

HOUSE No. 4446

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

An Act Reforming Community Supervision of Criminal Defendants and Offenders By
Establishing The Department Of Community Supervision Within The Executive Office Of
Public Safety and Security..

*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. Chapter 6A of the General Laws, as appearing in the 2008 Official
2 Edition, is hereby amended by striking out section 18 and inserting in place thereof the following
3 section:-

4 Section 18. The following state agencies are hereby declared to be within the executive
5 office of public safety and security: the department of public safety; the department of fire
6 services; the office of grants and research and the highway safety division; the municipal police
7 training committee; the criminal history systems board; the state 911 department; the department
8 of state police; the office of the chief medical examiner; the Massachusetts emergency
9 management agency; the military department; the department of correction; the department of
10 community supervision; the parole board; the sex offender registry board; and all other agencies
11 and boards within these departments, committees, and boards.

SECTION 2. Section 18½ of chapter 6A of the General Laws, as so appearing, is hereby amended by striking out, in line 18, the word “including”, and inserting in place thereof the following words:- the department of community supervision.

SECTION 3. Sections 4, 5 and 7 of chapter 27 are hereby repealed.

SECTION 4. Section 1 of chapter 125 of the General Laws, as so appearing, is hereby amended by striking out subsections (g) to (p), inclusive, and inserting in place thereof the following subsections:-

(g) “custody”, physical or constructive control of an inmate in a state or county correctional facility;

(h) “department”, the department of correction;

(i) “gainful employment”, employment within or without any correctional facility including but not limited to labor for the operation and maintenance of any correctional facility;

(j) “inmate”, a committed offender or such other person as is placed in custody in a correctional facility in accordance with law;

(k) “institution”, facility;

(l) “penal institution”, correctional facility;

(m) “prison”, correctional facility;

(n) “prisoner”, a committed offender and such other person as is placed in custody in a correctional facility in accordance with law;

(o) “state correctional facility”, any correctional facility owned, operated, administered or subject to the control of the department of correction, including but not limited to: Massachusetts Correctional Institution, Cedar Junction; Massachusetts Correctional Institution, Norfolk; Massachusetts Correctional Institution, Concord; Massachusetts Correctional Institution, Framingham; Massachusetts Correctional Institution, Bridgewater; Massachusetts Correctional Institution, Plymouth; Massachusetts Correctional Institution, Warwick; Massachusetts Correctional Institution, Monroe;

(p) “state prison”, 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;

(q) “superintendent”, the chief administrative officer of a state correctional facility.

SECTION 5. Section 1 of chapter 127 of the General Laws, as so appearing, is hereby amended by striking out, in line 4, the words “of the department of correction”, and inserting in place thereof the following words:- appointed by the governor under section 1 of chapter 127A.

SECTION 6. Chapter 127 of the General Laws, as so appearing, is hereby amended by inserting after section 20A the following section:-

Section 20B. The sheriff of any county may establish a day reporting program under which persons sentenced to the house of correction, except a sex offender as defined in section 178C of chapter 6, may be classified to constructive confinement. Such program shall include electronic monitoring of prisoners classified to the day reporting program. Placement of an individual in a day reporting program shall require victim notification as required under section

3(t) of chapter 258B. Any inmate sentenced to such program shall agree in writing to conditions set by the sheriff, who shall retain the right to revoke or alter such classification at will.

No prisoner shall be classified to a day reporting program under this section until he has served the longest mandatory minimum sentence for any offense for which the prisoner has been committed to the house of correction.

A prisoner classified to the day reporting program as set forth in this section and who abides by the conditions of the classification shall be credited time toward the serving of his sentence in the same manner as though he had served such time within the facility.

SECTION 7. Section 21 of chapter 127 of the General Laws, as so appearing, is hereby amended by inserting after the word “correction”, in line 3, the following words:- to physical or constructive confinement,.

SECTION 8. Section 36 of chapter 127 of the General Laws, as so appearing, is hereby amended by inserting after the words “parole board”, in line 5, the following words:- a community supervision officer.

SECTION 9. Section 49 of chapter 127 of the General Laws, as so appearing, is hereby amended by striking out, in line 5, the words “eligible for parole”, and inserting in place thereof the following words:- eligible for a parole hearing.

SECTION 10. Section 49A of chapter 127 of the General Laws, as so appearing, is hereby amended by striking out, in line 4 and in line 31, the words “exclusive of parole”, and inserting in place thereof the following words:- exclusive of persons under community supervision.

SECTION 11. Section 83E of chapter 127 of the General Laws, as so appearing, is hereby amended by striking out, in lines 5-6, the word “parole”, and inserting in place thereof the following words:- community supervision.

SECTION 12. Section 86F of chapter 127 of the General Laws, as so appearing, is hereby amended by striking out, in line 63, the word “parole”, and inserting in place thereof the following words:- community supervision.

SECTION 13. Section 87 of chapter 127 of the General Laws, as so appearing, is hereby amended by inserting after the words “probation officer or parole officer of the United States or of the commonwealth”, in lines 6-7, the following words:- community supervision officer.

SECTION 14. Section 90A of chapter 127 of the General Laws, as so appearing, is hereby amended by striking out, in line 29, the words “release on parole”, and inserting in place thereof the following words:- release to community supervision.

SECTION 15. Section 97 of chapter 127 of the General Laws, as so appearing, is hereby amended by striking out, in line 9, the words “law governing parole”, and inserting in place thereof the following words:- law governing release to community supervision.

SECTION 16. Section 97A of chapter 127 of the General Laws, as so appearing, is hereby amended by striking out, in line 10, the word “parole”, and inserting in place thereof the following words:- release to community supervision.

SECTION 17. Chapter 127 of the General Laws is hereby amended by striking out section 127 and inserting in place thereof the following section:-

Section 127. The governor, upon the written recommendation of the commissioner of the department of correction may appoint any employee of the department, a special state police officer for a term of 3 years, unless sooner removed. Officers so appointed may serve warrants issued by the governor, the commissioner of the department of correction and orders of removal or transfer of prisoners issued by the commissioner and warrants issued by any court or trial justice in the commonwealth for the arrest of a person charged with the crime of escape or attempt to escape from a penal institution or from the custody of an officer while being conveyed to or from any such institution, and may perform police duty about the premises of penal institutions. Such special state police officers of the investigative and fugitive apprehension unit of the department of correction may also perform police duties:

(1) when on official duty as a special state police officer of the investigative and fugitive apprehension unit, and in the company of an on-duty police officer or state police officer during the course of such police officer's official duties;

(2) to serve arrest warrants or escape warrants issued by any court in the commonwealth for the arrest of any person charged with any crime; and

(3) when arresting escapees pursuant to arrest warrants or transporting escapees, over individuals who attempt or threaten to interfere with special state police officers of the investigative and fugitive apprehension unit in the performance of their duties.

SECTION 18. Section 128 of chapter 127 is hereby repealed.

SECTION 19. Chapter 127 of the General Laws, as so appearing, is hereby by amended by striking out section 129C and inserting in place thereof the following section:-

Section 129C. For the satisfactory conduct of a prisoner confined in a prison camp, the commissioner may grant a deduction of sentence of not more than 2½ days for each month while confined in a prison camp. Such deduction of sentence shall be used in computing the minimum term of sentence for release on community supervision as authorized under chapters 127 and 127A or for reducing the term of imprisonment by deduction from the maximum term for which he may be held under his sentence or sentences. A prisoner whose term of imprisonment is reduced shall receive from the commissioner a certificate of discharge on the date which has been determined by such additional deduction from the maximum term of his sentence or sentences.

SECTION 20. Section 129D of chapter 127 of the General Laws, as so appearing, is hereby amended by striking out, in lines 25-26 , the words “parole eligibility”, and inserting in place thereof the following words:- eligibility for release under community supervision.

SECTION 21. Sections 130, 130A, 131, 131A, 133, 133A, 133B, 133C, 133D, 133D½, 133E and 134 of chapter 127 are hereby repealed.

SECTION 22. Section 135 of chapter 127 of the General Laws, as so appearing, is hereby amended by striking out, in line 13, the words “probation reports”, and inserting in place thereof the following words:- reports of designated court personnel or the department of community supervision.

SECTION 23. Section 135 of chapter 127 of the General Laws, as so appearing, is hereby further amended by striking out, in line 15, the words “and of all probation officers.”

SECTION 24. Section 135 of chapter 127 of the General Laws, as so appearing, is hereby further amended by striking out, in line 24, the word “parole”, and inserting in place thereof the following words:- release on community supervision.

SECTION 25. Chapter 127 of the General Laws is hereby amended by striking out section 136 and inserting in place thereof the following section:-

Section 136. No application for release on community supervision of a prisoner made by him or on his behalf shall be entertained by the parole board, but such a release of a prisoner by the board shall be solely on its own initiative. In every case where a prisoner is serving a sentence for a felony, except for those prisoners serving a sentence for any offense from the superior court for a term of 1 year or less or from the district court for a term of 1 year to a jail or house of correction, the parole board shall, within 60 days before such prisoner first becomes eligible for community supervision, grant such prisoner a hearing before the board and shall consider carefully and thoroughly the question whether a community supervision permit should be granted to such prisoner. Prisoners entitled to such a hearing shall, so far as reasonably practicable, be granted a hearing in the order in which they respectively become eligible for community supervision. At least 90 days prior to the time a prisoner serving sentence for a felony first becomes eligible for community supervision, the commissioner shall submit to the parole board or to an officer designated by it, all information with regard to such prisoner not already so submitted. Such information shall include, in addition to any other pertinent information:

(a) a report from the warden or superintendent of each prison in which such prisoner has been confined as to the prisoner’s conduct in prison, with a detailed statement as to all

156 infractions of prison rules and discipline, all punishments meted out to such prisoner, and the
157 circumstances connected therewith, as well as a report from each such warden or superintendent
158 as to the extent to which such prisoner has responded to the efforts made in prison to improve his
159 mental and moral condition, with a statement as to the prisoner's attitude toward society, toward
160 the judge who sentenced him, toward the district attorney who convicted him, toward the
161 policeman who arrested him, and how the prisoner then regards the crime for which he is in
162 prison and his previous criminal career;

163 (b) a report giving the prisoner's industrial record while in prison, the nature of his
164 occupations while in prison, and a recommendation as to the kind of work he is best fitted to
165 perform and at which he is most likely to succeed when he leaves prison;

166 (c) a report of such physical, mental and psychiatric examinations as have been made of
167 the prisoner which so far as practicable shall have been made within 2 months of the time of his
168 eligibility for parole. The parole board shall reach its own conclusions as to the desirability of
169 granting such prisoner a community supervision permit.

170 For those prisoners serving a sentence in a jail or house of correction, and for those
171 prisoners serving a Massachusetts sentence in a correctional institution of another state, hearings
172 shall be granted in accordance with this chapter, chapter 127B and chapter 127C.

173 SECTION 26. Section 146 of chapter 127 of the General Laws, as so appearing, is
174 hereby amended by striking out, in line 15, the word "parole", and inserting in place thereof the
175 following words:- the parole board.

SECTION 27. Sections 148, 149, 149A, 151A, 151B, 151C, 151D, 151E, 151F, 151G, 151H, 151I, 151J, 151K, 151L, 151M, 151N, 152, 153, 154, 155, 156, 157, 158, 160, 161, 166, 167, 168 and 169 of chapter 127 are hereby repealed.

SECTION 28. The General Laws are hereby amended by inserting after chapter 127 the following chapters:-

CHAPTER 127A

PAROLE BOARD

Section 1. There shall be a parole board, under the supervision and control of a chair of the board. The board shall consist of 7 members, to be appointed by the governor, with the advice and consent of the council, for terms of 5 years. The governor shall designate the chair who shall serve at the pleasure of the governor and may be removed by the governor at any time. Any person appointed as chair shall at the time of his appointment, have had at least 5 years of experience in corrections, including community corrections, and have an established record of high character and qualities of leadership. The chair shall be the executive and administrative head of the board and shall have the authority and responsibility of directing assignments of members of the board and shall be the appointing and removing authority for members of the parole staff. In the case of the absence or disability of the chair, the governor may designate 1 of the members to act as the chair during such absence or disability.

Whenever a vacancy occurs in the membership of the board the governor may appoint a panel of 5 persons consisting of the administrative justice for the superior court department, the president of the state parole officers association, or its successor association, the chair of the advisory committee on correction, the president of the Massachusetts bar association or his

designee, and the secretary of the executive office of public safety and security who shall serve as chair of the panel. The panel shall submit to the governor, within 60 days of the establishment of the panel, a list of not less than 6 or more than 9 persons, or not more than 12 persons in the event there should be 2 or more vacancies to fill, who are qualified by knowledge, education or experience in the administration of criminal justice or in the behavioral sciences as hereinafter provided. Such persons shall be graduates of an accredited 4-year college or university and shall have had at least 5 years of training and experience in 1 or more of the following fields: parole, probation, corrections-- including community corrections and alternative sentencing-- law, law enforcement, psychology, psychiatry, sociology and social work; provided, however, that the panel may, by unanimous vote, submit the name of a person who has demonstrated exceptional qualifications and aptitude for carrying out the duties required of a parole board member, if such person substantially, although not precisely, meets the above qualifications. The list of names of such persons for each vacancy shall include 1 or more of the following, insofar as it is possible to select such persons who are willing and able to fill promptly the existing vacancy or vacancies: an attorney admitted to practice in Massachusetts, a psychiatrist who is a member in good standing with the American Psychiatric Association, a psychologist certified by the Massachusetts Board of Certification in Psychology, Inc., and a member of the Massachusetts parole staff. If the governor does not appoint a panel as aforesaid any vacancy on the board shall be filled by the appointment of a member who possesses the qualifications as provided above.

The positions of chair and each of the other members shall be classified in accordance with section 45 of chapter 30 and the salaries shall be determined in accordance with section 46C of chapter 30. Members shall devote full time to their duties, and no member shall hold any

220 other salaried public office or engage in any activity which is in violation of any law or which
221 interferes or conflicts with his full time service as a member during his incumbency.

222 Section 2. The parole board shall: (a) within its jurisdiction, as defined in section 4,
223 determine which prisoners in the correctional institutions of the commonwealth or in jails or
224 houses of correction may be released to community supervision, and when and under what
225 conditions, and the power within such jurisdiction to grant a community supervision permit to
226 any prisoner, and to revoke, revise, alter or amend the same, and the terms and conditions on
227 which it was granted shall remain in the parole board until the expiration of the maximum term
228 of the sentence or sentences for the service of which such prisoner was committed, or until the
229 date which has been determined by deductions from the maximum term of his sentence or
230 sentences for good conduct, or unless otherwise terminated;

231 (b) be the advisory board of pardons with the power and duties as set forth in section 19;

232 (c) make rules relative to the performance of its duties, the calling and conduct of
233 meetings and for the conduct of its employees in the performance of their duties;

234 (d) ensure such rules are available to the public;

235 (e) make an annual report to each justice of the superior, municipal and district courts,
236 each sheriff, the commissioner of the department of community supervision and to the
237 commissioner of the department of correction;

238 (f) employ, subject to appropriation and the requirements of chapter 30 and chapter 31,
239 such support staff, hearing officers, clerks, attorneys and other employees and consultants as the
240 work of the parole board may require.

Any 3 members of the board may be appointed by the chair to act as the parole board for the purpose of granting or revoking of community supervision; provided, however, that for the purpose of considering hearing officer recommendations to the board under paragraph (b) of section 13, any single member of the board may be so appointed. The chair may also designate any member to act in his absence as the executive and administrative head of the board.

Section 3. (a) Retired members of the parole board and retired judges of the commonwealth whose names have been placed on the list of special parole board members pursuant to paragraph (d) may be designated by the secretary of the executive office of public safety and security, upon application by the chair of the parole board as provided in paragraph (e), to perform such of the duties of parole board members as they are assigned by the chair of the parole board and which they may be willing to undertake.

(b) In performing such services, a special member of the parole board shall exercise all powers and authority of the office with respect to matters to which he is assigned. Any decision or vote of any such member shall be equal to any decision or vote of any active member of the parole board.

(c) A special member of the parole board shall receive compensation equivalent to that received by active members of the parole board and payment of any pension or retirement benefits shall be deemed to have been waived during such service as provided by section 90B of chapter 32. Such special member of the parole board shall be reimbursed for all expenses incurred while performing such services. While so serving, such staff support, clerical assistance and facilities as are customarily available to active members of the parole board shall be provided.

(d) Any retired member of the parole board or any retired judge who is eligible as hereinafter provided, may notify the secretary that he wishes his name to be placed on the list of such persons who may be designated as a special member of the parole board. The secretary may place the name of any retired member of the parole board or any retired judge on the list of special parole board members. No retired judge shall be designated to serve as a special member of the parole board if he is designated and assigned pursuant to section 24 of chapter 211, section 16 of chapter 211A, and section 14 of chapters 211 and 211B, nor shall any such judge consider the eligibility for community supervision, commutation or pardon of any inmate who has ever appeared before him in his judicial capacity.

(e) Application for designation of a special member of the parole board shall be made by the chair of the parole board to the secretary by a certification by the chair that: (1) a significant number of cases is pending and has been pending for a least 30 days and that the active members of the parole board could not dispose of these cases within 60 days or (2) a case exists which creates a conflict of interest to the extent that the sitting member(s) of the board cannot render a fair and impartial decision. The secretary shall consult with the chair regarding the number of special members of the parole board to be designated and the length of time such designation shall remain in effect; provided, however, that no more than 3 temporary appointments to the parole board shall be in effect at the same time; and provided, further, that at no time shall more than 1 temporary appointment serve as a member of the parole board to dispose of any particular case. In no event may a designation remain in effect for longer than 1 year; provided, however, that the secretary may redesignate an individual as a special parole board member. Any designation may specify that a special member may serve on a less than full time basis.

(f) Upon recommendation of the chair, the secretary may withdraw an individual's designation as a special parole board member at any time.

(g) Whenever the secretary has designated 1 or more special members of the parole board for the reason of a significant number of cases is pending, the chair shall file with the secretary a monthly report on the efforts to address the caseload and shall indicate the number of pending cases.

Section 4. Subject to other provisions of law, community supervision permits, in this chapter also referred to as permits to be at liberty, may be granted by the parole board to prisoners in state and county correctional institutions serving sentences or total aggregate sentences of 60 days or more; serving sentences suspended in part under sections 1 or 1A of chapter 279; serving any sentence of imprisonment imposed under chapter 279, having a committed portion of 60 days or more; subject to lifetime community supervision under section 13 of chapter 127B; subject to mandatory post-release supervision under chapter 127C; or subject to a governor's pardon or commutation under section 17.

Section 5. No prisoner shall be granted a community supervision permit merely as a reward for good conduct. Permits shall only be granted if the parole board is of the opinion that there is a reasonable probability that, if such prisoner is released, in light of appropriate conditions and community supervision, he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society. In making this determination, the 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 127C.

The record of the decision of the board shall contain a summary statement of the case indicating the reasons for the decision. The record of decision shall become a public record and shall be available to the public except for any portion of the decision containing information upon which the decision was made that the board determines is actually necessary to keep confidential to protect the security of a criminal or civil investigation, to protect anyone from physical harm or to protect the source of any information; provided, however, that it was obtained under the condition of confidentiality. All such confidential information shall be segregated from the record of decision and shall not be available to the public. Confidential information may remain secret only as long as publication may defeat the lawful purposes of this section, but no longer. In every case, the terms and conditions shall include payment of any child support due under a support order, as defined in section 1A of chapter 119A, including payment toward any arrearage of support that accrues or has accrued or compliance with any payment plan between the prisoner and the IV-D agency as set forth in chapter 119A; provided, however, that the board shall not revise, alter, amend or revoke any term or condition related to payment of child support unless the community supervision permit itself is revoked.

