



## Massachusetts as a Surprising Pioneer in the Turn to Mandatory Sentencing as a Response to Crime

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In late twentieth-century United States, the supervision of offenders by the criminal justice system increased fivefold – culminating in a vastly expanded punishment system in which about one of every thirty-two U.S. adults is currently sitting in jail or prison or serving time on parole or probation. After long silence, scholars are now probing many implications of such vastly expanded criminal enforcement – for citizens, race relations, and American democracy. But much more remains to be learned about the origins and growth of punitive policies – including why every U.S. state passed at least one new mandatory sentencing law between 1975 and 2002.

My research looks at the enactment of mandatory sentencing laws and probes in depth the pioneering 1974 enactment of the influential Bartley-Fox law in Massachusetts. At that time, Massachusetts legislators faced enormous pressure to respond to violent crime, but attempts to enact gun control were stymied by pressures from the powerful gun lobby, leaving reformers to fall back on another approach: limiting judicial discretion in meting out sentences to convicted violent criminals, including those convicted of illegal gun possession. As often happens in legislative maneuvering, Bartley-Fox used the language of one kind of policy response – gun control – to justify a turn to a new type of policy – mandatory sentencing – whose full implications may not have been understood or anticipated at the time. Before long, this early Massachusetts law helped to fuel a nationwide movement toward stricter state-level as well as federal mandatory sentencing laws.

### Violent Crime and the Turn against Judicial Discretion

Scholars have connected changing race relations to the punitive turn in late-twentieth century criminal justice, but we should not overlook genuine public concerns about rising violent crime. The firearm homicide rate, for example, doubled between 1964 and 1974. In 1963, no respondents to the Gallup poll named crime as the “most important problem” facing the United States, but by 1968 nearly one fifth of respondents did so, with more than ten percent listing crime as a top problem through 1973.

This was not the first time that public concern about crime rose, but this time legislators, lawyers, criminal justice professionals and scholars reached a consensus that the broad sentencing discretion enjoyed by judges was an important cause of spiking crime rates. Critics on the right argued that judges were too “soft” on criminals, while critics on the left held that judges meted out harsh penalties only to minorities and the poor. In this context, the United States Sentencing Commission eventually formulated firm guidelines for sentencing in federal courts. But even before the Commission acted in 1984, the move away from discretion was well underway in the states, where most criminal cases are resolved. Eleven states eliminated discretionary parole; 25 states adopted “two strikes” provisions that mandated an increased sentence for a second felony conviction; and nine states enacted “truth-in-sentencing” laws for violent crimes, which require that offenders serve most of their sentences (usually 85%) before becoming eligible for release.

All of these measures were part of a broad 1970s movement to limit judicial discretion in sentencing, yet the purest expression took the form of mandatory sentencing laws that entirely removed such discretion for certain offenses. Some limits had existed earlier, but in the 1970s state legislatures took key steps to expand the universe of offenses that warranted a mandatory sentence – including through the 1973 Rockefeller drug laws in New York, the 1977 “one with a gun gets you two” firearm statute in Michigan, and the 1974 Bartley-Fox law in Massachusetts.

### From Gun Control to Mandatory Sentencing in Massachusetts

As the public demanded a policy response to rising violent crime in Massachusetts, gun control was high on the state legislature’s agenda, with dozens of proposals coalesced around the radical option of banning all handguns and the moderate alternative of banning the cheap, concealable handguns known as “Saturday Night Specials.” The more conceptually straightforward radical solution had powerful backers, but never came

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close to passage.

A bill furthering the more limited solution of banning Saturday Night Specials was meticulously crafted to avoid objections from the state's powerful Council of Sportsmen's Clubs. But once the total handgun ban was off the table, gun organizations initiated a lobbying blitz that killed the moderate bill by a 112-110 roll call. Gun control appeared done for in the 1974 session, but public demand for a policy solution to violent crime had not abated. At the eleventh hour, Democratic House Speaker David Bartley filed his own measure. Unlike the previous two options, Bartley's bill did not ban guns at all. Rather it criminalized a certain behavior – carrying a gun without a license – and removed all judicial discretion by mandating a year in prison for offenders. The bill sailed through the legislature with support from both the Council of Sportsmen's Clubs and gun control advocates.

In the Massachusetts enactment, the established but infeasible gun control response to rising crime was fused with, and in a sense shifted into, the new but untested policy response of mandatory sentencing. In an important sense, Bartley-Fox can be understood as a sincere response to demands about crime control from the public. But it ended up furthering an approach very different from gun control – firm limits on judicial discretion – that led to consequences many Massachusetts reformers had not originally intended.

### **A Larger Legacy**

The Massachusetts law became influential in spreading mandatory sentencing to other states. In 1975, the U.S. House Subcommittee on Crime held a series of hearings about policy solutions to violent crime, where the Bartley-Fox measure received intense study. Senator Ted Kennedy introduced a bill encouraging states to adopt mandatory sentencing for unlicensed gun carrying as part of a larger package of gun control measures. After a multi-year effort, Kennedy's overall measure failed, but in the meantime Congress and the states passed more and more mandatory sentencing laws. Ironically, the original Massachusetts hopes for comprehensive gun control were forgotten, even as the 1974 law came to be cited as a model for mandatory sentencing.

**Read more in Charles Decker, “We Wish to Instill Fear’: Mandatory Sentencing as Policy Solution and the Legacy of Bartley-Fox,” Yale University, 2014.**