

SENATE No. 02054

Senate, Monday, November 07, 2011 – New draft of Senate, No. 728 reported from the Senate committee on Ways and Means.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to habitual offenders, sentencing and improving law enforcement tools.

Whereas, the deferred operation of this act would tend to defeat its purpose, which is forthwith to strengthen laws relative to habitual offenders, update sentencing laws and to provide additional law enforcement tools, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety.

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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 3 of chapter 22E of the General Laws, as appearing in the 2010
2 Official Edition, is hereby amended by inserting after the first sentence the following sentence:-
3 The trial court and probation department shall work in conjunction with the director to establish
4 and implement a system for the electronic notification to the department whenever a person is
5 convicted of an offense that requires the submission of a DNA sample under this section.

6 SECTION 2. Section 4 of said chapter 22E, as so appearing, is hereby amended by
7 striking out, in line 3, the words “Only a” and inserting in place thereof the following word: - A.

8 SECTION 3. Said section 4 of said chapter 22E, as so appearing, is hereby further
9 amended by inserting after the word “including”, in lines 7 and 8, the following words:- buccal
10 swabs and.

11 SECTION 4. Section 11 of said chapter 22E, as so appearing, is hereby amended by
12 striking out, in line 2, the word “refuses”, and inserting in place thereof the following word:-
13 fails.

14 SECTION 5. Section 5 of chapter 27 of the General Laws, as so appearing is hereby
15 amended by inserting after the word “require”, in line 33, the following words:- ; and (i)
16 administer and oversee mandatory post-release supervision functions as set forth in subsection
17 (a) of section 133D of chapter 127 and in chapter 127A.

18 SECTION 6. Subsection (b) of section 32 of chapter 94C of the General Laws, as so
19 appearing, is hereby amended by striking out, in lines 15, 17 and 20, the word “five” and
20 inserting in place thereof, in each instance, the following figure:- $3\frac{1}{2}$.

21 SECTION 7. Subsection (b) of section 32A of said chapter 94C, as so appearing, is
22 hereby amended by striking out, in lines 15 and 18, the word “three” and inserting in place
23 thereof, in each instance, the following figure:- 2.

24 SECTION 8. Subsection (d) of said section 32A of said chapter 94C, as so appearing, is
25 hereby amended by striking out, in line 42, the word “five” and inserting in place thereof the
26 following figure:- $3\frac{1}{2}$.

27 SECTION 9. Subsection (b) of section 32B of said chapter 94C, as so appearing, is
28 hereby amended by striking out, in line 16, the word “two” and inserting in place thereof the
29 following words:- 18 months.

30 SECTION 10. Said subsection (b) of said section 32B of said chapter 94C, as so
31 appearing, is hereby further amended by striking out, in line 19, the words “two years” and
32 inserting in place thereof the following words:- 18 months.

33 SECTION 11. Paragraph (2) of subsection (a) of section 32E of said chapter 94C, as so
34 appearing, is hereby amended by striking out, in lines 19 and 21, the word “three” and inserting
35 in place thereof, in each instance, the following figure:- 2.

36 SECTION 12. Paragraph (3) of said subsection (a) of said section 32E of said chapter
37 94C, as so appearing, is hereby amended by striking out, in line 27 and in line 29, the first time it
38 appears, the word “five” and inserting in place thereof, in each instance, the following figure:-
39 3½.

40 SECTION 13. Paragraph (4) of said subsection (a) of said section 32E of said chapter
41 94C, as so appearing, is hereby amended by striking out, in lines 33 and 35, the word “ten” and
42 inserting in place thereof the following figure:- 8.

43 SECTION 14. Subsection (b) of said section 32E of said chapter 94C, as so appearing, is
44 hereby further amended by striking out paragraph (1) and inserting in place thereof the
45 following paragraph:-

46 (1) Eighteen grams or more but less than 36 grams, be punished by a term of
47 imprisonment in the state prison for not less than 2 nor more than 15 years. No sentence imposed

48 under the provisions of this clause shall be for less than a minimum term of imprisonment of 2
49 years, and a fine of not less \$2,500 nor more than \$25,000 may be imposed but not in lieu of the
50 mandatory minimum term of imprisonment, as established herein.

51 SECTION 15. Subsection (b) of said section 32E of said chapter 94C, as so appearing, is
52 hereby amended by striking out paragraph (2) and inserting in place thereof the following
53 paragraph:-

54 (2) Thirty-six grams or more, but less than 100 grams, be punished by a term of
55 imprisonment in the state prison for not less than 3½ nor more than 20 years. No sentence
56 imposed under the provisions of this clause shall be for less than a mandatory minimum term of
57 imprisonment of 3½ years, and a fine of not less than \$5,000 nor more than \$50,000 may be
58 imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

59 SECTION 16. Paragraph (3) of said subsection (b) of said section 32E of said chapter
60 94C, as so appearing, is hereby amended by striking out, in line 65 and in line 67, the first time it
61 appears, the word “ten” and inserting in place thereof the following figure:- 8.

