

SENATE No. 2210

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. Section 167 of chapter 6 of the General Laws, as appearing in the 2008
2 Official Edition, is hereby amended by striking out, in line 2, the words “one hundred and sixty-
3 eight to one hundred seventy-eight” and inserting in place thereof the following words:- 168 to
4 178L, inclusive.

5 SECTION 2. Said section 167 of said chapter 6, as so appearing, is hereby amended by
6 inserting before the definition of “criminal justice agencies” the following 3 definitions:-

7 “All available criminal offender record information”, adult and youthful offender
8 convictions, non-convictions and pending criminal court appearances, but excluding criminal
9 records sealed under section 34 of chapter 94C or sections 100A to 100C, inclusive, of chapter
10 276 or the existence of such records.

11 “Board”, the criminal record review board established under section 168.

12 “Commissioner”, the commissioner of the Massachusetts department of criminal justice
13 information services.

14 SECTION 3. Said section 167 of said chapter 6, as so appearing, is hereby further
15 amended by inserting after the definition of “criminal offender record information” the following
16 definition:-

17 “Department”, the Massachusetts department of criminal justice information services
18 established under section 167A.

19 SECTION 4. Said section 167 of said chapter 6, as so appearing, is hereby further
20 amended by inserting after the definition of “purge” the following 3 definitions:-

21 “Requestor”, any entity or individual, other than a criminal justice agency, submitting a
22 request for criminal offender record information to the department.

23 “Self-audit”, an inquiry made by a subject or an advocate or agent designated by the
24 subject to obtain a log of all queries to the department by any requestor for the subject’s criminal
25 offender record information, but excluding any information relative to any query conducted by a
26 criminal justice agency.

27 “Subject”, an individual for whom a request for criminal offender record information is
28 submitted.

29

30 SECTION 5. Said chapter 6, as so appearing, is hereby amended by inserting after
31 section 167 the following section:-

32 Section 167A. There shall be within the executive office of public safety and security a
33 department of criminal justice information services. The department shall provide for and
34 exercise control over the installation, operation and maintenance of data processing and data

35 communication systems, hereinafter called the public safety information system including, but
36 not limited to, the criminal justice information system. Said system shall be designed to ensure
37 the prompt collection, exchange, dissemination and distribution of such public safety information
38 as may be necessary for the efficient administration and operation of criminal justice agencies,
39 and to connect such systems directly or indirectly with similar systems in this or other states. The
40 secretary of public safety and security shall appoint a commissioner who shall be classified in
41 accordance with section 45 of chapter 30 and the salary shall be determined in accordance with
42 section 46C of said chapter 30. Such commissioner shall not be subject to the provisions of
43 chapter 31 or section 9A of chapter 30. The commissioner shall be responsible for all data
44 processing, management of the public safety information system, supervision of all personnel
45 associated with said system and the appointment of all such personnel. The commissioner may
46 appoint such other employees, including experts and consultants, as he deems necessary to carry
47 out the department's responsibilities, none of whom shall be subject to the provisions of chapter
48 31 or of section 9A of chapter 30.

49

50 The commissioner shall provide access to the public safety information system to
51 criminal justice agencies as defined in section 167. The commissioner may promulgate rules and
52 regulations for the control, installation, and operation of the public safety information system
53 accessed and utilized by criminal justice agencies. The commissioner or his designee may hear
54 and investigate complaints pertaining to misuse of the public safety information system and to
55 issue sanctions and penalties for misuse. The commissioner may refer complaints for further
56 review to the criminal record review board or any state or federal agency or prosecuting
57 authority.

58

59 The commissioner, upon the advice of the board, may promulgate regulations regarding
60 the collection, storage, access, dissemination, content, organization and use of criminal offender
61 record information by non-criminal justice agencies.

62

63 The department is authorized to enter into contracts and agreements with, and accept
64 gifts, grants, contributions, and bequests of funds from, any department, agency, or subdivision
65 of federal, state, county, or municipal government and any individual, foundation, corporation,
66 association, or public authority for the purpose of providing or receiving services, facilities or
67 staff assistance in connection with its work. Such funds shall be deposited with the state treasurer
68 and may be expended by the department in accordance with the conditions of the gift, grant,
69 contribution, or bequest, without specific appropriation.

