

HOUSE No. 2315

The Commonwealth of Massachusetts

PRESENTED BY:

David Paul Linsky

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to sentencing guidelines.

PETITION OF:

NAME:

David Paul Linsky

DISTRICT/ADDRESS:

5th Middlesex

HOUSE No. 2315

By Mr. Linsky of Natick, a petition (accompanied by bill, House, No. 2315) of David Paul Linsky for legislation to establish sentencing guidelines for convictions of criminal offenses in the Commonwealth. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1458 OF 2015-2016.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act relative to sentencing guidelines.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 1. Definitions. The following terms as used in this chapter shall have the
2 following meanings:-

3 “Adjudication of delinquency,” a determination or finding pursuant to G.L. c. 119 § 58
4 that a juvenile is a delinquent child.

5 “Conviction,” a finding or verdict of guilt for a criminal offense.

6 “Criminal history group,” the classification of an offender’s previous record of criminal
7 convictions or adjudications of delinquency as set forth on the horizontal axis of the sentencing
8 guidelines grid.

9 “Departure from the guidelines,” a sentence imposed outside the sentencing range
10 contained in the applicable grid cell for the particular offense.

11 “Governing offense,” the offense having the highest offense seriousness level among
12 multiple offenses arising out of the same criminal conduct.

13 “Grid cell,” the intersection on the sentencing guidelines grid between the offense
14 seriousness level and the criminal history group.

15 “Intermediate sanction,” a non-incarcerative sentence, or portion thereof, which includes
16 a level of restriction, such as standard probation, intensive supervision probation, community
17 service, home confinement, and day reporting, and which may be coupled with components,
18 such as residential programming, substance abuse treatment, restitution, continuing education,
19 vocational training, special education, and psychological counseling.

20 “Mandatory minimum sentence,” the provision of a criminal penalty for a particular
21 offense which specifies the minimum term of incarceration and prohibits suspension of any
22 sentence, placement on file, continuance without a finding, probation, and release on parole until
23 the minimum term of imprisonment has been served.

24 “Master crime list,” the list in which offenses in Massachusetts currently punishable by a
25 term of imprisonment are ranked for purposes of the sentencing guidelines.

26 “Offense seriousness levels,” the categories for ranking criminal offenses as set forth in
27 the master crime list and on the vertical axis of the sentencing guidelines grid.

28 “Same criminal conduct,” any two or more offenses committed during a single criminal
29 incident.

30 “Sentencing Commission,” the Massachusetts Sentencing Commission as defined in G.L.
31 c. 211E § 1.

32 “Sentencing event,” an appearance before a court of competent jurisdiction during which
33 sentence is imposed for one or more convictions or adjudications of delinquency.

34 “Sentencing guidelines,” all provisions set forth in this chapter which direct or guide
35 judges in sentencing.

36 “Sentencing guidelines grid,” the sentencing matrix, with offenses classified on a vertical
37 axis and criminal history groups classified on a horizontal axis , and which contains a sentencing
38 guidelines range within each grid cell.

39 “Sentencing guidelines range,” the range of any sentence, including the range of
40 intermediate sanctions, which may be imposed in each grid cell without constituting a departure
41 from the sentencing guidelines.

42 “Split sentence,” a sentence to a house of correction which is suspended in part and
43 includes a specified period of incarceration followed by a specified period of probation or
44 intermediate sanction or both.

45 “Staircased offense,” a criminal offense which is ranked in more than one offense
46 seriousness level on the basis of the existence of a specified factor.

47 “Statutory minimum sentence,” the provision of a criminal penalty for a particular
48 offense which does not require the imposition of incarceration, but specifies the minimum term
49 of incarceration, when incarceration is imposed.

50 Section 2. Sentencing Guidelines Grid. There are established, consistent with the
51 provisions of G.L. c. 211E § 3, sentencing guidelines in the form of a sentencing guidelines grid
52 with offenses classified on the vertical axis according to seriousness and criminal history
53 classified on the horizontal axis according to severity. Within each grid cell there is a sentencing
54 guidelines range, consistent with the provisions of G.L. c. 211E § 3 (a) (3) (C). The sentencing
55 guidelines grid includes three sentencing guidelines zones:- (1) an incarceration zone, where
56 only a sentence to incarceration is within the sentencing guidelines range and a sentence to an
57 intermediate sanction constitutes a departure from the sentencing guidelines; (2) a discretionary
58 zone, where either a sentence to incarceration or a sentence to an intermediate sanction are
59 within the sentencing guidelines range; and, (3) an intermediate sanction zone, where only a
60 sentence to an intermediate sanction is within the sentencing guidelines range and a sentence to
61 incarceration constitutes a departure from the sentencing guidelines. The following sentencing
62 guidelines grid shall be used as a basis for sentencing for convictions of all applicable offenses
63 for which incarceration is a possible sanction under existing statutes, except for those offenses
64 with mandatory minimum sentences listed in § 8 (a) and (b) of this chapter.