62 SECTION 17. Paragraph (4) of subsection (b) of section 32E of said chapter 94C, as so
63 appearing, is hereby amended by striking out, in lines 71 and 73, the word “fifteen” and inserting
64 in place thereof the following figure:- 12.

65 SECTION 18. Subsection (c) of said section 32E of said chapter 94C, as so appearing, is
66 hereby amended by striking out paragraphs (1) and (2) and inserting in place thereof the
67 following 2 paragraphs:-

68 (1) Eighteen grams or more but less than 36 grams, be punished by a term of
69 imprisonment in the state prison for not less than 3½ nor more than 20 years. No sentence
70 imposed under the provisions of this clause shall be for less than a mandatory minimum term of
71 imprisonment of 3½ years and a fine of not less than \$5,000 nor more than \$50,000 may be
72 imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

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

78 SECTION 19. Paragraph (3) of said subsection (c) of said section 32E of said chapter
79 94C, as so appearing, is hereby amended by striking out, in line 104 and in line 106, the first
80 time it appears, the word “ten” and inserting place thereof, in each instance, the following
81 figure:- 8.

82 SECTION 20. Paragraph (4) of said subsection (c) of said section 32E of said chapter
83 94C, as so appearing, is hereby amended by striking out, in lines 111 and 113, the word “fifteen”
84 and inserting place thereof, in each instance, the following figure:- 12.

85 SECTION 21. Section 32J of said chapter 94C, as so appearing, is hereby amended by
86 striking out, in lines 3 and 4, the words “one thousand feet” and inserting in place thereof the
87 following words:- 500 feet.

88 SECTION 22. Chapter 127 of the General Laws is hereby amended by inserting after
89 section 97B the following section:-

90 Section 97C. (a) Notwithstanding any general or special law to the contrary, when an
91 inmate, as defined in section 1 of chapter 125, is transferred from a county correctional facility to
92 a state correctional facility or from a state correctional facility to a county correctional facility or
93 between the department of mental health and a state or county correctional facility, including any
94 prisoner transferred pursuant to section 52A of chapter 276, the transferring facility shall provide
95 known medical and mental health information relative to such inmate's recent treatment and
96 information necessary for continuity of care of such inmate to the receiving facility.

97 (b) Under procedures jointly developed by the commissioner and the commissioner of
98 mental health, a correctional facility and the department of mental health shall share information
99 relevant to an inmate's recent treatment and information necessary for continuity of care of an
100 inmate who has received services from the department of mental health or who has been
101 identified as in need of such services, for purposes of continuing or providing mental health
102 treatment to such inmate at the custodial facility.

103 (c) Information shared under this section may be verbal or written. Whenever an inmate
104 is transferred between correctional facilities or between a correctional facility and the department
105 of mental health, correctional facilities shall utilize a form which shall be developed by the
106 commissioner, in consultation with the commissioner of mental health, and such form shall
107 include, but not be limited to: (i) the recent mental health history of an inmate and relevant
108 information necessary for continuity of care of such inmate; (ii) any history of suicide attempt by
109 an inmate; (iii) any acute medical concerns relative to an inmate; (iv) identification of any
110 medication currently prescribed to an inmate and the dosage thereof; (v) any substance abuse
111 history of an inmate; and (vi) any known allergies or dietary restrictions of an inmate. A
112 transferring facility shall provide such information at, or before, the time of an inmate's arrival at

113 the receiving facility, but in no event shall such information be provided more than 72 hours
114 after an inmate's arrival at the receiving facility. In the event of an emergency, a transferring
115 facility shall provide such information to a receiving facility as soon as possible after an inmate's
116 arrival, but in no event shall such information be provided more than 24 hours after an inmate's
117 arrival at the receiving facility.

118 (d) No privilege or confidentiality provision created by statute or common law and no
119 statute otherwise prohibiting the disclosure of information shall preclude the dissemination of
120 information pursuant to this section; provided, however, that dissemination of information under
121 this section shall not be deemed to constitute a waiver of any privilege or right to confidentiality.

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

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

128 SECTION 23. Chapter 127 of the General Laws is hereby amended by inserting after
129 section 119 the following section:-

130 Section 119A. Whenever a physician of any state correctional facility certifies that, to a
131 reasonable degree of medical certainty, a prisoner held therein is suffering from an irreversible or
132 terminal medical condition, disease or syndrome, whether due to advanced age or otherwise, and
133 is so debilitated or physically incapacitated that such prisoner is incapable of presenting a threat

134 to himself or to others, the commissioner may, in his sole discretion, petition the parole board to
135 grant such prisoner a medical release.