70 References in any general or special law to the criminal history systems board or its
71 executive director shall be deemed to refer to the Massachusetts department of criminal justice
72 information services or its commissioner.

73 SECTION 5A. References in any general or special law to the criminal history systems
74 board or the executive director thereof, except for the references in sections 171, 172, 172A,
75 172C, 172E, 172G, 172H, 172I, 172J, 173, 175, 176 and 178A of chapter 6 and in section 38R of
76 chapter 71, shall be deemed to refer to the Massachusetts department of criminal justice
77 information services or its commissioner.

78 SECTION 6. Section 168 of said chapter 6, as so appearing, is hereby amended by
79 striking out the first paragraph and inserting in place thereof the following paragraph:-

80
81 There shall be a criminal history systems board, hereinafter called the board,
82 consisting of the following persons: the secretary of public safety and security, who shall serve
83 as chairman, the secretary of labor and workforce development, the attorney general, the
84 chairperson of the Massachusetts sentencing commission, the chief counsel for the committee for
85 public counsel services, the chairman of the parole board, the commissioner of the department of
86 correction, the commissioner of probation and commissioner of the department of youth services
87 and the colonel of state police, or their designees, all of whom shall serve ex officio, and 10
88 persons to be appointed by the governor for a term of 3 years, 1 of whom shall represent the
89 Massachusetts District Attorneys Association, 1 of whom shall represent the Massachusetts
90 Sheriffs Association, and 1 of whom shall represent the Massachusetts Chiefs of Police
91 Association, 1 of whom shall represent private users of criminal offender record information, 1
92 of whom shall be a victim of crime, 1 of whom shall be a provider of victim services, 2 of whom
93 shall have experience in the areas of workforce development, ex-offender rehabilitation, or
94 economic development, and 2 of whom shall be persons who have experience in issues relating
95 to personal privacy. Upon the expiration of the term of any appointive member, his successor
96 shall be appointed in a like manner for a term of 3 years.

97 SECTION 7. Said section 168 of said chapter 6, as so appearing, is hereby further
98 amended by striking out, in line 50, the word “hundred” and inserting in place thereof the
99 following word:- thousand.

100 SECTION 8. Said section 168 of said chapter 6, as so appearing, is hereby further
101 amended by striking out, in line 50, the word “willful” and inserting in place thereof the
102 following word:- knowing.

103 SECTION 9. Said section 168 of said chapter 6, as so appearing, is hereby further
104 amended by inserting after the word “law”, in line 51, the following words:- provided, however,
105 that the board shall not issue any orders, sanctions or fines against a law enforcement officer
106 who, in good faith, obtains or seeks to obtain or communicates or seeks to communicate criminal
107 offender record information in the furtherance of his or her official duties.

108 SECTION 10. Said section 168 of said chapter 6, as so appearing, is hereby amended by
109 striking out the fourth and sixth paragraphs.

110 SECTION 11. Said chapter 6, as so appearing, is hereby further amended by striking out
111 section 168 and inserting in place thereof the following section:-

112
113 Section 168. There shall be a criminal record review board within the
114 Massachusetts department of criminal justice information services, consisting of the following
115 persons: the secretary of public safety and security, who shall serve as chairperson, the attorney
116 general, the secretary of labor and workforce development, the chairperson of the Massachusetts
117 sentencing commission, the chief counsel for the committee for public counsel services, the
118 chairperson of the parole board, the commissioner of the department of correction, the
119 commissioner of probation, the commissioner of the department of youth services, the colonel of
120 state police and the presidents of the Massachusetts District Attorneys Association, the
121 Massachusetts Sheriffs’ Association and the Massachusetts Chiefs of Police Association, or their

122 designees, all of whom shall serve ex officio, and 5 persons to be appointed by the governor, 1 of
123 whom shall represent private users of criminal offender record information, 1 of whom shall be a
124 victim of crime, 1 of whom shall have experience in the areas of workforce development or ex-
125 offender rehabilitation and 2 of whom shall be persons who have experience in issues relating to
126 personal privacy. Each appointed member shall serve for a term of 3 years or until a successor is
127 appointed and qualified, whichever is longer.

