to pay court fees or fines. The sentence, known as 'fine time', is served in lieu of payment at a rate of \$30 a day. An overwhelming majority of these sentences are for minor motor vehicle offenses, disorderly conduct, or shoplifting cases. People shouldn't be incarcerated because they are poor. Unfortunately, many individuals do not know they can be sentenced to fine time, are not given a hearing, and are not represented by counsel. Fine time upends the lives of poor people who can least afford it. Needed reforms will reduce fees and fines, increase the per diem amount, guarantee a hearing and counsel, and provide alternatives to incarceration.

Sentencing Alternatives for Probation Violations

Probation should be a pathway out of the criminal justice system, not a trap that tightens its grip with any false moves. Today, if a person is alleged to have violated a condition of probation after receiving a suspended sentence, the judge is required to jail her before a hearing and make a false choice between mandating incarceration for the full sentence and keeping the defendant on probation. Judges should have the ability to set a sanction that fits the violation.