

HOUSE DOCKET, NO. 03530

**HOUSE . . . . . No.**  
**00040**

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*(House – [Enter text], 01/26/2011)*

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**The Commonwealth of Massachusetts**

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IN THE YEAR TWO THOUSAND ELEVEN  
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***HOUSE . . . . . No. 00040***

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The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven.

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SECTION 1. Chapter 94C of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out sections 32, 32A and 32B and inserting in place thereof the following sections:-

Section 32. (a) Any person who knowingly or intentionally manufactures, distributes, dispenses, or possesses with intent to manufacture, distribute or dispense a controlled substance in Class A of section 31 shall be punished by imprisonment in the state prison for not more than 10 years or in a jail or house of correction for not more than 2½ years or by a fine of not less than \$1,000 nor more than \$10,000, or by both such fine and imprisonment.

(b) Any person convicted of violating subsection (a) after 1 or more prior convictions of manufacturing, distributing, dispensing or possessing with the intent to manufacture, distribute or dispense a controlled substance as defined by section 31 of this chapter under this or any prior law of this jurisdiction or of any offense of any other jurisdiction, federal, state or territorial, which is the same as or necessarily includes the elements of said offense shall be punished by a term of imprisonment in the state prison for not more than 15 years and by a fine of not less than \$2,500 nor more than \$25,000.

(c) Any person convicted of violating subsection (a) after 1 or more prior convictions of manufacturing, distributing, dispensing or possessing with the intent to manufacture, distribute or dispense a controlled substance as defined by section 31 of this chapter under this or any prior law of this jurisdiction or of any offense of any other jurisdiction, federal, state or territorial, which is the same as or necessarily includes the elements of said offense and who uses, carries or visibly possesses a firearm during the commission of the offense shall be punished by a term of imprisonment in the state prison for not less

than 5 nor more than 15 years. No sentence imposed under the provisions of this subsection shall be for less than a mandatory minimum term of imprisonment of 5 years and a fine of not less than \$2,500 nor more than \$25,000 may be imposed but not in lieu of the mandatory minimum 5 year term of imprisonment, as established herein.

Section 32A. (a) Any person who knowingly or intentionally manufactures, distributes, dispenses or possesses with intent to manufacture, distribute or dispense a controlled substance in Class B of section 31 shall be punished by imprisonment in the state prison for not more than 10 years, or in a jail or house of correction for not more than 2½ years, or by a fine of not less than \$1,000 nor more than \$10,000, or both such fine and imprisonment.

(b) Any person convicted of violating subsection (a) after 1 or more prior convictions of manufacturing, distributing, dispensing, or possessing with the intent to manufacture, distribute or dispense a controlled substance as defined by section 31 of this chapter under this or any other prior law of this jurisdiction or of any offense of any other jurisdiction, federal, state, or territorial, which is the same as or necessarily includes the elements of said offense shall be punished by a term of imprisonment in the state prison for not more than 10 years and by a fine of not less than \$2,500 nor more than \$25,000.

(c) Any person convicted of violating subsection (a) after 1 or more prior convictions of manufacturing, distributing, dispensing or possessing with the intent to manufacture, distribute or dispense a controlled substance as defined by section 31 of this chapter under this or any other prior law of this jurisdiction or of any offense of any other jurisdiction, federal, state or territorial, which is the same as or necessarily includes the elements of said offense and who uses, carries or visibly possesses a firearm during the commission of the offense shall be punished by a term of imprisonment in the state prison for not less than 3 nor more than 10 years. No sentence imposed under the provisions of this subsection shall be for less than a mandatory minimum term of imprisonment of 3 years and a fine of not less than \$2,500 nor more than \$25,000 may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(d) Any person who knowingly or intentionally manufactures, distributes, dispenses or possesses with intent to manufacture, distribute or dispense phencyclidine or a controlled substance defined in clause (4) of paragraph (a) or in clause (2) of paragraph (c) of class B of section 31 shall be punished by a term of imprisonment in the state prison for not less than 2½ nor more than 10 years or by imprisonment in a jail or house of correction for not more than 2½ years and by a fine of not less than \$1,000 nor more than \$10,000, or both such fine and imprisonment.

(e) Any person who knowingly or intentionally manufactures, distributes, dispenses or possesses with intent to manufacture, distribute or dispense phencyclidine or a controlled substance defined in clause (4) of paragraph (a) or in clause (2) of paragraph (c) of class B of section 31 and who uses, carries or visibly possesses a firearm during the commission of the offense shall be punished by a term of imprisonment in the state prison for not less than 2½ nor more than 10 years or by imprisonment in a jail or house of correction for not less than 1 nor more than 2½ years. No sentence imposed under the provisions of this subsection shall be for less than a mandatory minimum term of imprisonment of 1 year and a fine of not less than \$1,000 nor more than \$10,000 may be imposed but not in lieu of the mandatory minimum 1 year term of imprisonment, as established herein.

(f) Any person convicted of violating the provisions of subsection (d) after 1 or more prior convictions of manufacturing, distributing, dispensing or possessing with the intent to manufacture, distribute or dispense a controlled substance, as defined in section 31 or of any offense of any other jurisdiction, either federal, state or territorial, which is the same as or necessarily includes, the elements of said offense, shall be punished by a term of imprisonment in the state prison for not more than 15 years and by a fine of not less \$2,500 nor more than \$25,000.