65 Section 3. Master Crime List. Offenses which permit incarceration are ranked according
66 to offense seriousness level. Murder, as defined in G.L. c. 265 § 1, is placed at the highest level
67 of the sentencing guidelines grid and for this offense the sentencing provisions of G.L. c. 265 § 2
68 apply. The offense seriousness rankings are set forth in the following master crime list, which
69 contains the following information:-

70 (a) "Grid." A "YES" in this column denotes application of the sentencing guidelines
71 grid. A "NO" in this column indicates the sentencing guideline grid is not applicable, and an
72 alternate penalty provision as provided for in this chapter is applicable.

73 (b) “Offense seriousness level.” All offenses on the master crime list are ranked
74 according to seriousness. For offenses to which the sentencing guidelines grid applies, the
75 offense seriousness level of the governing offense determines the placement of the offender on
76 the vertical axis.

77 For all offenses, the offense seriousness level also represents the level to which a prior
78 conviction is to be assigned for purposes of determining the criminal history group.

79 (c) “Notes.” The following notes apply to certain offenses contained in the master crime
80 list:

81 (1) “Note A” refers to offenses where the sentencing guidelines range exceeds the
82 statutory maximum sentence in certain grid cells. In such circumstances, the sentencing
83 guidelines range applies, except that no sentence imposed may exceed the statutory maximum
84 sentence, as provided in § 9 of this chapter.

85 (2) “Note B” refers to offenses where the statutory minimum sentence exceeds the
86 sentencing guidelines range in certain grid cells. In such circumstances, it is not a departure
87 from the sentencing guidelines for a judge to impose a sentence within the sentencing guidelines
88 range, nor is it a departure from the sentencing guidelines for a judge to impose the statutory
89 minimum sentence, as provided in § 8 (e) of this chapter.

90 (3) “Note C” refers to offenses with mandatory minimum sentences in violation of G.L.
91 c. 94C. The sentencing guidelines for these offenses are set forth in § 8 (c) of this chapter.

92 (4) “Note D” refers to certain firearms offenses and certain offenses pertaining to
93 operating a motor vehicle or boat under the influence which may have mandatory minimum

94 sentences. The sentencing guidelines for these offenses are set forth in § 8 (a) and (b) of this
95 chapter.

96 (5) “Note E” refers to certain other offenses which have mandatory minimum sentences.
97 The sentencing guidelines for these offenses are set forth in § 8 (d) of this chapter.

98 (6) “Note F” refers to certain offenses for which a sentence to an intermediate sanction
99 constitutes a departure from the sentencing guidelines.

100 (7) “Note G” refers to staircased offenses. The staircase factors are described in § 4 (a)
101 of this chapter.

102 (8) “Note H” refers to offenses for which the criminal history group of the defendant is
103 enhanced as described in § 4 (b) of this chapter.

104 (9) “Note I” refers to offenses for which the level is contingent on the level assigned to
105 the underlying substantive offense and is the same as the level assigned to the underlying
106 substantive offense, except that no sentence may exceed the statutory maximum sentence, as
107 provided in § 9 of this chapter.

108 (10) “Note J” refers to offenses for which the level is contingent on the level assigned to
109 the underlying substantive offense and is one level lower than the level assigned to the
110 underlying substantive offense, except that no sentence may exceed the statutory maximum
111 sentence, as provided in § 9 of this chapter.

112 (d) “Offense Reference” - the Massachusetts General Law reference for a particular
113 offense.

114 (e) “Offense Penalty Reference” - the Massachusetts General Law reference for a
115 particular offense penalty provision when different from the offense reference.

116 (f) “Staircase Factor” - a specified factor, beyond the required elements of for an offense,
117 which determines the offense seriousness level.

118 (g) The master crime list also incorporates information existing elsewhere in the General
119 Laws. Any discrepancies between the following items of information reproduced in the master
120 crime list and as they appear in the General Laws are to be resolved in favor of those provisions
121 of the General Laws which set forth the penalties for the particular offense.