136 No offender sentenced to a maximum term of life imprisonment, no sexually dangerous
137 person, as defined in section 1 of chapter 123A and no sexually violent predator, as defined in
138 section 178C of chapter 6, shall be eligible for medical release. No person adjudicated as a
139 delinquent juvenile or youthful offender by reason of a sex offense or convicted of a sex offense,
140 as defined in section 178C of chapter 6, shall be eligible for medical release until such person has
141 been finally classified by the sex offender registry board.

142 The authority to grant a medical release shall be solely within the discretion of the parole
143 board. The parole board shall, within 60 days of receipt of a petition from the commissioner,
144 grant such prisoner a hearing before the board and shall consider carefully and thoroughly the
145 question whether a medical release should be granted to such prisoner. The commissioner shall
146 submit to the parole board or to an officer designated by it, all information relative to such
147 certification. The board may grant a medical release upon a determination that such prisoner will
148 live and remain at liberty without violating the law if released and that such release is not
149 incompatible with the welfare of society. No prisoner shall be deemed to have a right to medical
150 release or to a medical evaluation to determine eligibility for such release. The chairman of the
151 parole board shall adopt such policies and procedures as are necessary to implement this section.
152 The commissioner shall facilitate appropriate community placement for a prisoner granted a
153 medical release by the parole board pursuant to this section.

154 Notwithstanding any general or special law to the contrary, no physician or employer of a
155 physician who provides a medical diagnosis pursuant to this section shall be held jointly or

156 severally liable, either as an institution or personally, for a medical diagnosis offered pursuant to
157 this section, provided that such diagnosis was made in good faith, and shall be afforded absolute
158 immunity from civil and criminal liability for the provision of such good faith diagnosis pursuant
159 to this section.

160 SECTION 24. Section 129D of chapter 127 of the General Laws, as appearing in the
161 2010 Official Edition, is hereby amended by striking out, in line 14, the words “two and one-
162 half” and inserting in place thereof the following figure:- 5.

163 SECTION 25. Said section 129D of said chapter 127, as so appearing, is hereby further
164 amended by striking out, in line 19, the words “seven and one-half” and inserting in place thereof
165 the following figure:- 10.

166 SECTION 26. The first paragraph of said section 129D of said chapter 127, as so
167 appearing, is hereby further amended by striking out the last sentence and inserting in place
168 thereof the following 2 sentences:- For a prisoner’s successful completion of a program or
169 activity requiring 6 months of satisfactory participation, as designated by the commissioner, the
170 commissioner may grant an additional deduction of sentence of up to 10 days, to be deducted in
171 the month during which successful completion of the designated program or activity is achieved.
172 Such further deduction of sentence shall be added to any deduction to which the prisoner is
173 entitled under said section 129C for reducing the term of imprisonment by deduction from the
174 maximum term for which he may be held under his sentence or sentences, and for reducing from
175 the minimum term of the sentence or sentences the good conduct credits earned under this
176 section for parole eligibility as provided under section 133.

177 SECTION 27. Section 130 of chapter 127 of the General Laws, as so appearing, is hereby
178 amended by striking out the first and second sentences and inserting in place thereof the
179 following 6 sentences:- No prisoner shall be granted a parole permit merely as a reward for good
180 conduct. Permits shall be granted only if the board is of the opinion, after consideration of a risk
181 and needs assessment, that there is a reasonable probability that, if the such prisoner is released
182 with appropriate conditions and community supervision, the prisoner will live and remain at
183 liberty without violating the law and that release is not incompatible with the welfare of society.
184 In making this determination, the parole board shall consider whether, during the period of
185 incarceration, the prisoner has participated in available work opportunities and education or
186 treatment programs and demonstrated good behavior. The board shall also consider whether risk
187 reduction programs, made available through collaboration with criminal justice agencies would
188 minimize the probability of the prisoner re-offending once released. The record of the board's
189 decision shall contain a summary statement of the case indicating the reasons for the decision as
190 well as the number of members voting in favor of granting a parole permit and the number of
191 members voting against granting a parole permit.

192 SECTION 28. Said section 130 of said chapter 127, as so appearing, is hereby further
193 amended by striking out, in line 8, the words "and shall be available to the public" and inserting
194 in place thereof the following words:- , be available to the public and, to the extent reasonably
195 practicable, be available for public inspection on the internet.