(g) Any person convicted of violating the provisions of subsection (d) after 1 or more prior convictions of manufacturing, distributing, dispensing or possessing with the intent to manufacture, distribute or dispense a controlled substance, as defined in section 31 or of any offense of any other jurisdiction, either federal, state or territorial, which is the same as or necessarily includes, the elements of said offense, and who uses, carries or visibly possesses a firearm during the commission of the offense shall be punished by a term of imprisonment in the state prison for not less than 5 nor more than 15 years. No sentence imposed under the provisions of this subsection shall be for less than a mandatory minimum term of imprisonment of 5 years and a fine of not less \$2,500 nor more than \$25,000 may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

Section 32B. (a) Any person who knowingly or intentionally manufactures, distributes, dispenses or possesses with intent to manufacture, distribute, or dispense a controlled substance in Class C of section 31 shall be imprisoned in state prison for not more than 5 years or in a jail or house of correction for not more than 2½ years, or by a fine of not less than \$500 nor more than \$5,000, or both such fine and imprisonment.

(b) Any person convicted of violating this section after 1 or more prior convictions of manufacturing, distributing, dispensing or possessing with the intent to manufacture,

distribute or dispense a controlled substance as defined by section 31 under this or any prior law of this jurisdiction or of any offense of any other jurisdiction, federal, state or territorial, which is the same as or necessarily includes the elements of said offense shall be punished by a term of imprisonment in the state prison for not less than 2½ nor more than 10 years, or by imprisonment in a jail or house of correction for not more than 2½ years and by a fine of not less than \$1,000 nor more than \$10,000, or both such fine and imprisonment.

(c) Any person convicted of violating subsection (a) after 1 or more prior convictions of manufacturing, distributing, dispensing or possessing with the intent to manufacture, distribute or dispense a controlled substance as defined by section 31 under this or any prior law of this jurisdiction or of any offense of any other jurisdiction, federal, state or territorial, which is the same as or necessarily includes the elements of said offense and who uses, carries or visibly possesses a firearm during the commission of the offense shall be punished by a term of imprisonment in the state prison for not less than 2½ nor more than 10 years, or by imprisonment in a jail or house of correction for not less than 2 nor more than 2½ years. No sentence imposed under the provisions of this section shall be for less than a mandatory minimum term of imprisonment of 2 years and a fine of not less than \$1,000 nor more than \$10,000 may be imposed, but not in lieu of the mandatory minimum term of imprisonment, as established herein.

SECTION 2. Chapter 94C of the General Laws, as so appearing, is hereby further amended by striking out section 32E inserting in place thereof the following section:-

Section 32E. (a) Any person who trafficks in marihuana by knowingly or intentionally manufacturing, distributing, dispensing or cultivating or possessing with intent to manufacture, distribute, dispense or cultivate, or by bringing into the commonwealth a net weight of 50 pounds or more of marihuana or a net weight of 50 pounds or more of any mixture containing marihuana shall, if the net weight of marihuana or any mixture thereof is:

(1) Fifty pounds or more, but less than 100 pounds, be punished by a term of imprisonment in the state prison for not less than 2½ nor more than 15 years or by imprisonment in a jail or house of correction for not more than 2½ years and by a fine of not less than \$500 nor more than \$10,000, or both such fine and imprisonment.

(2) One hundred pounds or more, but less than 2,000 pounds, be punished by a term of imprisonment in the state prison for not more than 15 years and by a fine of not less than \$2,500 nor more than \$25,000..

(3) Two thousand pounds or more, but less than 10,000 pounds, be punished by a term of imprisonment in the state prison for not more than 15 years and by a fine of not less than \$5,000 nor more than \$50,000.

(4) Ten thousand pounds or more, be punished by a term of imprisonment in the state prison for not more than 15 years and by a fine of not less than \$20,000 nor more than \$200,000.

(b) Any person who trafficks in a controlled substance defined in clause (4) of paragraph (a) or in clause (3) of paragraph (c) of Class B of section 31 by knowingly or intentionally manufacturing, distributing or dispensing or possessing with intent to manufacture, distribute or dispense or by bringing into the commonwealth a net weight of 14 grams or more of a controlled substance as so defined, or a net weight of 14 grams or more of any mixture containing a controlled substance as so defined shall, if the net weight of a controlled substance as so defined, or any mixture thereof is:

(1) Fourteen grams or more but less than 28 grams, be punished by a term of imprisonment in the state prison for not more than 15 years and by a fine of not less than \$2,500 nor more than \$25,000.

(2) Twenty-eight grams or more, but less than 100 grams, be punished by a term of imprisonment in the state prison for not more than 20 years and by a fine of not less than \$5,000 nor more than \$50,000.

(3) One hundred grams or more, but less than 200 grams, be punished by a term of imprisonment in the state prison for not more than 20 years and by a fine of not less than \$10,000 nor more than \$100,000.

(4) Two hundred grams or more, be punished by a term of imprisonment in the state prison for not more than 20 years and by a fine of not less than \$50,000 nor more than \$500,000.