122 (1) “Offense” - an abbreviated offense description;

123 (2) “Penalty Type” - felony or misdemeanor;

124 (3) “Mandatory Time” - the mandatory minimum sentence, where applicable;

125 (4) “Min H/C” - the statutory minimum sentence to the house of correction, where
126 applicable;

127 (5) “Max H/C” - the statutory maximum sentence to the house of correction, where
128 applicable;

129 (6) “Min Prison” - the statutory minimum sentence to the state prison, where applicable;

130 and,

131 (7) “Max Prison” - the statutory maximum sentence to the state prison where applicable.

132 Where an offense is not found in the master crime list, the judge shall impose an
133 appropriate sentence, having due regard for the purposes of sentencing set forth in G.L. c. 211E
134 § 2. The master crime list follows:-

135 Section 4. (a) Staircasing certain offenses. Certain offenses, broadly defined to
136 encompass a wide range of behavior, are placed at more than one offense seriousness level in the
137 master crime list. These offenses are identified by a staircased notation on the master crime list
138 based on the following considerations:-

139 (1) Manslaughter in violation of G.L. c. 265 § 13 is a level eight offense where it is
140 voluntary manslaughter and a level six offense where it is involuntary manslaughter.

141 (2) Assault and battery by means of a dangerous weapon in violation of G.L. c. 265 §
142 15A is ranked according to the degree of injury to the victim as follows:-

143 Assault and battery by means of a dangerous weapon is a level six offense where there is
144 significant injury to the victim. Significant injury includes: injuries which are characterized by a
145 protracted period of total disability or long term impairment of function, loss of function of any
146 body members, organ, or mental faculty; injuries, not necessarily permanently disabling, which
147 require long term medical care or rehabilitative therapy; injuries which involve a gross
148 disfigurement; and, injuries which result in a permanent residual disability or loss of function to
149 a significant degree.

150 Assault and battery by means of a dangerous weapon is a level four offense where there
151 is moderate injury to the victim. Moderate injury includes: injuries which involve extreme
152 physical pain and some discernible disability or loss of function of some body member, organ, or

153 mental faculty, such as fractures, internal injuries or wounds which are serious but not life
154 threatening; and, psychological trauma that results in some temporary or partial disability.

155 Assault and battery by means of a dangerous weapon is a level three offense where there
156 is no injury or minor injury to the victim. Minor injury includes: injuries which require some
157 emergency treatment, such as lacerations, contusions, or abrasions, which have no residual
158 effect; concussions without lasting neurological impact; physical injuries that are painful and
159 obvious but not in any way disabling; and, minimal, psychological trauma without lasting effect.

160 (3) Armed robbery in violation of G.L. c. 265 § 17 is a level seven offense where there is
161 a display of a gun. Any other violation of G.L. c. 265 § 17 is a level six offense with the
162 exception of certain violations of G.L. c. 265 § 17 that are subject to the provisions of § 4 (b) of
163 this chapter.

164 (4) Breaking and entering in violation of G.L. c. 266 §§ 16 through 18 is a level four
165 offense where the breaking and entering involves a dwelling. Any other violation of G.L. c. 266
166 §§ 16 through 18 is a level three offense.

167 Certain property offenses are ranked according to the value of property lost or destroyed
168 as follows:-

169 Where the value of the property lost or destroyed is \$50,000 or over, the offense is a level
170 five offense.

171 Where the value of the property lost or destroyed is between \$10,000 and \$50,000, the
172 offense is a level four offense.

173 Where the value of the property lost or destroyed is \$10,000 or under, the offense is a
174 level three offense.

175 In determining the appropriate offense seriousness level for a staircased offense, the
176 judge may consider any evidence received during the proceedings; any victim impact statement;
177 any presentence report, when the judge requests one; and, any other information that the judge
178 deems credible.

179 Second and subsequent convictions. When a statute provides for a more severe penalty
180 upon a second and subsequent conviction for an offense, the second or subsequent offense is
181 elevated one level on the offense seriousness scale on the master crime list. Where the offense is
182 at level eight, the offender shall be moved over one cell to the right to the next more serious
183 criminal history group in the grid. When a defendant is charged as a second or subsequent
184 offender under the relevant statute, the prior conviction or convictions that served as the basis for
185 the second or subsequent charge shall not be counted in determining criminal history placement
186 on the grid. Offenses that are subject to a more severe penalty for second and subsequent
187 conviction are so designated in the master crime list.

188 Section 5. Criminal History Groups. There are five criminal history groups on the
189 horizontal axis of the sentencing guidelines grid as follows:-

190 (a) Criminal History Group A, No/Minor Record, refers to a criminal record that
191 contains no prior convictions of any kind; or, one to five prior convictions in any combination
192 for offenses in levels one or two.

