



The Commonwealth of Massachusetts

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Press Release

District Attorneys demands courts cease-and-desist using unapproved, unlawful sentence guidelines

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After months of stonewalling from the judiciary, Norfolk District Attorney Michael W. Morrissey has written to Chief Justice Paula Carey demanding that the courts stop using the guidelines that the Sentencing Commission refused to submit to the Legislature, as required by statute, and instead implemented without authority.

"The legislation creating the Sentencing Commission is unequivocal that their mandate is to draft sentencing guidelines and then submit them to the legislature for consideration," District Attorney Morrissey said. "They have not been submitted, but instead have been disseminated to trial judges and incorporated into judicial trainings. But the legislature hasn't even seen them yet."

Morrissey said that the majority of Massachusetts DA's agree with his request. The guidelines create a risk to public safety by limiting information judges should consider about a defendant's criminal history even in domestic violence and sexual assault cases.

Essex DA Jonathan Blodgett said that some of the sentences contained in the proposed guidelines violate existing law – which was pointed out in the MDAA's formal response issued in May, 2018. "A defendant convicted of aggravated rape of a child for the first time is subject to a mandatory minimum sentence of 10 years, as enacted by the Legislature in Mass General Law Chapter 265, Section 22A. The proposed guidelines, however, call for a 7 ½ year state prison sentence in clear violation of existing law."

"This is not the time for the Massachusetts Judiciary to be ignoring the separation of powers and usurping the powers reserved to the Legislature, but that is what they are doing," Morrissey said. "As a former legislator, I can attest that this is not a grey area. It is a bright line."

The guidelines are being distributed as "advisory," but "there is no mandate for the Sentencing Commission to create advisory guidelines that skirt the check-and-balance of legislative adoption," Morrissey said. "Chapter 211E Section 1 is very clear that the guidelines 'shall take effect only if enacted into law.' The legislature did not empower the Commission to skirt the law and bypass the General Court."

Morrissey began to raise concerns about the direction the Sentencing Commission was going last May, when he was serving as president of the Massachusetts District Attorney's Association, sending a letter from the MDAA which the Court has failed to heed.

Morrissey wrote to Auditor Susanne Bump in January under the portion of Chap. 11 Sec. 12 of the Massachusetts General Laws that empowers the Auditor's Office "to determine compliance with the provisions and requirements of ... the laws of the commonwealth." That audit is underway.

Plymouth District Attorney Timothy J. Cruz said: "We are prosecutors tasked with the job of protecting the people of our counties, and we will use every tool at our disposal to see that justice is served for victims of crime," DA Cruz said. "Now more than ever, there need to be clear sentencing guidelines that have been appropriately acted upon by the Legislature so that judges sentence by distinct instructions and not by their interpretation of an unapproved advisory report."

Cape and Islands District Attorney Michael O'Keefe said: "I have been troubled by this process for some time. As a District Attorney who had an assistant district attorney serve on this commission, I noted a number of irregularities – particularly at the end with regard to the voting. I hope the judiciary will consider the points raised in this letter and cease using these until the new commission votes and submits their product to the legislature as the statute requires, and the legislature acts."

"We in the executive don't get to legislate or judge. Legislators do not presume to act as judicial officers. The judiciary should abandon this path of attempting to unilaterally change sentencing practice," Morrissey said. "The issue of crime and punishment and the parameters of the criminal sentences are Constitutionally within the powers of the legislature. Judges get discretion to sentence, but only consistent with the laws enacted by the Legislature."