

What the Law Says: Understanding the legal definition of a prison¹

Massachusetts law provides little guidance for what elements a prison (also known as a “correctional facility”) must contain, defining a prison as “any building, enclosure, space or structure used for the custody, control and rehabilitation of committed offenders and of such other persons as may be placed in custody therein in accordance with law.” Mass. Gen. Laws ch. 125, § 1 (2020). This definition suggests that there is nothing in the statutes that requires a particular type of building. While the proposals coming out of the Department of Correction demonstrate a particular vision of what prisons should look like based on historical models, the statute is broad enough to encompass a complete re-envisioning of how this state can or should respond to individuals convicted of violating the state’s criminal laws in the twenty-first century.

Massachusetts regulations provide slightly more guidance, including imposing minimum health and sanitation standards on prisons and jails. 105 Code Mass. Regs. 451.000. These requirements include access to hot water, recreational opportunities, blankets and linens, etc. The regulations define a cell as “any room or group of rooms within a correctional facility used or intended to be used by a prisoner for living and sleeping.” 105 Code Mass. Regs. 451.020. In current prisons and jails, cells must be at least 60 square feet, whereas new prisons to be built in the future require 70–80 square feet. *Id.* at 451.320-21.

There are some limitations on what counts as “confinement” imposed by the laws governing mandatory minimums. In Commonwealth v. Donohue, 892 N.E.2d 718 (2008), the Supreme Judicial Court (SJC) wrestled with whether a sheriff exceeded his authority when he permitted a sentenced individual to participate in a GPS program outside of a house of correction for a portion of his sentence. *Id.* at 723-24. The SJC took the position that the sheriff has authority to “confine” “inmates within his custody and control” to their homes under a specific program that allows for outside education, training or employment programs (Mass. Gen. Laws ch. 127, § 49 (2020)). *Id.* at 726. In this particular case the individual had already served the mandatory minimum portion of his sentence before he was authorized to participate in a GPS program.² Notably,

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² The Court had previously held that “house arrest with an electronic monitoring device” could not substitute for “incarceration in a ‘jail or house of correction’” demanded by a mandatory minimum sentence. Commonwealth v. Cowan, 664 N.E.2d 425, 428 (Mass. 1996).

however, no case has addressed what type of facility would qualify as a “correctional facility.”

From the above it is clear that within the current provisions of the statutes, regulations, and case law governing prisons in Massachusetts, there is plenty of opportunity to rethink and reshape what these institutions should look like in the twenty-first century.