

SENATE No. 1677

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to sentencing laws..

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. There shall be a commission to study the issue of prison overcrowding, the
2 threat overcrowding poses to public safety and to make recommendations for the reduction in
3 the population of the commonwealth’s prisons, houses of corrections and jails. The commission
4 shall include and be co-chaired by the senate and house chairs of the joint committee on public
5 safety. The commission’s other members shall be the secretary of public safety, the
6 commissioner of the department of corrections, the president of the Massachusetts Sheriff’s
7 Association, and a representative of the Massachusetts Correctional Legal Services.

8 SECTION 2. Section 129D of chapter 127, as appearing in the 2004 Official Edition, is
9 hereby amended by striking out, in line 14, the words “two and one-half days” and inserting the
10 following words:-

11 three days

12 SECTION 3. Section 129D of chapter 127, as so appearing, is hereby further amended
13 by striking out, in line 19, the words “seven and one-half” and inserting the following words:-

14 ten days

15 SECTION 4. Chapter 276, as appearing in the 2004 Official Edition, is hereby amended
16 by striking out section 42 and inserting the following new section:-

17 Section 42. If it appears that a crime has been committed and that there is probable cause
18 to believe the prisoner guilty, the court or justice shall, if final jurisdiction is not exercised, admit
19 the prisoner to bail, if the crime is bailable and sufficient bail is offered; otherwise, except as
20 provided for in section 16 of chapter 125, such prisoner shall be either committed to jail or
21 placed under electronic supervision by the sheriff until trial. If a prisoner cannot offer sufficient
22 bail, the court may place them under electronic supervision by the sheriff as an alternative to
23 being committed to a jail.

24 SECTION 5. Section 57 of chapter 276, as so appearing, is hereby further amended by
25 inserting in line 9 after the words “or witness to bail” the following words:-

26 or electronic supervision by the sheriff

27 SECTION 6. Section 57 of chapter 276, as so appearing, is hereby further amended by
28 inserting in line 13 after the words “to take bail” the following words:-

29 or placed on electronic supervision

30 SECTION 7. Section 32H of chapter 94C, as appearing in the 2004 Official Edition, is
31 hereby amended by striking out, in line 13, the word “parole,” and is hereby further amended by
32 inserting at the end of said section the following paragraph:-

33 Notwithstanding any general or special law to the contrary, a person convicted of
34 violating any provisions of sections 32, 32A, 32B, 32E, 32F, and 32J of chapter 94C of the

35 General, who is serving a sentence where two-thirds of the maximum term of imprisonment
36 imposed is less than the mandatory minimum sentence required under that section shall be
37 eligible for parole after serving two-thirds of the maximum term of imprisonment imposed.

38 SECTION 8. Notwithstanding the provisions of sections 32, 32A, 32B, 32E, 32F, and 32J
39 of chapter 94C of the General Laws, or any other general or special law to the contrary, persons
40 serving mandatory minimum sentences for violations of the above referenced sections as of July
41 1, 2007 shall be eligible for parole after serving two-thirds of their maximum sentence.

42 SECTION 9. Chapter 279 of the General Laws, as so appearing, is hereby amended by
43 inserting after section 27 the following section following section:—

44 Section 28. For all sentences to incarceration for a period of twelve months or more
45 which are imposed in accordance with the sentencing guidelines as established in this chapter,
46 there shall be imposed a period of postincarceration supervision. The period of postincarceration
47 supervision shall be imposed as follows: a period of 6 months for a sentence with a maximum
48 term greater than or equal to 12 months but less than 30 months; a period of 12 months for a
49 sentence with a maximum greater than or equal to 30 months but less than 60 months; and a
50 period of 24 months for a sentence with a maximum greater than 60 months. The total term of
51 incarceration for the offense plus any additional commitment for a violation of a condition of
52 postincarceration supervision that does not otherwise constitute a new offense, shall not be
53 greater than the maximum term fixed by statute for the governing offense. During the period of
54 postincarceration supervision, the prisoner shall be subject to the supervision of the Parole Board
55 under such terms and conditions as established by the Board.

56 The postincarceration supervision period shall be deemed completed if the prisoner
57 completes the sentence to incarceration while on parole, if the prisoner is granted a certificate of
58 termination of sentence pursuant to G.L. c. 127, § 130A, if the prisoner is subject upon release
59 from custody to lifetime parole pursuant to section 133C of chapter 127, or if upon completion of
60 the sentence the prisoner is immediately committed to a sentence of incarceration, to the custody
61 of any other state or federal authority, or to the custody of immigration authorities. The
62 postincarceration supervision shall be stayed for any period the prisoner is in custody pursuant to
63 any order of custody under chapter 123A. The postincarceration supervision period shall be
64 deemed completed upon commitment pursuant to section 14 of chapter 123A. In all other
65 circumstances, the period of postincarceration supervision shall commence upon discharge from
66 the sentence.