(c) Any person who trafficks in heroin or any salt thereof, morphine or any salt thereof, opium or any derivative thereof by knowingly or intentionally manufacturing, distributing or dispensing or possessing with intent to manufacture, distribute or dispense or by bringing into the commonwealth a net weight of fourteen grams or more of heroin or any salt thereof, morphine or any salt thereof, opium or any derivative thereof or a net weight of 14 grams or more of any mixture containing heroin or any salt thereof, morphine or any salt thereof, opium or any derivative thereof shall, if the net weight of heroin or any salt thereof, morphine or any salt thereof, opium or any derivative thereof or any mixture thereof is:

(1) Fourteen grams or more but less than 28 grams, be punished by a term of imprisonment in the state prison for not more than 15 years and by a fine of not less than \$5,000 nor more than \$50,000.

(2) Twenty-eight grams or more but less than 100 grams, be punished by a term of imprisonment in the state prison for not more than 20 years and by a fine of not less than \$5,000 nor more than \$50,000.

(3) One hundred grams or more but less than 200 grams, be punished by a term of imprisonment in the state prison for not more than 20 years and by a fine of not less than \$10,000 nor more than \$100,000.

(4) Two hundred grams or more, be punished by a term of imprisonment in the state prison for not more than 20 years and by a fine of not less than \$50,000 nor more than \$500,000.

(d) Any person who trafficks in marihuana by knowingly or intentionally manufacturing, distributing, dispensing or cultivating or possessing with intent to manufacture, distribute, dispense or cultivate or by bringing into the commonwealth a net weight of fifty pounds or more of marihuana or a net weight of fifty pounds or more of any mixture containing marihuana and who uses, carries or visibly possesses a firearm during the commission of the offense shall, if the net weight of marihuana or any mixture thereof is:

(1) Fifty pounds or more, but less than 100 pounds, be punished by a term of imprisonment in the state prison for not less than 2½ nor more than 15 years or by imprisonment in a jail or house of correction for not less than 1 nor more than 2½ years. No sentence imposed under the provisions of this section shall be for less than a mandatory minimum term of imprisonment of 1 year and a fine of not less than \$500 nor more than \$10,000 may be imposed but not in lieu of the mandatory minimum one year term of imprisonment, as established herein.

(2) One hundred pounds or more, but less than 2,000 pounds, be punished by a term of imprisonment in the state prison for not less than 3 nor more than 15 years. No sentence imposed under the provisions of this section shall be for less than a mandatory minimum term of imprisonment of 3 years and a fine of not less than \$2,500 nor more than \$25,000 may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(3) Two thousand pounds or more, but less than 10,000 pounds, be punished by a term of imprisonment in the state prison for not less than 5 nor more than 15 years. No sentence imposed under the provisions of this section shall be for less than a mandatory minimum term of imprisonment of 5 years and a fine of not less than \$5,000 nor more than \$50,000 may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(4) Ten thousand pounds or more, be punished by a term of imprisonment in the state prison for not less than 10 nor more than 15 years. No sentence imposed under the provisions of this section shall be for less than a mandatory minimum term of imprisonment of 10 years and a fine of not less than \$20,000 nor more than \$200,000 may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(e) Any person who trafficks in a controlled substance defined in clause (4) of paragraph (a) or in clause (3) of paragraph (c) of Class B of section 31 by knowingly or intentionally manufacturing, distributing or dispensing or possessing with intent to manufacture, distribute or dispense or by bringing into the commonwealth a net weight of 14 grams or more of a controlled substance as so defined, or a net weight of 14 grams or more of any mixture containing a controlled substance as so defined and who uses, carries or visibly possesses a firearm during the commission of the offense shall, if the net weight of a controlled substance as so defined, or any mixture thereof is:

(1) Fourteen grams or more but less than 28 grams, be punished by a term of imprisonment in the state prison for not less than 3 nor more than 15 years. No sentence imposed under the provisions of this clause shall be for less than a minimum term of imprisonment of 3 years, and a fine of not less than \$2,500 nor more than \$25,000 may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(2) Twenty-eight grams or more, but less than 100 grams, be punished by a term of imprisonment in the state prison for not less than 5 nor more than 20 years. No sentence imposed under the provisions of this clause shall be for less than a mandatory minimum term of imprisonment of 5 years, and a fine of not less than \$5,000 nor more than \$50,000 may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(3) One hundred grams or more, but less than 200 grams, be punished by a term of imprisonment in the state prison for not less than 10 nor more than 20 years. No sentence imposed under the provisions of this clause shall be for less than a mandatory minimum term of imprisonment of 10 years and a fine of not less than \$10,000 nor more than \$100,000 may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(4) Two hundred grams or more, be punished by a term of imprisonment in the state prison for not less than 15 nor more than 20 years. No sentence imposed under the provisions of this clause shall be for less than a mandatory minimum term of imprisonment of 15 years and a fine of not less than \$50,000 nor more than \$500,000



may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(f) Any person who trafficks in heroin or any salt thereof, morphine or any salt thereof, opium or any derivative thereof by knowingly or intentionally manufacturing, distributing or dispensing or possessing with intent to manufacture, distribute or dispense or by bringing into the commonwealth a net weight of fourteen grams or more of heroin or any salt thereof, morphine or any salt thereof, opium or any derivative thereof or a net weight of 14 grams or more of any mixture containing heroin or any salt thereof, morphine or any salt thereof, opium or any derivative thereof and who uses, carries or visibly possesses a firearm during the commission of the offense shall, if the net weight of heroin or any salt thereof, morphine or any salt thereof, opium or any derivative thereof or any mixture thereof is:

(1) Fourteen grams or more but less than 28 grams, be punished by a term of imprisonment in the state prison for not less than 5 nor more than 20 years. No sentence imposed under the provisions of this clause shall be for less than a mandatory minimum term of imprisonment of 5 years and a fine of not less than \$5,000 nor more than \$50,000 may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(2) Twenty-eight grams or more but less than 100 grams, be punished by a term of imprisonment in the state prison for not less than 7 nor more than 20 years. No sentence imposed under the provisions of this clause shall be for less than a mandatory minimum term of imprisonment of 7 years and a fine of not less than \$5,000 nor more than \$50,000 may be imposed, but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(3) One hundred grams or more but less than 200 grams, be punished by a term of imprisonment in the state prison for not less than 10 nor more than 20 years. No sentence imposed under the provisions of this clause shall be for less than the mandatory minimum term of imprisonment of 10 years, and a fine of not less than \$10,000 nor more than \$100,000 may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established therein.

(4) Two hundred grams or more, be punished by a term of imprisonment in the state prison for not less than 15 nor more than 20 years. No sentence imposed under the provisions of this clause shall be for less than a mandatory minimum term of imprisonment of 15 years and a fine of not less than \$50,000 nor more than \$500,000 may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established therein.

SECTION 3. Chapter 94C of the General Laws, as so appearing, is hereby further amended by striking out sections 32H inserting in place thereof the following section:-

Section 32H. Prosecutions commenced under paragraph (c) of section 32, paragraphs (c), (e) or (g) of section 32A, paragraph (c) of section 32B, paragraphs (d), (e) or (f) of section 32E, section 32F or section 32K shall not be placed on file or continued without a finding, and the sentence imposed upon a person convicted of violating any provision of said sections shall not be reduced to less than the mandatory minimum term of imprisonment as established in said paragraph, nor shall any sentence of imprisonment imposed upon any person be suspended or reduced until such person shall have served said mandatory minimum term of imprisonment.

A person convicted of violating said paragraphs shall not, until the person shall have served the mandatory minimum term of imprisonment established in said sections, be eligible for probation, furlough, or receive any deduction from his sentence for good conduct under section 129C and 129D of chapter 127, nor shall he be eligible for parole; provided, however, that the commissioner of correction, on the recommendation of the warden, superintendent or other person in charge of the correctional institution, or a sheriff, on the recommendation of the administrator of a county correctional institution, may grant to said offender a temporary release, subject to the rules and regulations of the institution and under the direction, control and supervision of the officers thereof, for the following purposes: (1) to attend the funeral of a relative, to visit a critically ill relative, to obtain emergency medical or psychiatric services unavailable at said institution; (2) to participate in education, training, or employment programs established under section 48 of chapter 127; (3) to engage in employment pursuant to a work release program under sections 49, 49A, 86F or 86G of chapter 127; or (4) to participate in a program to provide services under section 49B or 49C of chapter 127. Section 87 of chapter 276 shall not apply to any person, 17 years of age or older, charged with a violation of said sections, or to any child between age 14 and 17, so charged by indictment under section 54 of chapter 119.

SECTION 4. Chapter 94C of the General Laws, as so appearing, is hereby further amended by striking out section 32J inserting in place thereof the following section:-

Section 32J. Any person who violates the provisions of section 32, 32A, 32B, 32C, 32D, 32E, 32F, 32I or 32K while in or on, or within 100 feet of the real property comprising a public or private accredited preschool, accredited headstart facility, elementary, vocational or secondary school whether or not in session, or within 100 feet of a public park or playground shall be punished by a term of imprisonment in the state prison for not less than 2½ nor more than 15 years or by imprisonment in a jail or house of correction for not more than 2½ years and by a fine of not less than \$1,000 nor more than \$10,000, or both such fine and imprisonment. In accordance with the provisions of

section 8A of chapter 279, such sentence shall begin from and after the expiration of the sentence for violation of section 32, 32A, 32B, 32C, 32D, 32E, 32F, 32I or 32K.

Lack of knowledge of school boundaries shall not be a defense to any person who violates the provisions of this section.

SECTION 5. Section 58 of chapter 119 of the General Laws, as so appearing, is hereby amended by striking out, in lines 71-72, the words “the Massachusetts Correctional Institution, Cedar Junction, prior to his seventeenth birthday”, and inserting in place thereof the following words:- any maximum security state correctional facility prior to his 17th birthday unless the commissioner of correction determines that no less restrictive placement would ensure protection of the public, correctional staff, said person or others.

SECTION 6. Section 72B of chapter 119 of the General Laws, as so appearing, is hereby amended by striking out, in lines 28-30, the words “the Massachusetts Correctional Institution, Cedar Junction, prior to his seventeenth birthday”, and inserting in place thereof the following words:- any maximum security state correctional facility prior to his 17th birthday unless the commissioner of correction determines that no less restrictive placement would ensure protection of the public, correctional staff, said person or others.