128 The chairperson shall hold regular meetings, 1 of which shall be an annual
129 meeting and shall notify all board members of the time and place of all meetings. Special
130 meetings may be called at any time by a majority of the board members and shall be called by
131 the chairman upon written application of 9 or more members. Members of the board shall
132 receive no compensation, but shall receive their expenses actually and necessarily incurred in the
133 discharge of their duties.

134

135 The board may hear complaints and investigate any incidents alleging that an
136 individual or agency that has requested or received criminal offender record information has
137 failed to provide the subject with the criminal offender record information in his possession prior
138 to questioning the individual about his criminal history in connection with a decision regarding
139 employment, volunteer opportunities, housing or professional licensing or in connection with an
140 adverse decision on such an application on the basis of the criminal offender record
141 information. The board shall also have the authority to hear complaints and investigate any
142 incidents alleging any other violation of sections 168 through 178A of this chapter or board rules
143 and regulations. The board may charge and collect a fee as a condition for filing a complaint,

144 which fee may be waived upon a finding of indigency. Any complaint filed with the board shall
145 be supported by a written declaration by the complainant that it is made under the penalties of
146 perjury. Any answer filed by a responding party shall be signed under the penalties of perjury by
147 an individual with personal knowledge of its contents. In conducting investigations or hearings
148 the board or department staff designated by the board shall have the power to summons
149 witnesses, compel their attendance and testimony, require the production of books, records and
150 documents, administer oaths and have access to all criminal offender record information. The
151 chairperson of the board may appoint a member, panel of 3 board members or a hearing officer
152 to conduct hearings, according to the standard rules of adjudicatory procedure or other rules
153 which the department may promulgate, upon advice of the board. Following review of a
154 complaint by a member, panel or hearing officer, the board, by a vote of two-thirds of the
155 members present and voting, shall issue a ruling as to the findings of the board. In accordance
156 with its findings the board may issue orders and sanctions enforcing its rules and regulations and
157 the General Laws, including but not limited to a remand for additional fact finding, the
158 imposition of civil fines payable to the commonwealth not to exceed \$5,000 for each violation,
159 conditions on continued access to criminal offender record information or revocation of access;
160 provided, however, that the board shall not issue any orders, sanctions or fines against a law
161 enforcement officer who, in good faith, obtains or seeks to obtain, or communicates or seeks to
162 communicate criminal offender record information in the furtherance of his or her official
163 dutiesThe board may at any time refer a complaint for criminal prosecution under section 178 of
164 this chapter.

165 The board shall make an annual report of the volume and disposition of
166 complaints without identifying data on any complainant or other information that would include

167 criminal offender record information relative to any person reviewed by the board to the
168 governor and file a copy thereof with the state secretary, the attorney general, the clerk of the
169 house of representatives and the clerk of the senate. The annual report shall also be available to
170 the public upon request.

171 SECTION 12. Section 171 of said chapter 6, as so appearing, is hereby amended by
172 striking out, in lines 3 to 7, inclusive, the words “(b) assuring the prompt and complete purging
173 of criminal offender record information, insofar as such purging is required by any statute or
174 administrative regulation, by the order of any court of competent jurisdiction, or to correct any
175 errors shown to exist in such information; and (c)” and inserting in place thereof the following:-
176 “ ;and (b)”

177

178 SECTION 13. Said section 171 of said chapter 6, as so appearing, is hereby further
179 amended by striking out, in lines 35-48, the words “Any individual aggrieved by an agency’s
180 decision denying access to evaluative information may appeal the denial in writing within thirty
181 days thereafter to the board or to a three member panel thereof, as the board may determine, and
182 the board or such panel or any court under section one hundred and seventy-seven shall have
183 access to any certificate. The adoption of such regulations by each criminal justice agency shall
184 be subject to the approval of the board, and shall be promulgated within time limits set by the
185 board. If any criminal justice agency holding evaluative information fails to promulgate such
186 regulations, then the board shall promulgate such regulations with respect to that criminal justice
187 agency. Evaluative information shall be subject to the provisions of section one hundred and

188 seventy-two and section one hundred and seventy-eight, as if such information was criminal
189 offender record information.”