Section 6. The parole board shall, in releasing a prisoner on community supervision, specify in writing the terms and conditions of such community supervision, and a copy of such terms and conditions shall be given to the person under community supervision. A violation of these terms and conditions shall render the person under community supervision liable to arrest and re-imprisonment.

Section 7. Not less than 24 hours prior to the effective date of any community supervision permit, the department of community supervision shall notify in writing the department of state police and the police department in the city or town to which the person under community supervision will return of the supervision, specifying the terms and conditions thereof.

Section 8. Community supervision permits may be granted by the parole board to prisoners subject to its jurisdiction at any time as the board in each case may determine; provided, however, that no prisoner sentenced to the state prison shall be eligible for such permit until such prisoner shall have served the minimum term of sentence, pursuant to section 24 of chapter 279, as such minimum term of sentence may be reduced by deductions allowed under section 129D. Where an inmate is serving 2 or more consecutive or concurrent state prison sentences, a single community supervision eligibility shall be established for all such sentences. Prisoners who are granted community supervision permits shall remain subject to the jurisdiction of the board until the expiration of the maximum term of sentence or, if a prisoner has 2 or more sentences to be served otherwise than concurrently, until the aggregate maximum term of such sentence, unless earlier terminated by the board under the provisions of section 130A. Sentences of imprisonment in the state prison shall not be suspended in whole or in part.

Section 9. Every prisoner who is serving a sentence for life in a correctional institution of the commonwealth, except prisoners confined to the hospital at the Massachusetts Correctional Institution, Bridgewater, and except prisoners serving a life sentence for murder in the first degree, shall be eligible for release on community supervision, and the parole board shall, within 60 days before the expiration of 15 years of such sentence, conduct a public hearing before the full membership unless a member of the board is determined to be unavailable as provided in this section. For the purposes of this section, the term unavailable shall mean that a board member

has a conflict of interest to the extent that he cannot render a fair and impartial decision or that the appearance of a board member would be unduly burdensome because of illness, incapacitation or other circumstance. Whether a member is unavailable for the purposes of this section shall be determined by the chair. Board members shall appear unless the chair determines them to be unavailable. Under no circumstances shall a parole hearing proceed pursuant to this section unless a majority of the board is present at the public hearing. Unless a board member is unavailable due to a conflict of interest, any board member who was not present at the public hearing shall review the record of the public hearing and shall vote in the matter.

At least 30 days before such hearing, the board shall notify in writing the attorney general, the district attorney in whose district sentence was imposed, the chief of police or head of the organized police department of the municipality in which the crime was committed and the victims of the crime for which sentence was imposed, and the officials and victims may appear in person or be represented or make written recommendations to the board, but failure of any or all of the officials to appear or make recommendations shall not delay the paroling procedure.

After such hearing the parole board may, by a vote of a majority of its members, grant to such prisoner a community supervision permit to be at liberty upon such terms and conditions as it may prescribe for the unexpired term of his sentence. If such permit is not granted, the parole board shall, at least once in each ensuing 5 year period, consider carefully and thoroughly the merits of each such case on the question of releasing such prisoner on community supervision, and may, by a vote of a majority of its members, grant such community supervision permit.

Such terms and conditions may be revised, altered and amended, and may be revoked, by the parole board at any time. The violation by the holder of such permit or any of its terms or conditions, or of any law of the commonwealth, may render such permit void, and thereupon, or if such permit has been revoked, the parole board may order his arrest and his return to prison, in accordance with the provisions of sections 14, 15, and 16 of this chapter and section 16 of chapter 127B.

Section 10. In the case of every prisoner sentenced under the provisions of section 25 of chapter 279, except for those persons sentenced to a term of imprisonment as prescribed by the sentencing guidelines established by the sentencing commission, the parole board shall, within 60 days before the expiration of half of his maximum sentence, and thereafter at least once in each ensuing 2-year period, consider carefully and thoroughly the merits of such case on the question of releasing such person on community supervision. After such consideration, the parole board may grant to such prisoner a community supervision permit to be at liberty upon such terms and conditions as it may prescribe for the unexpired term of his sentence. Such terms and conditions may be revised, altered and amended, and may be revoked by the parole board at any time. The violation by the holder of such permit of any of its terms or conditions, or of any law of the commonwealth, shall render such permit void, and thereupon, or if such permit has been revoked, the parole board may order his arrest and his return to prison, in accordance with the provisions of sections 14, 15, and 16 of this chapter and section 16 of chapter 127B. The period which must be served before such prisoner becomes eligible for community supervision shall be calculated with deductions applicable to other sentences for good conduct.

Section 11. The family members of a deceased victim may represent the victim at any parole hearing for a prisoner serving a sentence for a crime which resulted in the death of such

victim or for a crime for which a prisoner is serving a sentence for life in a correctional institution of the commonwealth, except prisoners serving a life sentence for murder in the first degree and prisoners confined to the hospital at the Massachusetts Correctional Institution, Bridgewater. For the purposes of this section, family members shall include: parent, stepparent or guardian of the victim, spouse or person with whom the victim lived and in a relationship similar to marriage, child, stepchild, grandchild, grandparent, sibling, aunt, uncle, niece, nephew and guardian of the minor child or stepchild of the victim.

Section 12. Victims, and parents or legal guardians of minor victims, of a violent crime or a sex offense for which a sentence was imposed, who have been certified by the criminal history systems board in accordance with section 172 of chapter 6 and section 3 of chapter 258B, may testify in person at the parole hearing of the perpetrator of the crime of which they were victims, or submit written testimony to the parole board.

For the purpose of this section, “sex offense” shall have the same meaning as set forth in section 178C of chapter 6, and “violent crime” shall be defined as follows:

“Violent crime”, any crime: (a) for which an individual has been sentenced to imprisonment of 1 year or more; and (b) that (i) has as an element the use, attempted use or threatened use of physical force or a deadly weapon against the person of another; (ii) is burglary, extortion, arson or kidnapping; (iii) involves the use of explosives; or (iv) otherwise involves conduct that presents a serious risk of physical injury to another.

Section 13. (a) In the case of an inmate committed to a correctional institution of the commonwealth, no community supervision permit shall be granted by the parole board until the inmate has been seen by at least 3 members of the board, except when the chair has designated 3

members to act as the parole board under the provisions of section 2 of chapter 127A, no community supervision permit shall be granted by the board until the inmate has been seen by at least 2 of the members.

(b) In the case of an inmate committed to a jail or house of correction, the chair may designate the department of community supervision, or an employee of the parole board to make an investigation and to conduct a hearing in lieu of the board for the purpose of ascertaining the suitability of such inmate for a community supervision permit. The staff member so designated shall report his findings of fact and recommendations regarding community supervision and conditions of such supervision to the board. The board may grant or deny a community supervision permit to such inmate after considering the report and recommendations. No community supervision permit shall be granted until the inmate has been seen according to the provisions of paragraphs (a) or (b).

(c) In the case of an inmate serving a Massachusetts sentence in another state, the chair may request the paroling authority of that state or at the written request of the inmate the federal paroling authority with jurisdiction over the institution in which the inmate is housed to conduct a hearing in lieu of the Massachusetts board for the purpose of ascertaining the suitability of such inmate for a community supervision permit and to report its findings and recommendations regarding community supervision and conditions of community supervision to the board. The board may grant or deny a community supervision permit to such an inmate after considering the report and recommendations. No community supervision permit shall be granted until such inmate has been seen in accordance with the provisions of paragraphs (a) or (c).

Section 14. The parole board may revoke a permit to be at liberty at any time prior to its expiration.

Section 15. The parole board may, by a majority vote of all of the members, issue to a person under community supervision, a certificate of termination of sentence, provided that in the judgment of the board such termination of sentence shall be in the public interest; and provided, further, that in no case will such certificate of termination of sentence be issued unless the person under community supervision has completed at least 1 year of satisfactory community supervision; provided, however, that the parole board, by a majority vote of all its members, may grant a certificate of termination if the person under community supervision has successfully completed the so-called special incarceration boot camp program and subsequently completed at least 4 months of satisfactory community supervision. The parole board shall furnish to the commissioner of correction and to the judge who pronounced the sentence upon the parolee a copy of such certificate of termination of sentence.

Section 16. If a permit to be at liberty has been revoked, the parole board may order the arrest of the holder of such permit by any officer qualified to serve civil or criminal process in any county, and order the return of such holder to the prison or jail to which he was originally sentenced. A prisoner who has been so returned to prison or jail shall be detained therein according to the terms of his original sentence. In computing the period of his confinement, the time between the day of his release upon a community supervision permit and the day of issuance of a violation warrant shall be considered as part of the term of his original sentence. The time between the day after the issuance of the community supervision violation warrant until the service of the warrant shall not be considered as any part of the term of his original sentence. Service of the community supervision violation warrant shall be made effective forthwith upon

463 arrest and imprisonment of the community supervision violator unless he is convicted of
464 commission of a crime or found guilty of violating the conditions of federal parole or probation
465 or another state's parole or probation, then service of the community supervision violation
466 warrant shall not be effective until the expiration of any additional sentences ordered by the
467 parole board or otherwise. If the community supervision violator is found not guilty of the
468 additional crimes charged or not guilty of violating the conditions of community supervision
469 then service of the warrant on the violator shall be made effective on the date of this issuance of
470 the warrant and the time served by him as a result of the community supervision violation
471 warrant lodged as a detainer shall be considered as part of the original sentence. If the disposition
472 of the new criminal charges or charges of violation of probation, community supervision, or
473 parole is without a finding of guilt, the parole board may retroactively serve the community
474 supervision violation warrant. The provisions of this section shall not be deemed to preclude the
475 board from withdrawing a community supervision violation warrant at any time. In computing
476 the period of the violator's confinement, the time between the day after the issuance of the
477 community supervision violation warrant until the withdrawal of the warrant shall not be
478 considered as any part of the term of the violator's original sentence.

479 Section 17. In a case in which the governor is authorized by the constitution to grant a
480 pardon, he may, with the advice and consent of the council, and upon the written petition of the
481 petitioner, grant it, subject to any conditions, restrictions and limitations provided by the
482 department of community supervision, as he considers proper, and he may issue his warrant to
483 all proper officers to carry such pardon into effect. Such warrant shall be obeyed and executed
484 instead of the sentence originally awarded.

485 If a sentence of death is imposed on a child under 17 years of age, and if, before he
486 reaches the age of 17, the governor pardons such child and commits him to the care of the
487 department of youth services, the department shall assume control over him subject to the
488 provisions of sections 17 to 20, inclusive, of chapter 120.

489 Every pardon petition shall, before its presentation to the governor, be filed with the
490 parole board, acting as the advisory board of pardons, together with all statements and signatures
491 appended thereto, and shall thereupon become a public record. Upon receipt, the advisory board
492 of pardons shall process each petition in accordance with the applicable provisions of section
493 154.

494 In the case of a prisoner confined under sentence for a felony, no final action or vote shall
495 be taken on such petition until after a public hearing has been held by the council. Such hearing
496 shall be held as soon as is practicable after the filing of the petition with the council. Any action
497 taken by the council on the petition shall be taken by a roll call vote of the members present,
498 recording and voting as yea or nay. The presence of a quorum and the vote of the majority of all
499 members of the council present shall be necessary for the approval or disapproval of a petition.
500 Within 3 days after such vote of the council, a certified copy of such roll call shall be filed with
501 the state secretary for public inspection.

502 Upon approval of a petition for pardon, the governor shall direct all proper officers to seal
503 all records relating to the offense for which the person received the pardon. Such sealed records
504 shall not disqualify a person in any examination, appointment or application for employment or
505 other benefit, public or private, including, but not limited to credit or housing, licenses, nor shall
506 such sealed record be admissible in evidence or used in any way in any court proceeding or

507 hearing before any board, commission or other agency except in imposing a sentence in
508 subsequent criminal proceedings or in any court proceeding or hearing in which an individual is
509 accused of violating sections 1, 13, 13B, 13C, 13F, 13G, 13H, 14, 15, 15A, 15B, 16, 18, 18A,
510 18B, 22, 22A, 23, 24, 24B or 26 of chapter 265. On any application or in an interview for
511 employment, or in any other circumstances, where a person is asked whether he has been
512 convicted of an offense, a person who has received a pardon for such offense may answer in the
513 negative. The attorney general and the person so pardoned may enforce the provisions of this
514 paragraph by an action commenced in the superior court department of the trial court.

515 The governor, with the advice and consent of the council, may at any time revoke any
516 pardon if he, determines that there is a misstatement of a material fact knowingly made at the
517 time of the filing of the written petition of the petitioner, or that such pardon was procured by
518 fraud, concealment or misrepresentation or that any provision of this section has not been
519 complied with, and upon such revocation the governor may issue his warrant to all proper
520 officers to take the person so pardoned into custody and return him to the institution where he
521 was imprisoned at the time of the granting of the pardon.

522 Such warrant shall be obeyed and executed by the officers to whom it is issued, and the
523 person whose pardon has been so revoked shall have the same standing in the penal institution to
524 which he is returned as he would have had if the pardon had not been granted, except that the
525 time during which he has been out of the penal institution upon such pardon, shall not be counted
526 in determining the amount of his sentence remaining to be served upon such return to such
527 institution.

528 The governor shall, at the end of each calendar year, transmit to the general court, by
529 filing with the clerk of either branch, a list of pardons granted with the advice and consent of the
530 council during such calendar year, together with action of the advisory board of pardons
531 concerning each such pardon, and together with a list of any revocations of pardons made under
532 this section.

533 The word “pardon” as used in this section shall be deemed to include any exercise of the
534 pardoning power except a respite from sentence.

535 Section 18. In all cases of petitions for pardons referred to the executive council by the
536 governor, where the petitioner is serving a sentence in the state prison, the executive secretary
537 shall notify the attorney general, and also the district attorney who prosecuted the case. The
538 attorney general and the prosecuting district attorney, or their representatives, may be present at
539 the hearing on the petition by the pardon committee of the executive council, examine the
540 petitioner’s witnesses, and present to the pardon committee full information as to the case of the
541 commonwealth against the petitioner on which he stands convicted of the crime for which he is
542 serving sentence.

543 Section 19. The parole board shall be the advisory board of pardons. The board shall,
544 forthwith, upon receipt of a pardon petition in a case in which the petitioner is confined in a
545 correctional institution of the commonwealth, forward a copy of such petition to the attorney
546 general, the commissioner of correction, the chief of police of the municipality in which the
547 crime was committed, and, if the petitioner was sentenced in the superior court, the district
548 attorney in whose district sentence was imposed, or, if the petitioner was sentenced in a district
549 court, the justice of the court in which sentence was imposed.

550 Upon receipt of all other petitions, the board shall forward a copy to the attorney general,
551 the chief of police and the district attorney or the justice of the district court, as the case may be;
552 provided, however, that they shall not be required to forward the copies if the petitioner was
553 convicted of a misdemeanor and is not confined.

554 Within 6 weeks of the receipt of a copy of any petition, the appropriate officials may
555 make written recommendations concerning such petition to the advisory board, but failure of any
556 or all of these officials to make such recommendations, shall not arrest the pardoning procedure
557 in the case.

558 Within 10 weeks of the original receipt of any petition, the advisory board shall transmit
559 the original petition to the governor, together with its conclusions and recommendations and
560 together with such recommendations as have been received from the above officials; except that
561 if the board shall determine that adequate consideration of the case requires a hearing on its
562 merits by the board, the board shall not be required to submit its recommendations at the end of
563 10 weeks but shall notify the governor of its intention to hold a hearing; but such hearing shall be
564 held and a report made to the governor within 6 months of the original receipt of the petition by
565 the board. If the board shall determine that such hearing shall be held, in the case of a petitioner
566 who is confined under sentence for a felony, the attorney general and the district attorney shall
567 be notified of the hearing and they or their representatives given the opportunity to appear,
568 examine the petitioner's witnesses and be heard.

569 If, in the opinion of the board, the facts stated in their report to the governor are such as
570 to cause undue or unmerited hardship or injury to the petitioner or to other individuals, if made
571 public, the portion of the report containing such facts may be submitted separately from the

conclusions and recommendations, and without publicity. However, in all cases a statement containing the facts of the crime or crimes for which a pardon or commutation is sought, the sentence or sentences received, together with all conclusions and recommendations shall be made public when the report is submitted. A copy of the statement, as well as a statement of the majority recommendation of the board, signed by all members concurring, and a certified copy of the petition with all statements and signatures appended thereto, shall be retained by the board as a permanent record open to public inspection at any reasonable time for a period of 10 years from the date the original petition was filed with the board.

The board shall not review the proceedings of the trial court, and shall not consider any questions regarding the correctness, regularity or legality of such proceedings, but shall confine itself solely to matters which properly bear upon the propriety of the extension of clemency to the petitioner. The board, from time to time, may make rules relative to the calling of meetings and to the related proceedings. The board, or any members of the board, may summon witnesses and administer oaths or affirmations. The fees of witnesses before the board shall be the same as for witnesses in civil actions before the courts, and shall be paid from the appropriation for the expenses of the parole board.

Section 20. If a prisoner who has been pardoned upon conditions to be observed and performed by him violates such conditions, the parole board shall forthwith cause him to be arrested and detained, and the warden, superintendent or keeper, respectively, of the institution in which the prisoner was confined shall receive the prisoner and cause him to be detained until the case can be examined by the governor and council; and the officer who makes the arrest shall forthwith give written notice thereof to the governor and council.

Section 21. The governor and council shall, upon receiving such notice, examine the case of the prisoner; and if it appears by his own admission or by evidence that he has violated the condition of his pardon, the governor, with the advice and consent of the council, shall order him to be remanded and confined for the unexpired term of his sentence, the confinement, if the prisoner is under any other sentence of imprisonment at the time of the order, to begin upon the expiration of such sentence. In computing the period of his confinement, the time between the conditional pardon and subsequent arrest shall not be taken to be part of the term of his sentence. If it appears to the governor and council that he has not broken the conditions of his conditional pardon, he shall be discharged.

Section 22. If a prisoner is pardoned or his punishment is commuted, the officer to whom the warrant for such purpose is issued shall, as soon as may be after executing it, make return thereof, signed by him, with his doings thereon, to the secretary's office, and shall file in the office of the clerk of the court in which the person was convicted an attested copy of the warrant and return, and the clerk shall attach a brief abstract thereof to the record of the conviction and sentence.

Section 23. No person shall, in the attempt to procure, or for the procurement of, any pardon, release to community supervision, commutation of or respite from sentence of a prisoner then confined in, or at liberty after having been confined in, any of the penal institutions of this commonwealth, or then under sentence to serve a term of imprisonment in any of the institutions, knowingly pay or offer to pay, or solicit, offer to receive or receive, either by way of gift or of reward or of compensation for services, or otherwise, except for proper legal services, any money or other thing of value, or shall transmit the same from 1 person to another; nor in such attempt or for such procurement shall any person make, or offer or promise to make, or to

617 procure or induce the making of, any appointment to any position, whether or not in the public
618 service.

619 Section 24. No person shall represent or purport to represent any prisoner then confined
620 in, or at liberty after having been confined in, any of the penal institutions of this commonwealth
621 or then under sentence to serve a term of imprisonment in any of the institutions, in the attempt
622 to procure or for the procurement of any pardon, release to community supervision, commutation
623 of or respite from sentence, unless such person shall first have filed in the office of the state
624 secretary a written statement signed by him and made under the penalties of perjury, stating in
625 substance that none of the provisions of section 23 has been violated, that such person is acting
626 with the written consent of the prisoner, and that such person has not received or been promised,
627 and does not expect to receive or to be promised, any money or other reward for so acting,
628 except fees or other reward for legal services, the amount of which fees or other reward and a
629 detailed description of which services shall be set forth in such statement. If any person receives
630 any additional fee or other reward for legal services different from that disclosed in the statement
631 referred to in this section, such person shall forthwith file in the same form and manner as the
632 original statement an additional statement setting forth the amount of such additional fees or the
633 exact nature and extent of such reward, with a detailed description of the legal services rendered
634 for such fee or reward. The statements shall be kept as permanent records in the office of the
635 state secretary and shall be open to public inspection at any reasonable time.

