



## Crime & Punishment

James Alan Fox on criminal behavior and the justice system

CRIMINAL LAW AND PROCEDURE

### Rat out your kids? -- Some say "yes"

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When I wrote my [column](#) for yesterday's op-ed page of the *Boston Globe*, I expected the proposal to protect parent-child communications would be a "no brainer." I thought that once folks were aware that parents could be compelled to testify against their kids, they would, like me, be both surprised and outraged. Frankly, I had hoped there would be at least a modest groundswell of support for passing Massachusetts [Senate bill S. 2473](#), which would extend the usual spousal privilege in criminal proceedings to the parent-child relationship.

Based on some online-posted [comments](#), it seems I was wrong about my faith in the sensibility of fellow Massachusettes-ians. Apparently, with my liberal-leaning lefty outlook, I can be a bit naive, although some of my critics would use far more colorful language to characterize it. Maybe I should just move to Connecticut or New York, two of the [states](#) where the parent-child privilege is recognized. Better yet, I'll stay and continue blogging for justice.

To summarize briefly the points of yesterday's [column](#):

Suppose you received a dreadful call from the police informing you that your son or daughter had just been arrested and charged with robbery or even murder. As a parent, your instinct and first response would likely be to speak with your child about what had happened. You would want to hear his or her explanation of events. However, this could actually turn out to be a disastrous move.

Here in Massachusetts, as in most states, anything your kid says to you about the alleged crime may be used as incriminating evidence in a court of law. You may even be compelled to take the stand as a witness for the Commonwealth against your own flesh and blood.

The good news is that [Senate bill S. 2473](#) would amend the Massachusetts law to insulate communication between minors living at home and their parents (or step-parents) and shield parents from being forced to testify against their offspring. The worrisome news, however, is that the days are dwindling away before the end of the legislative session; if no action is taken on this pending bill, it will end up in the legislative graveyard, at least for this term.

Based on the online comments and several e-mails, many readers were sympathetic. However, others felt that the parent-child relationship should not be shielded from subpoena, *and* that the existing spousal privilege should be eliminated as well. They argued that this would further the cause of justice, even if at the expense of privacy.

I wonder if these objectors would also wish to dismantle the confidentiality of conversations with clergy as well as psychiatrists when the interests of justice are at

stake. And would they also eliminate the Fifth Amendment protection against self-incrimination? Would they want defendants be forced into taking the stand to testify, under oath, concerning what they had done? I certainly hope they would draw the line at using coercive means. I trust they wouldn't advocate for a small jolt of electric shock to get parents to squeal on their children.

The error in the argument advanced by these critics is in confusing justice with punishment. A commitment to justice and fairness would want to protect conversations among intimates. Despite the rhetoric about justice, what they really want is for the evil-doers to be punished.

I'm not opposed to punishing criminals actually I'm all for it. I do draw the line, however, at dismantling our rights and intruding on the privacy of family and other important associations in order to achieve that desirable objective. As one reader noted, maybe prosecutors will just have to work a little harder to win their convictions without forcing Mom and Dad to rat out their child.