193 (b) Criminal History Group B, Moderate Record, refers to a criminal record that contains
194 six or more prior convictions in any combination for offenses in levels one or two; or, one or two
195 prior convictions in any combination for offenses in levels three or four.

196 (c) Criminal History Group C, Serious Record, refers to a criminal record that contains
197 three to five prior convictions in any combination for offenses in levels three or four; or, one
198 prior conviction for offenses in levels five or six.

199 (d) Criminal History Group D, Violent or Repetitive Record, refers to a criminal record
200 that contains six or more prior convictions in any combination for offenses in levels three, four,
201 five, or six; or, two or more prior convictions in any combination for offenses in levels five or
202 six; or, one prior conviction for offenses in levels seven through nine.

203 (e) Criminal History Group E, Serious Violent Record, refers to a criminal record that
204 contains two or more prior convictions in any combination for offenses in levels seven through
205 nine.

206 Section 6. Determining Criminal History. In determining placement in the appropriate
207 criminal history group on the sentencing guidelines grid, the following provisions shall apply:-

208 (a) Conviction-based criminal history. Only those prior offenses which resulted in a
209 conviction shall be counted for criminal history placement on the sentencing guidelines grid. All
210 convictions that occurred prior to the present sentencing event shall be counted for criminal
211 history placement on the sentencing guidelines grid. The offense seriousness level of each prior
212 conviction shall be determined by reference to the version of the master crime list in effect at the
213 time of the sentencing event for the present offense.

214 (b) Incident-based criminal history. Multiple prior convictions arising from the same
215 criminal conduct shall be counted as one prior conviction, based on the most serious offense.
216 There shall be a rebuttable presumption that multiple prior convictions that have the same
217 arraignment date shall be counted as one prior conviction, based on the most serious offense.
218 Multiple convictions with the same arraignment date may each be counted separately for
219 purposes of criminal history placement on the sentencing guidelines grid where each such
220 conviction is not part of the same criminal conduct. Multiple convictions with different
221 arraignment dates may be counted as a single conviction for purposes of criminal history
222 placement on the sentencing guidelines grid where each such conviction was part of the same
223 criminal conduct.

224 (c) Juvenile record. Adjudications of delinquency for offenses classified in offense
225 seriousness levels seven through nine on the master crime list shall be considered as convictions
226 of the offenses involved and counted for purposes of criminal history. Adjudications of
227 delinquency for offenses classified below level seven shall not be counted for purposes of
228 criminal history, but the existence of such adjudications may be considered as an aggravating
229 factor for departure from the sentencing guidelines range.

230 (d) Federal and out-of-state criminal records. Prior convictions in federal and other
231 jurisdictions shall be counted for criminal history purposes. The offense of prior conviction shall
232 be assigned to the same offense seriousness level as the Massachusetts offense in the master
233 crime list with the same or substantially the same elements.

234 (e) Prior convictions for staircased offenses. Where the prior conviction is a staircased
235 offense and the offense seriousness level of the staircased offense is not apparent from the

236 criminal record, there is a rebuttable presumption that the prior conviction is in the lowest
237 staircased level for that offense in the master crime list.

238 (f) Determination of criminal history. The judge shall decide any material contested
239 issues relating to criminal history.

240 Section 7. Sentencing Pursuant to the Sentencing Guidelines Grid. Sentencing pursuant
241 to the sentencing guidelines grid shall be based on the offense or offenses of conviction and the
242 criminal history of the defendant. The offense seriousness level for each offense of conviction
243 shall be determined from the master crime list. The appropriate level of staircased offenses shall
244 be determined by taking into account the relevant staircasing factors set forth herein. The
245 number and types of prior convictions shall be determined in accordance with § 5 of this chapter
246 to determine the appropriate criminal history group for the offender. The sentencing guidelines
247 range shall be determined by identifying that grid cell where the seriousness level of the
248 governing offense on the vertical axis intersects with the classification of the criminal history
249 group on the horizontal axis.

250 (a) Sentencing within the guideline range. The sentencing judge may impose a sentence
251 to incarceration within the sentencing guidelines range by imposing a maximum sentence from
252 within the guideline range of the appropriate grid cell. Unless otherwise noted herein, the
253 minimum sentence will always be two-thirds of the maximum sentence and will establish the
254 initial parole eligibility date. This applies to all sentences of incarceration of two months or
255 longer to houses of correction and all sentences to the state prison. Where the maximum
256 sentence of incarceration to a house of correction is less than two months, the minimum sentence
257 need not be two-thirds of the maximum sentence. Where the maximum sentence is selected from

258 the guideline range in the applicable grid cell, the sentence will be within the guidelines and no
259 written explanation is necessary.