SECTION 7. Section 1 of chapter 125 of the General Laws, as so appearing, is hereby amended by striking out, in lines 37-38, the words “Massachusetts Correctional Institution, Cedar Junction”, and inserting in place thereof the following words:- a state correctional facility; a sentence to “state prison” or “the state prison” otherwise provided by law shall be executed in any state correctional facility in the commonwealth.

SECTION 8. Section 49B of chapter 127 of the General Laws, as so appearing, is hereby amended by striking out, in lines 20-21, the words “in the maximum security section at the Massachusetts Correctional Institution at Cedar Junction”, and inserting in place thereof the following words:- in a maximum security correctional facility.

SECTION 9. Section 97 of said chapter 127 of the General Laws, as so appearing, is hereby amended by striking out, in line 6, the words “except the state prison”.

SECTION 10. Chapter 127 of the General Laws, as so appearing, is hereby amended by inserting after section 97B the following section:-

Section 97C. (a) Notwithstanding any general or special law to the contrary, when an inmate, as defined in section 1 of chapter 125, including any prisoner held pursuant to section 52A of chapter 276, is transferred from a county correctional facility to a state correctional facility or from a state correctional facility to a county correctional facility, or between the department of mental health and a state or county correctional facility, the

transferring facility shall provide known medical and mental health information about the inmate relevant to recent treatment and information necessary for continuity of care to the receiving facility.

(b) Under procedures jointly developed by the commissioner and the commissioner of mental health, a correctional facility and the department of mental health shall share information relevant to recent treatment and information necessary for continuity of care concerning an inmate who has received or is identified as needing services from the department of mental health for purposes of providing mental health treatment to said inmate at their respective facilities.

(c) Information shared under this section may be verbal or written, provided, however, that for an inmate transferred between correctional facilities, or between a correctional facility and the department of mental health information, information as set forth below shall also be provided in writing. The commissioner shall specify a written form that the correctional facilities shall utilize for purposes of this section. The content of this written form shall be developed by the commissioner in consultation with the commissioner of mental health and shall include, but not be limited to: (i) mental health history relevant to recent treatment and information necessary for continuity of care, (ii) history of suicide attempts, (iii) acute medical concerns, (iv) names and dosages of current medications, (v) substance abuse history, and (vi) allergies and dietary restrictions.

The transferring facility shall provide such information at or before the time of the inmate's arrival at the receiving institution, but in any event, not more than 72 hours after the inmate's arrival at the receiving institution. In the event of an emergency, the transferring facility shall provide such information as soon as possible after the inmate's arrival, but in any event, not more than 24 hours thereafter.

(d) Any privilege or confidentiality provision created by statute or common law relating to confidential communications or information or any statute otherwise prohibiting the disclosure of information shall not preclude the dissemination of information pursuant to this section; provided, however, that no such privilege or right of confidentiality shall be deemed waived in any proceeding by virtue of its having been disseminated pursuant to this section.

(e) Any person who provides information to a correctional facility or to the department of mental health in accordance with this section shall not be liable in any civil or criminal action for providing such information.

(f) Information shared pursuant to this section shall be considered health information and shall not be further disseminated except as provided by the regulations for release of health information of the respective departments.

SECTION 11. Chapter 127 of the General Laws, as so appearing, is hereby amended by inserting after section 119 the following section:-

Section 119A. Whenever the physician of any state correctional facility certifies that a prisoner held therein is suffering from an irreversible or terminal medical condition, disease or syndrome, whether due to advanced age or otherwise, and is so debilitated or physically incapacitated that the prisoner is incapable of presenting a threat to himself or others to a reasonable degree of medical certainty, the commissioner may grant the prisoner a medical release upon the commissioner's determination that if the prisoner is released, he will live and remain at liberty without violating the law and his release will not be incompatible with the welfare of society. The commissioner will facilitate appropriate community placement for prisoners granted a medical release.

An offender sentenced to a maximum term of life imprisonment or a sexually dangerous person as defined in section 1 of chapter 123A shall not be eligible for medical release. No person convicted of a sex offense as defined section 178C of chapter 6A shall be eligible for medical release until the person has been finally classified by the sex offender registry board.

The authority to grant a medical release rests solely within the discretion of the commissioner. No prisoner has the right to medical release or to a medical evaluation to determine eligibility for such release. The commissioner shall adopt such policies and procedures as are necessary to implement the medical release of prisoners.

Notwithstanding the provisions of any general law or special law to the contrary, no physician or employer of said physician providing a medical diagnosis pursuant to this section shall be held jointly or severally liable either as an institution, or personally, for issuance of a medical diagnosis pursuant to the requirements of this section, if such diagnosis was made in good faith. All such parties, provided they have operated in good faith, shall be afforded absolute immunity from civil or criminal liability as a result of fulfilling the provisions of this section.

SECTION 12. Section 129D of chapter 127 of the General Laws, as so appearing, is hereby amended by striking out, in line 14, the words "two and one-half", and inserting in place thereof the following figure:- 5.

SECTION 13. Section 129D of chapter 127 is hereby further amended by striking out, in line 19, the words "seven and one-half", and inserting in place thereof the following figure:- 10.