636 Section 25. Whoever violates any provision of section 23 or 24 shall be punished by a
637 fine of not more than \$5,000 dollars or by imprisonment for not more than 2 years, or both.

Section 26. A copy of sections section 23 to 25, inclusive, shall be printed on the form of any petition for pardon, parole, commutation of or respite from sentence, but shall not be deemed a part of such petition.

CHAPTER 127B

DEPARTMENT OF COMMUNITY SUPERVISION

Section 1. The purpose of this chapter is to promote the accountability of the criminal justice system to the public by developing a uniform, structured, and evidence-based system for pretrial case management and for sentencing, including the supervised release to the community of criminal defendants and offenders, and without eliminating the discretionary decisions affecting sentencing, and to:

- (1) Promote public safety and protection;
- (2) Promote respect for the law by providing just punishment;
- (3) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the person's criminal history;
- (4) Offer persons an opportunity to rehabilitate through consistent community supervision and continuity of law enforcement supervision;
- (5) Reduce the recidivism among criminal persons;

Section 2. As used in this chapter, inclusive, the following words shall, unless the context clearly requires a different meaning have the following meanings:

“Board”, parole board.

658 “Chair”, the chair of the parole board.

659 “Chief justice”, the chief justice for administration and management of the trial court.

660 “Commissioner”, commissioner of the department of community supervision.

661 “Community supervision and re-entry center”, any program that is operated by a state,
662 local or private service agency that has been deemed an appropriate intermediate sanctions
663 program by the department of community supervision.

664 “Community supervision plan”, a written proposal submitted to the commissioner of the
665 department of community supervision for approval and funding as a community supervision and
666 re-entry center or program.

667 “Community supervision”, that portion of a person’s sentence served in the community
668 subject to the supervision and jurisdiction of the department of community supervision.

669 “Community supervision officer”, an employee of the department of community
670 supervision whose duties, designated by the commissioner, include supervision of pre-sentenced
671 and sentenced persons and monitoring of the sentence.

672 “Community supervision officer II”, a community supervision officer appointed as a
673 special state police officer by the governor upon the written recommendation of the
674 commissioner of the department of community supervision under section 7.

675 “Department”, the department of community supervision.

“Electronic monitoring”, monitoring of a person using an electronic person tracking system, including, but not limited to, a system using radio frequency or active or passive global positioning system technology.

“Intermediate sanctions program”, any program that has been determined to impose an appropriate sanction upon a person for whom imprisonment may not be necessary or appropriate, including but not limited to standard community supervision, intensive supervision, community service, home confinement, weekend jail sentences, day reporting, residential programming, substance abuse treatment, restitution, means-based fines, continuing education, vocational training, special education, and psychological counseling.

“Risk assessment”, the application of a risk instrument accepted for use by the department in assessing the supervision levels and recommended conditions of supervision for persons.

Section 3. There shall be a department of community supervision under the supervision and control of the commissioner of community supervision. The commissioner shall be the executive and administrative head of the department and all officers and employees of the department shall be under his supervision and control. The position of commissioner shall be classified in accordance with section 45 of chapter 30 and the salary shall be determined in accordance with section 46C of chapter 30 and he shall devote his full time during business hours to the duties of his office. The secretary of public safety and security shall appoint, with the approval of the governor, the commissioner who shall serve at the pleasure of the secretary and may be removed by the secretary at any time, subject to the approval of the governor. Any person appointed to the office shall, at the time of his appointment, have had at least 5 years of

698 administrative experience in corrections, including community corrections, and have an
699 established record of high character and qualities of leadership.

700 Subject to the approval of the secretary of public safety and security the commissioner
701 may appoint deputies, supervisors and assistants necessary for the performance of his duties.
702 The commissioner shall establish reports and forms to be maintained by community supervision
703 officers, procedures to be followed by community supervision officers and standards and rules
704 community supervision, including methods and procedures of investigation, mediation,
705 supervision, case work, record keeping, accounting, caseload and case management.

706 Section 4. The department of community supervision shall: (a) supervise all persons
707 placed on community supervision by the superior, municipal or district court pursuant to: this
708 chapter, section 87 of chapter 276, sections 1, 1A, 5, 8 or 8A of chapter 279 or any court order or
709 sentence to a term of community supervision; (b) supervise all prisoners released to community
710 supervision permits granted by the parole board; (c) supervise all prisoners pardoned and
711 released to conditions of community supervision, and report to the governor violations by any
712 such prisoner of the conditions of community supervision applicable to his pardon; (d) supervise
713 all persons released to mandatory post-release community supervision under chapter 127C or
714 subject to lifetime community supervision under section 13 of chapter 127A; (e) make an annual
715 report to each justice of the superior, municipal, and district court, each sheriff, the parole board,
716 and the commissioner of the department of correction, which shall include all information that
717 the commissioner considers useful, with his suggestions or recommendations.

718 Section 5. Subject to appropriation the commissioner may appoint, assign, transfer or
719 remove community supervision officers to duties and responsibilities at his discretion. There

shall be 2 job titles in the community supervision officer job series, community supervision officers I and II. The compensation to be paid to the community supervision officers shall be paid by the commonwealth according to schedules established in chapter 30 or in a provision of the applicable collective bargaining unit.

The commissioner shall develop and conduct basic orientation and in-service training programs for community supervision officers, such programs to be held at such times and for such periods as he shall determine.

The community supervision officers shall perform such duties and responsibilities as the commissioner may assign them. Community supervision officer I duties shall include assistance to the court as directed by the commissioner, supervision of persons placed on pretrial community supervision under section 87 of chapter 276, sentenced to administrative community supervision or determined by the department of community supervision as requiring lower levels of supervision, and any such other duties as assigned by the commissioner, subject to the provisions of chapter 150E. Community supervision officers II shall be special state police officers whose duties shall include supervision of persons assessed by the department of community supervision as requiring higher levels of supervision, all duties of a community supervision officer I, and any such other duties as assigned by the commissioner, subject to the provisions of chapter 150E.

In addition to the other duties imposed upon him, each community supervision officer so assigned by the commissioner shall inquire into the nature of a criminal case brought before the superior, municipal or district court, and inform the court, so far as is possible, whether the defendant has previously been convicted of a crime and in the case of a criminal prosecution

742 before the court charging a person with an offense punishable by imprisonment for more than 1
743 year the community supervision officer shall in any event present to the court such information
744 as the commissioner has in his possession relative to prior criminal prosecutions, if any, of such
745 person and to the disposition of each such prosecution, and all other available information
746 relative thereto before disposition of the case against him by sentence, or placing on file or
747 supervision. Community supervision officers shall have access to all criminal offender record
748 information, juvenile records, the statewide domestic violence record keeping system and any
749 other court records necessary for the performance of their official duties.

750 Such record of the community supervision officer presented to the court shall not contain
751 as part thereof any information of prior criminal prosecutions, if any, of the defendant wherein
752 the defendant was found not guilty by the court or jury in the prior criminal prosecution. Prior to
753 the aforesaid disposition such record of the community supervision officer shall be made
754 available to the defendant and his counsel for inspection. When it comes to the knowledge of a
755 community supervision officer that the defendant in a criminal case before the court is charged
756 with an offense punishable by imprisonment is then on probation in the juvenile court or serving
757 a term of community supervision pursuant to a court order or sentence, release by the parole
758 board, or mandatory post-release supervision, such community supervision officer shall
759 forthwith certify the fact of the presence of the defendant before such juvenile court, department
760 of community supervision, or the parole authorities granting or issuing such release.

761 The community supervision officer may recommend to the court that any person
762 convicted be placed under the supervision of the department. Each community supervision
763 officer shall keep full records of all his duties performed, cases assigned, including records of
764 investigations and supervision.

765 The community supervision officer so assigned by the commissioner shall file with the
766 superior, municipal or district court a pre-sentence investigation report which shall be made
767 available to the parties no less than 7 days prior to sentencing. When appropriate, the
768 community supervision officer shall also complete a risk-needs assessment using the tools
769 adopted by the department to formulate a recommended supervision level.

770 The community supervision officers designated by the commissioner shall, in accordance
771 with the rules and regulations of the department, supervise, counsel and advise persons ordered
772 or sentenced by the court to a term of community supervision or released on community
773 supervision from the correctional institutions of the commonwealth, or from any institution to
774 which they were removed therefrom, and shall assist them in securing employment. They shall
775 also render assistance and counsel to discharged prisoners who are in need of such help, and
776 perform such other duties relative to their sentence, discharge or release as the court or the parole
777 board requires.

778 The community supervision officers shall obtain information for the use of the court and
779 the parole board relative to persons who are under consideration for release to community
780 supervision, whether directly from the court or a from a sentence to correctional institutions of
781 the commonwealth, especially as to the details of their offenses and their previous character and
782 history. They may for that purpose require of the police authorities any facts in their possession
783 relative to such persons if the communication thereof will not, in the opinion of the authorities,
784 be detrimental to the public interest.

Section 6. Except as otherwise provided by law, a community supervision officer shall, have all the powers of a police officer necessary in the performance of his official duties, and may act in any part of the commonwealth.

Section 7. The governor, upon the written recommendation of the commissioner, may appoint any employee of the department as a special state police officer for a term of 3 years, unless sooner removed by the commissioner. Officers so appointed may serve warrants issued by the governor, orders of removal or transfer of persons or prisoners issued by the commissioner and warrants issued by any court or trial justice in the commonwealth for the arrest of a person charged with the crime of escape or attempt to escape from a penal institution, from the custody of an officer while being conveyed to or from any such institution, and may perform police duty about the premises of penal institutions. Such special state police officers of the department of community supervision may also perform police duties:

(1) when on official duty as a community supervision officer and in the company of an on-duty police officer or state police officer during the course of such police officers' official duties;

(2) to serve arrest warrants issued by any court in the commonwealth for the arrest of any person charged with any crime;

(3) when arresting persons under community supervision pursuant to warrants or detainers of the parole board or transporting the persons under the community supervision, over individuals who attempt or threaten to interfere with such special state police officers of the department of community supervision in the performance of their duties;

(4) on the premises of department of community supervision facilities, which facilities shall include, but not be limited to community supervision and re-entry centers, and locations where the parole board is conducting a hearing or other board business;

(5) including applying for and executing search warrants in the course of an investigation of violations of conditions of community supervision, and upon complaint on oath that such special state police officer has probable cause to believe that a person under conditions of community supervision, for whom a current community supervision arrest warrant is outstanding, is concealed within a house, place, vessel or anywhere within the commonwealth or territorial waters thereof or vehicle of another;

(6) including, after such applying for and executing search warrants in the course of an investigation of violations of conditions of community supervision after notifying the appropriate local police department or the state police and upon complaint on oath that such special state police officer has probable cause to believe that stolen or embezzled property or property obtained by false pretenses, property which has been used as the means of committing a crime, property which has been concealed to prevent a crime from being discovered or property which is unlawfully possessed or kept or concealed for an unlawful purpose is in the possession or control of a person under conditions of community supervision; and

(7) including applying for and executing search warrants in the course of an investigation of violations of persons under conditions of community supervision, and upon complaint on oath that such special state police officer reasonably believes that evidence of a violation of conditions of community supervision is concealed on such person or under such exclusive

827 control. Whenever evidence of a crime has been discovered by such special state police officer,
828 the appropriate local police department or state police shall be notified immediately.

829 Section 8. A term of community supervision shall begin (a) at the time of sentencing if
830 ordered by the superior, municipal or district court; (b) upon completion of the term of
831 incarceration when sentenced by the court under sections 1, 1A, 5, 8 or 8A of chapter 279, or any
832 court order or sentence to a term of community supervision to commence after incarceration; or
833 (c) upon issuance of a permit for release to community supervision by the parole board under
834 chapter 127A; or (d) at the commencement of mandatory post-release supervision under chapter
835 127C.

836 When a person is sentenced by the superior, municipal, or district court to community
837 supervision, the person is subject to the conditions of community supervision as of the date of
838 sentencing, unless otherwise ordered by the court.

839 When a person is sentenced by the court to community supervision to commence after a
840 period of incarceration, the person is subject to the conditions of community supervision upon
841 completion of the term of confinement as ordered by the court.

842 When a person is released to community supervision by the parole board, the person is
843 subject to the conditions of community supervision as of the date determined by the parole
844 board.

845 When a person is released to community supervision for mandatory post-release
846 supervision, the person is subject to the conditions of community supervision at the
847 commencement of mandatory post-release supervision under chapter 127C.

When a person is released to community supervision for lifetime community supervision under this chapter, the person is subject to the conditions of community supervision at the time of the court order or as of the date determined by the parole board.

Section 9. Every person who is sentenced by the court or released by the parole board to community supervision shall report to and be placed under the supervision of the department.

The department shall assess the person's supervision level using the department's designated risk assessment tool and may recommend additional conditions of community supervision based on public safety. At a minimum the conditions shall include:

- (1) Report as directed to a community correction officer;
- (2) Remain within the geographical boundaries;
- (3) Notify the community corrections officer of any change in the person's address or employment;
- (4) Pay supervision fee assessment and all fines;
- (5) Disclose the fact of supervision to any mental health or chemical dependency treatment provider; and
- (6) Obey all laws.

The department may not impose conditions that are contrary to those ordered by the court or the parole board and may not contravene, increase or decrease conditions imposed by either the court or the parole board. The department shall return to the court to request in writing any modifications of the supervision conditions.

868 The department shall return to the parole board in accordance with this section to request
869 in writing any modifications of the supervision conditions or may modify supervision conditions
870 as otherwise provided in the parole board's regulations, rules or policies.

871 The department shall be given reasonable opportunity to assess the person and provide
872 the court or parole board with a comprehensive community supervision plan.

873 Section 10. Under the direction of the commissioner, the department shall oversee and
874 operate programs it has established to provide the tools and services necessary to complete the
875 conditions of a term of community supervision, whether ordered by the court or the parole board.
876 Such programs shall be established to enable the department to identify a comprehensive
877 community supervision plan which shall include appropriate conditions of supervision and
878 release for recommendation to the court and the parole board, to the extent practicable, without
879 requiring the provision of unnecessary services or duplication of services.

880 The department shall keep 1 centralized record of every person placed in its supervision,
881 including but not limited to records of case investigation, supervision, substance abuse or mental
882 health treatment whether inpatient, residential, or outpatient, training, GED classes, employment
883 counseling, employment, violation proceedings, payment of fees and restitution, and any other
884 rehabilitative services provided to the person whether in fulfillment of an ordered condition or
885 otherwise obtained. The department will make every effort to provide such rehabilitative
886 services with consistency, reason, and without unnecessary duplication. Records of the
887 department of corrections and the court shall be made available to the department and
888 incorporated into its record to reasonably ensure a complete report of the person's treatment and
889 efforts.

890 The commissioner shall work in consultation with the Massachusetts sentencing
891 commission, the administrative office of the trial court, the office of the commissioner of
892 probation, the parole board, the department of correction and the county sheriffs to fulfill the
893 requirements of this section.

894 Section 11. The superior, municipal or district court may impose as a sentence a term of
895 community supervision. The court may specify service of a sentence of administrative
896 community supervision or supervised community supervision. When such sentence is ordered,
897 the court shall impose conditions of community supervision as provided in this chapter. Such
898 conditions shall be determined based on the sentencing report and recommendations of a
899 community supervision officer of the department and the discretion of the court. The conditions
900 of community supervision imposed by a court upon an person under this section, sections 1, 1A,
901 5, 6A, 8 or 8A of chapter 279, section 87 of chapter 276 or any court order or sentence to a term
902 of community supervision may include, but shall not be limited to, participation by the person in
903 specified rehabilitative programs or performance by the person of specified community service
904 work for a stated period of time.

905 Nothing in this section shall be construed to limit a court from ordering additional
906 conditions when in its discretion such conditions are necessary and are within the department's
907 ability and resources to provide.

908 Section 12. When the parole board grants a community supervision permit in accordance
909 with section 5 of chapter 127A, the prisoner shall be allowed to go upon community supervision
910 outside prison walls and enclosure according to the terms and conditions as the parole board
911 shall prescribe, but shall remain, while thus under community supervision, subject to the

jurisdiction of the department of community supervision until the expiration of the term of imprisonment to which he has been sentenced or until the date which has been determined by deductions from the maximum term of his sentence or sentences for good conduct or until such earlier date as the board determines that it is in the public interest for the prisoner to be granted a certificate of termination of sentence.

Section 13. (a) A person upon whom a sentence of community supervision for life has been imposed under section 45 of chapter 265 or section 178H of chapter 6, shall be subject to the jurisdiction of the parole board and the department of community supervision for the term of such sentence.

Except as otherwise provided in this section, a person serving such sentence of community supervision for life shall be subject to the provisions of law governing the department of community supervision and parole board as if he were a person under community supervision following a term of incarceration. The parole board shall impose terms and conditions for such sentence within 30 days prior to the commencement of community parole supervision. The terms and conditions may be revised, altered or amended by the parole board at any time.

A person under community supervision for life shall be under the jurisdiction, supervision and control of the department of community supervision in the same manner as a person under community supervision following a term of incarceration. The parole board shall be authorized to establish any conditions of community supervision for life, on an individual basis, as may be necessary to ensure public safety. Such conditions may include protecting the public from such person committing a sex offense or kidnapping as well as promoting the rehabilitation

of such person. Such conditions shall include sex offender treatment with a recognized treatment provider in the field for as long as the board deems necessary, and compliance with the requirements of sections 178C to 178P, inclusive, of chapter 6.

The board is authorized to impose and enforce a supervision and rehabilitation fee upon a person on community supervision. To the extent possible, without reducing the income of a person under community supervision to such an extent that the potential for successful community reintegration is diminished, the department of community supervision shall set such fee in an amount that will substantially defray the cost of the community supervision program.

The department of community supervision shall also establish a fee waiver procedure for hardship and indigency cases.

(b)(1) Notwithstanding the parole board's authority to issue a certificate of termination of sentence under section 14 of chapter 127A after a person sentenced to community supervision for life has been on such supervision for a period of 15 years, such person may petition the parole board for termination of community supervision. Such termination may only occur by a majority vote of all the members. Upon receiving such a petition, the board shall, within 60 days, conduct a hearing before the full membership. At least 30 days prior to a hearing on the petition, the board shall cause a criminal history check to be conducted and notify in writing the victims of the crime for which the sentence was imposed, the attorney general, the district attorney in whose district the sentence was imposed, the chief of police or head of the organized police department of the municipality in which the crime was committed and the chief of police or head of the organized police department of the municipality in which the parolee resides, of the person's petition for release from supervision. Such officials and victims shall be provided the

956 opportunity to respond to such petition. Such officials and victims may appear in person or be
957 represented or make written recommendations to the board, but failure of any or all of such
958 officials to appear or make recommendations shall not delay the termination procedure.

959 If a victim is deceased at the time the hearing on termination of the sentence is scheduled,
960 the deceased victim may be represented by his relatives in the following order: mother, father,
961 spouse, child, grandchild, brother or sister, niece or nephew.

962 (2) Prior to the hearing, the petitioner shall be examined, personally interviewed and
963 evaluated by a psychiatrist or licensed psychologist who is an expert in the field of sex offender
964 treatment and who is approved by the board. The psychiatrist or psychologist shall file with the
965 board written reports of his examinations and diagnosis and his recommendation for the
966 disposition of such petitioner. The petitioner's treatment while on community parole supervision
967 shall be examined and considered by such psychiatrist or psychologist in such recommendation.
968 Such reports shall be admissible in a hearing conducted pursuant to this section. If such
969 petitioner refuses to be personally interviewed by such psychiatrist or psychologist, without good
970 cause, such petitioner shall be deemed to have waived his right to a hearing on the petition and
971 the petition shall be dismissed by the board. The cost of such examination and evaluation shall
972 be the responsibility of the petitioner; provided, however, that the board shall establish
973 procedures for cases of hardship or indigency.