260 (b) Departing from the guidelines range. The sentencing judge may impose a sentence
261 below or above the sentencing guidelines range by setting forth in writing reasons for departing
262 from that range on a sentencing statement, consistent with the provisions of G.L. c. 211E, § 3

263 (h). Any departure shall be based on a finding that one or more mitigating or aggravating
264 circumstances exist as provided in this chapter. In imposing a sentence of incarceration that
265 departs from the sentencing guidelines range, the minimum sentence shall be two-thirds of the
266 maximum sentence. A sentence that departs below the guidelines range may include a sentence
267 to any lesser term of incarceration or any intermediate sanction.

268 (1) Mitigating and aggravating circumstances. The following non-exclusive mitigating
269 and aggravating circumstances may guide departures from the sentencing guidelines range. The
270 presence of any such circumstance may warrant departure from the sentencing guidelines range
271 in the discretion of the sentencing judge. In determining mitigation or aggravation, the judge
272 may consider any evidence received during the proceedings; any victim impact statement; any
273 presentence report, when the judge requests one; and, any other information that the judge deems
274 credible.

275 (A) Mitigating circumstances. The non-exclusive list of mitigating circumstances
276 includes the following:-

277 The defendant was a minor participant in the criminal conduct.

278 The defendant was suffering from a mental or physical condition that significantly
279 reduced the culpability of the defendant for the offense.

280 The victim was an initiator, aggressor, or provoker of the offense.

281 The sentence was imposed in accordance with a jointly agreed recommendation.

282 The age of the defendant at the time of the offense.

283 The defendant verifies current involvement in, or successful completion of, a substance
284 abuse or other treatment program that began after the date of the offense.

285 (B) Aggravating circumstances. The non-exclusive list of aggravating circumstances
286 includes the following:-

287 The victim was especially vulnerable due to age or physical or mental disability.

288 The victim was treated with particular cruelty.

289 The defendant used position or status to facilitate commission of the offense, such as a
290 position of trust, confidence or fiduciary relationship.

291 The defendant was a leader in the commission of an offense involving two or more
292 criminal actors.

293 The defendant committed the offense while on probation, on parole, or during escape.

294 The defendant has committed repeated offenses against the same victim.

295 The sentencing judge shall not be required to conduct an evidentiary hearing in
296 determining aggravating or mitigating factors.

297 (c) Concurrent or consecutive sentencing. When a defendant is convicted of multiple
298 offenses arising out of the same criminal conduct, the judge may impose concurrent or

299 consecutive sentences, subject to the following provisions. The judge shall impose a consecutive
300 sentence when the imposition of a consecutive sentence is required by the terms of the statute
301 pertaining to a particular offense. The judge may impose concurrent or consecutive sentences of
302 incarceration in the house of correction for each offense where such incarceration is permitted by
303 law. The judge may impose concurrent or consecutive sentences of incarceration in the state
304 prison for each offense where such incarceration is permitted by law, subject to the following
305 limitation. The judge may impose consecutive sentences to the state prison by selecting a
306 sentence from the guidelines range in the applicable grid cell for each offense to be sentenced
307 consecutively. The total of such consecutive sentences may be combined up to twice the upper
308 limit of the sentencing guidelines range in the grid cell of the governing offense. Where the total
309 of the combined sentences exceeds twice that upper limit, it shall be considered a departure from
310 the guidelines and the judge is required to provide written reasons. The existence of multiple
311 victims is recognized as an aggravating circumstance which may justify such a departure.

312 Any sentence imposed as concurrent or consecutive to a governing offense may be for a
313 period of incarceration that is less than the lower limit of the sentencing guidelines range
314 contained in the applicable grid cell or for any level of intermediate sanction, without
315 constituting a departure from the sentencing guidelines.

316 When a defendant is convicted of multiple offenses which do not arise out of the same
317 criminal conduct or when a defendant at the time of sentencing is currently serving a sentence for
318 another criminal offense, the judge may impose either a concurrent or consecutive sentence from
319 within the sentencing guidelines range of the applicable grid cell without the limitation on
320 consecutive sentences to the state prison set forth in this section.