SECTION 14. Section 129D of chapter 127 is hereby further amended by striking out, in lines 19-26, the last sentence of the first paragraph, and inserting in place thereof the following words:- For a prisoner's successful completion of a program or activity requiring 6 months of satisfactory participation, as designated by the commissioner, the commissioner may grant an additional deduction of sentence of up to 10 days, to be deducted in the month during which successful completion of said designated program or activity is achieved. Such further deduction of sentence shall be added to any deduction to which the prisoner is entitled under said section 129C for reducing the term of imprisonment by deduction from the maximum term for which he may be held under his sentence or sentences, and for reducing from the minimum term of the sentence or sentences the good conduct credits earned under this section for parole eligibility as provided under section 133.

SECTION 15. Chapter 127 of the General Laws, as so appearing, is hereby amended by inserting after section 129D the following section:-

Section 129E. For the satisfactory completion by a person under parole of an educational program leading to the award of a high school equivalency certificate, satisfactory performance of said person in completion of any other educational sequence or any vocational training program approved by the parole board, satisfactory performance of said person for employment or volunteer service or satisfactory performance of said person in any other program or activity which the parole board shall deem valuable to said person's rehabilitation, the parole board may grant a deduction in addition to any deductions of sentence provided under sections 129C and 129D of not more than 5 days per program or activity for each month; provided, however, that in no event shall said deductions exceed a maximum monthly total of 10 days. For the successful completion of a program or activity requiring 6 months of satisfactory participation by a person under community supervision, as designated by the parole board, the board may grant an additional deduction of sentence of up to 10 days, to be deducted in the month during which the person completes the designated program or activity. The deductions earned under this provision shall be applied to the parolee's maximum sentence for the purpose of determining the termination of parole.

SECTION 16. Section 130 of said chapter 127, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following 4 sentences:-

No prisoner shall be granted a parole permit merely as a reward for good conduct. Permits shall be granted only if the board is of the opinion, after consideration of a risk and needs assessment, that there is a reasonable probability that, if the such prisoner is released with appropriate conditions and community supervision, the prisoner will live and remain at liberty without violating the law, and that release is not incompatible with the welfare of society. In making this determination, the parole board shall consider

whether, during the period of incarceration, the prisoner has participated in available work opportunities and education or treatment programs, and demonstrated good behavior. The board shall also consider whether risk reduction programs made available through collaboration with criminal justice agencies would minimize the probability of the prisoner re-offending once released. In making this determination, the board shall not consider the availability of post-release supervision as authorized under chapter 127A.

SECTION 17. Section 133A of chapter 127 of the General Laws, as so appearing, is hereby amended by inserting after the words “for parole”, in line 5, the following words:- at the expiration of the minimum term fixed by the court under section 24 of chapter 279.

SECTION 18. Section 133A of chapter 127 is hereby further amended by striking out, in line 6, the words “15 years”, and inserting in place thereof the following words:- the minimum term.

SECTION 19. Section 133B of chapter 127 of the General Laws, as so appearing, is hereby amended by inserting after the number “25”, in line 2, the following words:- or section 25A.

SECTION 20. Section 133B of chapter 127 is hereby further amended by striking out, in line 6, the word “half”, and inserting in place thereof the following words:- two-thirds.

SECTION 21. Section 133B of chapter 127 is hereby further amended by inserting at the end of the first paragraph the following words:- In the case of a maximum sentence of life, two-thirds of the maximum sentence shall be deemed to expire after 25 years.

SECTION 22. The General Laws, as appearing in the 2008 Official Edition, are hereby amended by inserting after chapter 127 the following chapter:-

## CHAPTER 127A

### MANDATORY POST-RELEASE SUPERVISION

Section 1. All sentences of incarceration to state prison shall include a period of post-release supervision, excluding sentences for those prisoners for whom parole eligibility is determined by section 133 of chapter 127. Except as provided in this chapter, for individuals who complete the incarceration portion of their sentences without supervised release or are re-incarcerated for the remainder of the sentence for violating the terms of parole or probation, the period of mandatory post-release supervision shall be 25 per cent of the maximum term of incarceration imposed at sentencing up to a maximum period of supervision of 2 years, but in no case less than 9 months. Where an individual is sentenced to incarceration on multiple offenses to be served concurrently, the greater of the maximum terms imposed at sentencing shall be used to calculate the mandatory post-release supervision period. Mandatory post-release supervision as established in this

chapter shall not be imposed upon any individual who successfully completes a period of probation imposed by a court at sentencing, upon an individual who is granted a parole permit under chapter 127 and successfully completes a period of parole supervision, or upon an individual sentenced to lifetime community parole under section 45 of chapter 265 or section 178H of chapter 6, being supervised under section 133D of chapter 127. An individual subject to this chapter may be supervised in another jurisdiction in accordance with sections 151A through 151N of chapter 127 and shall be considered on parole for the purposes of supervision.