196 SECTION 29. Section 133A of said chapter 127, as so appearing, is hereby
197 amended by striking out the first sentence and inserting in place thereof the following 3
198 sentences:- Every prisoner who is serving a sentence for life in a correctional institution of the
199 commonwealth, except prisoners confined to the hospital at the Massachusetts Correctional

200 Institution, Bridgewater, except prisoners serving a life sentence for murder in the first degree
201 and except prisoners serving more than 1 life sentence, shall be eligible for parole at the
202 expiration of the minimum term fixed by the court under section 24 of chapter 279. The parole
203 board shall, within 60 days before the expiration of such minimum term, conduct a public
204 hearing before the full membership unless a member of the board is determined to be unavailable
205 as provided in this section. Notwithstanding the previous sentence, the board may postpone a
206 hearing until 30 days before the expiration of such minimum term, if the interests of justice so
207 require and upon publishing written findings of the necessity for such postponement.

208 SECTION 30. Section 133A of said chapter 127, as so appearing, is hereby further
209 amended by striking out, in lines 29 and 35, the words “a majority”, and inserting in place
210 thereof, in each instance, the following word:- two-thirds.

211 SECTION 31. Section 133B of said chapter 127, as so appearing, is hereby amended by
212 striking out the first sentence and inserting in place thereof the following 2 sentences:- The
213 parole board shall, within 60 days before the expiration of two-thirds of the maximum sentence
214 of a prisoner sentenced under section 25 of chapter 279, and thereafter at least once in each
215 ensuing 2-year period, consider carefully and thoroughly the merits of releasing such person on
216 parole except for a habitual offender sentenced under subsection (b) of section 25 of chapter 279
217 and a prisoner sentenced to a term of imprisonment as prescribed by the sentencing guidelines
218 established by the sentencing commission.

219 SECTION 32. Said section 133B of said chapter 127, as so appearing, is hereby further
220 amended by adding the following paragraph:-

221 Habitual offenders sentenced under subsection (b) of said section 25 of said chapter 279
222 shall not be eligible for parole, work release or furlough or receive any deduction from such
223 person's sentence for good conduct.

224 SECTION 33. Section 136 of said chapter 127, as so appearing, is hereby amended by
225 inserting after the second sentence the following sentence:- Notwithstanding the previous
226 sentence, the board may postpone a hearing until 30 days before a prisoner first becomes eligible
227 for parole, if the interests of justice so require and upon publishing written findings of the
228 necessity for such postponement.

229 SECTION 34. The General Laws are hereby amended by inserting after chapter 127 the
230 following chapter:-

231 CHAPTER 127A

232 MANDATORY POST-RELEASE SUPERVISION

233 Section 1. All sentences of incarceration to state prison shall include a period of post-
234 release supervision, excluding sentences for those prisoners for whom parole eligibility is
235 determined by section 133A of chapter 127. Except as provided in this chapter, for individuals
236 who complete the incarceration portion of their sentences without supervised release or who are
237 re-incarcerated for the remainder of their sentences for having violated the terms of parole or
238 probation, the period of mandatory post-release supervision shall be 25 per cent of the maximum
239 term of incarceration imposed at sentencing, but in no case less than 9 months nor more than 2
240 years. If a prisoner is sentenced to incarceration on multiple offenses and the sentences therefore
241 are to be served concurrently, the greatest of the maximum term imposed at sentencing shall be
242 used to calculate the mandatory post-release supervision period. Mandatory post-release

243 supervision shall not be imposed upon any individual who: successfully completed a period of
244 probation imposed by a court at sentencing; was granted a parole permit under chapter 127 and
245 successfully completed a period of parole supervision; or has been sentenced to lifetime
246 community parole under section 45 of chapter 265 or section 178H of chapter 6 and is being
247 supervised under section 133D of chapter 127. An individual subject to this chapter may be
248 supervised in another jurisdiction in accordance with sections 151A to 151N, inclusive, of
249 chapter 127 and shall be considered on parole for the purposes of section 2.

250 Section 2. Upon an individual's release from incarceration in a state prison for a sentence
251 of any length, such individual shall be subject to the supervision and jurisdiction of the parole
252 board during the period of mandatory post-release supervision and shall be subject to the law,
253 rules and regulations governing parole. The chairman of the parole board shall establish
254 regulations for post-release supervision consistent with chapters 27 and 127. Such regulations
255 shall: (1) establish supervision levels based on risk-needs assessments, ranging from minimum
256 parole supervision for low-risk parolees to maximum parole supervision of high-risk parolees,
257 with a focus on reducing the risk posed by high-risk parolees; (ii) include the use of graduated
258 and intermediate sanctions as appropriate in response to non-criminal violations of parole
259 conditions and, in the discretion of the board, for low-level criminal violations; and (iii) establish
260 guidelines with specific benchmarks which, if achieved by an individual, shall reduce the period
261 of time in which such individual shall be subject to post-release supervision. Nothing in this
262 section or in such regulations shall limit the authority of the superior, municipal, district or
263 juvenile court to impose conditions of probation supervision to protect the public or promote the
264 rehabilitation of any person.

