

# Case Law Summary: Massachusetts

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This summary of Massachusetts appellate case law addresses five topics: the availability of and general standards for appellate review, standards and allowable grounds for departure, constitutional requirements for proof of facts permitting upward departure or increasing the minimum sentence, and other important appellate sentencing decisions.

## 1. Availability of and General Standards for Appellate Review

Massachusetts has three main criminal trial courts. The Superior Court of Massachusetts “has exclusive original jurisdiction of first degree murder cases and original jurisdiction of all other crimes.”<sup>1</sup> The District Court of Massachusetts has jurisdiction over “all felonies punishable by a sentence up to five years,” and certain “felonies with greater potential penalties; all misdemeanors; and all violations of city and town ordinances and by-laws.”<sup>2</sup> Finally, the Boston Municipal Court has the same type of jurisdiction as the District Court, but over cases that arise in the city of Boston.<sup>3</sup> Defendants and the Commonwealth have the right to appeal sentencing decisions to the Appeals Court.<sup>4</sup>

The Appeals Court has discretion to increase or decrease a sentence.<sup>5</sup> It is not required to provide a statement of reasons for its decision.<sup>6</sup> There are no reported opinions indicating which factors the Appeals Court considers in reviewing a sentence.<sup>7</sup> The trial court is “given great discretion in determining the proper sentence.”<sup>8</sup> This discretion permits the court to impose a sentence of any length that “does not violate statutory limits.”<sup>9</sup> In practice, these appeals are rarely successful.<sup>10</sup>

Alternatively, aggrieved defendants may appeal any sentence to state prison through the appellate division of the Superior Court. This court consists of three superior court judges designated by the chief justice, none of whom may be the original sentencing judge.<sup>11</sup> Unlike the Supreme Court (discussed below), the appellate division has the power to review and revise a lawful sentence, though this is not a given right to either the defendant or the Commonwealth.<sup>12</sup> The division may substitute a different appropriate sentence or impose any other disposition that could have been made at the time of sentencing. It may also allow the original sentence to stand. It can operate with or without a hearing but must allow a defendant to be heard if increasing a sentence.<sup>13</sup> By appealing a sentence in this manner, a defendant risks an increased sentence if the division finds the initial sentence inadequate.<sup>14</sup>

<sup>1</sup> Mass. Gen. Laws ch. 212 § 6 (2019); Mass. Court Sys., *Superior Court Department*, <http://www.mass.gov/courts/court-info/trial-court/sc/> (last visited Mar. 22, 2019).

<sup>2</sup> Mass. Gen. Laws ch. 218 § 26 (2019); Mass. Court Sys., *District Court Department*, <http://www.mass.gov/courts/court-info/trial-court/dc/> (last visited Mar. 22, 2018).

<sup>3</sup> Mass. Gen. Laws ch. 218 § 26 (2019); Mass. Court Sys., *Boston Municipal Court Department*, <http://www.mass.gov/courts/court-info/trial-court/bmc/> (last visited Mar. 22, 2018).

<sup>4</sup> Mass. R. App. P. 4 (2019). Review of Appeals Court decisions is conducted by the Massachusetts Supreme Judicial Court. Mass. R. App. P. 27.1 (2019). However, the Supreme Judicial Court also has jurisdiction to hear direct appeals in some cases. Mass. Gen. Laws ch. 278 § 28 (2019).

<sup>5</sup> *Hicks v. Com.*, 185 N.E.2d 739 (Mass. 1962).

<sup>6</sup> *Com. v. Barros*, 955 N.E.2d 295, 298 (Mass. 2011).

<sup>7</sup> See, e.g., *Com. v. White*, 764 N.E.2d 808, 812 (Mass. 2002) (“[S]entencing judges ‘properly may consider a variety of factors,’ including information concerning a defendant’s character, behavior, and propensity for rehabilitation” (citing *Com. v. Coleman*, 461 N.E.2d 157, 162 (Mass. 1984))); *Com. v. Cabral*, 2007 WL 3355727, at \*2 (Mass. App. Ct. Nov. 13, 2007) (listing a few of the factors a sentencing judge may consider).

<sup>8</sup> *Abrahams v. Comm’r of Corr.*, 786 N.E.2d 1249, 1251 (Mass. App. Ct. 2003) (quoting *Com. v. Lykus*, 546 N.E.2d 159, 166 (Mass. 1989)).