Section 2. Upon release, an individual sentenced to a term of incarceration in a state prison for any length of time shall be subject to the supervision and jurisdiction of the parole board during the period of mandatory post-release supervision and shall be subject to the law, rules and regulations governing parole. The chairman of the parole board shall establish regulations for post-release supervision consistent with applicable provisions of chapters 27 and 127. The regulations shall establish supervision levels based on risk-needs assessments, ranging from minimum parole supervision for low-risk parolees to maximum parole supervision of high-risk parolees, with a focus on reducing the risk posed by high-risk parolees. The regulations shall include the use of graduated and intermediate sanctions as appropriate in response to non-criminal violations of parole conditions and, in the discretion of the board, for low-level criminal violations. The regulations shall also establish guidelines with specific benchmarks, which if achieved by an individual shall reduce the period of time in which such individual is subject to post-release supervision. Nothing in this section or in the regulations shall limit the authority of the superior, municipal, district or juvenile court to impose conditions of probation supervision to protect the public or promote the rehabilitation of any person.

Section 3. An individual subject to mandatory post-release supervision who has successfully completed 6 months of supervision shall be eligible for early termination of that supervision. Early termination shall only occur in accordance with procedures to be adopted in the regulations of the parole board. In proceedings for early termination of mandatory post-release supervision, the parole board's considerations shall include, but not be limited to, the amount of time the individual has successfully spent under post-release supervision, efforts and achievements in the areas of employment, housing, education, counseling, substance abuse treatment and required testing programs, and any other circumstances that are relevant to the individual case.

Section 4. An individual who violates a condition of mandatory post-release supervision shall be subject to this section and to modification or revocation proceedings initiated by the parole board. The laws and regulations governing parole violation proceedings shall govern these modification or revocation proceedings. In all proceedings under this section, an individual who violates a condition of mandatory post-release supervision and such violation does not otherwise constitute a criminal offense may be



placed under increased supervision, subjected to other conditions and intermediate sanctions, or upon a determination that such alternative sanctions are not appropriate, incarcerated as follows: Upon a first violation, the individual may be incarcerated for a period no greater than 2 months or the maximum remaining period of post incarceration supervision, whichever is less. Upon a second violation, the prisoner may be incarcerated for a period no greater than 6 months or the maximum remaining period of post incarceration supervision, whichever is less. Upon a third or subsequent violation the prisoner, may be incarcerated for a period no greater than 12 months or the maximum remaining period of post incarceration supervision, whichever is less. In all cases where the individual is not being incarcerated for a violation, the individual shall be subject to the graduated sanctions policy of the parole board. In the case of any violation for use of controlled substances or an offense for operating under the influence of drugs or alcohol where the individual is not incarcerated for the violation, the period of mandatory post-release supervision may be extended to accommodate an appropriate substance abuse program, but the total shall not exceed the maximum supervisory period permitted under section 1. For any violation of the conditions of mandatory post-release supervision, the period of supervision shall be stayed during a period of incarceration and it shall be resumed upon release. If the violation constitutes a criminal offense, the period of incarceration shall be served on and after any sentence received as a result of the new offense. Upon subsequent release, the greater of the maximum sentences of the original offense and subsequent offense shall be used to calculate the new mandatory post-release supervision period.

Section 5. Mandatory post-release supervision shall be considered stayed under the following circumstances: (a) the individual is immediately committed to the custody of any other state or of the United States to serve a period of incarceration less than the post-release supervision period required under this chapter; (b) the individual is immediately committed to the custody of the United States immigration authorities; or (c) the individual is committed pursuant to an order of custody under chapter 123A.

Section 6. Mandatory post-release supervision shall be considered completed under the following circumstances: (a) except as provided in sections 3 and 4, the individual serves a post-release supervision period of 25 per cent of the maximum term of incarceration imposed at sentencing up to a maximum period of supervision of 2 years, but in no case less than 9 months; (b) the individual is granted early termination under section 3; (c) upon completion of the sentence, the individual is immediately committed to the custody of any other state or of the United States to serve a period of incarceration greater than or equal to the post-release supervision period required under this chapter; or (d) upon completion of the sentence, the individual is physically removed from the United States by immigration authorities for the purpose of permanent deportation.

SECTION 23. Section 4 of chapter 279 of the General Laws, as so appearing, is hereby amended by striking out, in line 11, the words “the state prison”, and inserting in place thereof the following words:- the state correctional facility in which he is confined.

SECTION 24. Section 24 of chapter 279 of the General Laws, as so appearing, is hereby amended by striking out, in lines 1-2, the words “for life or”.

SECTION 25. Section 24 of chapter 279 is hereby further amended by inserting at the end the following sentence:- In the case of a life sentence, the court shall fix a minimum term of not less than 15 years.

SECTION 26. Section 25 of chapter 279 of the General Laws, as so appearing, is hereby amended by inserting after the word “state”, in line 2, the following words:- , or the United States or a military, territorial or Indian tribal authority.

SECTION 27. Section 25 of chapter 279 is hereby further amended by striking out, in line 3, the words “another state”, and inserting in place thereof the following words:- any of the sovereigns listed above.