321 Section 8. Sentencing for Offenses with Mandatory Minimum Terms. Sentencing
322 guidelines for offenses with mandatory minimum terms are as follows:-

323 (a) Firearms offenses. No departures below the mandatory minimum sentences for
324 firearms offenses in violation of G.L. c. 269 §§ 10 (a), 10 (c), 10 (d), or 10E are permitted.
325 These enumerated mandatory firearms offenses are not integrated into the guidelines grid. The
326 sentencing guidelines for these mandatory firearms offenses are the mandatory sentencing
327 provisions of the existing statutes. The minimum term of incarceration shall be no less than the
328 mandatory minimum sentence provided in the statutes enumerated in this paragraph. The
329 sentencing judge is required to impose a minimum and a maximum sentence, but the minimum
330 sentence need not be two-thirds of the maximum. For purposes of determining the criminal
331 history group for a defendant with prior mandatory firearms convictions, the master crime list
332 provides the offense seriousness level corresponding to the sentencing guidelines grid for each
333 firearms offense with a mandatory minimum sentence.

334 (b) Operating under the influence offenses. (1) For purposes of this chapter, operating
335 under the influence offenses refer to offenses enumerated in the second paragraph of c. 90 § 23,
336 in c. 90 § 24 (1) (a) (1), and in c. 90B § 8 (a) (1) (A). With the exception of the departure
337 enumerated in sub-paragraph (b) (2) of this section, no departures below any mandatory
338 minimum sentences for operating under the influence offenses are permitted. These operating
339 under the influence offenses are not integrated into the guidelines grid. The sentencing
340 guidelines for these operating under the influence offenses are the mandatory sentencing
341 provisions of the existing statutes. The minimum term of incarceration shall be no less than any
342 mandatory minimum sentence provided in the statutes enumerated in this paragraph. The

343 sentencing judge is required to impose a minimum and a maximum sentence, but the minimum
344 sentence need not be two-thirds of the maximum.

345 (2) A judge may sentence a defendant, who has been previously convicted of a violation
346 of c. 90 § 24 (1) (a) (1) or c. 90B § 8 (a) (1) (A) or assigned to an alcohol or controlled substance
347 education, treatment, or rehabilitation program by a court of the commonwealth or any other
348 jurisdiction because of a like violation not more than two times within ten years preceding the
349 date of the commission of the operating under the influence offense for which he has been
350 convicted, to a long term residential substance abuse treatment program, approved by the office
351 of community corrections, as established in G.L. c. 211F § 2 (a), in lieu of imposing the
352 mandatory minimum sentence. No other departures below any mandatory minimum sentences
353 for operating under the influence offenses are permitted.

354 (3) For purposes of determining the criminal history group for a defendant with prior
355 convictions for operating under the influence offenses, the master crime list provides the offense
356 seriousness level for each operating under the influence offense.

357 (4) Nothing in this section shall be found to prohibit a sentence pursuant to c. 90 § 24 (1)
358 (a) (4) or c. 90B § 8 (a) (3) (A).

359 (c) Offenses in violation of the controlled substances act. Controlled substances offenses
360 with mandatory minimum terms are integrated into the sentencing guidelines grid. As set forth
361 in the master crime list, violations of G.L. c. 94C § 32E (b) (4) and § 32E (c) (4) are level eight
362 offenses; violations of G.L. c. 94C §§ 32E (a) (4), 32E (b) (3), 32E (c) (2), and 32E (c) (3) are
363 level seven offenses; violations of G.L. c. 94C §§ 32 (b), 32A (d), 32E (a) (3), 32E (b) (2), 32E
364 (c) (1), 32F (a), 32F (d), and 32K are level six offenses; violations of G.L. c. 94C §§ 32A (b),

365 32B (b), 32E (a) (2), 32E (b) (1), 32F (b), and 32F (c) are level five offenses; and, violations of
366 G.L. c. 94C §§ 32A (c), 32E (a) (1), and 32J are level four offenses.

367 For the offenses enumerated in the preceding paragraph, a judge shall provide written
368 reasons for sentencing below a mandatory minimum term even though the judge may be
369 imposing sentence that is within the guidelines range of the sentencing guidelines grid. The
370 standard for sentencing below the mandatory minimum term is more stringent than the standard
371 for departure below a sentencing guidelines range. A departure below a mandatory minimum
372 sentence for the controlled substances offenses enumerated above is not permitted unless the
373 defendant has no prior conviction for a controlled substance offense in level seven or eight and
374 the sentencing judge finds the existence of one or more mitigating circumstances.

375 A judge may impose a sentence below the sentencing guidelines range, provided that:- (a)
376 the criminal history of the defendant falls in criminal history group A or B in the sentencing
377 guidelines grid; and, (b) there is a substantial mitigating factor in addition to the mitigating
378 circumstance or circumstances that justified the departure below the mandatory minimum
379 sentence that should result in a sentence below the sentencing guidelines range.