265 Section 3. An individual subject to mandatory post-release supervision who has
266 successfully completed 6 months of supervision shall be eligible for early termination of such
267 supervision. Early termination shall be granted in accordance with the regulations of the parole
268 board. In proceedings for early termination of mandatory post-release supervision, the parole
269 board's considerations shall include, but not be limited to, the amount of time an individual has
270 successfully spent under post-release supervision, efforts and achievements in the areas of
271 employment, housing, education, counseling, substance abuse treatment and required testing
272 programs and any other circumstances relevant to the individual case.

273 Section 4. An individual who violates a condition of mandatory post-release supervision
274 shall be subject to modification or revocation proceedings initiated by the parole board. The laws
275 and regulations governing parole violation proceedings shall govern modification or revocation
276 proceedings under this section. If an individual violates a condition of mandatory post-release
277 supervision and such violation does not otherwise constitute a criminal offense, such individual
278 may be placed under increased supervision, subjected to other conditions and intermediate
279 sanctions or, upon a determination that such alternative sanctions are not appropriate,
280 incarcerated as follows: for a first violation, for not more than 2 months or the maximum
281 remaining period of post-incarceration supervision, whichever is less; for a second violation, for
282 not more than 6 months or the maximum remaining period of post-incarceration supervision,
283 whichever is less; for a third or subsequent violation, for not more than 12 months or the
284 maximum remaining period of post-incarceration supervision, whichever is less. In all cases in
285 which the individual is not being incarcerated for a violation, the individual shall be subject to
286 the graduated sanctions policy of the parole board. If a violation is for use of controlled
287 substances or an offense for operating under the influence of drugs or alcohol or with a

288 percentage, by weight, of alcohol in such individual's blood of eight one-hundredths or greater
289 or, for an individual under 21 years old, with a percentage, by weight, of alcohol in such
290 individual's blood of 2 one-hundredths or greater and the individual is not incarcerated for the
291 violation, the period of mandatory post-release supervision may be extended to accommodate an
292 appropriate substance abuse program, but the total period of mandatory post-release supervision
293 shall not exceed the maximum supervisory period permitted under section 1. For any violation of
294 the conditions of mandatory post-release supervision, the period of supervision shall be stayed
295 during a period of incarceration and it shall be resumed upon release.

296 If the violation constitutes a criminal offense, the period of incarceration shall be served
297 on and after any sentence received as a result of the new offense. Upon subsequent release, the
298 greater of the maximum sentences of the original offense and subsequent offense shall be used to
299 calculate the new mandatory post-release supervision period.

300 Section 5. Mandatory post-release supervision shall be considered stayed under the
301 following circumstances: (i) the individual is immediately committed to the custody of another
302 state, the United States or a military, territorial or Indian tribal authority to serve a period of
303 incarceration less than the post-release supervision period required under this chapter; (ii) the
304 individual is immediately committed to the custody of the United States immigration authorities;
305 or (iii) the individual is committed pursuant to an order of custody under chapter 123A.

306 SECTION 35. Chapter 265 of the General Laws is hereby amended by striking out
307 section 13M, as appearing in the 2010 Official Edition, and inserting in place thereof the
308 following section:-

309 Section 13M. (a) Whoever commits an assault or assault and battery on a family or
310 household member, as defined in section 1 of chapter 209A, shall be punished by imprisonment
311 in the house of correction for not more than 2 ½ years or by a fine of not more than \$5,000 or
312 both.

313 (b) Whoever is convicted of committing an assault or assault and battery on a family or
314 household member, after having previously been convicted of, placed on probation for, granted a
315 continuance without a finding for, or otherwise having pleaded guilty to or admitted to a finding
316 of sufficient facts for: (1) an assault or assault and battery on a family or household member; (2)
317 an offense that has as an element the use, attempted use or threatened use of physical force
318 against the person of another; (3) an offense that has as an element the possession, use or
319 threatened use of a deadly weapon; (4) a "sex offense" as defined in section 178C of chapter 6;
320 or (5) a violation of section 7 of chapter 209A, shall be punished by imprisonment in the state
321 prison for not more than 5 years or in the house of correction for not more than 2 ½ years or by a
322 fine of not more than \$10,000, or by both such fine and imprisonment.

323 (c) For any violation of this section, or as a condition of a continuance without a finding,
324 the court shall order the defendant to complete a certified batterer's intervention program unless,
325 upon good cause shown, the court issues specific written findings describing the reasons that
326 batterer's intervention should not be ordered or unless the batterer's intervention program
327 determines that the defendant is not suitable for intervention.