SECTION 28. Chapter 279 of the General Laws, as so appearing, is hereby amended by inserting after section 25 the following sections:-

Section 25A. Whoever has been convicted of 2 or more of the following felonies, or twice convicted of 1 of the following felonies, arising out of separate incidents or involving separate victims, and does not show that a pardon has been granted for either crime, shall, upon conviction of a felony in the superior, district or municipal court be considered an habitual criminal and be punished by imprisonment for the maximum term provided by law as a penalty for the felony for which the person is then to be sentenced:

murder under section 1 of chapter 265; manslaughter under section 13 of chapter 265; manslaughter while operating under the influence under section 13½ of chapter 265; indecent assault and battery on a child under 14 under sections 13B, 13B½ or 13B¾ of chapter 265; indecent assault and battery on a mentally retarded person under section 13F of chapter 265; commission of a felony for hire under section 13G of chapter 265; indecent assault and battery on a person 14 or older under section 13H of chapter 265; assault and battery on a child resulting in substantial bodily injury under section 13J of chapter 265; assault and battery upon an elderly or disabled person under section 13K of chapter 265; mayhem under section 14 of chapter 265; assault and battery with a dangerous weapon upon a person age sixty or older under section 15A(a) of chapter 265; aggravated assault and battery with a dangerous weapon under section 15(A)(c) of chapter 265; assault and battery by means of a hypodermic syringe under section 15C of chapter 265; attempted murder under section 16 of chapter 265; armed robbery under section 17 of chapter 265; assault with intent to rob under section 18 of chapter 265;

armed assault in a dwelling under section 18A of chapter 265; use of a firearm in the commission of a felony under section 18B of chapter 265; home invasion under section 18C of chapter 265; unarmed robbery under section 19 of chapter 265; carjacking under section 21A of chapter 265; rape under section 22 of chapter 265; rape of a child by force under section 22A of chapter 265; aggravated rape of a child with force under section 22B of chapter 265; rape of a child by force by certain previously convicted offenders under section 22C of chapter 265; rape of a child under section 23 of chapter 265; aggravated rape and abuse of a child under section 23A of chapter 265; rape and abuse of a child by certain previously convicted offenders under section 23B of chapter 265; assault with intent to rape under section 24 of chapter 265; assault with intent to rape a child under section 24B of chapter 265; kidnapping under section 26 of chapter 265; drugging persons for kidnapping under section 26B of chapter 265; child enticement under section 26C of chapter 265; poisoning under section 28 of chapter 265; arson of a dwelling house under section 1 of chapter 266; armed burglary under section 14 of chapter 266; unarmed burglary of a dwelling at nighttime under section 15 of chapter 266; breaking and entering at night under section 16 of chapter 266; malicious explosion under section 101 of chapter 266; willful throwing or placing of explosives at or near persons or property under section 102 of chapter 266; possession, use, ignition or explosion of an explosive, destructive or incendiary device, substance or weapon under sections 102, 102A, 102B, or 102C of chapter 266; unlawful possession of a firearm, machine gun, sawed-off shotgun, large capacity weapon or large capacity feeding device under section 10 of chapter 269, or an assault weapon under section 131M of chapter 140; trafficking firearms under section 10E of section 269; airport security violation under subsection (e) of section 12F of section 269; drugging for sex under section 3 of chapter 272; incest under section 17 of chapter 272; posing or exhibiting child in a state of nudity or sexual conduct under section 29A of chapter 272; dissemination of visual material of child in state of nudity or sexual conduct under section 29B of chapter 272; possession of child pornography under section 29C of chapter 272; or a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority.

A sentence imposed under this section shall run from and after any sentence the defendant is serving at the time of sentencing.

Section 25B. (a) A prosecution commenced under section 25 or 25A shall not be continued without a finding or placed on file and no offender sentenced under section 25 or 25A shall be eligible for probation.

(b) In any prosecution commenced under section 25 or 25A, introduction into evidence of a prior conviction by either certified attested copies of original court papers, or certified attested copies of the defendant's biographical and informational data from records of the department of probation, any jail or house of correction or the department

of correction showing that defendant served a sentence or probationary term for the offense in question, shall be prima facie evidence that the defendant before the court has been convicted previously by a court of the commonwealth or any other jurisdiction. Such documentation shall be self-authenticating and admissible, after the commonwealth has established the defendant's guilt on the primary offense, as evidence in any court of the commonwealth to prove the defendant's commission of any prior conviction described therein. The commonwealth shall not be required to introduce any additional corroborating evidence or live witness testimony to establish the validity of such prior conviction.

SECTION 29. Section 60 of chapter 279 of the General Laws, as so appearing, is hereby amended by striking out, in lines 7-8, the words "the state prison", and inserting in place thereof the following words:- a state correctional facility designated by the commissioner of correction.

SECTION 30. Section 60 of chapter 279 is hereby further amended by striking out, in lines 8-9, the words "the state prison", and inserting in place thereof the following words:- such designated correctional facility.

SECTION 31. Notwithstanding the provisions of sections 32, 32A, 32B, 32E, 32H and 32J of chapter 94C of the General Laws, or any other general or special law to the contrary, a person serving a mandatory minimum sentence in state prison for violating any provision of the above-referenced sections as of the effective date of this act, shall be eligible for parole after serving one-half of the maximum term of the sentence, provided, however, that said person shall not be eligible for parole if, in connection with the offense, the person was convicted of a crime that has an element the use or attempted use of violence or threats of violence or possession of a firearm, rifle, shotgun, machine gun or a weapon described in paragraph (b) of section 10 of chapter 269 or the person was convicted of the commission or attempted commission of an offense set forth in section 32F or section 32K of chapter 94C.