<sup>9</sup> *Id.*

<sup>10</sup> Correspondence with Hon. Jack Lu, Mass. Sentencing Comm’n Chair (May 13, 2016).

<sup>11</sup> Mass. Gen. Laws ch. 278 § 28A (2019). Female offenders are sent to the reformatory for women rather than state prison; thus, those with reformatory sentences of greater than five years may appeal.

<sup>12</sup> *Com. v. McCravy*, 723 N.E. 2d 517, 524 (Mass. 2000).

<sup>13</sup> Mass. Gen. Laws ch. 278, §§ 28B, 28C (2019).

<sup>14</sup> *Com v. Callahan*, 644 N.E. 2d 629 (Mass. 1995).

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Defendants have no automatic appeal to the Massachusetts Supreme Court.<sup>15</sup> The Supreme Court may exercise its discretion to review sentences through its superintendence power.<sup>16</sup> It has stated that it will do so rarely.<sup>17</sup>

The Massachusetts Sentencing Guidelines have never been legally binding because they have never been enacted by the legislature.<sup>18</sup> The Commission has recently drafted new guidelines that are explicitly advisory.<sup>19</sup>

## 2. Standards and Allowable Grounds for Departure

The Massachusetts Sentencing Guidelines are not binding on courts.<sup>20</sup> Accordingly, courts are not required to consider the guidelines during sentencing.<sup>21</sup> Nonetheless, some trial courts choose to consult the sentencing guidelines.<sup>22</sup> The advisory guidelines propose departure from a guideline recommendation upon “a finding that there exists one or more aggravating or mitigating circumstances that should result in a sentence different from the one otherwise prescribed by the guidelines.”<sup>23</sup>

## 3. Constitutional Requirements For Proof of Facts Permitting Upward Departure

Because the Massachusetts guidelines operate only in an advisory capacity,<sup>24</sup> there are no *Blakely* issues implicated by this sentencing scheme.<sup>25</sup>

## 4. Constitutional Requirements For Proof of Facts that Increase the Minimum Sentence

Under *Alleyne v. United States*, a fact that increases a statutory mandatory minimum associated with a crime is an element to be submitted to a jury, under the *Apprendi* doctrine.<sup>26</sup> Courts in other states have applied this holding to facts that raise the floor of the applicable sentencing guidelines range in a legally-binding-guidelines system.<sup>27</sup> Because the Massachusetts guidelines operate only in an advisory capacity, there are no *Alleyne* considerations regarding the Massachusetts guidelines.

<sup>15</sup> *Com. v. Barros*, 955 N.E.2d 295, 297 (Mass. 2011) (citing Mass. Gen. Laws ch. 278, § 28B). There is an exception for capital cases. Mass. Gen. Laws ch. 278, § 33E (2019) (appeals in capital cases).

<sup>16</sup> 955 N.E.2d at 297.

<sup>17</sup> *See id.*

<sup>18</sup> *Abrahams v. Comm'r of Corr.*, 786 N.E.2d 1249, 1251 (Mass. App. Ct. 2003). *See also Com. v. Laltaprasad* (60 N.E.3d 326 (Mass. 2016), discussing how any downward departure from the statutory mandatory minimum sentence suggested by the guidelines could not occur unless the guidelines were enacted by the legislature.

<sup>19</sup> Mass. Sentencing Comm'n, *Advisory Sentencing Guidelines* (Nov. 2017), <https://www.mass.gov/files/documents/2018/02/01/Advisory%20Sentencing%20Guidelines%2020180119.pdf>.

<sup>20</sup> *Abrahams*, 786 N.E.2d at 1251 (“There are no mandatory sentencing guidelines.” (citation omitted)).

<sup>21</sup> *Com. v. Cabral*, 2007 WL 3355727, at \*2 (Mass. App. Ct. Nov. 13, 2007).

<sup>22</sup> *See, e.g., Com. v. White*, 764 N.E.2d 808, 811 (Mass. 2002) (the resentencing judge “reviewed and considered several factors, including [...] the sentencing guidelines [...]” (quotation omitted)).

<sup>23</sup> Mass. Gen. Laws ch. 211E, § 3(a)(2) (2018); *see also* Mass. Sentencing Guidelines Attachment D (1998) (providing a non-exclusive list of aggravating and mitigating circumstances). The intricacies of departing under the proposed guidelines are discussed in the Massachusetts State Profile.

<sup>24</sup> *Advisory Sentencing Guidelines*, *supra* note 19.