67 During the period of postincarceration supervision, the prisoner shall be subject to the
68 jurisdiction of the parole board in accordance with section 130 of chapter 127. The prisoner may
69 be supervised in another jurisdiction in accordance with sections 151A through 151L of chapter
70 127 and shall be considered on parole for the purposes of such supervision. By a majority vote of
71 a panel of the parole board after a hearing and for good cause, the parole board may terminate
72 the period of postincarceration supervision at any time before completion.

73 An individual who violates a condition of postincarceration supervision shall be subject
74 to the provisions of section 149 of chapter 127. Upon a first violation, the prisoner may be
75 incarcerated for a period no greater than two months or the maximum remaining period of
76 postincarceration supervision, whichever is less, if such violation does not otherwise constitute a
77 criminal offense. Upon a second violation, the prisoner may be incarcerated for a period no
78 greater than six months or the maximum remaining period of postincarceration supervision,

79 whichever is less, if such violation does not otherwise constitute a criminal offense. Upon a third
80 or subsequent violation the prisoner, may be incarcerated for a period no greater than twelve
81 months or the maximum remaining period of postincarceration supervision, whichever is less, if
82 such violation does not otherwise constitute a criminal offense. If such violation otherwise
83 constitutes a criminal offense, said period of incarceration shall be served on and after any
84 sentence received for commission of the new offense. In the event that the prisoner has been
85 convicted of more than one offense, postincarceration supervision may be imposed if the
86 maximum sentence on all offenses has not been served.

87 Notwithstanding Section 23 of Chapter 279, where the defendant is sentenced to the
88 house of correction, the total term of incarceration for any offense plus any additional
89 commitment for violation of a condition or conditions of postincarceration supervision pursuant
90 to section 17 of chapter 211G shall not exceed the longest term fixed by law for the punishment
91 of the crime of which the prisoner has been convicted or if the defendant is serving a sentence
92 after being convicted of only one offense, two and one half years, whichever is less.

93 SECTION 10. Section 25 of chapter 279, as so appearing, is hereby amended by inserting
94 after the word “sentenced” in line 8 the following words:— in addition to two years of post-
95 release supervision to be served when the habitual offender is released from prison,
96 notwithstanding that the combined total of years of the term of imprisonment and the post-
97 release supervision exceeds the maximum term fixed by law. During the period of post-release
98 supervision, the offender shall be under the jurisdiction and supervised by the parole board
99 pursuant to the provisions of sections 128 through 151 of chapter 127.

100 SECTION 11. Section 130 of chapter 127 of the General Laws, as so appearing is hereby
101 amended by striking out the first sentence and inserting in place thereof the following three
102 sentences:— No prisoner shall be granted a parole permit merely as a reward for good conduct
103 but only if the parole board is of the opinion that there is a reasonable probability that, if such
104 prisoner is released, in light of appropriate conditions and community supervision, he will live
105 and remain at liberty without violating the law and that his release is compatible with the welfare
106 of society. In making this determination, the board shall consider whether, during the period of
107 incarceration, the prisoner has participated in available work opportunities and education or
108 treatment programs, and demonstrated good behavior. The board shall also consider whether risk
109 reduction programs made available through collaboration with criminal justice agencies would
110 minimize the probability of the prisoner reoffending once released.

111 SECTION 12. Chapter 276 of the General Laws, as so appearing, is hereby amended by
112 adding, after section 87, the following new section:-

113 Section 88. The Sheriff of any county and in the case of women who are committed as
114 pretrial detainees to the Massachusetts Correctional Institution at Framingham, the commissioner
115 of correction, subject to rules and regulations established in accordance with the provisions of
116 this section, may permit a detainee, committed to a jail awaiting disposition of any criminal
117 matter, except those being held for offenses listed in this section, or may permit a person
118 committed to the jail for contempt of court, to be classified to a pretrial diversion program
119 operated by the Sheriff's Office in the county where the court that committed the detainee is
120 sitting.

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

126 For the duration of their participation in the program, the detainee shall be deemed to be
127 in custody as a pretrial detainee for the purpose of receiving credit pursuant to Chapter 127
128 Section 129B and Chapter 299 Section 33A toward any sentence they may receive, and may be
129 charged with escape pursuant to Chapter 268 Section 16 should they leave the place they are
130 classified to pursuant to their participation in the program without authorization and with no
131 intent to return or should they escape from custody while they are being transported pursuant to
132 their participation in the program. Additionally for the duration of their participation in this
133 program only, the detainee may receive additional deductions from any sentence that may be
134 imposed in the case they were committed on, for participation in work, education, or treatment
135 programs designated by the Sheriff pursuant to Chapter 127 Section 129D.

136 No detainee who is charged with murder, any offense that carries the possibility of a life
137 sentence, a violation of section thirteen, 14, 15, 15A, 15B, 16, 17, 18, 18A, 19, 20, 21, 24B, 25,
138 or section 26 of chapter 265, or section 17, 34, or 35, of chapter two hundred and seventy-two, or
139 for an attempt to commit any crime referred to in said sections shall be eligible to participate in
140 the program. No sex offender or sexually dangerous person as defined in section 1 of chapter
141 123A, or any person who is charged with committing a sexual offense as defined in said section
142 1, or any person who violates section 24B of chapter 265 shall be eligible to participate in this
143 program.