

HOUSE No. 1423

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to the punishment of habitual offenders..

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 Section 133B of chapter 27 of the General Laws is hereby repealed.

2 SECTION 2. Section 25 of chapter 279 of the General Laws, as appearing in the 2006
3 Official Edition, is hereby amended by striking section 25 in its entirety and inserting in place
4 there of the following section:-

5 Section 25. (a) Whoever has been twice convicted of crime and sentenced and
6 committed to prison in this or another state or by the Federal government, or once in this and
7 once or more in another state or by the Federal government, for terms of not less than three years
8 each, and does not show that he has been pardoned for either crime on the ground that he was
9 innocent, shall, upon conviction of a felony, be considered an habitual criminal and be punished
10 by imprisonment in the state prison for the maximum term provided by law as a penalty for the
11 felony for which he is then to be sentenced.

12 (b) Whoever has been twice convicted in the Superior Court of a felony, and does not
13 show that he has been pardoned for either crime on the ground that he was innocent, shall, upon

14 conviction in the Superior Court of a felony, be considered an habitual criminal and be punished
15 by imprisonment in the state prison for the maximum term provided by law as a penalty for the
16 felony for which he is then to be sentenced.

17 (c) Whoever has been twice convicted of a felony punishable by more than ten years in
18 the state prison, and does not show that he has been pardoned for either crime on the ground that
19 he was innocent, shall, upon conviction of any felony, either in the Boston Municipal Court,
20 District Court, or Superior Court be considered an habitual criminal and be punished by
21 imprisonment for the maximum term provided by law as a penalty for the felony for which he is
22 then to be sentenced.

23 (d) A prosecution commenced under this section shall not be continued without a finding
24 or placed on file and all offenders sentenced under this section shall be ineligible for probation,
25 parole, work release or furlough or receive any deduction from his sentence for good conduct.

26 (e) In any prosecution commenced pursuant to this section, introduction into evidence of
27 a prior conviction by either certified attested copies of original court papers, or certified attested
28 copies of the defendant's biographical and informational data from records of the department of
29 probation, any jail or house of correction or the department of correction showing that defendant
30 served a sentence or probationary term for the offense in question, shall be prima facie evidence
31 that the defendant before the court has been convicted previously by a court of the
32 commonwealth or any other jurisdiction. Such documentation shall be self-authenticating and
33 admissible, after the commonwealth has established the defendant's guilt on the primary offense,
34 as evidence in any court of the commonwealth to prove the defendant's commission of any prior
35 conviction described therein. The commonwealth shall not be required to introduce any

36 additional corroborating evidence or live witness testimony to establish the validity of such prior
37 conviction.

38 SECTION 3. Section 1 of chapter 279 of the General Laws, as appearing in the 2006
39 Official Edition, is hereby amended by inserting in the second paragraph after the first sentence
40 the following new sentence:-

41 A probationer whose sentence has been suspended shall be revoked and committed on the
42 suspended sentence where it is established by a preponderance of the evidence that the
43 probationer committed a felony while on probation.

44 SECTION 4. Section 1A of chapter 279 of the General Laws, as appearing in the 2006
45 Official Edition, is hereby amended by inserting, after the first paragraph, the following new
46 paragraph:-

47 A probationer whose sentence has been suspended shall be revoked and committed on the
48 suspended sentence where it is established by a preponderance of the evidence that the
49 probationer committed a felony while on probation.

50 SECTION 5. Section 3 of chapter 279 of the General Laws, as appearing in the 2006
51 Official Edition, is hereby amended in the first paragraph by striking the words “If such
52 suspension is revoked, the sentence shall be in full force and effect.” and inserting in place
53 thereof the following:- If such suspension is revoked, the sentence shall be in full force and
54 effect, and such suspension must be revoked where it is established by a preponderance of the
55 evidence that the probationer committed a felony while on probation. The pendency of a
56 criminal action on a charge which also constitutes an alleged violation of probation shall not be

57 grounds for a continuance of the probation violation hearing and such probation violation
58 hearing shall be conducted promptly.

59 SECTION 6. Chapter 279 of the General Laws, as appearing in the 2006 Official
60 Edition, is hereby amended by striking out section 8B in its entirety and inserting in place thereof
61 the following section:-

62 Section 8B. If a defendant on release subject to the provisions of sections 42A, 58, 58A,
63 or 87 of chapter 276 or any other statute that allows the court to set conditions of release during
64 the pendency of a criminal case, commits a crime, the sentences ultimately imposed on the
65 pending crime and the new crime shall run consecutively to each other, without regard to the
66 order or sequence in which those cases are adjudicated.