

SENATE No. 1600

The Commonwealth of Massachusetts

PRESENTED BY:

Patricia D. Jehlen

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 to reform parole supervision in the interest of justice.

PETITION OF:

NAME:

Patricia D. Jehlen

DISTRICT/ADDRESS:

Second Middlesex

SENATE No. 1600

By Ms. Jehlen, a petition (accompanied by bill, Senate, No. 1600) of Patricia D. Jehlen for legislation to reform parole supervision in the interest of justice. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act to reform parole supervision in the interest of justice.

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. Section 5 of chapter 27 of the general laws, as so appearing, is hereby
2 amended by inserting in clause (a) after the words “under what conditions,” the following
3 words:- "pursuant to section 131 of chapter one hundred and twenty-seven,".

4 SECTION 2. Section 119A of chapter 127 of the general laws, as so appearing, is hereby
5 amended by striking out paragraph (f) and inserting in place thereof:-

6 (f) A prisoner granted release under this section shall be under the jurisdiction,
7 supervision and control of the parole board, as if the prisoner had been paroled pursuant to
8 section 130 of chapter 127. The parole board may revise, alter or amend the terms and conditions
9 of a medical parole pursuant to section 149B. If a parole officer receives credible information
10 that a prisoner has failed to comply with a condition of the prisoner's medical parole, the parole
11 officer shall issue a summons pursuant to section 149B. Upon discovery that the terminal illness
12 or permanent incapacitation has improved to the extent that the prisoner would no longer be

13 eligible for medical parole under this section, the parole officer shall issue a summons to the
14 parolee and bring the parolee before the board for a hearing. If the board determines that the
15 terminal illness or permanent incapacitation has improved to the extent that the parolee would no
16 longer be eligible for medical parole pursuant to this section, the prisoner shall resume serving
17 the balance of the sentence with credit given only for the duration of the prisoner's medical
18 parole that was served in compliance with all conditions of their medical parole pursuant to
19 subsection (e). Revocation of a prisoner's medical parole due to a change in the prisoner's
20 medical condition shall not preclude a prisoner's eligibility for medical parole in the future or for
21 another form of release permitted by law.

22 SECTION 3. Section 130B of said chapter 127, as so appearing, is hereby amended by
23 striking out paragraph (c) and inserting in place thereof:-

24 (c) The terms and conditions of the prisoner's parole shall be determined by the parole
25 board pursuant to section 131. The parole board's determination of such terms and conditions
26 under this section shall not be the subject of judicial review. Such terms and conditions may be
27 revised, altered and amended and may be revoked by the parole board pursuant to section 149B.
28 The violation by the holder of such permit of any law of the commonwealth, may render such
29 permit void, and thereupon, or if such permit has been revoked pursuant to section 149B, the
30 parole board may order his or her arrest and his or her return to prison, in accordance with the
31 provisions of sections 149.

32 SECTION 4. Section 130C of said chapter 127, as so appearing, is hereby amended by
33 striking out subsection (a) and inserting in place thereof:-

34 (a) For the satisfactory conduct of a parolee under the supervision of the parole board
35 who is serving a sentence to state prison, the chairman of the parole board or the chairman's
36 designee shall grant compliance credits of up to a maximum monthly total of 31 days, provided
37 that one compliance credit shall be granted for each day within the month in which no conditions
38 of supervision have been found to be violated; compliance credits shall not be withheld unless
39 the alleged violation is sustained after a final hearing pursuant to section 149B; provided,
40 however, that no compliance credits may be granted to a person serving a mandatory minimum
41 sentence until such person shall have served the mandatory minimum term. Any compliance
42 credits so granted and not rescinded pursuant to subsection (b) shall reduce the period of time
43 that a parolee is subject to the jurisdiction of the parole board under section 130.

44 SECTION 5. Section 133 of said chapter 127 is hereby amended by inserting at the end
45 the following paragraphs:-

46 Each condition of parole imposed by the parole board shall be reasonably related to the
47 crime of conviction of the person placed on parole and no more restrictive than necessary to
48 assure the parolee can live safely in the community. For each condition imposed, the parole
49 board shall state the reasonable relation the condition has to the person's crime of conviction and
50 why no less restrictive conditions would assure the parolee's safety in the community.

51 No person placed on parole shall be prohibited from associating with another person or
52 group of people, except that the parole board may impose a condition prohibiting association
53 with a specific, named person or persons if the prohibition on association is reasonably related to
54 the crime of conviction.

55 No person placed on parole shall be prohibited from using or possessing alcohol or drugs,
56 or subject to testing for alcohol or drug use, unless the use or possession of alcohol or drugs is
57 reasonably related to the crime of conviction.

58 If the parole board requires as a condition of parole that the person reside in alcohol and
59 drug free housing within the commonwealth, the parole board shall require the parole officer to
60 refer the defendant only to alcohol and drug free housing certified under section 18A of chapter
61 17 and the parole officer shall require the defendant to reside in such certified housing in order to
62 satisfy such condition. If accredited alcohol and drug free housing is not available, the parole
63 board shall permit the parole officer to refer the person placed on supervised probation to alcohol
64 and substance free housing that is available and that appropriately supports the recovery goals of
65 the person. If the parole board imposes as a condition of parole that the person reside in alcohol
66 and drug free housing in another state, the parole board may permit the parole officer to refer the
67 person to alcohol and drug free housing that, in the parole board's discretion, appropriately
68 supports the recovery goals of the person.