974 (3) At the hearing, the board shall call such witnesses as it deems necessary, including the
975 examining psychiatrist or psychologist, the appropriate district attorney, the attorney general, the
976 police chief or the victims of the crime or such crime victims' family members, as the board

977 deems necessary. The petitioner may offer such witnesses and other proof at the hearing as is
978 relevant to the petition.

979 (4) The board shall terminate community supervision for life if the petitioner
980 demonstrates, by clear and convincing evidence, that he has not committed a sex offense or a
981 kidnapping since his conviction, that he is not likely to pose a threat to the safety of others and
982 that the public interest is not served by further community supervision over the petitioner.

983 (5) If a petition for release from supervision is denied by the board, such petitioner may
984 not file another such petition for a period of 3 years.

985 (c) An individual who violates a condition of community supervision shall be subject to
986 the provisions of section 16 of this chapter and sections 14 through 16 of chapter 127A. If the
987 person under community supervision has served the entire period of confinement under his
988 original sentence, the original term of imprisonment shall, upon a first violation, be increased to
989 imprisonment in a house of correction for 30 days if such violation does not otherwise constitute
990 a criminal offense. Upon a second violation, the original term of imprisonment shall be increased
991 to 180 days in the house of correction if such violation does not otherwise constitute a criminal
992 offense. Upon a third or subsequent violation, the original term of imprisonment shall be
993 increased to 1 year in the house of correction if such violation does not otherwise constitute a
994 criminal offense. If such violation otherwise constitutes a criminal offense, the increased term of
995 imprisonment shall be served on and after any sentence received for commission of the new
996 offense.

997 Section 14. Any person under community supervision or under community supervision
998 for life for any offense listed within the definition of “sex offense”, a “sex offense involving a

child” or a “sexually violent offense”, as defined in section 178C of chapter 6, shall, as a requirement of such community supervision, wear a global positioning system device, or any comparable device, administered by the board at all times for the length of his parole for any such offense. The parole board shall, in addition to any other condition, establish defined geographic exclusion zones including, but not limited to, the areas in and around the victim’s residence, place of employment and school and other areas defined to minimize the person offender’s contact with children, if applicable. If the offender enters an excluded zone, as defined by the terms of his community supervision, the location data shall be immediately transmitted to the police department in the municipality wherein the violation occurred and the department of community supervision, by telephone, electronic beeper, paging device or other appropriate means. If the parole board or the offender’s community supervision officer believes that the person has violated his terms of community supervision by entering an excluded zone as prescribed in this section, the parole board or community supervision officer shall cause the person to be taken into temporary custody in accordance with section 16 of this chapter and sections 14, 15, and 16 of chapter 127A.

The fees incurred by installing, maintaining and operating the global positioning system device, or comparable device, shall be paid by the person under community supervision. If that person establishes his inability to pay such fees, the board may waive them.

Section 15. If a community supervision officer believes that a person under community supervision following a term of incarceration, or in connection with community supervision for life or mandatory post-release supervision has lapsed or is about to lapse into criminal ways or has associated or is about to associate with criminal company or that he has violated the conditions of his community supervision, the community supervision officer may, with the

consent of a supervisor or other superior officer, issue a warrant for the temporary custody of the person for a period not longer than fifteen days, during which period he shall notify the director of community supervision or a supervisor of his action and submit a complete report for final decision by the parole board. The detention of any such person may be further regulated by the rules of the board. The parole board shall have the right to withdraw the warrant for temporary custody and such withdrawal shall not affect the validity of any subsequent warrants issued. Upon the withdrawal of the warrant, the time from the issuance of the warrant until the withdrawal shall be considered as part of the original sentence. Such warrant shall constitute sufficient authority to a community supervision officer and to the superintendent, jailer, or any other person in charge of any jail, house of correction, lockup, or place of detention to whom it is exhibited to hold in temporary custody the person retaken pursuant thereto.

Section 16. (a) The court may revoke its sentence to a term of community supervision, where the person under the supervision of the department is alleged to have violated 1 or more conditions of community supervision. The commissioner shall adopt rules and regulations to govern the surrender and violation processes of the department, which shall be consistent with the rules of court and include, but not be limited to, the provisions of section 3 and of chapter 279.

(b) Pursuant to section 14 of chapter 127A, the parole board may revoke a permit to be at liberty at any time prior to its expiration. The chair shall adopt rules and regulations to govern the surrender and violation processes and its hearings.

Section 17. The court shall assess upon every person placed under the supervision of the department including all persons placed on community supervision for offenses under section 24

1044 of chapter 90, a monthly community supervision fee, hereinafter referred to as “community
1045 supervision fee”, in the amount of \$75 per month. The person shall pay the community
1046 supervision fee once each month during such time as the person remains supervised by the
1047 department. The court shall assess upon every person placed on administrative community
1048 supervision a monthly administrative supervision fee, hereinafter referred to as “administrative
1049 community supervision fee”, in the amount of \$25 per month. The person shall pay the
1050 administrative community supervision fee once each month during such time as the person
1051 remains on administrative community supervision. Notwithstanding the foregoing, the court
1052 may waive the fees upon any person accused or convicted of a violation of section 1 or 15 of
1053 chapter 273, where compliance with an order of support for a spouse or minor child is a
1054 condition of community supervision.

1055 The court may not waive payment of either or both of the fees unless it determines after a
1056 hearing and upon written finding that such payment would constitute an undue hardship on the
1057 person or his family due to limited income, employment status or any other factor. Following
1058 the hearing and upon such written finding that either or both of the fees would cause such undue
1059 hardship: (1) in lieu of payment of the community supervision fee the court shall require the
1060 person to perform unpaid community work service at a public or nonprofit agency or facility, as
1061 approved and monitored by the department, for not less than 1 day per month and (2) in lieu of
1062 payment of the administrative community supervision fee the court shall require the person to
1063 perform unpaid community work service at a public or nonprofit agency or facility, as approved
1064 and monitored by the department, for not less than 4 hours per month. Such waiver shall be in
1065 effect only during the period of time that the person is unable to pay the monthly fee.

1066 The court may waive payment of either or both of the fees in whole or in part if the
1067 person is assessed payment of restitution. In such cases, the fees may be waived only to the
1068 extent and during the period that restitution is paid in an amount equivalent to the fee.

1069 The community supervision fee shall be collected by the department and transmitted to
1070 the state treasurer for deposit into the General Fund. The state treasurer shall account for all such
1071 fees received and report the fees annually, itemized by court division, to the house and senate
1072 committees on ways and means.

1073 The court shall also assess upon every person placed on supervised community
1074 supervision, including all persons placed on community supervision for offenses under section
1075 24 of chapter 90, a monthly victim services surcharge, hereinafter referred to as “victim services
1076 surcharge”, in the amount of \$5 per month. The person shall pay the victim services surcharge
1077 once each month during such time as the person remains on such community supervision. The
1078 court shall assess upon every person placed on administrative community supervision a monthly
1079 administrative victim services surcharge, hereinafter referred to as “administrative victim
1080 services surcharge” in the amount of \$1 per month.

1081 The person shall pay the administrative victim services surcharge once each month
1082 during such time as the person remains on administrative community supervision.
1083 Notwithstanding the foregoing, the fees shall not be assessed upon any person accused or
1084 convicted of a violation of section 1 or 15 of chapter 273, where compliance with an order of
1085 support for a spouse or minor child is a condition of probation or community supervision.

1086 The court may not waive payment of either or both of the fees unless it has determined,
1087 after a hearing and upon written finding, that such payment would constitute an undue hardship

1088 on the person or his family due to limited income, employment status or any other factor. Such
1089 waiver shall be in effect only during the period of time that the person is unable to pay his
1090 monthly probation fee.

1091 The community supervision fee shall be collected by the department and shall be
1092 transmitted to the state treasurer for deposit into the General Fund of the commonwealth. The
1093 state treasurer shall account for all such fees received and report the fees annually, itemized by
1094 court division, to the house and senate committees on ways and means.

1095 Section 18. If a person is placed on community supervision upon condition of restitution
1096 or reparation to be made to the person injured in the commission of the offense, and payment is
1097 not made at once, the court may order that it shall be made to the community supervision officer,
1098 who shall give receipts for and keep record of all payments to him, pay the money to the person
1099 injured and keep the receipt, and notify the clerk of the court whenever the full amount of the
1100 money is received or paid in accordance with such order or with any modification.

1101 Section 19. (a) The department shall adopt regulations which shall establish supervision
1102 levels based on risk-needs assessments, ranging from minimum community supervision for low-
1103 risk persons to maximum community supervision of high-risk persons, with a focus on reducing
1104 the risk posed by high-risk persons. The regulations shall include the use of graduated and
1105 intermediate sanctions, as appropriate, in response to non-criminal violations of community
1106 supervision conditions and, in the discretion of the parole board, for low-level criminal
1107 violations. Nothing in this section or in the regulations shall limit the authority of the parole
1108 board, or the superior, municipal or district court to impose conditions of community
1109 supervision, or, in the case of the juvenile court, probation supervision, to protect the public or

1110 promote the rehabilitation of any person. The department shall ensure such rules are available to
1111 the public.

1112 (b) The department shall also adopt procedures, rules and regulations for the orderly
1113 operation of the department, for community supervision officers and the performance of their,
1114 community supervision duties, including methods and procedures of investigation, sentencing
1115 reports, mediation, supervision, case work, record keeping, accounting, caseload and case
1116 management, the classification of persons under the department's supervision, the risk
1117 assessment tools and process for the effective assignment of conditions of community
1118 supervision, the factors to consider in establishing a community supervision plan, the eligibility
1119 of persons to be placed under the supervision of the department, the establishment of community
1120 corrections and re-entry centers and the delivery of services to the persons in order to fulfill the
1121 requirements of community supervision.

1122 Section 20. The department of community supervision shall develop and implement a
1123 public education program about community supervision and corrections, provide technical
1124 assistance, training and education to the judiciary and criminal justice system agencies and
1125 personnel, and coordinate training for providers.

1126 Section 21. Three years after the inception of the department, the commissioner shall
1127 study the results of the effectiveness of the establishment of the department of community
1128 supervision. The study shall address the effect on the rate of recidivism, overall spending for
1129 corrections and alternative sentencing, and prison commitments. The commissioner shall report
1130 its findings to the governor, the joint committees on criminal justice and public safety, the clerks
1131 of the house of representatives and the senate.

Section 22. Sections 22 to 36, inclusive, shall be designated and may be known as “the interstate compact for adult offender supervision.” This designation shall, when appropriate, include corresponding provisions of earlier laws.

The compacting states to this interstate compact recognize that each state is responsible for the supervision of adult persons in the community who are authorized pursuant to the by-laws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of persons, transfer supervision authority in an orderly and efficient manner, and when necessary return persons to the originating jurisdictions. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime. It is the purpose of this compact and the interstate commission created hereunder, through means of joint and cooperative action among the compacting states: to provide the framework for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of persons in the community; to provide for the effective tracking, supervision and rehabilitation of these persons by the sending and receiving states; and to equitably distribute the costs, benefits and obligations of the compact among the compacting states. In addition, this compact shall: create an interstate commission which shall establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections or other criminal justice agencies, which shall promulgate rules to achieve the purpose of this compact; ensure an opportunity for input and timely notice to victims and to jurisdictions where defined persons are authorized to travel or to relocate across state lines; establish a system of uniform data collection, access to information on

1155 active cases by authorized criminal justice officials, and regular reporting of compact activities to
1156 heads of state councils, state executive, judicial and legislative branches and criminal justice
1157 administrators; monitor compliance with rules governing interstate movement of persons and
1158 initiate interventions to address and correct noncompliance; and coordinate training and
1159 education regarding regulations of interstate movement of persons for officials involved in such
1160 activity. The compacting states shall recognize that there is no “right” of any person to live in
1161 another state and that duly accredited officers of a sending state may at all times enter a receiving
1162 state and there apprehend and retake any person under supervision subject to this compact and
1163 by-laws and rules promulgated hereunder. It shall be the policy of the compacting states that the
1164 activities conducted by the interstate commission created herein are the formation of public
1165 policies and are therefore public business.

1166 Section 23. As used in sections 22 to 36, inclusive, the following words shall, unless the
1167 context clearly requires a different meaning have the following meanings:

1168 “Adult”, individuals legally classified as adults and juveniles treated as adults by court
1169 order, statute, or operation of law.

1170 “By-laws”, binding rules established by the interstate commission for its governance, or
1171 for directing or controlling the interstate commission’s actions or conduct.

1172 “Compact administrator”, the individual in each compacting state appointed pursuant to
1173 the terms of this compact responsible for the administration and management of the state’s
1174 supervision and transfer of persons subject to the terms of this compact, the rules adopted by the
1175 interstate commission and policies adopted by the state council under this compact.

1176 “Compacting state”, any state which has enacted the enabling legislation for this
1177 compact.

1178 “Commissioner”, the voting representative of each compacting state appointed pursuant
1179 to section 25 of this chapter.

1180 “Interstate commission”, the interstate commission for adult person supervision
1181 established by this compact.

1182 “Member”, the commissioner of a compacting state or his designee, who shall be a
1183 person officially connected with the commissioner.

1184 “Non compacting state”, any state which has not enacted the enabling legislation for this
1185 compact.

1186 “Person”, an adult placed under or subject to supervision as the result of the commission
1187 of a criminal offense and released to the community under the jurisdiction of courts, paroling
1188 authorities, corrections or other criminal justice agencies.

1189 “Person”, any individual, corporation, business enterprise, or other legal entity, either
1190 public or private.

1191 “Rules”, acts of the interstate commission, duly promulgated pursuant to section 29 of
1192 this chapter, substantially affecting interested parties in addition to the interstate commission,
1193 which shall have the force and effect of law in the compacting states.

1194 “State”, a state within the United States, the District of Columbia and any other territorial
1195 possessions of the United States.

1196 “State council”, the resident members of the state council for interstate adult person
1197 supervision created by each state under section 25 of this chapter.

1198 Section 24. (a) The compacting states hereby create the interstate commission for adult
1199 person supervision.

1200 (b) The interstate commission shall be a body corporate and joint agency of the
1201 compacting states.

1202 (c) The interstate commission shall have all the responsibilities, powers and duties set
1203 forth herein, including the power to sue and be sued, and such additional powers as may be
1204 conferred upon it by subsequent action of the respective legislatures of the compacting states in
1205 accordance with the terms of this compact.

1206 (d) The interstate commission shall consist of commissioners duly appointed from each
1207 of the member states.

1208 (e) In addition to the commissioners who are the voting representatives of each state, the
1209 interstate commission shall include individuals who are not commissioners but who are members
1210 of interested organizations; such non-commissioner members shall include a member of the
1211 national organizations of governors, legislators, state chief justices, attorneys general and crime
1212 victims. All non-commissioner members of the interstate commission shall be ex-officio
1213 members. The interstate commission may provide in its by-laws for such additional, ex-officio,
1214 non-voting members as it deems necessary.

1215 (f) Each compacting state represented at any meeting of the interstate commission is
1216 entitled to 1 vote. A majority of the compacting states shall constitute a quorum for the

1217 transaction of business, unless a larger quorum is required through the by-laws of the interstate
1218 commission.

1219 (g) The interstate commission shall meet at least once each calendar year. The
1220 chairperson may call additional meetings and, upon the request of 27 or more compacting states,
1221 shall call additional meetings. Public notice shall be given of all meetings and meetings shall be
1222 open to the public.

1223 (h) The interstate commission shall establish an executive committee which shall include
1224 commission officers, members and others as shall be determined by the by-laws. The executive
1225 committee shall have the power to act on behalf of the interstate commission during periods
1226 when the interstate commission is not in session, with the exception of rulemaking power and the
1227 power to amend the compact. The executive committee shall oversee the day-to-day activities
1228 managed by the executive director and interstate commission staff, administer enforcement and
1229 compliance with the provisions of the compact and its by-laws and as directed by the interstate
1230 commission, and perform other duties as directed by commission or as set forth in the by-laws.

1231 Section 25. The commissioner of the department of community supervision, or his
1232 designee, shall serve as the compact administrator and as the state's commissioner on the
1233 interstate compact commission. The Massachusetts state council shall be appointed by the
1234 compact administrator. The state council shall be comprised of 5 members whose term of office
1235 shall be for 4 years. The state council shall meet at least twice a year. The state council may
1236 advise the compact administrator or his designee on participation in the interstate commissioner
1237 activities and administration of the compact. The state council's membership shall include at

1238 least 1 representative from the legislative, judicial and executive branches of government and
1239 victims' groups.

1240 Section 26. The interstate commission shall have the following powers and duties:

1241 (a) to adopt a seal and suitable by-laws governing the management and operation of the
1242 interstate commission;

1243 (b) to promulgate rules which shall have the force and effect of statutory law and shall be
1244 binding in the compacting states to the extent and in the manner provided in this compact;

1245 (c) to oversee, supervise and coordinate the interstate movement of persons subject to the
1246 terms of this compact and any by-laws adopted and rules promulgated by the compact
1247 commission;

1248 (d) to enforce compliance with compact provisions, interstate commission rules, and by-
1249 laws, using all necessary and proper means including, but not limited to, the use of the judicial
1250 process;

1251 (e) to establish and maintain offices;

1252 (f) to purchase and maintain insurance and bonds;

1253 (g) to borrow, accept or contract for services of personnel including, but not limited to,
1254 members and their staffs;

1255 (h) to establish and appoint committees and hire staff which it deems necessary for the
1256 carrying out of its functions including, but not limited to, an executive committee as required by

1257 section 24 of this chapter, which shall have the power to act on behalf of the interstate
1258 commission in carrying out its powers and duties hereunder;

1259 (i) to elect or appoint such officers, attorneys, employees, agents, or consultants, and to
1260 fix the compensation, define the duties and determine the qualifications thereof; and to establish
1261 the interstate commission's personnel policies and programs relating to, among other things,
1262 conflicts of interest, rates of compensation and qualifications of personnel;

1263 (j) to accept any and all donations and grants of money, equipment, supplies, materials,
1264 and services, and to receive, utilize and dispose of the same;

1265 (k) to lease, purchase, accept contributions or donations of, or to otherwise own, hold,
1266 improve or use any property, real, personal or mixed;

1267 (l) to sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of
1268 any property, real, personal or mixed;

1269 (m) to establish a budget and make expenditures and levy dues as provided in section 31;

1270 (n) to sue and be sued;

1271 (o) to provide for dispute resolution among compacting states;

1272 (p) to perform such functions as may be necessary or appropriate to achieve the purposes
1273 of this compact;

1274 (q) to report annually to the legislatures, governors, judiciary and state councils of the
1275 compacting states concerning the activities of the interstate commission during the preceding

1276 year. Such reports shall also include any recommendations that may have been adopted by the
1277 interstate commission;

1278 (r) to coordinate education, training and public awareness regarding the interstate
1279 movement of persons for officials involved in such activity; and

1280 (s) to establish uniform standards for the reporting, collecting and exchanging of data.

1281 Section 27. (a) The interstate commission shall, by a majority of the members, within 12
1282 months of the first interstate commission meeting, adopt by-laws to govern its conduct as may be
1283 necessary or appropriate to carry out the purposes of the compact including, but not limited to:

1284 (1) establishing the fiscal year of the interstate commission;

1285 (2) establishing an executive committee and such other committees as may be necessary;

1286 (3) providing reasonable standards and procedures:

1287 (i) for the establishment of committees; and

1288 (ii) governing any general or specific delegation of any authority or function of the
1289 interstate commission;

1290 (4) providing reasonable procedures for calling and conducting meetings of the interstate
1291 commission, and ensuring reasonable notice of each such meeting;

1292 (5) establishing the titles and responsibilities of the officers of the interstate commission;

1293 (6) providing reasonable standards and procedures for the establishment of the personnel
1294 policies and programs of the interstate commission. Notwithstanding any civil service or other

1295 similar laws of any compacting state, the by-laws shall exclusively govern the personnel policies
1296 and programs of the interstate commission;

1297 (7) providing a mechanism for cessation of operations of the interstate commission and
1298 the equitable return of any surplus funds that may exist upon the termination of the compact after
1299 the payment and reserving of all of its debts and obligations;

1300 (8) providing transition rules for start up administration of the compact; and

1301 (9) establishing standards and procedures for compliance and technical assistance in
1302 administering the compact.