380 Where the judge departs below the mandatory minimum sentence and imposes an
381 incarceration sentence within the guidelines range or below the guidelines range, the minimum
382 sentence shall be two-thirds of the maximum sentence; the defendant shall be eligible for parole
383 at the expiration of the minimum sentence; and, the defendant shall be eligible for earned good
384 time, work release, and other pre-release programs deemed appropriate by the correctional
385 authority with custody responsibility, notwithstanding the provisions of G.L. c. 94C § 32H.

386 Where the judge does not depart from the mandatory minimum sentence and imposes a
387 sentence pursuant to any mandatory sentencing provision, the minimum sentence need not be
388 two-thirds of the maximum sentence, and the defendant shall not be eligible for parole, earned
389 good time, work release, or other pre-release programs until he has served the mandatory
390 minimum sentence, as mandated by G.L. c. 94C, § 32H.

391 (d) Other offenses with mandatory minimum terms. No departures below any mandatory
392 minimum sentence provided for in these enumerated sections are permitted. As set forth in the
393 master crime list, violations of G.L. c. 90 § 24G (a), c. 90B § 8B (1), c. 272 § 4B, and c. 272 § 6
394 are level six offenses; violations of G.L. c. 265 § 43 (b), c. 265 § 43 (c), and c. 272 § 4A are
395 level five offenses; violations of G.L. c. 272 § 4A, c. 90 § 24L (1), c. 90B § 8A (1), c. 266 §
396 27A, . c. 266 § 28 (a), c. 268 § 39, and c. 272 § 7 are level four offenses.

397 For these offenses the minimum sentence shall be two-thirds of the maximum sentence
398 selected from within the applicable guidelines range, provided that all sentences require a
399 minimum term of incarceration equal to or greater in length than the mandatory minimum
400 sentence. It shall not constitute a departure for a judge to impose a sentence exceeding the
401 guidelines range of the applicable grid cell in order to comply with the requirement that the
402 minimum term of incarceration must be equal to or greater in length than the mandatory
403 minimum sentence and the requirement that the minimum sentence shall be two-thirds of the
404 maximum sentence.

405 The defendant shall be eligible for parole at the expiration of the minimum sentence. The
406 defendant shall not be eligible for earned good time, work release, and other pre-release

407 programs deemed appropriate by the correctional authority with custody responsibility, until the
408 defendant has served the mandatory minimum sentence.

409 (e) Offenses with statutory minimum sentences. For those offenses with a statutory
410 minimum sentence, it shall not be considered a departure for the judge to impose a sentence
411 within the sentencing guidelines range, even though the sentence may be below the statutory
412 minimum sentence. Where the statutory minimum sentence exceeds the sentencing guidelines
413 range, the imposition of the statutory minimum sentence shall not constitute a departure from the
414 sentencing guidelines.

415 Section 9. The Statutory Maximum Term. Notwithstanding G.L. c. 211E § 3 (c), a judge
416 may not impose any sentence which exceeds the statutory maximum term set forth in the statute
417 that establishes the penalty for the particular offense.

418 Section 10. District and Municipal Court Jurisdiction. When a district or municipal court
419 judge is imposing a sentence and the sentencing guidelines range in the applicable grid cell
420 exceeds the district and municipal court sentencing jurisdiction of two and one half years, the
421 sentencing guidelines range shall be an incarceration zone range of 20 to 30 months and it shall
422 not constitute a departure from the sentencing guidelines for a district or municipal court judge to
423 impose a sentence of incarceration from within the 20 to 30 month sentencing guidelines range.

424 Section 11. Sentencing to Intermediate Sanctions. Guidelines for sentencing to
425 intermediate sanctions, as defined in G.L. c. 211F § 1, are integrated into the sentencing
426 guidelines grid in the discretionary zone and the intermediate sanctions zone as described in § 2
427 of this chapter.

428 There are four levels of intermediate sanctions according to the severity of the
429 restrictions on personal liberty and the intensity of supervision. The four levels of intermediate
430 sanctions are integrated into the grid as follows:-

431 Level IV, 24-hour restriction, under which the offender is subject to 24-hour restriction
432 and accountability of his whereabouts. This represents the maximum level of restriction and
433 accountability short of incarceration.

434 Level III, daily accountability, under which the offender is subject to daily accountability
435 of his whereabouts. This represents the level of restriction and accountability that falls in
436 between 24-hour restriction and standard probation supervision.

437 Level II, standard probation supervision, under which the offender is subject to weekly
438 accountability of his whereabouts. This represents the level of restriction and accountability that
439 is typically associated with standard probation supervision.

440 Level I, financial accountability, which represents the level of restriction and
441 accountability that is typically associated with administrative probation. It is primarily designed
442 to monitor the timely payment of restitution, fines, victim/witness fees, and the like, by the
443 offender.