190

191 SECTION 14. Said chapter 6, as so appearing, is hereby further amended by inserting
192 after section 171 the following section:-

193 Section 171A. In connection with any decision regarding employment, volunteer
194 opportunities, housing or professional licensing, a person in possession of an applicant’s criminal
195 offender record information shall provide the applicant with the criminal history record in the
196 person’s possession, whether obtained from the department or any other source prior to
197 questioning the applicant about his criminal history. If the person makes a decision adverse to
198 the applicant on the basis of his criminal history, the person shall also provide the applicant with
199 the criminal history record in the person’s possession, whether obtained from the department or
200 any other source; provided, however, that if the person has provided the applicant with a copy of
201 his criminal offender record information prior to questioning the person is not required to
202 provide the information a second time in connection with an adverse decision based on this
203 information. Failure to provide such criminal history information to the individual in accordance
204 with this section may subject the offending person to investigation, hearing and sanctions by the
205 board. Nothing in this section shall be construed to prohibit a person from making an adverse
206 decision on the basis of an individual’s criminal history or to provide or permit a claim of an
207 unlawful practice under chapter 151B or an independent cause of action in a court of civil
208 jurisdiction for a claim arising out of an adverse decision based on criminal history except as
209 otherwise provided under chapter 151B.

210 A person who annually conducts 5 or more criminal background investigations,
211 whether criminal offender record information is obtained from the department or any other
212 source, shall maintain a written criminal offender record information policy providing that, in
213 addition to any obligations required by the commissioner by regulation, it will: (i) notify the
214 individual of the potential adverse decision based on the criminal offender record information;
215 (ii) provide a copy of the criminal offender record information and the policy to the individual;
216 and (iii) provide information concerning the process for correcting a criminal record.

217 SECTION 15. Section 172 of said chapter 6, as so appearing, is hereby amended by
218 inserting after the word “privacy”, in lines 14 and 40, the following words, in each instance:-
219 and the importance and value of successful reintegration of ex-offenders.

220

221 SECTION 16. Said chapter 6, as so appearing, is hereby further amended by striking out
222 section 172 and inserting in its place thereof the following section:-

223 Section 172. (a) The department shall maintain criminal offender record information in
224 a database, which shall exist in an electronic format and be accessible via the world wide web.
225 Except as provided otherwise in this chapter, access to the database shall be limited as follows:

226 (1) Criminal justice agencies may obtain all criminal offender record information,
227 including sealed records, for the actual performance of their criminal justice duties. Licensing
228 authorities, as defined in section 121 of chapter 140, may obtain all criminal offender record
229 information, including sealed records, for the purpose of firearms licensing in accordance with
230 sections 121 to 131P, inclusive, of chapter 140. The criminal record review board may obtain all

231 criminal offender record information, including sealed records, for the actual performance of its
232 duties.

233 (2) Requestors authorized or required by statute, regulation or accreditation requirement
234 to obtain criminal offender record information other than that available under subsection (a)(3)
235 may obtain such information to the extent and for the purposes authorized by said statute,
236 regulation or accreditation requirement.

237 (3) Requestors and their agents may obtain criminal offender record information for any
238 of the following purposes: (a) to evaluate current and prospective employees including full-time,
239 part-time, contract, internship employees or volunteers; (b) to evaluate applicants for rental or
240 lease of housing; (c) to evaluate volunteers for services; and (d) to evaluate applicants for
241 professional licensure issued by a state or municipal entity. Criminal offender record
242 information made available under this section shall be limited to the following: (i) felony
243 convictions for 10 years following their disposition, including termination of any period of
244 incarceration or custody as defined in section 1 of chapter 125, (ii) misdemeanor convictions for
245 5 years following their disposition, including termination any period of incarceration or custody
246 as defined in section 1 of chapter 125, and (iii) pending criminal charges, which shall include
247 cases that have been continued without a finding until such time as the case is dismissed pursuant
248 to section 18 of chapter 278 ; provided, however, that prior misdemeanor and felony conviction
249 records shall be available for the entire period that the subject's last available conviction record
250 is available under this section 172; and provided further that a violation of section 7 of chapter
251 209A shall be treated as a felony for purposes of this section.