328 SECTION 36. Said chapter 265 is hereby further amended by inserting after section 15C
329 the following 4 sections:-

330 Section 15D. (a) Whoever commits an assault and battery upon another by means of
331 discharging a firearm, large capacity weapon, rifle, shotgun, sawed-off shotgun, machine gun or
332 assault weapon, as defined in section 121 of chapter 140, shall be punished by imprisonment in
333 the state prison for not more than 15 years or by imprisonment in the house of correction for not
334 more than 2½ years or by a fine of not more than \$10,000, or by both such fine and
335 imprisonment.

336 (b) Whoever commits an assault and battery upon another by means of discharging a
337 firearm, large capacity weapon, rifle, shotgun, sawed-off shotgun, machine gun or assault
338 weapon, as defined in section 121 of chapter 140, after 1 or more prior convictions under
339 subsection (a), section 15E or a law of another jurisdiction that necessarily includes the elements
340 of subsection (a) or section 15E, shall be punished by imprisonment in the state prison for not
341 less than 10 years nor more than 20 years. The sentence imposed shall not be reduced to less
342 than a term of 10 years imprisonment, nor suspended, nor shall a person sentenced under this
343 subsection be eligible for probation, parole, work release or furlough or receive any deduction
344 from the sentence for good conduct, until having served 10 years of the sentence; provided,
345 however, that the commissioner of correction may, on the recommendation of the warden,
346 superintendent or other person in charge of a correctional institution, grant to an offender
347 committed under this subsection a temporary release in the custody of an officer of such
348 institution for the following purposes only: to attend the funeral of a relative; to visit a critically
349 ill relative; or to obtain emergency medical or psychiatric services unavailable at such institution.

350 (c) Prosecutions commenced under this section shall not be suspended, continued without
351 a finding or placed on file. A sentence imposed under this section shall begin from and after the

352 expiration of any sentence imposed under paragraphs (a), (c), (d), (h), (m) or (n) of section 10 of
353 chapter 269 arising out of the same incident.

354 Section 15E. (a) Whoever commits an assault upon another by means of a firearm, large
355 capacity weapon, rifle, shotgun, sawed-off shotgun, machine gun or assault weapon, as defined
356 in section 121 of chapter 140, shall be punished by imprisonment in the state prison for not more
357 than 10 years or by imprisonment in the house of correction for not more than 2½ years or by a
358 fine of not more than \$5,000, or by both such fine and imprisonment.

359 (b) Any person convicted of violating subsection (a) after 1 or more prior convictions
360 under subsection (a), section 15D, or a law of another jurisdiction that necessarily includes the
361 elements of subsection (a) or section 15D, shall be punished by imprisonment in the state prison
362 for not less than 2 years nor more than 15 years. The sentence imposed shall not be reduced to
363 less than a term of 2 years imprisonment, nor suspended, nor shall a person sentenced under this
364 subsection be eligible for probation, parole, work release or furlough or receive any deduction
365 from the sentence for good conduct, until having served 2 years of the sentence; provided,
366 however, that the commissioner of correction may, on the recommendation of the warden,
367 superintendent or other person in charge of a correctional institution, grant to an offender
368 committed under this subsection a temporary release in the custody of an officer of such
369 institution for the following purposes only: to attend the funeral of a relative; to visit a critically
370 ill relative; or to obtain emergency medical or psychiatric service unavailable at said institution.

371 (c) Prosecutions commenced under this section shall not be suspended, continued without
372 a finding or placed on file. A sentence imposed under this section shall begin from and after the

373 expiration of any sentence imposed under paragraphs (a), (c), (d), (h), (m) or (n) of section 10 of
374 chapter 269 arising out of the same incident.

375 Section 15F. (a) For the purposes of this section the following words shall have the
376 following meanings:

377 "Strangulation", the intentional interference of the normal breathing or circulation of
378 blood by applying pressure on the throat or neck of another.

379 "Suffocation", the intentional interference of the normal breathing or circulation of blood
380 by blocking the nose or mouth of another.

381 "Serious bodily injury", bodily injury that results in a permanent disfigurement, loss or
382 impairment of a bodily function, limb or organ, or a substantial risk of death.

383 (b) Whoever strangles or suffocates another shall be punished by imprisonment in the
384 state prison for not more than 5 years or in the house of correction for not more than 2 ½ years or
385 by a fine of not more than \$5,000, or by both such fine and imprisonment.

386 (c) Whoever: (i) strangles or suffocates another and by such strangulation or suffocation
387 causes serious bodily injury; or (ii) strangles or suffocates another who is pregnant at the time of
388 such strangulation or suffocation, knowing or having reason to know that the person is pregnant;
389 or (iii) is convicted of strangling or suffocating another after having been previously convicted of
390 the crime of strangling or suffocating another under this section, or of a like offense in another
391 state or the United States or a military, territorial or Indian tribal authority; or (iv) strangles or
392 suffocates another, knowing that the victim of such strangulation or suffocation has an
393 outstanding temporary or permanent vacate, restraining or no contact order or judgment issued

394 pursuant to section 18, 34B or 34C of chapter 208, section 32 of chapter 209, section 3, 4 or 5 of
395 chapter 209A or section 15 or 20 of chapter 209C, in effect against the strangler or suffocator at
396 the time such offense was committed, shall be punished by imprisonment in the state prison for
397 not more than 10 years or in the house of correction for not more than 2½ years, and by a fine of
398 not more than \$10,000.