444 A sentence to an intermediate sanction shall be imposed as a condition of probation,
445 consistent with the provisions of G.L. c. 211F § 3 (c). The length of the probation period that
446 may be imposed shall be consistent with the provisions of G.L. c. 276 § 87. The sentencing
447 judge shall specify the intermediate sanction level at which the offender will start serving the
448 term of probation and may also include a minimum period during which the offender is required
449 to be supervised at that level. The supervising probation officer has the discretion to move a

450 probationer down in level or levels in appropriate circumstances, without judicial consultation,
451 consistent with any special conditions or time restrictions specified by the judge. Such a
452 reduction in the intermediate sanction level by a probation officer shall not go below the
453 guideline levels set forth in the grid cell in which the offender was sentenced.

454 A judge has the exclusive authority to increase an intermediate sanction level or add
455 program components.

456 Section 12. Revocation of Probation. The sentencing guidelines do not apply to a
457 probation revocation hearing. In imposing a sentence at a probation revocation hearing, the
458 judge has the discretion to impose any sentence up to the statutory maximum. When imposing a
459 sentence of incarceration, the judge shall impose both a minimum sentence and a maximum
460 sentence and the minimum sentence must be two-thirds of the maximum sentence.

461 Section 13. Split Sentences. A sentence to the state prison shall not be suspended in
462 whole or in part. A sentence to a house of correction shall not be suspended in whole, but a
463 sentence to a house of correction may be suspended in part to permit the imposition of a split
464 sentence. In imposing a split sentence, a judge shall impose a minimum and a maximum term as
465 provided by § 6 (a) of this chapter and shall specify the period of incarceration to be served in
466 the house of correction. The judge shall also specify the term of probation to be served
467 subsequent to the period of incarceration.

468 Section 14. Financial Sanctions. When appropriate, a judge shall order fines or
469 restitution or both as part of any sentence. Restitution to the victim shall be a priority of the
470 judge at the time of sentencing, regardless of whether the offender is incarcerated.

471 Section 15. Imposing a Sentence. In sentencing a defendant after trial or after
472 acceptance of a guilty plea pursuant to either Rule 12 of the Rules of Criminal Procedure or Rule
473 4 (c) of the District/Municipal Court Rules of Criminal Procedure, the court shall comply with
474 the provisions of Rule 28 of the Massachusetts Rules of Criminal Procedure. The judge shall
475 allow both parties to be heard at sentencing on all sentencing issues. In determining the
476 sentence, the judge may rely on any evidence received during the proceedings; any victim impact
477 statement; any presentence report, when the judge requests one; and, any other information the
478 judge deems credible. A sentencing statement shall be completed in accordance with G.L. c.
479 211E § 3 (h) for each defendant being sentenced. The sentencing judge shall sign the completed
480 sentencing statement and a copy shall be submitted to the Sentencing Commission as provided in
481 G.L. c. 211E § 3 (h).

482 Section 16. Right of Appeal. The defendant or the commonwealth may appeal a
483 sentence imposed pursuant to sentencing guidelines, to the extent an appeal is permitted in
484 accordance with the provisions of section 4 of chapter 211E of the General Laws. The
485 provisions of sections 28A and 28B of chapter 278 of the General Laws shall not apply to any
486 offense committed on or after the effective date of this chapter.

487 Section 17. Severability. Where any provision of this chapter or the application thereof
488 to any person or circumstance, shall, for any reason, be held invalid, the remainder of this
489 chapter or the application of such provision to persons or circumstances other than those as to
490 which it is held invalid shall not be affected thereby.

491 Section 18. Split Sentences. Section 3 (a) (2) of chapter 211E of the General Laws is
492 hereby amended by inserting after the phrase, “Said sentence shall not be suspended in whole or

493 in part,” the following: “except for the imposition of split sentences to the house of correction
494 pursuant to chapter 211G.”

495 Section 19. Section 3 (e) of chapter 211E of the General Laws is hereby amended by
496 inserting after the phrase “impose a sentence below any mandatory minimum term prescribed by
497 statute,” the following: “only to the extent provided by chapter 211G,”.

498 Section 20. Effective Date. The provisions of this chapter shall take effect on January 1,
499 2012 and the sentencing guidelines and other related provisions contained herein shall apply to
500 all felonies and misdemeanors committed on or after that date. All offenses committed prior to
501 January 1, 2012 shall be governed by the laws, including but not limited to those on sentencing,
502 parole, and probation, in effect at the time the offense is committed. Any amendments to the
503 sentencing guidelines shall apply to all offenses committed on or after the effective date of the
504 amendment.