1303 (b) (1) The interstate commission shall, by a majority of the members, elect from among
1304 its members a chairperson and a vice-chairperson, each of whom shall have such authorities and
1305 duties as may be specified in the by-laws. The chairperson or, in his or her absence or disability,
1306 the vice-chairperson, shall preside at all meetings of the interstate commission. The officers so
1307 elected shall serve without compensation or remuneration from the interstate commission, except
1308 that, subject to the availability of budgeted funds, the officers shall be reimbursed for any actual
1309 and necessary costs and expenses incurred by them in the performance of their duties and
1310 responsibilities as officers of the interstate commission.

1311 (2) The interstate commission shall, through its executive committee, appoint or retain an
1312 executive director for such period, upon such terms and conditions and for such compensation as
1313 the interstate commission may deem appropriate. The executive director shall serve as secretary
1314 to the interstate commission, and hire and supervise such other staff as may be authorized by the
1315 interstate commission, but shall not be a member.

1316 (c) The interstate commission shall maintain its corporate books and records in
1317 accordance with the by-laws.

1318 (d) (1) The members, officers, executive director and employees of the interstate
1319 commission shall be immune from suit and liability, either personally or in their official capacity,
1320 for any claim for damage to or loss of property or personal injury or other civil liability caused or
1321 arising out of any actual or alleged act, error or omission that occurred within the scope of
1322 interstate commission employment, duties or responsibilities. Nothing in this paragraph,
1323 however, shall be construed to protect any such person from suit or liability for any damage,
1324 loss, injury or liability caused by the intentional or willful and wanton misconduct of any such
1325 person.

1326 (2) The interstate commission shall defend the commissioner of a compacting state, or his
1327 representatives or employees, or the interstate commission's representatives or employees, in any
1328 civil action seeking to impose liability, arising out of any actual or alleged act, error or omission
1329 that occurred within the scope of interstate commission employment, duties or responsibilities, or
1330 that the defendant had a reasonable basis for believing occurred within the scope of interstate
1331 commission employment, duties or responsibilities if the actual or alleged act, error or omission
1332 did not result from intentional wrongdoing on the part of such person.

1333 (3) The interstate commission shall indemnify and hold the commissioner of a
1334 compacting state, his appointed designee or employees, or the interstate commission's
1335 representatives or employees, harmless in the amount of any settlement or judgment obtained
1336 against such persons arising out of any actual or alleged act, error or omission that occurred
1337 within the scope of interstate commission employment, duties or responsibilities, or that such

persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities, if the actual or alleged act, error or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

Section 28. (a) The interstate commission shall meet and take such actions as are consistent with the provisions of the compact.

(b) Except as otherwise provided in the compact and unless a greater percentage is required by the by-laws, in order to constitute an act of the interstate commission, such act shall have been taken at a meeting of the interstate commission and shall have received an affirmative vote of a majority of the members present.

(c) Each member of the interstate commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person on behalf of the state and shall not delegate a vote to another member state, except that a state council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting. The by-laws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone, or other means of telecommunication or electronic communication shall be subject to the same quorum requirements of meetings at which members are present in person.

(d) The interstate commission shall meet at least once during each calendar year. The chairperson of the interstate commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

1360 (e) The interstate commission's by-laws shall establish conditions and procedures under
1361 which the interstate commission shall make its information and official records available to the
1362 public for inspection or copying. The interstate commission may exempt from disclosure any
1363 information or official records to the extent disclosure of such information or records would
1364 adversely affect personal privacy rights or proprietary interests. In promulgating such rules, the
1365 interstate commission may make available to law enforcement agencies records and information
1366 otherwise exempt from disclosure, and may enter into agreements with law enforcement
1367 agencies to receive or exchange information or records subject to nondisclosure and
1368 confidentiality provisions.

1369 (f) Public notice shall be given of all meetings and all meetings shall be open to the
1370 public, except as set forth in the rules or as otherwise provided in the compact. The interstate
1371 commission shall promulgate rules consistent with the principles contained in the Government in
1372 Sunshine Act, 5 U.S.C. Section 552(b), as may be amended. The interstate commission and any
1373 of its committees may close a meeting to the public if it determines by 2/3 vote that an open
1374 meeting would be likely to:

1375 (1) relate solely to the interstate commission's internal personnel practices and
1376 procedures;

1377 (2) disclose matters specifically exempted from disclosure by statute;

1378 (3) disclose trade secrets or commercial or financial information that is privileged or
1379 confidential;

1380 (4) involve accusing any person of a crime, or formally censuring any person;

1381 (5) disclose information of a personal nature that would constitute a clearly unwarranted
1382 invasion of personal privacy;

1383 (6) disclose investigative records compiled for law enforcement purposes;

1384 (7) disclose information contained in or related to examination, operating or condition
1385 reports prepared by, or on behalf of, or for the use of, the interstate commission relative to a
1386 regulated entity for the purpose of regulation or supervision of such entity;

1387 (8) disclose information, the premature disclosure of which would significantly endanger
1388 the life of a person or the stability of a regulated entity; or

1389 (9) specifically relate to the interstate commission's issuance of a subpoena, or its
1390 participation in a civil action or proceeding.

1391 For every meeting closed pursuant to this subsection, the interstate commission's chief
1392 legal officer shall publicly certify that, in his opinion, the meeting may be closed to the public,
1393 and shall reference each relevant exempting provision. The interstate commission shall keep
1394 minutes which shall fully and clearly describe all matters discussed in any meeting and shall
1395 provide a full and accurate summary of any actions taken, and the reasons therefore, including a
1396 description of each of the views expressed on any item and the record of any roll call vote. All
1397 documents considered in connection with any action shall be identified in such minutes.

1398 (g) The interstate commission shall collect standardized data concerning the interstate
1399 movement of persons as directed through its by-laws and rules which shall specify the data to be
1400 collected, the means of collection and data exchange and reporting requirements.

1401 Section 29. (a) The interstate commission shall promulgate rules in order to effectively
1402 and efficiently achieve the purposes of the compact including transition rules governing
1403 administration of the compact during the period in which it is being considered and enacted by
1404 the states.

1405 (b) Rulemaking shall occur pursuant to the criteria set forth in this section and the by-
1406 laws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the
1407 principles of the federal Administrative Procedure Act, 5 U.S.C.S. section 551 et seq., and the
1408 Federal Advisory Committee Act, 5 U.S.C.S. app. 2, section 1 et seq., as may be amended.

1409 (c) All rules and amendments shall become binding as of the date specified in each rule
1410 or amendment.

1411 (d) If a majority of the legislatures of the compacting states rejects a rule, by enactment
1412 of a statute or resolution in the same manner used to adopt the compact, then such rule shall have
1413 no further force and effect in any compacting state.

1414 (e) When promulgating a rule, the interstate commission shall:

1415 (1) publish the proposed rule stating with particularity the text of the rule which is
1416 proposed and the reason for the proposed rule;

1417 (2) allow persons to submit written data, facts, opinions and arguments, which shall be
1418 publicly available;

1419 (3) provide an opportunity for an informal hearing; and

1420 (4) promulgate a final rule and its effective date, if appropriate, based on the rulemaking
1421 record.

1422 Not later than 60 days after a rule is promulgated, any interested person may file a
1423 petition in the United States District Court for the District of Columbia or in the Federal District
1424 Court where the interstate commission's principal office is located for judicial review of such
1425 rule. If the court finds that the interstate commission's action is not supported by substantial
1426 evidence, as defined in the Administrative Procedure Act, in the rulemaking record, the court
1427 shall hold the rule unlawful and set it aside.

1428 (f) Subjects to be addressed within 12 months after the first meeting shall, at a minimum,
1429 include:-

1430 (1) notice to victims and opportunity to be heard;

1431 (2) person registration and compliance;

1432 (3) violations or returns;

1433 (4) transfer procedures and forms;

1434 (5) eligibility for transfer;

1435 (6) collection of restitution and fees from persons;

1436 (7) data collection and reporting;

1437 (8) the level of supervision to be provided by the receiving state;

1438 (9) transition rules governing the operation of the compact and the interstate commission
1439 during all or part of the period between the effective date of the compact and the date on which
1440 the last eligible state adopts the compact; and

1441 (10) mediation, arbitration and dispute resolution.

1442 (g) The existing rules governing the operation of the previous compact superseded by this
1443 chapter shall be null and void 12 months after the first meeting of the interstate commission
1444 created hereunder.

1445 (h) Upon determination by the interstate commission that an emergency exists, it may
1446 promulgate an emergency rule which shall become effective immediately upon adoption,
1447 provided that the usual rulemaking procedures provided hereunder shall be retroactively applied
1448 to the rule as soon as reasonably possible, but in no event later than 90 days after the effective
1449 date of the rule.

1450 Section 30. (a) (1) The interstate commission shall oversee the interstate movement of
1451 adult persons in the compacting states and shall monitor such activities being administered in
1452 non-compacting states which may significantly affect compacting states.

1453 (2) The courts and executive agencies in each compacting state shall enforce this compact
1454 and shall take all actions necessary and appropriate to effectuate the compact's purposes and
1455 intent.

1456 (3) In any judicial or administrative proceeding in a compacting state pertaining to the
1457 subject matter of this compact which may affect the powers, responsibilities or actions of the
1458 interstate commission, the interstate commission shall be entitled to receive all service of process
1459 in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

1460 (b) The compacting states shall report to the interstate commission on issues or activities
1461 of concern to them, and cooperate with and support the interstate commission in the discharge of

1462 its duties and responsibilities. The interstate commission shall attempt to resolve any disputes or
1463 other issues which are subject to the compact and which may arise among compacting states and
1464 non-compacting states. The interstate commission shall enact a by-law or promulgate a rule
1465 providing for both mediation and binding dispute resolution for disputes among the compacting
1466 states.

1467 (c) The interstate commission, in the reasonable exercise of its discretion, shall enforce
1468 this compact using any or all means set forth herein.

1469 Section 31. (a) The interstate commission shall pay or provide for the payment of the
1470 reasonable expenses of its establishment, organization and ongoing activities.

1471 (b) The interstate commission shall levy on and collect an annual assessment from each
1472 compacting state to cover the cost of the internal operations and activities of the interstate
1473 commission and its staff which assessments shall total an amount sufficient to cover the
1474 interstate commission's annual budget as approved each year. The aggregate annual assessment
1475 amount shall be allocated based upon a formula to be determined by the interstate commission,
1476 taking into consideration the population of the state and the volume of interstate movement of
1477 persons in each compacting state and shall promulgate a rule binding upon all compacting states
1478 which governs such assessment.

1479 (c) The interstate commission shall not incur any obligations of any kind prior to securing
1480 the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any
1481 compacting state, except by and with the authority of such compacting state.

1482 (d) The interstate commission shall keep accurate accounts of all receipts and
1483 disbursements. The receipts and disbursements of the interstate commission shall be subject to

1484 the audit and accounting procedures established under its by-laws except that all receipts and
1485 disbursements of funds handled by the interstate commission shall be audited annually by a
1486 certified or licensed public accountant and the report of the audit shall be included in and become
1487 part of the annual report of the interstate commission.

1488 Section 32. (a) Any state is eligible to become a compacting state.

1489 (b) The compact shall become effective and binding upon legislative enactment of the
1490 compact into law by no less than 35 of the states. The initial effective date shall be the later of
1491 July 1, 2001, or upon enactment into law by the 35th jurisdiction. Thereafter it shall become
1492 effective and binding, as to any other compacting state, upon enactment of the compact into law
1493 by that state. The governors of non-member states, or their designees, shall be invited to
1494 participate in interstate commission activities on a non-voting basis prior to adoption of the
1495 compact by all states and territories of the United States.

1496 (c) Amendments to the compact may be proposed by the interstate commission for
1497 enactment by the compacting states. No amendment shall become effective and binding upon
1498 the interstate commission and the compacting states unless and until it is enacted into law by
1499 unanimous consent of the compacting states.

1500 Section 33. (a) (1) Once effective, the compact shall continue in force and remain binding
1501 upon each and every compacting state. A compacting state may withdraw from the compact by
1502 enacting a statute specifically repealing the statute which enacted the compact into law.

1503 (2) The effective date of withdrawal is the effective date of the repeal.

1504 (3) The withdrawing state shall immediately notify the chairperson of the interstate
1505 commission, in writing, upon the introduction of legislation repealing this compact in the
1506 withdrawing state.

1507 (4) The interstate commission shall notify the other compacting states of the withdrawing
1508 state's intent to withdraw within 60 days of its receipt thereof.

1509 (5) The withdrawing state shall be responsible for all assessments, obligations and
1510 liabilities incurred through the effective date of withdrawal, including any obligations, the
1511 performance of which extend beyond the effective date of withdrawal.

1512 (6) Reinstatement following withdrawal of any compacting state shall occur upon the
1513 withdrawing state reenacting the compact or upon such later date as determined by the interstate
1514 commission.

1515 (b) (1) If the interstate commission determines that any compacting state has at any time
1516 defaulted in the performance of any of its obligations or responsibilities under the compact, the
1517 by-laws or any duly promulgated rules the interstate commission may impose any or all of the
1518 following penalties:

1519 (i) fines, fees and costs in such amounts as are deemed to be reasonable as fixed by the
1520 interstate commission;

1521 (ii) remedial training and technical assistance as directed by the interstate commission;
1522 and

1523 (iii) suspension and termination of membership in the compact. Suspension shall be
1524 imposed only after all other reasonable means of securing compliance under the by-laws and

1525 rules have been exhausted. Immediate notice of suspension shall be given by the interstate
1526 commission to the governor, the chief justice or chief judicial officer of the state; the majority
1527 and minority leaders of the defaulting state's legislature, and the state council.

1528 (2) The grounds for default shall include, but not be limited to, failure of a compacting
1529 state to perform such obligations or responsibilities imposed upon it by this compact, interstate
1530 commission by-laws or duly promulgated rules. The interstate commission shall immediately
1531 notify the defaulting state, in writing, of the penalty imposed by the interstate commission on the
1532 defaulting state pending a cure of the default. The interstate commission shall stipulate the
1533 conditions and the time period within which the defaulting state shall cure its default. If the
1534 defaulting state fails to cure the default within the time period specified by the interstate
1535 commission, in addition to any other penalties imposed herein, the defaulting state may be
1536 terminated from the compact upon an affirmative vote of a majority of the compacting states and
1537 all rights, privileges and benefits conferred by this compact shall be terminated from the
1538 effective date of suspension.

1539 (3) Within 60 days of the effective date of termination of a defaulting state, the interstate
1540 commission shall notify the governor, the chief justice or chief judicial officer and the majority
1541 and minority leaders of the defaulting state's legislature and the state council of such
1542 termination.

1543 (4) The defaulting state shall be responsible for all assessments, obligations and liabilities
1544 incurred through the effective date of termination, including any obligations, the performance of
1545 which extends beyond the effective date of termination.

1546 (5) The interstate commission shall not bear any costs relating to the defaulting state
1547 unless otherwise mutually agreed upon between the interstate commission and the defaulting
1548 state.

1549 (6) Reinstatement following termination of any compacting state requires both a
1550 reenactment of the compact by the defaulting state and the approval of the interstate commission
1551 pursuant to the rules.

1552 (c) The interstate commission may, by majority vote of the members, initiate legal action
1553 in the United States District Court for the District of Columbia or, at the discretion of the
1554 interstate commission, in the Federal District wherein the interstate commission's offices are
1555 located, has its offices to enforce compliance with the compact, its duly promulgated rules and
1556 by-laws, against any compacting state in default. In the event judicial enforcement is necessary,
1557 the prevailing party shall be awarded all costs of such litigation, including reasonable attorneys'
1558 fees.

1559 (d) The compact dissolves effective upon the date of the withdrawal or default of the
1560 compacting state which reduces membership in the compact to 1 compacting state.

1561 Upon the dissolution of this compact, the compact shall become null and void and shall
1562 be of no further force or effect, and the business and affairs of the interstate commission shall be
1563 terminated and any surplus funds shall be distributed in accordance with the by-laws.

1564 Section 34. (a) The provisions of this compact shall be severable, and if any phrase,
1565 clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact
1566 shall be enforceable.

1567 (b) The provisions of this compact shall be liberally constructed to effectuate its
1568 purposes.

1569 Section 35. (a) (1) Nothing herein prevents the enforcement of any other law of a
1570 compacting state that is not inconsistent with this compact.

1571 (2) All compacting states' laws conflicting with this compact are superseded to the extent
1572 of the conflict.

1573 (b) (1) All lawful actions of the interstate commission, including all rules and by-laws
1574 promulgated by the interstate commission, are binding upon the compacting states.

1575 (2) All agreements between the interstate commission and the compacting states are
1576 binding in accordance with the terms thereof.

1577 (3) Upon the request of a party to a conflict over meaning or interpretation of interstate
1578 commission actions, and upon a majority vote of the compacting states, the interstate
1579 commission may issue advisory opinions regarding such meaning or interpretation.

1580 (4) In the event any provision of this compact exceeds the constitutional limits imposed
1581 on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought
1582 to be conferred by such provision upon the interstate commission shall be ineffective and such
1583 obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be
1584 exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are
1585 delegated by law in effect at the time this compact becomes effective.

1586 Section 36. Wherever, in any general or special law, there are used in connection with
1587 adult or youthful offender criminal proceedings in the superior, district or municipal court, the

1588 following words: (a) probation, (b) probation officer, (c) department of probation, (d)
1589 commissioner of probation, (e) office of the commissioner of probation, or (f) words having the
1590 same connotation as (a)-(e) above, the words shall, unless the context otherwise requires, refer to
1591 the department of community supervision established in this chapter, the programs and services
1592 it administers, or the commissioner of community supervision or such officer or employee of the
1593 department of community supervision as the commissioner from time to time may designate.
1594 This section shall not apply to the use of the words in connection with juvenile proceedings or
1595 proceedings in the probate and family court.

1596 Wherever, in any general or special law, there are used in connection with adult or
1597 youthful offender criminal proceedings in the superior, district or municipal court, the following
1598 words: (a) parole, (b) parole permits, (c) parole supervision, or (d) words having the same
1599 connotation as (a)-(c), the words shall, unless the context otherwise requires, refer to the
1600 programs and services administered by the department of community supervision. This section
1601 shall not apply to the use of the words in connection with juvenile proceedings or proceedings in
1602 the probate and family court.

1603 Section 37. Notwithstanding any general or special law to the contrary, the secretary of
1604 administration and finance may authorize the transfer of funds between the department of
1605 correction, the department of community supervision and the parole board as necessary to
1606 achieve the purposes of chapters 127, 127A, 127B, 127C; provided, that no transfer authorized
1607 by this section shall exceed 7 per cent of the amount appropriated for an item; and provided
1608 further, that the transfer may be made only with the written approval of the heads of the sending
1609 and receiving agencies and of the secretary of public safety and security.

