



Crime & Punishment

James Alan Fox on criminal behavior and the justice system

COURTS AND SENTENCING

Patrick's wise move to amend 3-strikes bill

Posted by James Alan Fox, Crime and Punishment July 28, 2012 08:45 AM

12:30 PM -- Author's Note and Update: *Within hours of posting this blog piece calling on Governor Deval Patrick to veto the three-strikes component of the pending sentencing reform bill, he did in fact send the measure back to the Legislature with a proposed amendment that would allow for judicial discretion. Rather than attempting to override, the Legislature should embrace the wisdom of Patrick's modification.*

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8:45 AM posting

Governor Patrick should veto 3-strikes

With the legislative deadline fast approaching, lawmakers, lawyers, and legal observers are all watching closely to see what Governor Deval Patrick decides to do with regard to the sentencing reform bill on his desk. Will he veto the legislation out of concern that the three-strikes component does not permit judicial discretion -- the so-called safety valve?

And if the Governor does indeed bounce the measure back to the legislature, will it move quickly to override? Here's hoping that the Governor does and the legislature does not. The bill potentially has unintended deadly consequences.

Leaving aside the debate over correctional costs associated with warehousing criminals well past their crime-prime years, I have two concerns. The first involves the overly broad range of offenses among those that disallow parole, and the other relates to the subset that is punishable by life without parole.

The array of serious felonies that qualify as strikes appropriately includes such atrocities as homicide and rape. However, lesser offenses such as stalking in violation of a restraining order and assault with intent to commit robbery would also make the third-timer ineligible for early release on parole. Let's not lose sight of the many benefits to the parole process, including the incentive for change and good institutional behavior as well as providing post-release supervision.

Particularly problematic is the fate of those convicted on a smaller subset of crimes that are punishable by a life sentence. These offenses range considerably in terms of their seriousness.

At the severity extreme, there is, of course, murder. A first degree murder conviction already carries a life sentence without parole eligibility, whether the offender is a first-timer or a repeat criminal. A habitual offender convicted of second degree murder would also, by virtue of the pending legislation, receive life without parole.

Not so reasonable, however, is that many other habitual offenders convicted of crimes well short of murder could also be sentenced to life without the possibility of parole. If charged as a habitual offender, defendants convicted of such crimes as armed robbery and burglary could be sent away to prison forever. Shrewd third-timers might then decide to kill victims in order to prevent them from reporting the crime to the police and later testifying in court. Already facing life without parole, these third-strikers would have a strong incentive for silencing the witnesses, with no additional penalty to serve as a disincentive.

Staying with the baseball metaphor, there is an old adage that a batter should never permit himself to be rung up by the ump, but with two strikes in the count should "defend the plate." Exactly how desperately would offenders with two strikes behind them try to defend their freedom?

I do not mean to minimize the severity of such transgressions as robbery and burglary, but they do not rise to the gravity level of homicide. Life without parole should be reserved for the very worst of the worst, and robbers and burglars -- even habitual ones -- do not fall in the category of those who should never ever experience freedom again. The most serious crimes short of homicide require long sentences, but not life-long ones.

The overall weakness to three-strikes laws is that they base punishments more on the number of offenses than on their nature. Some first- and second-time offenders are far more dangerous than many with three or more felony convictions.

Sentencing should not be about strikes or the number three. Rather, we need to trust our judges to use their discretion wisely and the parole board to moderate punishments when appropriate. While the idea of three-strikes laws may sound attractive to some folks, it hardly represents a sound basis for criminal justice policy.