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# Dozens of convicted rapists in Mass. have avoided prison

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**More than three dozen people convicted of rape in Massachusetts in recent years have received no prison time at all for their crimes.**

**By Matt Rocheleau**

GLOBE STAFF JULY 07, 2016

More than three dozen people convicted of rape in Massachusetts in recent years have received no prison time for their crimes, state data show, including several who had lengthy criminal histories.

A Globe review of Massachusetts court system statistics on 305 [rape](#) convictions in the 12-year period that concluded at the end of June 2013 found that in 42 cases, or about 14 percent of the time, defendants received no prison time.

They included two defendants who had a record of either “repetitive” or “violent” convictions, and three had a “serious record.” Seven had a “moderate record” of convictions, while 30 had either never been convicted of a crime or had been convicted of what the court system considered minor offenses. The figures come from [annual reports](#) by the Executive Office of the Trial Court.



“If you look at any other violent, serious felony, this would never happen,” said Colby Bruno, an attorney at the Victim Rights Law Center in Boston. Rapists should not be given leniency when it comes to sentencing, Bruno said.

In Massachusetts, [state sentencing guidelines](#) call for anyone convicted of certain serious crimes, including rape, to be sentenced to some period of incarceration. For rape, the minimum recommended sentence is five years. But judges aren’t required to follow the guidelines.

The Massachusetts data reviewed by the Globe showed that convicted rapists who were incarcerated were typically sentenced to between five and 10 years in prison, and that defendants with more troubling [criminal histories](#) usually received lengthier sentences.

## Incarceration rates of convicted rapists, by criminal history

Massachusetts sentencing guidelines place defendants into one of [five categories](#) based on their criminal history. The following chart shows incarceration rates for each of the five categories for people convicted of rape from July 2001 through June 2013.

Defendant category	Convicted	Incarcerated	Incarceration rate
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No/Minor Record	149	119	80%
Moderate Record	40	33	83%
Serious Record	52	49	94%
Violent or Repetitive Record	60	58	97%
Serious Violent Record	4	4	100%

SOURCE: Massachusetts Executive Office of the Trial Court

National statistics on criminal sentencing are limited. But a federal [study](#) on cases that began in 2009 in large urban US counties found 11 percent of convicted rapists were not sentenced to jail or prison time. For those who were incarcerated, the median prison sentence length was 10 years.

Questions have been raised nationally about sentencing in rape cases after former Stanford University swimmer Brock Turner was convicted on three felony sexual assault charges in California and sentenced last month to six months in prison.

Prosecutors had asked for him to be sentenced to six years behind bars, according to [media reports](#). He faced a maximum sentence of 14 years in prison.



[Legislators in California have since proposed mandatory prison sentences](#) for anyone convicted of sexually assaulting an intoxicated or unconscious person, as Turner did.

The Globe's review of the data focused on convictions under Massachusetts' [definition of rape](#), which is described as nonconsensual sex with someone by using force or the threat of bodily injury. The review did not look at [other classifications](#) of the crime, such as aggravated, statutory, or child rape.

The reports did not detail specific cases. The state trial court office, which is exempt from public record disclosure laws, declined to release further details. The most recent year for which data was available was fiscal year 2013.

Defense attorneys, as well as former judges and prosecutors, offered several potential reasons why

someone convicted of rape might not get prison time.

One of the most likely scenarios, experts said, would be a plea bargain. A prosecutor with a weak case could offer, in exchange for a guilty plea, to recommend a lesser sentence such as probation to the judge.

Getting a conviction and at least some punishment for the defendant is sometimes viewed as a better option than risking losing the case at trial. It also removes the possible need to bring a traumatized victim to testify.

“The ultimate goal is to decrease crime and hold people responsible, and sometimes that can come in different forms and packages,” said law professor Mary G. Leary, a former prosecutor whose focus included sexual assault cases.

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*‘The ultimate goal is to decrease crime and hold people responsible, and sometimes that can come in different forms and packages.’*

In another possible scenario, a victim might ask the judge not to incarcerate the assailant.

“Sometimes, when you have parties who know each other, they want the person convicted, but they don’t want them to be incarcerated,” said Christine Cole, executive director of the Crime & Justice Institute, part of the Boston-based nonprofit Community Resources for Justice.

In addition, judges carefully weigh many factors when making sentencing decisions. Factors can include the specific facts of the crime, and whether the defendant cooperated with prosecutors, showed remorse, has a criminal past, and is likely to reoffend, specialists said.

The details of each case are critical, said Nancy Gertner, a former federal judge in Boston and a former defense attorney.

For example, Gertner said, she routinely encountered cases where defendants, particularly those with drug addiction problems, “wound up with these very long rap sheets, but of relatively minor offenses.”

Some observers, including Cole and Gertner, said they believe judges sentence appropriately in the vast majority of cases.

Martin Rosenthal, a longtime criminal defense attorney and Massachusetts Sentencing Commission member, agreed, saying that while “it’s certainly unusual for someone to be convicted of rape and not get incarcerated . . . I don’t think that rape is being diminished in any way” by judges or the justice system.

“The idea that we’re being soft on rape as a society is just not true,” he said.

A limited, manual search of court records by the Globe uncovered five cases where rapists received no prison time. Four of the five convictions appeared to be the result of plea bargains.