252

253 (4) Any member of the general public may upon written request to the department obtain
254 the following criminal offender record information: (i) convictions for any felony punishable by
255 a term of imprisonment of 5 years or more; (ii) felony convictions for 2 years following their
256 disposition, including any period of incarceration or custody as defined in section 1 of chapter
257 125; and (iii) misdemeanor convictions for 1 year following their disposition, including any
258 period of incarceration or custody as defined in section 1 of chapter 125.

259

260 (5) Subjects who seek to obtain their own criminal offender record information, or an
261 advocate or agent designated by the subject, may obtain all criminal offender record information
262 pertaining to the subject under section 175 of this chapter.

263

264 (6) The commissioner may provide access to criminal offender record information to
265 persons other than those entitled to obtain access under subsections (1) through (5) above if the
266 commissioner finds that such dissemination to such requestor serves the public interest. Upon
267 such a finding, the commissioner shall also determine the extent of access to criminal offender
268 record information necessary to sustain the public interest. The commissioner shall make an
269 annual report to the governor and file a copy thereof with the state secretary, the attorney
270 general, the clerk of the house of representatives and the clerk of the senate documenting access
271 provided under this subsection. The annual report shall be available to the public upon request.

272

273 (b) Notwithstanding the foregoing, convictions for murder, voluntary
274 manslaughter, involuntary manslaughter, and sex offenses as defined in section 178C of chapter
275 6 that are punishable by a term of incarceration in state prison will remain in the database
276 permanently and shall be available to all requestors listed in subsections (a)(1) through (a)(3)
277 unless sealed under section 100A of chapter 276.

278

279 (c) The department shall specify the information that requestors must provide to query
280 the database, including, but not limited to, the subject's name, date of birth and the last four
281 digits of the subject's social security number; provided, however, that a member of the public
282 accessing information under subsection (a)(4) shall not be required to provide the last four digits
283 of the subject's social security number. To obtain criminal offender record information
284 concerning a subject under subsection (a)(2) or (a)(3), the requestor must certify under the
285 penalties of perjury that the requestor is an authorized designee of a qualifying entity, that the
286 request is for a purpose authorized under subsection (a)(2) or (a)(3), and that the subject has
287 signed an acknowledgement form authorizing the requestor to obtain the subject's criminal
288 offender record information. The requestor must also certify that he has verified the identity of
289 the subject by reviewing a form of government-issued identification. Each requestor shall
290 maintain acknowledgement forms for a period of one year from the date the request is
291 submitted. Such forms shall be subject to audit by the department. The department may establish
292 rules or regulations imposing other requirements or affirmative obligations upon requestors as a
293 condition of obtaining access to the database.

294

295 In connection with any decision regarding employment, volunteer opportunities, housing
296 or professional licensing, a person in possession of an applicant's criminal offender record
297 information shall provide the applicant with the criminal history record in the person's
298 possession, whether obtained from the department or any other source, (a) prior to questioning
299 the applicant about his criminal history and (b) if the person makes a decision adverse to the
300 applicant on the basis of his criminal history; provided, however, that if the person has provided
301 the applicant with a copy of his criminal offender record information prior to questioning the
302 person is not required to provide the information a second time in connection with an adverse
303 decision based on this information. Failure to provide such criminal history information to the
304 individual in accordance with this section may subject the offending person to investigation,
305 hearing and sanctions by the board.

306

307 Except as authorized by this section, it shall be unlawful to request or require a person to
308 provide a copy of his criminal offender record information. Violation of this subsection is
309 punishable by the penalties set forth in section 178.

310 No employer or person relying on volunteers shall be liable for negligent hiring practices
311 by reason of relying solely on criminal offender record information received from the
312 department and not performing additional criminal history background checks, unless required to
313 do so by law, provided that the employer made an employment decision within 90 days of
314 obtaining the criminal offender record information and maintained and followed policies and
315 procedures for verification of the subject's identifying information consistent with the
316 requirements set forth in this section and in the the department's regulations.

317

318 No employer shall be liable for discriminatory employment practices for the failure to
319 hire a person on the basis of criminal offender record information that contains erroneous
320 information requested and received from the department, if the employer would not have been
321 liable if the information had been accurate, provided that the employer made an employment
322 decision within 90 days of obtaining the criminal offender record information and maintained
323 and followed policies and procedures for verification of the individual's information consistent
324 with the requirements set forth in this section and the department's regulations.