<sup>25</sup> *Blakely v. Washington*, 542 U.S. 296 (2004); *U.S. v. Booker*, 543 U.S. 220, 233 (2005). These cases have been mentioned many times in appeals of first-degree murder convictions that were based on the theory of extreme atrocity or cruelty. Defendants have tried to argue that *Blakely* and *Booker* require a unanimous jury verdict with respect to all of the factors that support this type of murder conviction; however, the argument has not been successful. *See, e.g., Com. v. Perez*, 825 N.E.2d 1040, 1049 (Mass. 2005).

<sup>26</sup> *Alleyne v. United States*, 570 U.S. 99 (2013). *Apprendi v. New Jersey*, 530 U.S. 466 (2000) involved proof of facts permitting a sentence above the applicable statutory maximum. In the *Blakely* and *Booker* cases, discussed above in Section 3, the Court held that *Apprendi* proof requirements also apply to facts permitting a sentence above the presumptive guidelines sentencing range.

<sup>27</sup> *See, e.g., People v. Lockridge*, 870 N.W. 2d 502, 506 (Mich. 2015).

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However, in 2014, the Massachusetts Supreme Court did find that a Massachusetts statute violated *Alleyne* because it granted power to the parole board (an executive agency) to either increase a defendant's sentence or to execute a suspended sentence.<sup>28</sup>

In addition, the Massachusetts Supreme Court also held in 2014 that court-ordered restitution is not subject to the requirements of *Alleyne*, because the amount of restitution is not governed by any statutory provisions.<sup>29</sup>

## 5. Other Important Sentencing Decisions

Until the sentencing guidelines are legislatively approved, Massachusetts judges cannot sentence below a statutory mandatory minimum.<sup>30</sup> The defendant in *Commonwealth v. Laltaprasad* was convicted of several drug crimes that carried minimum prison sentences of three and a half years each. The sentencing judge, citing mitigating factors of crime severity and the defendant's disability, sentenced him to two and a half years in a house of correction (jail). The Commonwealth appealed, stating that the judge's sentence, although arguably authorized by the sentencing guidelines, was not valid because those guidelines were yet to be legislatively approved.<sup>31</sup> The Massachusetts Supreme Court stated that while minimum sentences for drug crimes are the subject of public debate regarding criminal justice reform, the current statutory language is clear and in favor of the Commonwealth's interpretation.<sup>32</sup>

A sentencing judge may not enhance a defendant's sentence due to a belief that the defendant is guilty of uncharged misconduct.<sup>33</sup> However, this does not mean that a judge may never consider uncharged misconduct in any manner at sentencing.<sup>34</sup> Reliable evidence of prior misconduct may be considered for purposes of evaluating the defendant's character and amenability to rehabilitation, but the defendant may not be *punished* for that misconduct.<sup>35</sup>

A sentencing judge who considers uncharged misconduct at sentencing must carefully explain the reason for doing so, because an enhanced sentence motivated by a judge's punitive, personal feelings is impermissible.<sup>36</sup> If there is any ambiguity about whether the sentencing judge was improperly motivated by personal feelings in enhancing the defendant's sentence, resentencing is required.<sup>37</sup>

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<sup>28</sup> *Commonwealth v. Cole*, 468 Mass. 294, 305 (Mass. 2014).

<sup>29</sup> *Commonwealth v. Denehy*, 466 Mass. 723, 736 (Mass. 2014).

<sup>30</sup> *Commonwealth v. Laltaprasad*, 475 Mass. 692, 60 N.E.3d 326 (2016) (citing Mass. Ann. Laws ch. 211E, § 3).

<sup>31</sup> *Id.* at 330.

<sup>32</sup> *Id.* at 334.

<sup>33</sup> *Commonwealth v. Henriquez*, 780 N.E.2d 118, 121 (Mass. App. Ct. 2002).

<sup>34</sup> *Id.*

<sup>35</sup> *Commonwealth v. Henriquez*, 796 N.E. 843, 844 (Mass. 2003) (citing *Commonwealth v. Goodwin*, 605 N.E.2d 827, 831 (Mass. 1993)). Notably, the sentencing issue in *Goodwin* was an increased probation sentence, not an increased sentence of incarceration.

<sup>36</sup> *Commonwealth v. Henriquez*, 780 N.E.2d 118, 123–124 (Mass. App. Ct. 2002).

<sup>37</sup> *Commonwealth v. Henriquez*, 796 N.E.2d 843 (Mass. 2003).