

Sentencing Guideline Bills / Massachusetts 2003-2004 Legislative Session

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	MODEL ONE (H.3302 and S.219) Sentencing Commission Guidelines	MODEL TWO (H.2750) Rep. Tobin, et. al (so-called "compromise bill")	MODEL THREE (H.2749) Rep. Tobin, et. al. with Marini Amendments
Parole Eligibility	No earlier than 2/3 of imposed sentence.	Same as Model One.	Same as Model One.
Sentence Ranges	Less punitive than other bills. Example: sentences range of 96 to 306 months for most serious offenses (Level 8), other than murder.	Sentences range of 120 to 413 months for most serious offenses (Level 8), other than murder.	Same as Model Two.
Departure from Sentence Ranges	Departure allowed up or down from guidelines range in light of mitigating/aggravating circumstances; judge must provide written justification. Sentences can be appealed by defendants if higher or by prosecution if lower. Non-exclusive list of mitigating and aggravating circumstances provided as guidance. No evidentiary hearing required. Finding can be based on any evidence received during proceedings, as deemed credible by judge.	Same Model One but employs exclusive list of mitigating and aggravating circumstances. No evidentiary hearing required. Finding can be based on any evidence received during proceedings, as deemed credible by judge.	Same as Model Two, but and adds one mitigating circumstance not found in Model Two: defendant provides prosecution all information defendant has about the crime. Evidentiary hearing required. Finding can be based on any evidence received during proceedings, as deemed credible by judge.
Classifying Criminal Histories	Less punitive than other bills. Example: fewer juvenile adjudications treated as convictions (only Levels 7 – 9). Lower level adjudications can be considered as aggravating circumstances to increase sentences above guidelines range.	More punitive than Model One – more juvenile (Levels 5 – 9) adjudications counted as convictions.	Same as Model Two.
Offense Levels	Offense seriousness levels lower than other bills for most crimes. For example, armed carjacking Level 7 , larceny of a firearm Level 3 .	Seriousness levels higher than Model One. Example: armed carjacking Level 8 , larceny of firearm Level 4 . Differences significant at Level 7 and up where sentences increase greatly in Models Two and Three.	Same as Model Two.
Consecutive Sentences	More punitive than other bills. Consecutive sentences may total up to two times the upper limit for the "governing offense" (crime with highest seriousness level of multiple offenses), even for crimes with single or no victim.	Less punitive than Model One. If multiple offenses involve single or no victim, total consecutive sentence cannot exceed upper limit of guideline sentence for "governing offense" (crime with highest seriousness level of multiple offenses). Can be up to two times the upper limit for crimes with multiple victims.	Same as Model Two.

Statutory Min/Max Terms (other than drug, firearm, OUI offenses)	If max. guidelines range is longer than statutory sentence, guidelines sentence applies. If statutory min. is longer than guidelines range, judge can choose statutory or guidelines min. sentence.	Same as Model One.	Same as Model One, plus no written reason or aggravating circumstance required if judge imposes statutory max. sentence on any defendant in criminal history group E.
Post Release Supervision	Will not change current post release supervision guidelines.	Duration of supervision as follows: 6 months following a sentence of 12 – 30 months; 12 months following a sentence of 30 – 60 months; and 24 months following a sentence of 60 months or more.	Same as Model Two.
Projected Prison Population within 8 Years (Sent. Comm. projections: www.mass.gov/courts/admin/sentcomm)	Would remain neutral.	+1,700	+3,239
New Costs (Sent. Comm. projections: www.mass.gov/courts/admin/sentcomm)	None.	\$9,562,500 more every year on inmates.	\$444+ million for new facilities. Would add \$18,219,375 a year, spent on inmates.
Retroactivity	Retroactive to Jan. 1, 2004.	No retroactivity stated.	No retroactivity stated.
Mandatory Minimums	Remain in effect for most OUI (drunk driving) and all firearm offenses. Departure allowed for some drug offenses in some circumstances.	Same as Model One, except no departure for any OUI offense.	Same as Model One, except no departure for any OUI offense.
Drug Offenses Available for Departure	Departure available for 23 offenses .	Departure available for 9 offenses .	Departure available for 8 offenses .
Conditions for Departure from Drug Minimums	Defendant has no prior convictions for Level 7 or 8 drug offense and judge finds one or more other mitigating circumstance, at judge's discretion.	1) defendant has minor/moderate criminal history; 2) no prior drug convictions; 3) offense not violent; 4) no serious injury; 5) defendant was minor participant; 6) no minors involved; 7) defendant provides prosecution all information about offense before sentencing. Defendant must prove factors by clear and convincing evidence and circumstances must be substantial reason for departure.	Same as Model Two factors 1 – 6. Defendant must prove factors by clear and convincing evidence and circumstances must be substantial reason for departure. Defendant must prove factors by clear and convincing evidence and circumstances must be substantial reason for departure.
Limits on Departures from Mandatory Minimums	Where departure below drug minimum falls within/below guidelines range, min. sentence is 2/3 the maximum guideline sentence. Judge can depart below guidelines range if criminal history is minor/moderate and finds “substantial” mitigating circumstance in addition to circumstance used for initial departure.	If guidelines sentence includes incarceration or intermediate sanction, incarceration must be imposed. When departing from the minimum, sentence will be 2/3 the maximum. No departure below guidelines range after departure from drug minimum.	Same as Model Two.