69 If the parole board requires as a condition of parole that the person enroll in any program,
70 including but not limited to treatment for substance use or an educational program, the parole
71 board shall ensure that such program is available in the county in which the person will reside.
72 The parole board shall require the parole officer to provide support to the person to assist with
73 identifying appropriate programs, applying or enrolling, and other positive supports. A good
74 faith effort to enroll in programs shall not be grounds for a violation notice to issue and shall be a
75 defense to an alleged violation of any parole condition involving program enrollment.

76 No person placed on parole shall be found to have violated a condition of parole solely on
77 the basis of possession or use of a controlled substance that is legal or has been lawfully
78 dispensed pursuant to a valid prescription to that person by a health professional registered to
79 prescribe a controlled substance pursuant to chapter 94C and acting within the lawful scope of
80 the health professional's practice.

81 No person placed on parole shall have a parole permit revoked solely for violating a
82 condition of parole that does not result in a new conviction.

83 SECTION 6. Section 133A of said chapter 127, as so appearing, is hereby amended by
84 striking out in the fourth paragraph the words "at any time" and inserting in place there of the
85 words:- "pursuant to section 149B".

86 SECTION 7. Section 133B of said chapter 127, as so appearing, is hereby amended by
87 striking out in the first paragraph the words "at any time" and inserting in place there of the
88 words:- "pursuant to section 149B".

89 SECTION 8. Section 133D of said chapter 127 is hereby amended by striking out the
90 second paragraph and inserting in place thereof:

91 Except as otherwise provided in this section, a person serving such sentence of
92 community parole supervision for life shall be subject to the provisions of law governing parole
93 as if such person were a parolee. The parole board shall impose terms and conditions for such
94 sentence within 30 days prior to the commencement of community parole supervision. Such
95 terms and conditions may be revised, altered and amended by the parole board pursuant to
96 section 149B. If the terms and conditions prescribed by the board include residence in alcohol
97 and drug free housing, the board shall refer and require that the person serving the sentence

98 reside in alcohol and drug free housing that is certified pursuant to section 18A of chapter 17 in
99 order to satisfy those terms and conditions. If accredited alcohol and drug free housing is not
100 available, the parole board shall permit the parole officer to refer the person placed on parole to
101 alcohol and substance free housing that is available and that appropriately supports the recovery
102 goals of the person.

103 SECTION 9. Said chapter 127 is hereby further amended by striking out section 148, as
104 so appearing, and inserting in place thereof the following section:-

105 Section 148. The parole board may revise or revoke a permit to be at liberty at any time
106 prior to its expiration pursuant to section 149B, provided that the parole board shall not revoke a
107 permit to be at liberty solely for a violation of a condition of parole that does not result in a new
108 conviction.

109 When a person, including those serving community parole supervision for life pursuant to
110 section 133D of chapter 127 and those otherwise serving a mandatory minimum sentence, has
111 lived in the community on parole for three years without violating the law, the person shall be
112 entitled to a hearing before the parole board to terminate their parole pursuant to section 130A of
113 chapter 127. A noncriminal violation of parole shall not constitute a violation of the law for the
114 purposes of this section. At the hearing, there shall be a presumption of termination of parole
115 unless the Board finds, based on clear and convincing evidence, that the public interest requires
116 parole to continue, including based on a pattern of sustained noncriminal violations within the
117 last year of parole supervision.

118 SECTION 10. Section 149A of said chapter 127 is hereby repealed.

119 SECTION 11. Said chapter 127 is further amended by inserting after section 149A a new
120 section:

121 Section 149B.

122 If a parole officer believes that a parolee has violated one or more conditions of their
123 parole, the parole officer may, with the consent of a parole supervisor or other superior officer,
124 issue the parolee a written notice of the alleged violation and a summons to appear before the
125 board on a specific date for an initial violation hearing. The board shall not issue a warrant for
126 the detention of persons on parole who are alleged to have violated one or more conditions of
127 their parole.

128 At an initial violation hearing, the board shall determine whether probable cause exists
129 that the parolee violated one or more conditions of their parole, and if so, whether any conditions
130 should be added or modified. If probable cause is found, the board may add or modify the
131 conditions of parole, provided that the additional or modified conditions are reasonably related to
132 the alleged violation; provided further that if probable cause is found, the board may schedule a
133 final violation hearing and the parolee shall be given notice of the final hearing date at the initial
134 hearing. The parolee shall not be held in custody pending the final hearing. If probable cause is
135 not found, or if the board determines that a final hearing is not necessary, the board shall not
136 schedule a final hearing.

137 At final violation hearing, the parolee shall be entitled to present evidence and to review
138 all the evidence against them. The board shall sustain a violation only on the basis of clear and
139 convincing evidence that the parolee willfully violated the condition of parole. If a violation is
140 sustained, the board shall explain, on the record, any modification to the conditions of parole,

141 which must be reasonably related to the violation itself and no more restrictive than necessary to
142 ensure that the parolee can live safely in the community. The record of the board's decision at a
143 final violation hearing shall be made available to the parolee.

144 The board shall not revoke parole in the case of a violation not resulting in a new
145 conviction, or where the violation stems from relapse caused by substance use disorder, or where
146 reasonable accommodation for a disability would enable the person to live and remain at liberty
147 without violating the law.