The other was the case of Michael Boutchie.

In 2005, a jury convicted Boutchie of, two years earlier, raping an acquaintance who was sleeping. Prosecutors recommended six to eight years in state prison. Essex Superior Court Judge Elizabeth Fahey described the sentencing decision as difficult.

Fahey wrote in her sentencing memorandum that on the one hand, he stood convicted of “an extremely serious offense,” and had failed to address his substance abuse problem. And, she added, “The horrendous crime had a tremendous impact on the victim.”

On the other hand, Fahey noted Boutchie had no prior convictions on his record, and she had received letters from more than 30 people — Boutchie’s family, friends, co-workers, and former teachers — describing him as a good person.

Fahey wrote that Boutchie had “consumed a lot of alcohol and cocaine at the party just prior to the rape.”

“While his alcohol and drug use does not diminish his legal responsibilities for his crime, this court considers this a significant contributing factor to his criminal behavior,” she wrote.

“I am hopeful that, if he can eliminate his substance abuse, he can become a law-abiding, contributing member of society,” she added.

Fahey sentenced Boutchie to five years of probation, placing him under house arrest for the first year. She also imposed other conditions, including that he avoid and be screened for alcohol and drug use and seek sex offender and substance abuse treatment.

**Boutchie fared well on probation, at least initially, according to court records.**

**But in June 2008, Boutchie tested positive for alcohol consumption while on probation, records show.**

**And he was “heavily intoxicated” last year when he allegedly fondled a friend’s girlfriend and punched her in the face, according to a police report. He pleaded guilty to charges including indecent assault and battery and was sentenced to 2 to 2 ½ years in a house of corrections, followed by 2 ½ years of probation, along with other conditions.**

**Through a trial court spokeswoman, Fahey declined to comment.**

**When asked recently about Fahey’s sentencing decision from 2005, Essex district attorney’s spokeswoman Carrie Kimball-Monahan said, “We made our recommendation to the judge, which was six to eight years in state prison. We felt the crime merited that much time in prison and ultimately, it’s the judge’s decision.”**

**Two of the three attorneys who represented Boutchie at various points in the 2005 case declined to comment. The third attorney did not respond to messages left for him. Another attorney who represented him in the case last year declined to comment.**

## **Incarceration rates for the most serious crimes in Massachusetts**

Massachusetts ranks criminal offenses by seriousness using a scale of 1 to 9, with 9 being the most serious. Rape is considered a Level 7 offense. State sentencing guidelines call for anyone convicted of a Level 6 or higher offense to be incarcerated. The following chart shows the incarceration rates of Level 7 or higher offenses from July 2001 through June 2013.

<b>Governing offense</b>	<b>Offense level</b>	<b>Convicted</b>	<b>Incarcerated</b>	<b>Incarceration rate</b>
Murder	9	632	632	100%
Rape, Aggravated	8	182	182	100%
Armed Assault w/i Murder - Firearm	8	146	146	100%
Traffic Cocaine 200+ grams	8	99	99	100%
Traffic Heroin 200+ grams	8	10	10	100%
Rape 2nd	8	4	4	100%
Kidnapping Sexual Assault	8	3	3	100%
Armed Robbery Gun 2nd	8	1	1	100%

Kidnapping Firearm Extort	8	1	1	100%
Rape of Child w/Force Aggravated	8	1	1	100%
Traffic Cocaine 100-200 grams	7	256	256	100%
Traffic Heroin 28-100 grams	7	112	112	100%
Rape of Child Aggravated	7	37	37	100%
Traffic Heroin 100-200 grams	7	32	32	100%
Rape of Child 2nd	7	11	11	100%
Assault w/i Rape 2nd	7	4	4	100%
Traffic Heroin 36-100 grams	7	4	4	100%
Drug for Sexual Intercourse	7	2	2	100%
Kidnapping Firearm Armed	7	2	2	100%
Hostage Taking by Prisoner	7	1	1	100%
Robbery Unarmed Person 60+ 2nd	7	1	1	100%
Traffic Marijuana 10,000+ lbs	7	1	1	100%
Manslaughter	8	462	461	99.8%
Firearmed Assault w/i Murder	8	44	43	97.7%
Armed Assault In Dwell House	8	67	65	97.0%
Carjacking, Armed	7	70	67	95.7%
Rape of Child w/Force	8	384	367	95.6%
Armed Assault w/i Murder	7	426	400	93.9%
A&B Child w/Injury Substantial	7	69	64	92.8%
Mayhem	7	147	135	91.8%
Murder, Attempted	7	77	70	90.9%
Armed Robbery Gun	7	908	825	90.9%
Confine And Put In Fear	7	52	47	90.4%
<b>Rape</b>	<b>7</b>	<b>305</b>	<b>263</b>	<b>86.2%</b>
Assault w/i Rape Child	7	30	24	80.0%
Burglary, Armed	8	43	34	79.1%
Kidnapping Extortion	7	9	7	77.8%
Incest	7	31	24	77.4%
Throw or Place Explosives	7	11	7	63.6%
Home Invasion	8	76	48	63.2%
Assault In Dwelling	8	5	3	60.0%
Kidnapping Child	7	5	3	60.0%

TOTAL - 4763 4499 94.5%

SOURCE: Massachusetts Executive Office of the Trial Court

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