

Criminal justice reform bill: 4 questions for the Legislature

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Why are repeat offenders responsible for three-quarters of all new convictions in Massachusetts? Because when it comes to making criminal justice policy, we've labored under the shadows of Willie Horton for far too long.

Counterproductive tough-on-crime laws have been accumulating for three decades, leaving us with a corrections system that fails to correct. It's time the commonwealth follows the lead of many other states and starts tackling criminal justice reform with courage and creativity.

Gov. Charlie Baker, House Speaker Robert DeLeo, Senate President Stanley Rosenberg, and Supreme Judicial Court

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Chief Justice Ralph Gants showed their mettle last year when they joined hands and requested assistance from the Council of State Governments. The CSG's independent analysts spent many months collecting and dissecting Massachusetts data. In February, they presented a policy blueprint to cut down on recidivism.

Legislation to implement the CSG policy recommendations is now before the Judiciary Committee. Lawmakers serving on the committee — many of them courthouse lawyers who know our system through and through — must work to ensure that what emerges from the legislative process solves the problems revealed by the CSG analysis.

The problems the legislation seeks to address, detailed below, largely stem from the proliferation of mandatory minimum sentencing laws, a tough-on-crime era tactic that has clearly taken more than it has given.

As Judiciary Committee members perform their due diligence, they should consider whether they can answer the questions below affirmatively without moving to eliminate most, if not all, mandatory minimums.

1. Will all incarcerated individuals identified



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From left: Gov. Charlie Baker, Senate President Stanley Rosenberg and House Speaker Robert DeLeo

for treatment programs have both the opportunity and the incentive to receive these services?

An effective system screens individuals admitted to correctional facilities to identify behavioral health conditions and match them with appropriate treatment programs. The CSG analysis shows that is not happening in Massachusetts. There are large gaps in needed behavioral health services. Programs that do exist are generally not the cognitive-behavioral models proven to reduce recidivism.

But it's not just a matter of making more programs available. By virtue of their mandatory minimum sentence, many individuals are either unable or have

little incentive to participate in programs that would lessen their risk to the community. The committee must ensure that reform legislation doesn't shy away from this serious problem. Every time a validated risk assessment says someone should get services, the corrections system must be positioned to effectively deliver them.

2. Will individuals released from incarceration receive appropriate supervision?

The CSG analysts found that high-risk inmates are released without appropriate supervision and support; some even exit directly from the most restrictive maximum-security settings, which leave them ill-prepared to live

independently in the community. At the same time, many low- or moderate-risk inmates are released with supervision terms that often only serve to trip them up.

This is one of the surest signs that our criminal justice system is operating in ways that are backward and broken, and again, it is largely driven by mandatory minimum sentencing laws.

The answer is not mandatory post-release supervision, which would likely lengthen time served and increase admissions for technical violations. We must position the corrections system to provide individuals with supervision consistent with their risks and needs, as best as we can understand them.

3. Will individuals released from incarceration face fewer barriers when they return to the community?

Over the past three decades, we have learned a lot about how criminal records, fines and fees make returning to the community that much more difficult. While the CSG analysis did not delve into those issues, committee co-chair Sen. Will Brownsberger has filed excellent legislation. These provisions are crucial to a comprehensive criminal justice reform package.

4. Will the proposed legislation improve data collection and increase transparency?

The CSG analysts noted “that lack of timely

information sharing is one of the most important barriers to improving outcomes and among the greatest needs for policy change and support.” Yet the legislation implementing the CSG recommendations does not include provisions to improve the collection of information policymakers need to make data-driven decisions.

Recent actions, such as the House refusing to include the Senate’s transparency provisions in a supplemental budget appropriation for the Department of Correction, hint that this exclusion is not a simple oversight. Those in the Legislature who stand for good government and public safety must fight to close this serious information gap.

Around the country, the Council on State Governments has helped other states reduce recidivism and avoid additional incarceration and crime. Legislators need the entire legal community’s support to achieve the best results possible for Massachusetts.

It’s not just a matter of the unnecessary social, economic and fiscal costs that lawyers get an up close view of every day. Incarceration rates have risen faster in Massachusetts over the past three decades than in the U.S., which means we’ve contributed more than our share to the nation’s incarceration crisis. We must do our part to correct this costly error. **MLW**