399 Section 15G. Any person who, with the intent that another commit murder, solicits,
400 counsels, advises or otherwise entices another to commit murder shall be punished by
401 imprisonment in the state prison for not more than 20 years, or by imprisonment in the house of
402 correction for not more than 2½ years and a fine of not more than \$1,000.

403 SECTION 37. Section 37 of chapter 266 of the General Laws, as so appearing, is hereby
404 amended by inserting after the word “larceny”, in line 6, the following words:- and, if the face
405 amount of such check, draft or order does not exceed \$250, shall be punished for a first offense
406 by a fine of not more than \$500.

407 SECTION 38. Said section 37 of said chapter 266, as so appearing, is hereby further
408 amended by inserting after the word “larceny”, in line 7, the following words:- if the value of
409 such money, property or services obtained does not exceed \$250, shall be punished for a first
410 offense by a fine of not more than \$1,000, and if not a first offense or if the face amount of the
411 check or the value of such money, property or services obtained exceeds \$250, shall be punished
412 in accordance with section 30.

413 SECTION 39. Section 10 of chapter 269 of the General Laws, as so appearing, is hereby
414 amended by striking out, in lines 103 to 107, inclusive, the words “seven years; for a third such
415 offense, by imprisonment in the state prison for not less than seven years nor more than ten

416 years; and for a fourth such offense, by imprisonment in the state prison for not less than ten
417 years nor more than fifteen years” and inserting in place thereof the following words:- 10 years;
418 for a third such offense, by imprisonment in the state prison for not less than 10 years nor more
419 than 15 years; and for a fourth such offense, by imprisonment in the state prison for not less than
420 15 years nor more than 20 years.

421 SECTION 40. Said section 10 of said chapter 269 is hereby further amended by adding
422 the following paragraph:-

423 (p) Whoever, having been previously convicted in any court of this or another state or the
424 United States or a military, territorial or Indian tribal authority, of a crime punishable by
425 imprisonment for a term exceeding 2½ years, knowingly possesses or knowingly has under his
426 control, a firearm, large capacity weapon, rifle, shotgun, sawed-off shotgun, machine gun,
427 assault weapon or ammunition, as defined in section 121 of chapter 140, shall be punished by
428 imprisonment in the state prison for not more than 10 years or by imprisonment in the house of
429 correction for not more than 2½ years. Prosecutions commenced under this subsection shall not
430 be suspended, continued without a finding or placed on file. A sentence imposed under this
431 subsection shall begin from and after the expiration of any sentence imposed under paragraphs
432 (a), (c), (d), (h), (m) or (n) of section 10 or section 10E arising out of the same incident.

433 SECTION 41. Section 99 of chapter 272, as so appearing, is hereby amended by striking
434 out subsection A.

435 SECTION 42. Said section 99 of said chapter 272, as so appearing, is hereby further
436 amended by striking out the definition of “wire communication” and inserting in place thereof
437 the following definition:-

438 1. The term “wire communication” means any communication made in whole or in part
439 through the use of facilities for the transmission of communications by the aid of wire, cable,
440 electronic, digital, cellular or other like connection between the point of origin and the point of
441 reception. The term “wire communication” shall also include text message and data
442 communications sent and received via cellular telephone, smartphone or personal data assistant.

443 SECTION 43. Said section 99 of said chapter 272, as so appearing, is hereby further
444 amended by striking out the definition of “designated offense” and inserting in place thereof the
445 following definition:-

446 7. The term “designated offense” shall include the following offenses in connection with
447 organized crime: arson, assault and battery with a dangerous weapon, extortion, bribery,
448 burglary, embezzlement, forgery, gaming in violation of section 17 of chapter 271, intimidation
449 of a witness or juror, kidnapping, larceny, lending of money or things of value in violation of the
450 general laws, mayhem, murder, any offense involving the possession or sale of a narcotic or
451 harmful drug, perjury, prostitution, robbery, subornation of perjury, any violation of this section,
452 being an accessory to any of the foregoing offense and conspiracy or attempt or solicitation to
453 commit any of the foregoing offenses.

