

Patrick aims to take over Probation Department

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Rising budget, patronage, and insularity cited by critics

By Thomas Farragher and Scott Allen, Globe Staff | January 24, 2010

Governor Deval Patrick, in his new budget this week, will seek to wrest control of one of the fastest-growing but most secretive state agencies, taking direct charge of the probation officers who supervise criminals when they serve their sentences outside a prison cell.

Patrick's proposal would largely remove the Probation Department from the court system, where, critics say, it has become a backwater of patronage jobs and bloated budgets, operating mostly independent of other public safety agencies.

It also has been buffeted by a corruption investigation after the indictment of a probation clerk last month for allegedly embezzling \$2 million.

Patrick's move sets up an election year showdown with the Legislature, which has strongly supported longtime Probation Commissioner John J. O'Brien. The Legislature twice overrode attempts by Patrick to cut probation's budget last November and, in 2005, took away the trial courts' authority to transfer money from probation to other parts of the system.

Since O'Brien took office in 1998, state spending on probation has grown several times more rapidly than prisons, courts, and other public safety agencies, according to state budget figures.

"We need to make probation a part of a unified system," said a senior administration official, who spoke on condition of anonymity because he did not have permission to comment before the budget was released.

Patrick believes the state can save at least \$40 million by consolidating prisons, probation, and the parole board under one office in the executive branch.

"Right now, that efficiency doesn't exist," the official said. "There will be strong political pushback. But no state does it like we do."

Yesterday, O'Brien said he wants control over his department to stay within the courts. "We are guided by judicial rules, rules of the court and many policies that make probation an essential element of the judicial process," he said in a written statement.

Massachusetts runs one of the largest probation programs in the country, according to Justice Department statistics, overseeing an estimated 180,000 people who have been convicted of an offense but are allowed to serve at least part of the sentence in the community. On a per capita basis, only two states, Georgia and Idaho, have a larger probation population.

But probation officials here provide far less information about their work than their counterparts in other states. For instance, unlike 32 states, O'Brien's office doesn't report to the Justice Department how many people commit additional crimes while they're on probation, even though in 2007, two Massachusetts probationers committed murders in Washington state and Florida.

Probation officials say they collect comprehensive data - they say crime by probationers is dropping - but that their statistics are not tallied precisely the way the Justice Department prefers.

Patrick administration officials and other agencies that deal with the department complain that it should not be so difficult to get basic answers from probation, which has an annual budget of about \$150 million.

"You get the impression that whatever you ask, the first answer is 'no' and the second answer is, 'never,'" said Lael Chester, executive director of Citizens for Juvenile Justice, an advocacy group, and a member of a state advisory panel that has sought data from probation. "They say, 'It's confidential.' How can the number of kids being arraigned be confidential?"

O'Brien, 52, a career probation official who lives in Quincy, generally avoids publicity, issuing written statements rather than talking to reporters, while working behind the scenes to build alliances with key politicians. For instance, 19 probation employees each donated \$100 to the campaign of state Treasurer Tim Cahill at one 2005 event.

Probation officials have also donated thousands of dollars to legislative allies of the department, such as state Representative Thomas Petrolati and state Senator Steven Baddour. Petrolati's wife helps supervise the electronic monitoring bracelet program overseen by probation. Baddour's wife is an associate probation officer.

But recent events have drawn O'Brien - who declined Globe requests for interviews - into an unaccustomed public role.

First, the Boston Foundation released a report in early December concluding that probation's budget had grown a stunning 163 percent from 1998 to 2008. The growth rate, adjusted for inflation, was eight times faster than any other public safety agency over the same period. The Legislature did cut probation's budget last year but not by as much as Patrick wanted, restoring \$4.4 million that the governor had vetoed.

In a rare public response, O'Brien rejected the foundation's findings as "convoluted mathematical calculations" that failed to consider a 2004 change in the budget process that made probation spending look greater than it is.

"I am disappointed that we had no opportunity to review the report in its draft form nor prior to its release to correct many inaccuracies contained therein," he wrote.

However, the report's author, Len Engel of Community Resources for Justice, says he did account for the budget process change O'Brien cited. And he said that despite repeated attempts, he did not receive key data he sought from the Probation Department. Patrick administration officials say Engel's figures are accurate.

Meanwhile, the early December indictment of probation clerk Marie Morey on embezzlement charges raised serious questions about the way probation handles money. Morey allegedly stole \$2 million over a three-year period from the department office in Lawrence where, prosecutors say, she used bookkeeping tricks to hide her vast theft.

State Auditor Joseph DeNucci had given probation a stark warning about Morey's "questionable" bookkeeping in July 2007. DeNucci's routine review found that Morey made lots of errors and revised her books six times after the auditor began asking questions. But, according to the indictment against Morey, she continued to steal an average of \$12,000 a week for a year and a half after DeNucci's report.

O'Brien laid the blame partly on the chief probation officer at the Lawrence court, George Corkery, who retired shortly after Morey was arrested.

But the Lawrence probation office was only one of 10 that DeNucci has criticized for lax money-handling practices over the past three years, raising questions about whether probation has a much broader vulnerability to theft.

Patrick's attempt to place probation under the executive branch of government is the result, in part, of a growing sense of frustration among other public safety and judiciary officials that the department has become increasingly insular.

"This department has a life of its own," said Michael B. Keating, chairman of a court management advisory board appointed by the Supreme Judicial Court. "It can't be an island unto itself."

Massachusetts last year lost a lucrative federal grant to help offenders returning to society get housing and jobs, in part because state agencies don't cooperate well enough, according to one official briefed on Patrick's

plan.

Under the governor's proposal, the judicial branch would retain only the small portion of the current Probation Department responsible for family court issues.

According to an internal policy document, which analyzed the centralization plan embraced by the governor, the office of the commissioner of probation reported that it had 175,000 cases under its oversight in 2007, a number slightly less than the federal figure. But even at that lower figure, Massachusetts has a per capita probationer rate 47 percent above the national average. The policy document, obtained by the Globe, said it remains unclear how many of those cases require significant hands-on supervision.

"An accurate assessment of probation caseloads cannot be calculated," the analysis states.

The administration also is taking aim at the Office of Community Corrections, a branch of probation that operates a sprawling but underutilized network of 25 centers across the state, where probationers are subject to random drug and alcohol testing and can attend classes to obtain their high school equivalency diploma.

The Community Corrections annual budget is currently \$23.7 million. Yet in 2008, all 25 centers together had an average of fewer than 1,200 offenders at any given time, or an average of about 46 people in each center.

Some judges are reluctant to sentence probationers to the centers and some probation officers even discourage the judges from doing so, according to the policy brief. One reason is the highly prescriptive programming that requires the most serious offenders to spend four to six hours a day at the center, six days a week, and perform eight hours of community service a week.

"There's no supervision by a judge over community corrections," said Robert F. Kumor Jr., former first justice of the Springfield District Court, who retired last fall. "You sentence someone to community corrections, you don't know what happens next."

In his letter disputing the Boston Foundation's findings, O'Brien called the Community Corrections centers "a monumental and successful effort by Massachusetts to ensure community reintegration" of offenders.

Yet only 21 percent of those using the centers who took the GED exam in 2008 were awarded their diploma, the annual report said. Among the most serious offenders, about half of those who left the programs that year were removed not because they finished successfully, but because they got in more trouble with the law.

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