

April 13, 2018

To the Honorable Senate and House of Representatives,

Earlier today I signed An Act Implementing the Joint Recommendations of the Massachusetts Criminal Justice Review and An Act Relative to Criminal Justice Reform. I am grateful for the partnership among members of our administration, the legislature and the judiciary in conducting the Massachusetts Criminal Justice Review and working together on this landmark legislation. I am also thankful for the tremendous effort the legislature has put into crafting An Act Relative to Criminal Justice Reform. This complicated piece of legislation touches many different parts of the criminal justice system. When viewed as a whole, the legislation makes our system better. There are process improvements from policing to corrections. Some sentences are enhanced; others are modified to allow for judicial discretion. Overall, this proposal makes the criminal justice system stronger by giving prosecutors new tools to combat the opioid epidemic and by holding offenders accountable while also giving them greater abilities to achieve positive outcomes in their lives.

There are, however, some aspects of An Act Relative to Criminal Justice Reform which I believe require significant modification. There are also other provisions that may have unintended, negative consequences that should be corrected. In view of all of the urgently needed reforms this bill entails, I believe it is appropriate to avoid the delay in enactment that would result if I were to return the legislation with proposed amendments. Accordingly, I signed the legislation and am submitting for your consideration “An Act Building on Criminal Justice Reform” to address these issues.

Our administration has already begun reaching out to members of the legislature to discuss some of these changes. Based on those initial discussions, I expect that there are a number of changes which we agree are appropriate and on which we can reach prompt resolution. These include:

- Ensuring that law enforcement agencies, the Department of Early Education and Care and other agencies that currently have access to sealed records maintain that access. The ability to review sealed records is critical to firearms licensing decisions and the evaluation of day care providers and other professionals who care for and interact with children.

- Preserving the ability of sheriffs and the Department of Correction to transfer a sentenced prisoner from a house of correction to a Department of Correction facility in appropriate circumstances.
- Strengthening the new expungement procedures against a potential constitutional challenge by ensuring that any courtroom closure is done after due consideration of the public's right to access the courts.
- Preventing certain crimes involving children from being dismissed over the objection of a prosecutor or converted into civil infractions.
- Clarifying updates to the juvenile justice laws to ensure that the police, courts and the Department of Youth Services are best able to perform their respective roles in the juvenile justice process.
- Restoring a provision of Melanie's Law that lengthened the mandatory driver's license suspension for motor vehicle homicide from ten years to fifteen years.

Other proposals will require more discussion and debate. In my view, there are some provisions in An Act Relative to Criminal Justice Reform that require significant modification to strike the proper balance in several areas, including respecting decision-making within a family, ensuring that mandated reporters of child abuse are able to continue making those reports in all circumstances, and giving appropriate deference to the Department of Correction in the management of our prisons.

First, the Act prevents a parent from testifying against his or her child in a criminal case even if the parent concludes that the consequences from the justice system are the best thing for that child or their family as a whole and wants to testify. While I agree that, except in cases where the victim is a member of the family, no parent or child should be forced to testify against the other, we should respect the decisions of parents and children who want to be heard in court. When a willing witness to a crime comes forward, courts should hear from that person. Restricting testimony means more cases in which justice is not done. The enclosed bill converts this ban on testimony into a privilege that can be exercised by a parent or child.

Second, the enclosed bill also clarifies that the confidentiality provisions of the new restorative justice program do not supersede the duty of a mandated reporter to report the abuse or neglect of a child.

Third, the Act places a number of requirements on the Department of Correction. While many of these requirements reflect current agency practice, others impose new and unnecessary burdens on the Department that will have serious negative impacts on the operation and safety of our prisons. The enclosed bill addresses these issues by restoring necessary discretion to the Department, with a particular focus on the provisions of the Act relating to restrictive housing. We can all agree that there should be limits on the use of restrictive housing, that is, a housing assignment in which an inmate is confined to a cell for more than 22 hours per day. We can also all agree that those with serious mental illnesses need special consideration. However, the Act's definition of serious mental illness is so broad that it includes any inmate with an anxiety disorder, no matter how well managed with medication, and trauma and stressor related disorders. The enclosed bill includes a more narrow definition of "serious mental illness" that, when appropriate, incorporates the concept of significant functional impairment.

Additional provisions in the enclosed bill improve the medical parole process and the Forensic Science Oversight Board established by the Act. Those serving life without parole for first degree murder, sexually dangerous persons and sex offenders who have yet to be finally classified will be categorically ineligible for medical parole. The Commissioner of Correction and doctors who participate in the medical parole process will be insulated from civil liability. Time consuming judicial review, which can be particularly inappropriate when a prisoner has a terminal illness, is eliminated. The Forensic Science Oversight Board is updated to take into account the vital role accrediting bodies play in the oversight of crime labs. In addition to updating and expanding the Board's membership to include people with relevant experience working in accredited crime laboratories, the enclosed bill ensures adequate law enforcement representation on the Board and includes enhanced conflict of interest provisions. The Board's governance structure is also altered to provide for majority rule.

Finally, the Act creates a number of new requirements for public safety agencies. Meeting these mandates is not possible without hiring new staff, purchasing new equipment and software, updating computer systems and building new lab space. This requires additional funding. Accordingly, the enclosed bill seeks a \$15,000,000 appropriation to begin implementation of the Act in Fiscal Year 2018 and Fiscal Year 2019. Sufficient revenues are estimated to be available to finance this appropriation. While we are continuing to work on cost estimates for Fiscal Year 2019, I expect that the Fiscal Year 2019 budget will need to include as much as an additional \$40,000,000 to fully implement the Act.

I urge your prompt and favorable review of this legislation.

Respectfully submitted,

Charles D. Baker  
Governor