325 Neither the board nor the department shall be liable in any civil or criminal action by
326 reason of any criminal offender record information or self-audit log that is disseminated by the
327 board, including any information that is false, inaccurate or incorrect because it was erroneously
328 entered by the court or the office of the commissioner of probation.

329

330 (d) Requestors shall not disseminate criminal offender record information except (1)
331 upon request by a subject, a requestor shall provide criminal offender record information
332 received from the department to the subject to whom it pertains; (2) requestors may share
333 criminal offender record information with individuals within the requesting entity that have a
334 need to know the contents of the criminal offender record information to serve the purpose for
335 which the information was obtained; and (3) upon request, requestors shall share criminal
336 offender record information with the government entities charged with overseeing, supervising,
337 or regulating them. Requestors shall maintain a secondary dissemination log for a period of one
338 year following the dissemination of a subject's criminal offender record information. The log

339 shall include the following information: (i) name of subject; (ii) date of birth of the subject; (iii)
340 date of the dissemination; (iv) name of person to whom it was disseminated; and (v) the purpose
341 for the dissemination. The secondary dissemination log shall be subject to audit by the
342 department.

343

344 Unless otherwise provided by law or court order, no requestor shall maintain a copy,
345 electronic or otherwise, of requested criminal offender record information obtained from the
346 department for more than 7 years from the last date of employment, volunteer service or
347 residency or from the date of the final decision of the requestor regarding the subject.

348

349 (e) The department shall maintain a log of all queries that shall indicate the name of the
350 requestor, the name of the subject, the date of the query, and the certified purpose of the
351 query. A self-audit may be requested for no fee once every 90 days. The commissioner may
352 impose a fee in an amount as determined by the secretary of public safety and security, for self-
353 audit requests made more than once every 90 days. Upon request, the commissioner may
354 transmit the self-audit electronically. Further, if funding is available and technology reasonably
355 allows, the department shall establish a mechanism that will notify a subject, or an advocate or
356 agent designated by the subject, by electronic mail or other communication mechanism
357 whenever a query is made regarding the subject. The self-audit log shall not be considered a
358 public record.

359

360 (f) Notwithstanding the provisions of this section, the motor vehicle insurance merit
361 rating board may disseminate information concerning convictions of automobile law violations
362 as defined in section 1 of chapter 90C, or information concerning a charge of operating a motor
363 vehicle while under the influence of intoxicating liquor that results in assignment to a driver
364 alcohol program as described in section 24D of chapter 90, directly or indirectly, to an insurance
365 company doing motor vehicle insurance business within the commonwealth, or to such insurance
366 company's agents, independent contractors or policyholders to be used exclusively for motor
367 vehicle insurance purposes.

368

369 (g) Notwithstanding any other provisions of this section, information indicating custody
370 status and placement within the correction system shall be available to any person upon request;
371 provided, however that no information shall be disclosed that identifies family members, friends,
372 medical or psychological history, or any other personal information unless such information is
373 directly relevant to such release or custody placement decision, and no information shall be
374 provided if its release would violate any other provisions of state or federal law.

375

376 (h) The parole board, subject to sections 130 and 154 of chapter 127, the department of
377 correction, a county correctional authority or a probation officer with the approval of a justice of
378 the appropriate division of the trial court may, in its discretion, make available a summary, which
379 may include references to criminal offender record information or evaluative information,
380 concerning a decision to release an individual on a permanent or temporary basis, to deny such
381 release, or to change the individual's custody status.

382

383 (i) Notwithstanding any other provision of this section or any other general or special
384 law to the contrary, members of the public who are in fear of an offender may obtain from the
385 department advance notification of the temporary or permanent release of an offender from
386 custody, including but not limited to expiration of a sentence, furlough, parole, work release or
387 educational release. An individual seeking access to advance notification shall verify by a
388 written declaration under the penalties of perjury that the individual is in fear of the offender and
389 that advance notification is warranted for physical safety reasons.

390

391 (j) Any individual or agency, public or private, that receives or obtains criminal offender
392 record information from any source in violation of sections 168 through 175 of this chapter,
393 whether directly or through any intermediary, shall not collect, store, disseminate, or use such
394 criminal offender record information in any manner or for any purpose.