CHAPTER 127C

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 community supervision eligibility is determined by section 9 of chapter 127A. 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 community supervision, 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 community supervision imposed by a court at sentencing, upon an individual who is granted a community supervision permit under chapter 127A and successfully completes a period of community supervision, or upon an individual sentenced to lifetime community supervision under section 45 of chapter 265 or section 178H of chapter 6, being supervised under section 13 of chapter 127B. An individual subject to this chapter may be supervised in another jurisdiction in accordance with sections 22 through 36 of chapter 127B and shall be considered on community supervision pursuant to a decision of the parole board 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 department of community supervision during the period of mandatory post-release supervision and shall be subject to the law, rules and regulations governing community supervision. The commissioner of the department of community supervision shall establish regulations to be implemented by the department for post-release supervision consistent with applicable provisions of chapters 127, 127A and 127B. The regulations shall establish supervision levels based on risk-needs assessments, ranging from minimum community supervision for low-risk persons to maximum community supervision of high-risk persons, with a focus on reducing the risk posed by high-risk persons. The regulations shall include the use of graduated and intermediate sanctions as appropriate in response to non-criminal violations of community supervision conditions and, in the discretion of the parole 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 parole board, the superior, municipal, or district court to impose conditions of community supervision, or, in the case of the juvenile court, 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 provided in the parole board regulations. 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 department of community supervision through the parole board. The laws and regulations governing community supervision 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 postincarceration 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 postincarceration 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 postincarceration 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 department of community supervision. 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 of this chapter. 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 29. Section 178C of chapter 6 of the General Laws, as so appearing, is hereby amended by striking out, in lines 55-121, the definitions of “sex offense,” “sex offense involving a child” and “sexually violent offense”, and inserting in place thereof the following words:-

“Sex offense”, an indecent assault and battery on a child under 14 under section 13B of chapter 265; aggravated indecent assault and battery on a child under the age of 14 under section 13B½ of chapter 265; a repeat offense under section 13B¾ of chapter 265; indecent assault and battery on a mentally retarded person under section 13F of chapter 265; indecent assault and battery on a person age 14 or over under section 13H of chapter 265; rape under section 22 of chapter 265; rape of a child under 16 with force under section 22A of chapter 265; aggravated rape of a child under 16 with force under section 22B of chapter 265; a repeat offense under section 22C of chapter 265; rape and abuse of a child under section 23 of chapter 265; aggravated rape and abuse of a child under section 23A of chapter 265; a repeat offense under section 23B of chapter 265; assault with intent to commit rape under section 24 of chapter 265; assault of a child with intent to commit rape under section 24B of chapter 265; kidnapping of a child under section 26 of chapter 265; enticing a child under the age of 16 for the purposes of committing a crime under section 26C of chapter 265; enticing away a person for prostitution or sexual intercourse under section 2 of chapter 272; drugging persons for sexual intercourse under section 3 of chapter 272; inducing a minor into prostitution under section 4A of chapter 272; living off or sharing earnings of a minor prostitute under section 4B of chapter 272; second and subsequent adjudication or conviction for open and gross lewdness and lascivious behavior under section 16 of chapter 272, but excluding a first or single adjudication as a delinquent juvenile

1722 before August 1, 1992; incestuous marriage or intercourse under section 17 of chapter 272;
1723 disseminating to a minor matter harmful to a minor under section 28 of chapter 272; posing or
1724 exhibiting a child in a state of nudity under section 29A of chapter 272; dissemination of visual
1725 material of a child in a state of nudity or sexual conduct under section 29B of chapter 272;
1726 possession of child pornography under section 29C of chapter 272; unnatural and lascivious acts
1727 with a child under 16 under section 35A of chapter 272; aggravated rape under section 39 of
1728 chapter 277; or for conspiracy to commit any of these offenses, or for serving as an accessory
1729 thereto or attempting to commit a violation of any of the aforementioned sections pursuant to
1730 section 6 of chapter 274 or a like violation of the laws of another jurisdiction, state, the United
1731 States or a military, territorial or Indian tribal authority.

1732 “Sex offense involving a child”, an indecent assault and battery on a child under 14 under
1733 section 13B of chapter 265; aggravated indecent assault and battery on a child under the age of
1734 14 under section 13B½ of chapter 265; a repeat offense under section 13B¾ of chapter 265; rape
1735 of a child under 16 with force under section 22A of chapter 265; aggravated rape of a child under
1736 16 with force under section 22B of chapter 265; a repeat offense under section 22C of chapter
1737 265; rape and abuse of a child under section 23 of chapter 265; aggravated rape and abuse of a
1738 child under section 23A of chapter 265; a repeat offense under section 23B of chapter 265;
1739 assault of a child with intent to commit rape under section 24B of chapter 265; kidnapping of a
1740 child under the age of 16 under section 26 of chapter 265; enticing a child under the age of 16 for
1741 the purposes of committing a crime under section 26C of chapter 265; inducing a minor into
1742 prostitution under section 4A of chapter 272; living off or sharing earnings of a minor prostitute
1743 under section 4B of chapter 272; disseminating to a minor matter harmful to a minor under
1744 section 28 of chapter 272; posing or exhibiting a child in a state of nudity under section 29A of

1745 chapter 272; dissemination of visual material of a child in a state of nudity or sexual conduct
1746 under section 29B of chapter 272; possession of child pornography under section 29C of chapter
1747 272; unnatural and lascivious acts with a child under 16 under section 35A of chapter 272;
1748 aggravated rape under section 39 of chapter 277; or for conspiracy to commit any of these
1749 offenses, or for serving as an accessory thereto or attempting to commit a violation of any of the
1750 aforementioned sections pursuant to section 6 of chapter 274 or a like violation of the laws of
1751 another jurisdiction, state, the United States or a military, territorial or Indian tribal authority.

1752 “Sexually violent offense”, indecent assault and battery on a child under 14 under section
1753 13B of chapter 265; aggravated indecent assault and battery on a child under the age of 14 under
1754 section 13B½ of chapter 265; a repeat offense under section 13B¾ of chapter 265; indecent
1755 assault and battery on a mentally retarded person under section 13F of chapter 265; rape under
1756 section 22 of chapter 265; rape of a child under 16 with force under section 22A of chapter 265;
1757 aggravated rape of a child under 16 with force under section 22B of chapter 265; a repeat offense
1758 under section 22C of chapter 265; aggravated rape and abuse of a child under section 23A of
1759 chapter 265; a repeat offense under section 23B of chapter 265; assault with intent to commit
1760 rape under section 24 of chapter 265; assault of a child with intent to commit rape under section
1761 24B of chapter 265; drugging persons for sexual intercourse under section 3 of chapter 272;
1762 unnatural and lascivious acts with a child under 16 under section 35A of chapter 272; aggravated
1763 rape under section 39 of chapter 277; or for conspiracy to commit any of these offenses, or for
1764 serving as an accessory thereto or attempting to commit a violation of any of the aforementioned
1765 sections pursuant to section 6 of chapter 274 or a like violation of the law of another jurisdiction,
1766 state, the United States or a military, territorial or Indian tribal authority, or any other offense
1767 that the sex offender registry board determines to be a sexually violent offense.

1768 SECTION 30. Section 2 of chapter 211D, as so appearing, is hereby amended by striking
1769 out, in line 16, the words "probation department of the appointing court", and inserting in place
1770 thereof the following words:- department of community supervision.

1771 SECTION 31. Section 2 ½ of chapter 211D, as so appearing, is hereby amended by
1772 striking out, in lines 3, 7, 10, 13, 32, 33-34, 37, 41, 43, 44, 53, 65, 66, 83, each occurrence of the
1773 words "chief probation", and inserting in place thereof the following words:- community
1774 supervision.

1775 SECTION 32. Section 2 ½ of chapter 211D, as so appearing, is hereby further amended
1776 by striking out, in line 113, the words "office of the commissioner of probation", and inserting in
1777 place thereof the following words:- department of community supervision.

1778 SECTION 33. Section 5 of chapter 211D, as so appearing, is hereby amended by striking
1779 out, in lines 10-11, the words "from the probation officer a written report containing the
1780 probation officer's opinion", and inserting in place thereof the following words:- from the
1781 community supervision officer a written report containing the officer's opinion.

1782 SECTION 34. Chapter 211F of the General Laws is hereby repealed.

1783 SECTION 35. Section 81 of chapter 218, as so appearing, is hereby amended by
1784 inserting after the word "probation", in lines 9-10, the following words:- or community
1785 supervision.

1786 SECTION 36. Chapter 265 of the General Laws is hereby amended by striking out
1787 section 45 and inserting in place thereof the following section:-

1788 Section 45. Any person convicted of violating section 13B, 13B1/2, 13F, 13H, 22, 22A,
1789 22B, 23, 23A, 24, 24B or 26 of this chapter or of an attempt to violate any of those sections
1790 pursuant to section 6 of chapter 274, after 1 or more prior convictions of indecent assault and
1791 battery on a child under the age of 14, aggravated indecent assault and battery on a child under
1792 14, indecent assault and battery on a person 14 or older, assault of a child with intent to commit
1793 rape, rape of a child with force, aggravated rape of a child with force, rape and abuse of a child,
1794 aggravated rape and abuse of a child, rape, aggravated rape, assault with intent to commit rape,
1795 unnatural and lascivious acts, drugging for sex, kidnap or of any offense which is the same as or
1796 necessarily includes the same elements of the offense shall, in addition to the term of
1797 imprisonment authorized by such section, be punished by a term of community supervision for
1798 life, to be served under the jurisdiction of the parole board, as set forth in section 13 of chapter
1799 127A. The sentence of community supervision for life shall commence immediately upon the
1800 expiration of the term of imprisonment imposed upon such person by the court or upon such
1801 person's release from probation supervision or upon discharge from commitment to the treatment
1802 center pursuant to section 9 of chapter 123A, whichever occurs first.

1803 SECTION 37. Section 18 of Chapter 275 is hereby repealed.

1804 SECTION 38. Section 30 of chapter 276 of the General Laws, as so appearing, is hereby
1805 amended by inserting after the words "probation officer", in line 9, the following words:- or
1806 community supervision officer.

1807 SECTION 39. Section 42A of chapter 276 of the General Laws, as so appearing, is
1808 hereby amended by inserting after the word "probation", in line 14, the following words:- or
1809 community supervision.

1810 SECTION 40. Section 42A of chapter 276 of the General Laws, as so appearing, is
1811 hereby further amended by inserting after the word “probation”, in line 24, the following words:-
1812 or community supervision.

1813 SECTION 41. Section 42A of chapter 276 of the General Laws, as so appearing, is
1814 hereby further amended by inserting after the words “probation officer”, in line 28, the following
1815 words:- or community supervision officer.

1816 SECTION 42. Section 57 of chapter 276 of the General Laws, as so appearing, is hereby
1817 amended by inserting after the words “probation officer”, in line 42, the following words:- in
1818 juvenile or probate court, or designated court staff.

1819 SECTION 43. Chapter 276 of the General Laws, as so appearing, is hereby further
1820 amended by striking out section 58 and inserting in place thereof the following section:-

1821 Section 58. A justice or a clerk or assistant clerk of the district court, a bail commissioner
1822 or master in chancery, in accordance with the applicable provisions of section 57, shall, when a
1823 person is held under arrest or committed either with or without a warrant for an offense other
1824 than an offense punishable by death, or, upon the motion of the commonwealth, for an offense
1825 enumerated in section 58A or for any offense on which a warrant of arrest has been issued by the
1826 superior court, hold a hearing in which the defendant and his counsel, if any, may participate and
1827 inquire into the case and shall admit such person to bail on his personal recognizance without
1828 surety unless the justice, clerk or assistant clerk, bail commissioner or master in chancery
1829 determines, in the exercise of his discretion, that such a release will not reasonably assure the
1830 appearance of the person before the court. In his determination under this section as to whether
1831 release will reasonably assure the appearance of the person before the court, the justice, clerk or

1832 assistant clerk, bail commissioner or master in chancery shall, on the basis of any information
1833 which he can reasonably obtain, take into account the nature and circumstances of the offense
1834 charged, the potential penalty the person faces, the person's family ties, financial resources,
1835 employment record and history of mental illness, his reputation and the length of residence in the
1836 community, his record of convictions, if any, any illegal drug distribution or present drug
1837 dependency, any flight to avoid prosecution or fraudulent use of an alias or false identification,
1838 any failure to appear at any court proceeding to answer to an offense, whether the person is on
1839 bail pending adjudication of a prior charge, whether the acts alleged involve violation of a
1840 temporary or permanent order issued pursuant to sections 18 or 34B of chapter 208, section 32 of
1841 chapter 209, sections 3, 4, 5, or 32 of chapter 209, or sections 15 or 20 of chapter 209C, or abuse
1842 as defined in section 1 of chapter 209A, whether the person has any history of orders issued
1843 against him pursuant to the aforesaid sections, whether he is on probation, parole, or community
1844 supervision, or other release pending completion of sentence for any conviction, and whether he
1845 is on release pending sentence or appeal for any conviction.

1846 The person authorized to admit the person to bail shall provide as an explicit condition of
1847 release for any person admitted to bail pursuant to this section or section 57 of this chapter that,
1848 should the person be charged with a crime during the period of his release, his bail may be
1849 revoked in accordance with the third paragraph of this section. If the justice or clerk or assistant
1850 clerk of the district court, the bail commissioner or master in chancery determines that a cash bail
1851 is required, the person shall be allowed to provide an equivalent amount in a surety company
1852 bond. If the justice or clerk or assistant clerk of the district court, the bail commissioner or
1853 master in chancery determines it to be necessary, the defendant may be ordered to abide by
1854 specified restrictions on personal associations or conduct including, but not limited to, avoiding

1855 all contact with an alleged victim of the crime and any potential witness or witnesses who may
1856 testify concerning the offense, as a condition of release.

1857 A person, before being released on personal recognizance without surety, shall be
1858 informed by the person authorized to admit such person to bail of the penalties provided by
1859 section 82A of this chapter if he fails without sufficient excuse to appear at the specified time
1860 and place in accordance with the terms of his recognizance. A person authorized to take bail may
1861 charge the fees authorized by section 24 of chapter 262, if he goes to the place of detention of the
1862 person to make a determination provided for in this section although the person is released on his
1863 personal recognizance without surety. The fees shall not be charged by any clerk or assistant
1864 clerk of a district court during regular working hours.

1865 A person aforesaid charged with an offense and not released on his personal recognizance
1866 without surety by a clerk or assistant clerk of the district court, a bail commissioner or master in
1867 chancery shall forthwith be brought before the next session of the district court for a review of
1868 the order to recognize in accordance with the standards set forth in the first paragraph of this
1869 section. The court shall provide as an explicit condition of release for any person admitted to bail
1870 pursuant to this section or section 57 that should the person be charged with a crime during the
1871 period of his release, his bail may be revoked in accordance with this paragraph and the court
1872 shall enter in writing on the court docket that the person was so informed and the docket shall
1873 constitute prima facie evidence that the person was so informed. If a person is on release pending
1874 the adjudication of a prior charge, and the court before which the person is charged with
1875 committing a subsequent offense after a hearing at which the person shall have the right to be
1876 represented by counsel, finds probable cause to believe that the person has committed a crime
1877 during the period of release, the court shall then determine, in the exercise of its discretion,

1878 whether the release of the person will seriously endanger any person or the community. In
1879 making the determination, the court shall consider the gravity, nature and circumstances of the
1880 offenses charged, the person's record of convictions, if any, and whether the charges or
1881 convictions are for offenses involving the use or threat of physical force or violence against any
1882 person, whether the person is on probation, parole, or community supervision, or other release
1883 pending completion of sentence for any conviction, whether he is on release pending sentence or
1884 appeal for any conviction, the person's mental condition, and any illegal drug distribution or
1885 present drug dependency. If the court determines that the release of the person will seriously
1886 endanger any person or the community and that the detention of the person is necessary to
1887 reasonably assure the safety of any person or the community, the court may revoke bail on the
1888 prior charge and may order the person held without bail pending the adjudication of the prior
1889 charge, for a period not to exceed 60 days. The hearing shall be held upon the person's first
1890 appearance before the court before which the person is charged with committing an offense
1891 while on release pending adjudication of a prior charge, unless that person, or the attorney for the
1892 commonwealth, seeks and the court allows, a continuance because a witness or document is not
1893 immediately available. Except for good cause, a continuance on motion of the person shall not
1894 exceed 7 days and on motion of the attorney for the commonwealth may not exceed 3 business
1895 days. During such continuance, the person may be detained consistent with the provisions of this
1896 section. The order shall state in writing the reasons therefor and shall be reviewed by the court
1897 upon the acquittal of the person, or the dismissal of, any of the cases involved. A person so held
1898 shall be brought to trial as soon as reasonably possible. A person aggrieved by the denial of a
1899 district court justice to admit him to bail on his personal recognizance without surety may
1900 petition the superior court for a review of the order of the recognizance and the justice of the

1901 district court shall thereupon immediately notify such person of his right to file a petition for
1902 review in the superior court. When a petition for review is filed in the district court or with the
1903 detaining authority subsequent to petitioner's district court appearance, the clerk of the district
1904 court or the detaining authority, as the case may be, shall immediately notify by telephone, the
1905 clerk, the juvenile probation officer or the community supervision officer whichever is
1906 applicable, the district attorney for the district in which the district court is located, the
1907 prosecuting officer, the petitioner's counsel, if any, and the clerk of courts of the county to which
1908 the petition is to be transmitted. The clerk of the district court, upon the filing of a petition for
1909 review, either in the district court or with the detaining authority, shall forthwith transmit the
1910 petition for review, a copy of the complaint and of the record of the court, including the
1911 appearance of the attorney, if any is entered, and a summary of the court's reasons for denying
1912 the release of the defendant on his personal recognizance without surety to the superior court for
1913 the county in which the district court is located, if a justice thereof is then sitting, or to the
1914 superior court of the nearest county in which a justice is then sitting; the clerk of the district court
1915 shall transmit forthwith to the clerk of the superior court, copies of all relevant records of the
1916 district court pertaining to the petitioner, including the petitioner's record of prior convictions, if
1917 any, as currently verified by inquiry of the designated court staff. The district court or the
1918 detaining authority, as the case may be, shall cause any petitioner in its custody to be brought
1919 before the superior court on the same day the petition shall have been filed, unless the district
1920 court or the detaining authority shall determine that such appearance and hearing on the petition
1921 cannot practically take place before the adjournment of the sitting of the superior court for that
1922 day and in which event, the petitioner shall be caused to be brought before the court for such
1923 hearing during the morning of the next business day of the sitting of the superior court. The

1924 district court is authorized to order any officer authorized to execute criminal process to transfer
1925 the petitioner and any papers herein above described from the district court or the detaining
1926 authority to the superior court, and to coordinate the transfer of the petitioner and the papers by
1927 such officer. The petition for review shall constitute authority in the person or officer having
1928 custody of the petitioner to transport the petitioner to the superior court without the issuance of
1929 any writ or other legal process, provided, however, that any district or superior court is
1930 authorized to issue a writ of habeas corpus for the appearance forthwith of the petitioner before
1931 the superior court.

1932 The superior court shall in accordance with the standards set forth in the first paragraph
1933 of this section, hear the petition for review as speedily as practicable and except for unusual
1934 circumstances, on the same day the petition is filed; provided, however, that the court may
1935 continue the hearing to the next business day if the required records and other necessary
1936 information are not available. The justice of the superior court may, after a hearing on the
1937 petition for review, order that the petitioner be released on bail on his personal recognizance
1938 without surety, or, in his discretion, to reasonably assure the effective administration of justice,
1939 make any other order of bail or recognizance or remand the petitioner in accordance with the
1940 terms of the process by which he was ordered committed by the district court.

1941 If a defendant has posted bail in the district court and has subsequently been arraigned in
1942 the superior court for the same offense, the superior court clerk shall notify the district court
1943 clerk holding the defendant's bail of such arraignment. Upon such notification, the amount of
1944 any bail bond posted by a defendant in the district court shall be carried over to a bail bond
1945 required by the superior court. The superior court justices' discretion in setting the amount of
1946 bail shall not be affected by the provisions of this paragraph.

