

MLW editorial

Legislature should go back to drawing board on crime bills

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Posted on the Supreme Judicial Court’s website is the essay “John Adams and the Massachusetts Constitution.” The piece rightly boasts that our constitution served as “a model for the U.S. Constitution, ... the constitutions of many nations, ... [and] the Universal Declaration of Human Rights.”

Our founders cherished liberty and adopted constitutional protections against excessive executive power. They would have cringed at mandatory sentences, in which legislatures decree cookie-cutter, often draconian sentences that shift discretion from judges to prosecutors.

They would also cringe at the hasty process currently in place for passing complex criminal laws, resulting in few legislators, let alone citizens, understanding the ramifications.

Last January, Lawyers Weekly editorialized on the need for careful consideration of pending sentencing issues, opining that hurriedly drafted legislation is not the answer to the parole problem.

But before the holidays, the Legislature rushed through two slightly different versions of “three-strikes” bills, each jammed with details that were subjected to almost no debate.

The far more complex Senate bill, S-2080, before going to conference was 38 pages and 798 lines — with many new or changed provisions, including revisions to the wiretap statute, expanded liability for withholding DNA samples, procedures for enforcing civil infractions, and the introduction of new crimes and new sex offender registration rules.

Possibly most troubling, but least discussed, of the Senate changes is its provision for “mandatory post-release supervision,” or MPRS, of nine to 24 months for all inmates, even those who served drug charge mandatory minimums.

Almost everyone embraces that abstract concept, but thoughtful experts — like the 2004 Governor’s Commission on Corrections Reform and the 2009 MBA Drug Policy Task Force — have warned that it must be done carefully. Otherwise, you have, as in S-2080, inevitable “net-widening,” i.e., higher rates of re-incarceration and the need to spend ever more on prisons, aside from an expanded parole staff.

Both Community Resources for Justice and Prisoners' Legal Services have submitted estimates of S-2080's budgetary impact for MPRS, ranging from \$2 million to \$10 million a year, on top of expanded three-strikes costs (perhaps \$75 million to \$125 million a year).

The tragic December 2010 shooting of Woburn Police Officer John Maguire during a botched robbery has fueled the current push for tough crime bills. But that is counter to the trend in other states, which have embraced a "smart on crime" approach that includes thoughtful recidivism prevention.

Particularly in this time of fiscal crisis, it is a shame to see Massachusetts lawmakers moving in the opposite direction, with little discussion or analysis of the details or fiscal consequences.

*[crime bills, back to drawing board [mlw-edit,0123.docx]
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