454 The term “designated offense” shall also include, whether or not in connection with
455 organized crime: (i) any murder or manslaughter, except under chapter 90 or 90B or 13 ½ of
456 chapter 265; (ii) any violation of chapter 94C; and (iii) the illegal use, possession or carrying of a
457 firearm, sawed-off shotgun, machine gun, assault weapon or large capacity weapon, as defined
458 by section 121 of chapter 140, any offense, proof of which requires the illegal sale, purchase or
459 transfer of a firearm, sawed-off shotgun, machine gun, assault weapon or large capacity weapon

460 as an element thereof, and any license violation under sections 121 to 131P, inclusive, of chapter
461 140.

462 SECTION 44. Section 24 of chapter 279 of the General Laws, as so appearing, is hereby
463 amended by striking out, in lines 1 and 2, the words “for life or”.

464 SECTION 45. Said section 24 of said chapter 279, as so appearing, is hereby further
465 amended by adding the following sentence:- In the case of a sentence to life imprisonment,
466 except in the case of a sentence for murder in the first degree, the court shall fix a minimum term
467 which shall be not less than 15 years nor more than 25 years.

468 SECTION 46. Said chapter 279 is hereby further amended by striking out section 25, as
469 so appearing, and inserting in place thereof the following section:-

470 Section 25. (a) Whoever is convicted of a felony and has been previously twice convicted
471 and sentenced to prison for a term of not less than 3 years by the commonwealth, another state or
472 the United States, and who does not show that he has been pardoned for either crime on the
473 ground that he was innocent, shall be considered a habitual criminal and be punished by
474 imprisonment in the state prison for such felony for the maximum term provided by law.

475 (b) Whoever: (i) is convicted of section 131M of chapter 140; section 1, 13 or 13½,
476 subsection (b) of section 13A, section 13B, 13B½, 13B¾, 13F, 13H, 13J, 13K, 14 or 15,
477 subsection (a) or (c) of section 15A, subsection (b) of section 15C, 15D, 16, 17, 18, 18A, 18B or
478 18C, section 21, 21A, 22, 22A, 22B, 22C, 23A, 23B, 24, 24B, 26, 26B, 26C or 28, subsection (b)
479 of section 39 or subsection (b) or (c) of section 43 of chapter 265, section 1, 14, 17, 18, 102,
480 102A, 102B or 102C of chapter 266, section 10, 10E or subsection (e) of section 12F of chapter
481 269 or section 3, 4A, 13, 17, 29A, 29B, 29C, 35A or subsection (b) of section 53A of chapter

482 272; (ii) at the time of the offense has been convicted 2 times previously of 1 or more of the
483 offenses in clause (i), or has been convicted 2 times previously of a like violation of the laws of
484 another state, the United States or a military, territorial or Indian tribal authority, arising out of
485 separate incidents or involving separate victims, if the second offense occurred subsequent to the
486 first conviction; (iii) has been sentenced to incarceration for at least 1 day to be served for each
487 of the prior 2 convictions; and (iv) does not show that he has been pardoned for either prior
488 offense on the ground that he was innocent shall be considered a habitual criminal and punished
489 by imprisonment in the state prison for the maximum term provided by law. No sentence
490 imposed under this section shall be reduced or suspended nor shall such person so sentenced be
491 eligible for probation, parole, work release or furlough or receive any deduction from such
492 person's sentence for good conduct.

493 (c) No person shall be considered a habitual offender pursuant to subsection (b) based
494 upon any offense for which such person was adjudicated a delinquent child, or a like violation of
495 the laws of another state, the United States or a military, territorial or Indian tribal authority for
496 which a person was treated as a juvenile.

497 (d) No guilty plea shall be entered for any offense listed in subsection (b), unless a person
498 is informed by the court, prior to entering the plea, of the penalties for a violation of said
499 subsection: (1) imprisonment in the state prison for the maximum term provided by law; (2) that
500 no sentence may be reduced or suspended; and (3) that no person so sentenced shall be eligible
501 for probation, parole, work release or furlough or receive any deduction in sentence for good
502 conduct.

503 SECTION 47. The authority of the chairman of the parole board to establish regulations
504 for post-release supervision as required by section 2 of chapter 127A shall take effect upon
505 passage, and said chairman shall adopt such regulations not later than 90 days thereafter.

506 SECTION 48. Section 30 shall apply to any felony, as defined in section 1 of chapter
507 274 of the General Laws, committed on or after the effective date of this act.

508 SECTION 49. Notwithstanding any general or special law, rule or regulation to the
509 contrary, any person incarcerated on the effective date of this act for an offense which, at the
510 time such person was sentenced on such offense, requires serving a minimum term of
511 incarceration before such person is eligible for probation, parole, work release or release shall be
512 eligible for probation, parole, work release and deductions in sentence for good conduct in
513 accordance with sections 6 to 20, inclusive.

514 SECTION 50. Section 4 of this act shall take effect on January 1, 2013.

515 SECTION 51. Except as provided in sections 47 and 50, this act shall take effect in 90
516 days.