1947 Except where the defendant has defaulted on his recognizance or has been surrendered by
1948 a probation officer, community supervision officer, or designated court staff an order of bail or
1949 recognizance shall not be revoked, revised or amended by the district court, because the
1950 defendant has been bound over to the superior court; provided, however, that if any court, in its
1951 discretion, finds that changed circumstances or other factors not previously known or considered,
1952 make the order of bail or recognizance ineffective to reasonably assure the appearance of the
1953 defendant before the court, the court may make a further order of bail, either by increasing the
1954 amount of the recognizance or requiring sufficient surety or both, which order will not revoke the
1955 order of bail or recognizance previously in force and effect. The court may also review such
1956 changed circumstances or other factors not previously known or considered in accordance with
1957 the third paragraph of this section.

1958 The chief justice of the district court department and the chief justice of the Boston
1959 municipal court department shall prescribe forms for use in their respective courts, for the
1960 purpose of notifying a defendant of his right to file a petition for review in the superior court,
1961 forms for a petition for review and forms for the implementation of any other procedural
1962 requirements. The clerk of courts shall forthwith notify the district court of all orders or
1963 judgments of the superior court on petitions for review. Costs or expenses of services and
1964 transportation under this section shall be ordered paid in the amount determined by the superior
1965 court out of the state treasury.

1966 For an offense enumerated in section 58A, and upon the motion of an attorney for the
1967 commonwealth for an order of pretrial detention or imposition of conditions of release based on
1968 dangerousness, a justice of the district or superior court shall hold a hearing pursuant to the
1969 provisions of subsection (4) of section 58A and shall admit such person to bail on his personal

1970 recognizance without surety or subject to conditions of release unless the justice, determines, in
1971 the exercise of his discretion, that such release will endanger the safety of any other person or the
1972 community.

1973 SECTION 44. Section 58A of chapter 276 of the General Laws, as so appearing, is
1974 hereby amended by striking out subsection (1) and inserting in place thereof the following
1975 subsection:-

1976 (1) The commonwealth may move, based on dangerousness, for an order of pretrial
1977 detention or release on conditions for a felony offense that has as an element of the offense the
1978 use, attempted use or threatened use of physical force against the person of another or any other
1979 felony that, by its nature, involves a substantial risk that physical force against the person of
1980 another may result, including the crimes of burglary and arson whether or not a person has been
1981 placed at risk thereof, or a violation of an order pursuant to section 18, 34B or 34C of chapter
1982 208, section 32 of chapter 209, section 3, 4 or 5 of chapter 209 A or section 15 or 20 of chapter
1983 209C, or arrested and charged with a misdemeanor or felony involving abuse as defined in
1984 section 1 of chapter 209A or while an order of protection issued under chapter 209A was in
1985 effect against such person, an offense for which a mandatory minimum term of 3 years or more
1986 is prescribed in chapter 94C, arrested and charged with a violation of section 13B of chapter 268
1987 or a third or subsequent conviction for a violation of section 24 of chapter 90, or arrested and
1988 charged with a violation of paragraph (a), (c) or (m) of section 10 of chapter 269; provided,
1989 however, that the commonwealth may not move for an 882 order of detention under this section
1990 based on possession of a large capacity feeding device without simultaneous possession of a
1991 large capacity weapon; or arrested and charged with a violation of section 10G of chapter 269.

SECTION 45. Section 58A of chapter 276 of the General Laws, as so appearing, is hereby amended by striking out subsection (7) and inserting in place thereof the following subsection:-

(7) A person aggrieved by the denial of a district court justice to admit him to bail on his personal recognizance with or without surety may petition the superior court for a review of the order of the recognizance and the justice of the district court shall thereupon immediately notify such person of his right to file a petition for review in the superior court. When a petition for review is filed in the district court or with the detaining authority subsequent to the petitioner's district court appearance, the clerk of the district court or the detaining authority, as the case may be, shall immediately notify by telephone, the clerk of the district court, the district attorney for the district in which the district court is located, the prosecuting officer, the petitioner's counsel, if any, and the clerk of courts of the county to which the petition is to be transmitted. The clerk of the district court, upon the filing of a petition for review, either in the district court or with the detaining authority, shall forthwith transmit the petition for review, a copy of the complaint and the record of the court, including the appearance of the attorney, if any is entered, and a summary of the court's reasons for denying the release of the defendant on his personal recognizance with or without surety to the superior court for the county in which the district court is located, if a justice thereof is then sitting, or to the superior court of the nearest county in which a justice is then sitting. The clerk of the district court shall transmit forthwith to the clerk of the superior court, copies of all relevant records of the district court pertaining to the petitioner, including the petitioner's record of prior convictions, if any, as currently verified by inquiry of the district court. The district court or the detaining authority, as the case may be, shall cause any petitioner in its custody to be brought before the superior court within 2 business days of the petition

having been filed. The district court is authorized to order any officer authorized to execute criminal process to transfer the petitioner and any papers described above from the district court or the detaining authority to the superior court, and to coordinate the transfer of the petitioner and the papers by such officer. The petition for review shall constitute authority in the person or officer having custody of the petitioner to transport the petitioner to the superior court without the issuance of any writ or other legal process; provided, however, that any district or superior court is authorized to issue a writ of habeas corpus for the appearance forthwith of the petitioner before the superior court.

The superior court shall in accordance with the standards set forth in section 58A, hear the petition for review under section 58A as speedily as practicable and in any event within 5 business days of the filing of the petition. The justice of the superior court hearing the review may consider the record below which the commonwealth and the person may supplement. The justice of the superior court may, after a hearing on the petition for review, order that the petitioner be released on bail on his personal recognizance without surety, or, in his discretion, to reasonably assure the effective administration of justice, make any other order of bail or recognizance or remand the petitioner in accordance with the terms of the process by which he was ordered committed by the district court.

SECTION 46. Section 58B of chapter 276 of the General Laws, as so appearing, is hereby amended by striking out, in line 33, the words “or probation” and inserting in place thereof the following words:- the probation department in the juvenile or probate court or the department of community supervision.

SECTION 47. Chapter 276 of the General Laws, as so appearing, is hereby further amended by inserting after section 58B the following section:-

Section 58C. The sheriff of any county or the commissioner of correction, subject to rules and regulations established in accordance with the provisions of this section, may permit a detainee who is subject to a court order of bail, except those being held for offenses listed in this section, to be classified to a pretrial diversion program operated by the sheriff's office in the county of the court ordering the bail. The pretrial diversion program shall include electronic monitoring; provided further, that the sheriff's office may prescribe a program administrative fee to be paid by each sentenced inmate or pre-trial detainee participating in the program that shall be determined according to the person's ability to pay, finances, household income, number of dependents and medical status. The inability to pay all or a portion of the program fees shall not preclude participation in the program and eligibility shall not be enhanced by reason of ability to pay. For those deemed unable to pay, the sheriff's office shall agree to cover the cost for participants at a reduced and agreed upon rate with the electronic monitoring agency or entity.

The sheriff may extend the limits of the place of confinement of a detainee for the purpose of participation in this program and shall establish a classification system to determine the suitability of detainees who may be potential participants in this program. A person permitted to be away from the jail due to participation in this program may be accompanied by an employee of the sheriff's office in the discretion of the sheriff or his designee.

For the duration of his participation in the program, the detainee shall be deemed to be in custody as a pretrial detainee for the purpose of receiving credit pursuant to section 129B of chapter 127 and section 33A of chapter 279 toward any sentence he may receive, and may be

charged with escape pursuant to section 16 of chapter 268 should he leave the place to which he is classified to pursuant to his participation in the program without authorization or should they escape from custody while they are being transported pursuant to their participation in the program. Additionally for the duration of his participation in this program only, the detainee may receive additional deductions from any sentence that may be imposed in the matter on which he was committed, for participation in work, education, or treatment programs designated by the sheriff pursuant to section 129D of chapter 127.

A detainee shall not be eligible to participate in this program if he is:

detained under subsection (3) of section 58A of chapter 276; charged with a felony offense that has an element of the offense the use, attempted use, or threatened use of physical force against the person of another, or any other felony that by its nature involves a substantial risk that physical force against the person of another may result, including the crime of burglary and arson whether or not a person has been placed at risk thereof, or a violation of an order pursuant to section 18, 34B or 34C of chapter 208, section 32 of chapter 209, section 3, 4 or 5 of chapter 209A, or section 15 or 20 of chapter 209C, or arrested and charged with a misdemeanor or felony involving abuse as defined in section 1 of chapter 209A or while an order of protection issued under chapter 209A was in effect against the person, an offense for which a mandatory minimum term of 3 years or more is prescribed in chapter 94C, arrested and charged with a violation of section 13B of chapter 268 or a third or subsequent conviction for a violation of section 24 of chapter 90. Placement of an individual in such program shall require victim notification as required under subsection (t) of section 3 of chapter 258B.

SECTION 48. Sections 83, 96 and 102 of chapter 276 are hereby repealed.

SECTION 49. Chapter 276 of the General Laws, as so appearing, is hereby amended by striking out section 85 and inserting in place thereof the following section:-

Section 85. Each person who receives an appointment as a probation officer shall, within 6 months of the date of his appointment, attend a basic orientation training course conducted by the commissioner of probation pursuant to section 99. All probation officers shall attend at least every 3 years an in-service training course pursuant to this section. In addition to the other duties imposed upon him, each probation officer shall, as the court may direct, inquire into the nature of every juvenile case brought before the court under the appointment of which he acts, and inform the court, so far as is possible, of prior delinquency or youthful offender involving the juvenile before the court. Such record of the probation officer shall also be made available to the juvenile and the juvenile's counsel for inspection. He may recommend to the justice of his own court that any juvenile found delinquent be placed on probation. He shall perform such other duties as the court requires. He shall keep full records of all cases investigated by him or placed in his care by the court, and of all duties performed by him. Every person released upon probation shall be given by the probation officer a written statement of the terms and conditions of the release.

SECTION 50. Chapter 276 of the General Laws, as so appearing, is hereby amended by striking out section 87 and inserting in place thereof the following section:-

Section 87. The superior, municipal or district court may place on community supervision in the care of a community supervision officer any person before it charged with an offense or a crime for such time and upon such conditions as it deems proper, with the defendant's consent, before trial and before a plea of guilty, or in any case after a finding or verdict of guilty; provided, that, in the case of any child under the age of 17 placed upon community supervision

2102 by the superior court, he may be placed in the care of a probation officer of any juvenile court or
2103 any juvenile session of the district court, within the judicial district of which such child resides;
2104 and provided further, that no person convicted under section 22A or 24B of chapter 265 or
2105 section 35A of chapter 272 shall, if it appears that he has previously been convicted under those
2106 sections and was 18 years of age or older at the time of committing the offense for which he was
2107 so convicted, be released on community supervision prior to the completion of 5 years of his
2108 sentence. Any juvenile court and any juvenile session of the district or municipal court may place
2109 on probation in the care of its probation officer any juvenile before it charged with an offense or
2110 a crime for such time and upon such conditions as it deems proper, with the juvenile's consent,
2111 before trial and before a plea of guilty, or in any case after a finding or verdict of guilty.

2112 SECTION 51. Chapter 276 of the General Laws, as so appearing, is hereby amended by
2113 striking out section 87A and inserting in place thereof the following section:-

2114 Section 87A. The conditions of probation imposed by a court upon a juvenile under
2115 section 87 of this chapter, section 58 of chapter 119 or section 1 or section 1A of chapter 279,
2116 may include, but shall not be limited to, participation by the person in specified rehabilitative
2117 programs or performance by the juvenile of specified community service work for a stated period
2118 of time.

2119 SECTION 52. Chapter 276 of the General Laws, as so appearing, is hereby amended by
2120 striking out section 88 and inserting in place thereof the following section:-

2121 Section 88. Every juvenile court and juvenile session of the district court appointing
2122 probation officers may employ such clerical assistance as it deems necessary to keep, index and
2123 consolidate the records required to be kept by probation officers and for such other work in

2124 connection with its probation service as the court may determine. The compensation for such
2125 service, together with such other necessary expenses as the court shall incur in connection with
2126 such work, shall be paid by the commonwealth upon vouchers approved by the court.

2127 The administrative justices for the district court and juvenile court departments, in
2128 consultation with the commissioner of probation, may designate and redesignate such juvenile
2129 divisions thereof, including in such term the Boston juvenile court, the Worcester juvenile court,
2130 the Bristol county juvenile court and the Springfield juvenile court, within each of the counties of
2131 the commonwealth as in the opinion of the administrative justices should join in the
2132 establishment of a probation district office for the clerical service of the probation officers of the
2133 divisions thereof so designated or redesignated and the divisions so designated or redesignated
2134 shall thereupon consult with the chief administrative justice of the trial court and the
2135 commissioner of probation as to the establishment of such a probation district office, and shall
2136 join in the employment of such clerical assistance as is necessary to keep, index and consolidate
2137 the records in such form as may be required by the commissioner of probation in connection with
2138 the probation service of the courts. The compensation for such service, together with such other
2139 necessary expenses as the courts shall incur in connection with such work, shall be paid by the
2140 commonwealth upon vouchers approved by 1 of the justices of the courts, designated by the
2141 administrative justices.

2142 SECTION 53. Section 89 of chapter 276 of the General Laws, as so appearing, is hereby
2143 amended by striking out, in line 1, the words “The superior court or the justice of a district
2144 court”, and inserting in place thereof the following words:- The juvenile court and the justice of
2145 a juvenile session of the district court.

2146 SECTION 54. Section 89 of chapter 276 of the General Law, as so appearing, is hereby
2147 further amended by striking out, in line 31, the words “The justice of a district court”, and
2148 inserting in place thereof the following words:- The juvenile court the justice of a juvenile
2149 session of the district court.

2150 SECTION 55. Section 90 of chapter 276 of the General Laws, as so appearing, is hereby
2151 amended by striking out, in lines 4-5, the words “, and if appointed by the superior court may, by
2152 its direction, act in any part of the commonwealth”.

2153 SECTION 56. Section 92 of chapter 276 of the General Laws, as so appearing, is hereby
2154 amended by striking out, in line 1, the word “person”, and inserting in place thereof the
2155 following word:- juvenile.

2156 SECTION 57. Section 93 of chapter 276 of the General Laws, as so appearing, is hereby
2157 amended by striking out, in lines 2-3, the words “probation officer under order of the court by
2158 which he is appointed”, and inserting in place thereof the following words:- probation officer
2159 under order of the juvenile or probate court by which he is appointed, or community supervision
2160 officer.

2161 SECTION 58. Chapter 276 is hereby amended by striking out section 94 and inserting in
2162 place thereof the following section:-

2163 Section 94. The reasonable expenses, including supplies and equipment, incurred by
2164 probation officers of the probate court in the performance of their duties shall be approved and
2165 apportioned by the court, and paid by the commonwealth. Such reasonable expenses shall
2166 include the traveling expenses necessarily incurred by such a probation officer in connection
2167 with attendance at sessions of the court outside of the town in which the principal office of such

2168 probation officer is maintained, such expenses to be computed from and to the town. Money to
2169 be used for the necessary expenses to be incurred by such a probation officer in going outside the
2170 commonwealth for the purpose of bringing back for surrender to the court a person who is on
2171 probation shall be advanced by the treasurer of the commonwealth, upon presentation of a
2172 certificate signed by the probation officer and approved by the court. After his return such
2173 probation officer shall account for such money by filing with the state treasurer itemized
2174 vouchers, duly sworn to, approved by the court, setting forth the necessary expenses so incurred
2175 and any unexpended balance of such money shall be paid to the state treasurer. Subject to section
2176 81 of chapter 218, probation officers of juvenile courts or the juvenile sessions of the district
2177 courts shall be reimbursed by the commonwealth for their actual disbursements for necessary
2178 expenses incurred while in the performance of their duties, including their reasonable traveling
2179 expenses in attending conferences authorized by section 99 of this chapter, not exceeding \$400
2180 to each in any 1 year, upon vouchers approved by the court by which they are appointed.

2181 SECTION 59. Chapter 276 is hereby amended by striking out section 95 and inserting in
2182 place thereof the following section:-

2183 Section 95. The superior courts or the Boston, Springfield, Bristol county and Worcester
2184 juvenile courts or a district court may authorize a community supervision or probation officer to
2185 expend such amount as the court considers expedient for the temporary support or transportation,
2186 or both, of a person placed on community supervision or probation. A record of any amount so
2187 authorized shall be entered on the clerk's docket of the case.

2188 SECTION 60. Section 97 of chapter 276 of the General Laws, as so appearing, is hereby
2189 amended by inserting after the words “a probation officer”, in line 2, the following words:- of the
2190 juvenile or probate court, or a community supervision officer.

2191 SECTION 61. Section 99 of chapter 276 of the General Laws, as so appearing, is hereby
2192 amended by striking out, in line 2, the words “in all of the courts”, and inserting in place thereof
2193 the following words:- in all of the probate courts, juvenile courts and juvenile sessions of the
2194 district courts.

2195 SECTION 62. Section 99B of chapter 276 of the General Laws, as so appearing, is
2196 hereby amended by striking out, in line 1, the words “in those courts or regions”, and inserting
2197 in place thereof the following words:- in those probate courts, juvenile courts or juvenile sessions
2198 of the district courts.

2199 SECTION 63. Section 99E of chapter 276, of the General Laws, as so appearing, is
2200 hereby amended by striking out , in lines 5, 9 and 10, the words, “The commissioner of
2201 probation”, and inserting in place thereof the following words:- The administrative office of the
2202 trial court.

2203 SECTION 64. Chapter 276 is hereby amended by striking out section 100 and inserting
2204 in place thereof the following section:-

2205 Section 100. Every probation officer, or the chief or senior probation officer of a court
2206 having more than 1 probation officer, shall transmit to the commissioner of probation, in such
2207 form and at such times as he shall require, detailed reports regarding the work of probation in the
2208 probate court, juvenile courts, and juvenile sessions of the district court; and under the direction
2209 of the commissioner a record shall be kept of all such cases as the commissioner may require for

2210 the information of the justices and probation officers. Police officials shall co-operate with the
2211 commissioner and the probation officers in obtaining and reporting information concerning
2212 persons supervised by the office of the commissioner of probation. The information so obtained
2213 and recorded shall not be regarded as a public record and shall not be open for public inspection
2214 but shall be accessible to the justices and probation officers of the courts, to the police
2215 commissioner for the city of Boston, to all chiefs of police and city marshals, and to such
2216 departments of the state and local governments as the commissioner may determine appropriate.
2217 Upon payment of a fee of \$3.00 for each search, such records shall be accessible to such
2218 departments of the federal government and to such educational and charitable corporations and
2219 institutions as the commissioner may determine appropriate. The department of youth services
2220 shall at all times give to the commissioner and the probation officers such information as may be
2221 obtained from the records concerning persons committed to the department of youth services or
2222 who have been released. The commissioner may use systems operated by the criminal history
2223 systems board, pursuant to sections 167 to 178, inclusive, of chapter 6, for any record-keeping
2224 lawfully required by him provided that such records remain subject to the regulations of the
2225 board.

2226 SECTION 65. Chapter 276 of the General Laws, as so appearing, is hereby amended by
2227 striking out section 100A and inserting in place thereof the following section:-

2228 Section 100A. Any person having a record of criminal court appearances and dispositions
2229 in the commonwealth may, on a form furnished by the administrative office of the trial court and
2230 signed under the penalties of perjury, request that the court seal the record in its files. The court
2231 shall comply with the request provided that: (1) the person's court appearance and court
2232 disposition records, including any period of incarceration or custody as defined in section 1 of

chapter 125 for any misdemeanor record to be sealed occurred not less than 5 years before the request; (2) the person's court appearance and court disposition records, including any period of incarceration or custody as defined in section 1 of chapter 125 for any felony record to be sealed occurred not less than 10 years before the request; (3) the person had not been found guilty of any criminal offense within the commonwealth in the case of a misdemeanor, 5 years before the request, and in the case of a felony, 10 years before the request, except motor vehicle offenses in which the penalty does not exceed a fine of \$50; (4) the form includes a statement by the petitioner that he has not been convicted of any criminal offense in any other state, United States possession or in a court of federal jurisdiction, except such motor vehicle offenses, as aforesaid, and has not been imprisoned in any state or county in the case of a misdemeanor, within the preceding 5 years, and in the case of a felony, within the preceding 10 years; and (5) the person's record does not include convictions of offenses other than those to which this section applies. This section shall apply to court appearances and dispositions of all offenses; provided, however, that this section shall not apply in case of convictions for violations of sections 121 to 131H, inclusive, of chapter 140 or for violations of chapter 268 or chapter 268A.

