

Massachusetts: Summary of S. 2371 (189th General Court, 2018)

The Bill: In the fall of 2017, both the Massachusetts Senate and House of Representatives passed different criminal justice reform bills out of their chambers. At the end of 2017, a conference committee was formed from the two houses to reconcile the differences between the two bills and come to a compromise. S. 2371 is the product of these deliberations. The bill touches on every phase of the criminal justice, including sentencing and prison reform and compassionate release.

Who it Would Help: People convicted in Massachusetts state courts (not federal offenders).

Status: The bill is not yet a law. To become law, it must be passed by the Massachusetts Senate, the Massachusetts House, and signed by the governor. Votes could begin happening as soon as April 2018. Keep checking FAMM's website for updates on the bill's progress.

Mandatory Minimums: S. 2371 both repeals harmful mandatory minimums for some low-level drug offenses while also creating new mandatory minimums for opioid-related and DUI offenses and assault on a police officer.

SENTENCING REFORM

The Good: S. 2371 repeals the following mandatory minimums (**not retroactive**):

- Second and subsequent offenses of manufacture, distribution, dispensing, or possession with intent of Class B drugs (2 years)
- First and subsequent offenses of manufacture, distribution, dispensing, or possession with intent of PCP/Cocaine/Methamphetamine under the threshold (threshold = 18 grams for cocaine and methamphetamine) (2.5 years)
- Second or subsequent offenses of manufacture, distribution, dispensing, or possession with intent Class C drugs (2.5 years)
- Second or subsequent offenses of manufacture, distribution, dispensing or possession with intent of Class D drugs (1 year)
- Sale, possession or manufacture with intent to sell drug paraphernalia (1 year).
- S. 2371 would also reform the drug-free school zone law (**not retroactive**), limiting the two-year consecutive mandatory minimum to people who:
 - Use violence or credible threats of violence or possess a gun, or
 - Play a leadership role in the drug offense, or
 - Directly sell to minors or involve minors in the sale.

The Bad: S. 2371 adds the following mandatory minimums for:

- Trafficking by manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense, or bringing into the state
 - 10 grams but less than 36 grams of fentanyl, its derivatives, or a mixture containing fentanyl or its derivatives (3.5 years)

- Any amount of carfentanil or its derivatives, or a mixture containing carfentanil or its derivatives (3.5 years)
- 36 grams but less than 100 grams of fentanyl, carfentanyl, synthetic opioids, their derivatives, or a mixture containing these drugs or their derivatives (5 years)
- 100 grams but less than 200 grams of fentanyl, carfentanyl, synthetic opioids, their derivatives, or a mixture containing these drugs or their derivatives (8 years)
- 200 grams or more of fentanyl, carfentanyl, synthetic opioids, their derivatives, or a mixture containing these drugs or their derivatives (12 years)
- Assault on a police officer resulting in serious bodily injury (1 year)
- 5th or 6th DUI conviction (2.5 years; must serve 2)
- 7th or 8th DUI conviction (3.5 years; must serve 3)
- 9th or subsequent DUI conviction (4.5 years; must serve 4)
- Negligent or reckless vehicular manslaughter while under the influence (1 year).

COMPASSIONATE RELEASE

Medical Parole: S. 2371 creates a medical parole process for seriously ill prisoners in Massachusetts prisons or Houses of Correction.

Eligibility Requirements: Medical parole would be available for prisoners with a “terminal illness” or “permanent incapacitation.”

- Terminal illness is defined as an incurable illness that will likely cause death within 18 months and that is so debilitating that the prisoner is not a public safety risk.
- Permanent incapacitation is a physical or cognitive incapacitation that appears irreversible, as determined by a licensed physician, and that is so debilitating that the prisoner does not pose a public safety risk.

The Process:

1. The prisoner, prisoner’s next of kin, prisoner’s attorney, correctional facility’s medical provider, or correctional facility staff member petitions the prison superintendent (or sheriff of a county House of Correction) in writing for medical parole.
2. The superintendent (or sheriff) sends recommendation (either for or against release) to the commissioner of the Department of Correction (DOC) within 21 days of receipt of the petition. The superintendent (or sheriff) must include with recommendation:
 - a. A medical parole plan
 - b. A written diagnosis by a licensed physician
 - c. An assessment of the risk for violence that the prisoner poses to society.
3. Upon receipt of the petition, the DOC commissioner shall notify the district attorney of the jurisdiction in which the offense occurred, the prisoner, the petitioner, the victim, and the victim’s family. All parties may submit written statements to the commissioner. If it is a murder case, the victim’s family may request a hearing.
4. The DOC commissioner shall issue a written decision not later than 45 days after receipt of petition, which must include a statement of reasons for the decision. A prisoner, superintendent, or sheriff may petition the courts for review if they are not pleased with the DOC commissioner’s decision.

5. A prisoner who is released is under the jurisdiction of the parole board. If a prisoner's condition improves such that they would not be eligible for medical parole, the prisoner shall resume serving their sentence (with credit given only for the duration of the medical parole served within the compliance of their parole conditions). Medical parole can also be revoked if the prisoner commits new crimes or violates the conditions of release.

Report language: The DOC commissioner and the secretary of the executive office of public safety and security shall file an annual report detailing:

1. The number of prisoners in the custody of the DOC or of the sheriffs who applied for medical parole, and the race and ethnicity of each applicant
2. The number of prisoners who have been granted medical parole, and the race and ethnicity of each prisoner
3. The nature of the illnesses of medical parole applicants
4. The counties to which prisoners have been released
5. The number of prisoners who have been denied, the reason for denial, and the race and ethnicity of each prisoner denied release
6. The number of prisoners who petitioned for medical parole more than once
7. The number of prisoners released who have been returned to the custody of the DOC or the sheriff, and the reason for each prisoner's return
8. The number of appeals.

PRISON REFORM

The bill also includes important prison reforms, including:

1. Limiting use of restrictive housing for prisoners
2. Banning prisons from unreasonably limiting in-person visits between prisoners and families
3. Requiring prisons to give people reentry preparation programming at least 6 months before their release dates.