In carrying out the provisions of this section, notwithstanding any laws to the contrary:

(1) Any recorded offense which was a felony when committed and has since become a misdemeanor shall be treated as a misdemeanor.

(2) Any recorded offense which is no longer a crime shall be eligible for sealing forthwith, except in cases where the elements of the offense continue to be a crime under a different designation.

2254 (3) In determining the period for eligibility, any subsequently recorded offenses for
2255 which the dispositions are “not guilty”, “dismissed for want of prosecution”, “dismissed at
2256 request of complainant”, “nol prossed”, or “no bill” shall not be held to interrupt the running of
2257 the required period for eligibility.

2258 (4) If it cannot be ascertained that a recorded offense was a felony when committed the
2259 offense shall be treated as a misdemeanor.

2260 (5) Any violation of section 7 of chapter 209A shall be treated as a felony.

2261 (6) Sex offenses, as defined in section 178C of chapter 6, shall not be eligible for sealing
2262 for 15 years following their disposition, including termination of supervision, probation or any
2263 period of incarceration, or for so long as the offender is under a duty to register in the
2264 commonwealth or in any other state where the offender resides or would be under such a duty if
2265 residing in the commonwealth, whichever is longer.

2266 When records of criminal appearances and criminal dispositions are sealed by the court in
2267 its files, the court shall notify forthwith the criminal history systems board, which likewise shall
2268 seal records of the same proceedings in the criminal justice information system files.

2269 Such sealed records shall not operate to disqualify a person in any examination,
2270 appointment or application for public service in the service of the commonwealth or of any
2271 political subdivision thereof; nor shall such sealed records be admissible in evidence or used in
2272 any way in any court proceedings or hearings before any boards or commissions, except in
2273 imposing a sentence in subsequent criminal proceedings, and except that in any proceedings
2274 under sections 1 to 39I, inclusive, of chapter 119, sections 2 to 5, inclusive, of chapter 201,
2275 chapters 208, 209, 209A, 209B, 209C, or sections 1 to 11A, inclusive, of chapter 210, a party

2276 having reasonable cause to believe that information in a sealed criminal record of another party
2277 may be relevant to (1) an issue of custody or visitation of a child, (2) abuse, as defined in section
2278 1 of chapter 209A or (3) the safety of any person may upon motion seek to introduce the sealed
2279 record into evidence. The judge shall first review such records in camera and determine those
2280 records that are potentially relevant and admissible. The judge shall then conduct a closed
2281 hearing on the admissibility of those records determined to be potentially admissible; provided,
2282 however, that such records shall not be discussed in open court and, if admitted, shall be
2283 impounded and made available only to the parties, their attorneys and court personnel who have
2284 a demonstrated a need to receive them.

2285 An application for employment used by an employer which seeks information concerning
2286 prior arrests or convictions of the applicant shall include the following statement: “An applicant
2287 for employment with a sealed record on file with the court may answer ‘no record’ with respect
2288 to an inquiry herein relative to prior arrests, criminal court appearances or convictions. In
2289 addition, any applicant for employment may answer ‘no record’ with respect to any inquiry
2290 relative to prior arrests, court appearances and adjudications in all cases of delinquency or as a
2291 child in need of services which did not result in a complaint transferred to the superior court for
2292 criminal prosecution.” The attorney general may enforce the provisions of this paragraph by a
2293 suit in equity commenced in the superior court.

2294 The court, in response to inquiries by authorized persons other than any law enforcement
2295 agency or any appointing authority, shall in the case of a sealed record or in the case of court
2296 appearances and adjudications in a case of delinquency or the case of a child in need of services
2297 which did not result in a complaint transferred to the superior court for criminal prosecution,
2298 report that no record exists.

2299 SECTION 66. Chapter 276 as so appearing, is hereby amended by striking out section
2300 100B and inserting in place thereof the following section:-

2301 Section 100B. Any person having a record of entries of a delinquency court appearance
2302 in the commonwealth may, on a form furnished by the administrative office of the trial court,
2303 signed under the penalties of perjury, request that the court seal the record in its files. The court
2304 shall comply with such request provided: (1) that any court appearance or disposition including
2305 court supervision, probation, community supervision, commitment or parole, the records for
2306 which are to be sealed, terminated not less than 3 years before the request; (2) that the person has
2307 not been adjudicated delinquent or found guilty of any criminal offense within the
2308 commonwealth in the 3 years preceding such request, except motor vehicle offenses in which the
2309 penalty does not exceed a fine of \$50 nor been imprisoned under sentence or committed as a
2310 delinquent within the commonwealth within the preceding 3 years; and (3) the form includes a
2311 statement by the petitioner that he has not been adjudicated delinquent or found guilty of any
2312 criminal offense in any other state, United States possession or in a court of federal jurisdiction,
2313 except such motor vehicle offenses as aforesaid, and has not been imprisoned under sentence or
2314 committed as a delinquent in any state or county within the preceding 3 years.

2315 When records of delinquency appearances and delinquency dispositions are sealed by the
2316 court in its files, the court shall notify forthwith the criminal history systems board, which
2317 likewise shall seal records of the same proceedings in the criminal justice information system
2318 files.

2319 Such sealed records of a person shall not operate to disqualify a person in any future
2320 examination, appointment or application for public service under the government of the

2321 commonwealth or of any political subdivision thereof; nor shall such sealed records be
2322 admissible in evidence or used in any way in any court proceedings or hearings before any
2323 boards of commissioners, except in imposing sentence for subsequent offenses in delinquency or
2324 criminal proceedings.

2325 Notwithstanding any other provision to the contrary, the court shall report such sealed
2326 delinquency record to inquiring police and court agencies only as “sealed delinquency record
2327 over 3 years old” and to other authorized persons who may inquire as “no record”. The
2328 information contained in the sealed delinquency record shall be made available to a judge or
2329 probation or community supervision officer who affirms that such person, whose record has been
2330 sealed, has been adjudicated a delinquent or has pleaded guilty or has been found guilty of and is
2331 awaiting sentence for a crime committed subsequent to the sealing of such record. The
2332 information shall be used only for the purpose of consideration in imposing the sentence.

2333 SECTION 67. Chapter 276, as so appearing, is hereby amended by striking out section
2334 100C and inserting in place thereof the following section:-

2335 Section 100C. In any criminal case wherein the defendant has been found not guilty by
2336 the court or jury, or a no bill has been returned by the grand jury, or a finding of no probable
2337 cause has been made by the court, the court shall seal the court appearance and disposition
2338 recorded in its files. The provisions of this paragraph shall not apply if the defendant makes a
2339 written request to the court to keep the records of the proceedings unsealed.

2340 In any criminal case wherein a nolle prosequi has been entered, or a dismissal has been
2341 entered by the court, and it appears to the court that substantial justice would best be served, the
2342 court shall seal the records of the proceedings in its files. The court shall notify forthwith the

2343 criminal history systems board, which likewise shall seal records of the same proceedings in the
2344 criminal justice information system files.

2345 Such sealed records shall not operate to disqualify a person in any examination,
2346 appointment or application for public employment in the service of the commonwealth or of any
2347 political subdivision thereof.

2348 An application for employment used by an employer which seeks information concerning
2349 prior arrests or convictions of the applicant shall include in addition to the statement required
2350 under section 100A the following statement: “An applicant for employment with a sealed record
2351 on file with the commissioner of probation may answer ‘no record’ with respect to an inquiry
2352 herein relative to prior arrests or criminal court appearances.” The attorney general may enforce
2353 the provisions of this section by a suit in equity commenced in the superior court.

2354 The court, in response to inquiries by authorized persons other than any law enforcement
2355 agency, shall in the case of a sealed record report that no record exists. After a finding or verdict
2356 of guilty on a subsequent offense such sealed record, with the exception of a not guilty, a no bill,
2357 or a no probable cause, shall be made available by the court to criminal justice agencies.

2358 SECTION 68. Chapter 276, as so appearing, is hereby amended by inserting after section
2359 100C the following section:-

2360 Section 100D. Notwithstanding any provision of section 100A, 100B, or 100C of this
2361 chapter, criminal justice agencies as defined in section 167 of chapter 6 shall have immediate
2362 access to, and be permitted to use as necessary for the performance of their criminal justice
2363 duties, any sealed criminal offender record information as defined in section 167 of chapter 6 and

2364 any sealed information concerning criminal offenses or acts of delinquency committed by any
2365 person before he attained the age of 17.

2366 SECTION 69. All criminal or juvenile delinquency records maintained by the office of
2367 the commissioner of probation as of the effective date of this chapter, including the statewide
2368 domestic violence record keeping system established in section 7 of chapter 188 of the acts of
2369 1992, are hereby transferred to the administrative office of the trial court to own, administer,
2370 operate and control.

2371 SECTION 70. Section 101A of chapter 276 of the General Laws, as so appearing, is
2372 hereby amended by striking, in lines 2-3, the words, “district courts”, and inserting in place
2373 thereof the following words:- probate courts, juvenile courts and juvenile sessions of the district
2374 court.

2375 SECTION 71. Section 101A of chapter 276 of the General Laws, as so appearing, is
2376 hereby further amended by striking out in line 7, the words “district and”, and inserting in place
2377 thereof the following words:- district, probate or.

2378 SECTION 72. Chapter 276A of the General Laws, as so appearing, is hereby amended
2379 by striking out section 1 and inserting in place thereof the following section:-

2380 Section 1. The following words, as used in this chapter, unless the context otherwise
2381 requires, shall have the following meanings:

2382 “Assessment”, a thorough and complete measurement of the needs of an individual in,
2383 but not limited to, the following areas: education, vocational training, job placement, mental and

2384 physical health, family and social services, and an analysis of a defendant's commitment to
2385 participate in a program of community supervision and services.

2386 "Commissioner", the commissioner of community supervision.

2387 "Director", the person in charge of the operation of a program of community supervision
2388 and services.

2389 "Pretrial diversion designee", a community supervision officer of the department of
2390 community supervision designated by the commissioner of the department to assist the superior,
2391 municipal, or district court to screen defendants who may be eligible for diversion.

2392 "Plan of service", a comprehensive and cohesive set of recommended programs and
2393 specific services to meet the needs of individuals as determined through assessment.

2394 "Program", any program of community supervision and services certified or approved by
2395 the commissioner under the provisions of section 8, including, but not limited to, medical,
2396 educational, vocational, social and psychological services, corrective and preventive guidance,
2397 training, performance of community service work, counseling, provision for residence in a
2398 halfway house or other suitable place, and other rehabilitative services designed to protect the
2399 public and benefit the individual.

2400 SECTION 73. Section 3 of chapter 276A of the General Laws, as so appearing, is hereby
2401 amended by striking out, in lines 1-2, the words "probation officers of a district or municipal
2402 court, or their official designee", and inserting in place thereof the following words:- pretrial
2403 diversion designee.

2404 SECTION 74. Section 3 of chapter 276A of the General Laws, as so appearing, is hereby
2405 further amended by striking out, in lines 14-15, the words “probation office or its official
2406 designee”, and inserting in place thereof the following words:- pretrial diversion designee.

2407 SECTION 75. Section 9 of chapter 276A of the General Laws, as so appearing, is hereby
2408 amended by inserting before the words “the attorney general”, in line 3, the following words:-
2409 the secretary of public safety and security or his designee.

2410 SECTION 76. Chapter 279 of the General Laws, as so appearing, is hereby amended by
2411 striking out section 1 and inserting in place thereof the following section:-

2412 Section 1. When a person convicted before a court is sentenced to imprisonment, the
2413 court may direct that the execution of the sentence, or any part thereof, be suspended and that he
2414 be placed on community supervision for such time and on such terms and conditions as it shall
2415 fix. When a person so convicted is sentenced to pay a fine and to stand committed until it is paid,
2416 the court may direct that the execution of the sentence, or any part thereof, be suspended for such
2417 time as it shall fix and in its discretion that he be placed on community supervision on condition
2418 that he pay the fine within such time. If the fine does not exceed \$200 and the court finds that the
2419 defendant is unable to pay it when imposed, the execution of the sentence shall be suspended and
2420 he may, in the court’s discretion be placed on community supervision, unless the court shall find
2421 that he will probably default, or that such suspension will be detrimental to the interests of the
2422 public. If he is committed for nonpayment of a fine, the order of commitment shall contain a
2423 recital of the findings of the court on which suspension is refused. The fine shall be paid in 1
2424 payment, or in part payments, to the clerk’s office, and when fully paid the order of commitment
2425 shall be void. The clerk of the court shall give a receipt for every payment so made, shall keep a

2426 record of the same, shall pay the fine, or all sums received in part payment thereof, to the sheriff
2427 if such fine is imposed in the superior court, or remain with the clerk of the court if such fine is
2428 imposed in the district court, at the end of the period of community supervision or any extension
2429 thereof, and shall keep on file the sheriff's or clerk's receipt therefor. If during or at the end of
2430 the period the clerk of the court shall report that the fine is in whole or in part unpaid, and in his
2431 opinion the person is unwilling or unable to pay it, the court may either extend the period, place
2432 the case on file or revoke the suspension of the execution of the sentence. When such suspension
2433 is revoked, in a case where the fine has been paid in part, the defendant may be committed for
2434 default in payment of the balance.

2435 The provisions of this section shall not permit the suspension of the execution of the
2436 sentence of a person convicted of a crime punishable by death or imprisonment for life. In
2437 granting community supervision under this section, the court shall include in its terms and
2438 conditions of community supervision that the person convicted shall pay any child support due
2439 under a support order, as defined in section 1A of chapter 119A, including payment toward any
2440 arrearage of support that accrues or has accrued or compliance with any payment plan between
2441 the person convicted and the IV-D agency as set forth in chapter 119A.

2442 When a person is sentenced by a court upon conviction of any crime, he shall be
2443 informed by the clerk of the court on a form provided by the criminal history systems board that
2444 he will have a criminal record that may be accessible to the public under certain conditions, and
2445 of his rights pertaining thereto, as provided in sections 167 through 178 of chapter 6.

2446 SECTION 77. Chapter 279 of the General Laws, as so appearing, is hereby amended by
2447 striking out section 1A and inserting in place thereof the following section:-

Section 1A. When a person convicted before a court is sentenced to fine and imprisonment, the court may direct that the execution of the sentence, or any part thereof, be suspended, and that he be placed on community supervision for such time and on such terms and conditions as it shall fix. The court may direct, as 1 of such terms and conditions, that payment of the fine shall be made to the clerk of the court in 1 payment, or in part payments, during the period of community supervision or any extension thereof, and when such fine shall have been fully paid the order of commitment as to the fine shall be void, but the order of commitment as to imprisonment shall not be affected by such payment. The clerk of the court shall record a receipt for every payment so made, shall keep a record of the same, shall pay the fine, or all sums received in part payment thereof, to the clerk of the court at the end of the period of community supervision or any extension thereof, and shall keep on file the clerk's receipt therefor. If during or at the end of the period the clerk of the court shall report that the fine is in whole or in part unpaid, and in his opinion the person is unwilling or unable to pay it, the court may either extend the period, place the case on file or revoke the suspension of the execution of the sentence. When such suspension is revoked, in a case where the fine has been paid in part, the defendant may be committed for default in payment of the balance, and may also be committed for the term of imprisonment fixed in the original sentence. This section shall not permit the suspension of the execution of the sentence of any person convicted of a crime punishable by imprisonment for life or of a crime an element of which is being armed with a dangerous weapon, or of any person convicted of any other felony if it shall appear that he has been previously convicted of any felony. In granting community supervision under this section, the court shall include in its terms and conditions of community supervision that the person convicted shall pay any child support due under a support order, as defined in section 1A of chapter 119A, including payment toward

2471 any arrearage of support that accrues or has accrued or compliance with any payment plan
2472 between the person convicted and the IV-D agency as set forth in chapter 119A.

2473 SECTION 78. Chapter 279 of the General Laws, as so appearing, is hereby amended by
2474 striking out section 3 and inserting in place thereof the following section:-

2475 Section 3. At any time before final disposition of the case of a person placed under
2476 probation or community supervision or in the custody or care of a probation or community
2477 supervision officer, such officer may arrest him without a warrant and take him before the court,
2478 or the court may issue a warrant for his arrest. When taken before the court, it may, if he has not
2479 been sentenced, sentence him or make any other lawful disposition of the case, and if he has
2480 been sentenced, it may continue or revoke the suspension of the execution of his sentence;
2481 provided however, that in all cases where the person subject to the surrender is served with
2482 notice of surrender and at least 1 of the underlying crimes for which he is on probation or
2483 community supervision is a felony, then the probation or community supervision officer shall
2484 provide a duplicate copy of the notice of surrender to the district attorney, and the court shall
2485 provide to the district attorney the opportunity to be heard and present evidence at the surrender
2486 hearing. If such suspension is revoked, the sentence shall be in full force and effect. If a warrant
2487 has been issued by the court for the arrest of such a person and he is a prisoner in any
2488 correctional institution, jail or house of correction, the commissioner of correction, the sheriff,
2489 master or keeper of the house of correction, or in Suffolk county, the penal institutions
2490 commissioner of the city of Boston, as the case may be, having such prisoner under his
2491 supervision or control, upon receiving notice of such warrant, shall notify such prisoner that he
2492 has the right to apply to the court for prompt disposition thereof. Such an application shall be in
2493 writing and given or sent by such prisoner to the commissioner of correction, or such sheriff,

2494 master, keeper, or penal institutions commissioner, who shall promptly forward it to the court
2495 from which the warrant issued, by certified mail, together with a certificate of the commissioner
2496 of correction, sheriff, master, keeper, or penal institutions commissioner, stating: (a) the term of
2497 commitment under which such prisoner is being held, (b) the amount of time served, (c) the
2498 amount of time remaining to be served, (d) the amount of good time earned, (e) the time of
2499 eligibility for release to community supervision of such prisoner, and (f) any decisions of the
2500 board of parole relating to such prisoner. The commissioner of correction, sheriff, master,
2501 keeper, or penal institutions commissioner shall notify the appropriate district attorney by
2502 certified mail of such application to the court. Any such prisoner shall, within 6 months after
2503 such application is received by the court, be brought into court for sentencing or other lawful
2504 disposition of his case as provided above.

2505 In no case where a provision of this chapter provides for a finding, disposition or other
2506 order to be made by the court, or for a warrant to be issued, shall such be made or issued by any
2507 person other than a justice, special justice or other person exercising the powers of a magistrate.

2508 Notwithstanding any restriction in the preceding paragraph, if a probation or community
2509 supervision officer has probable cause to believe that a person placed under probation or
2510 community supervision or in the custody or care of a probation or community supervision officer
2511 pursuant to sections 42A, 58A or 87 of chapter 276 or any other statute that allows the court to
2512 set conditions of release, has violated the conditions set by the court, the probation or community
2513 supervision officer may arrest the person or may issue a warrant for the temporary custody of the
2514 person for a period not to exceed 72 hours or until the next sitting of the court, during which
2515 period the probation or community supervision officer shall arrange for the appearance of the
2516 person before the court pursuant to the first paragraph of this section. Such warrant shall

2517 constitute sufficient authority to a probation or community service officer and to the
2518 superintendent, jailer, or any other person in charge of any jail, house of correction, lockup, or
2519 place of detention to whom it is exhibited, to hold in temporary custody the person detained
2520 pursuant thereto.

2521 SECTION 79. Notwithstanding any general or special law to the contrary, chapter 127C
2522 of the General Laws shall apply to any felony, as defined in section 1 of chapter 274, committed
2523 on or after the effective date of this act.