395

396 (k) Notwithstanding this section or chapter 66A, the following shall be public records: (1)
397 police daily logs, arrest registers, or other similar records compiled chronologically; (2)
398 chronologically maintained court records of public judicial proceedings; (3) published records of
399 public court or administrative proceedings, and of public judicial administrative or legislative
400 proceedings; and (4) decisions of the parole board as provided in section 130 of chapter 127.

401

402 (l) The commissioner, upon the advice of the board, may promulgate rules and
403 regulations to carry out the provisions of this section.

404

405 SECTION 17. Said chapter 6, as so appearing, is hereby further amended by striking out
406 section 172A and inserting in place thereof the following section:- Section 172A. The
407 commissioner shall assess a fee for each request for criminal offender record information or self-
408 audit, according to a fee structure established by the secretary of public safety and security. No
409 fee shall be assessed for a request made by a victim of crime or a witness or a family member of
410 a homicide victim, all as defined in section 1 of chapter 258B, or for a request made by any local,
411 state or federal government entity. The commissioner shall waive the fee or a portion of the fee
412 from such other persons as provided in the department's rules and regulations.. The department
413 is authorized to enter into contracts and agreements for reduced or bulk fees for requestors who
414 make extensive use of the database.

415 The department shall be authorized, subject to appropriation, to retain a portion of the
416 revenues received by the commonwealth under this section for the following purposes: to assist
417 ex-offenders in obtaining and maintaining employment, training and auditing requestors
418 described in subsection (a) of section 172, providing education and assistance regarding the
419 correction of criminal records and to operate and maintain the public safety information system
420 and the criminal records review board.

421

422 SECTION 18. Section 172E of said chapter 6, as so appearing, is hereby amended by
423 striking out the first paragraph and inserting in place thereof the following paragraph:-

424

425 Notwithstanding section 172, criminal offender record information shall be
426 available to any long term care facility, as defined in section 72W of chapter 111, for the purpose
427 of evaluating applicants under final consideration for, or an individual currently working as, an
428 employee, volunteer or provider of care, treatment, education, training, transportation, delivery
429 of meals, instruction, counseling, supervision, recreation or other services for an elderly or
430 disabled person or who will have any direct or indirect contact with such elderly or disabled
431 persons or access to such persons' personal information. Any such long term care facility shall
432 obtain all available criminal offender record information from the department on such applicant
433 or current staff member. A long term care facility which obtains information under this section
434 shall prohibit the dissemination of such information of such information for any purpose other
435 than to further the protection of the elderly or the disabled, including, but not limited to,
436 dissemination among and between long term care facilities.

437

438 SECTION 19. Said section 172E of said chapter 6, as so appearing, is hereby further
439 amended by striking out, in lines 16-18, the words "for a position that involves the provision of
440 direct personal care or treatment to residents of such facility".

441

442 SECTION 20. Section 172H of said chapter 6, as so appearing, is hereby amended by
443 striking out, in line 4, the words "that accepts volunteers,".

444

445 SECTION 21. Said section 172H of said chapter 6, as so appearing, is hereby further
446 amended by striking out, in line 6, the words “a volunteer” and inserting in place thereof the
447 following words:- an employee, volunteer, vendor or contractor.

448

449 SECTION 22. Said chapter 6, as so appearing, is hereby amended by inserting after
450 section 172J the following two sections:-

451

452 Section 172K. Notwithstanding section 172 or any other general or special law to
453 the contrary, housing authorities operating pursuant to chapter 121B may obtain from the
454 department conviction and pending criminal offender record information for the sole purpose of
455 evaluating applications for housing owned by such housing authority, in order to further the
456 protection and well-being of tenants of such housing authorities.

457

458 Section 172L. Notwithstanding section 172 or any other general or special law to
459 the contrary, the Massachusetts department of telecommunications and energy may obtain from
460 the department all available criminal offender record information for the purpose of screening
461 applicants for motor bus driver certificates and applicants who regularly transport school age
462 children or students under chapter 766 in the course of their job duties. The Massachusetts
463 department of telecommunications and energy shall not disseminate such information for any
464 purpose other than to further the protection of children.

465

466 SECTION 23. Section 173 of said chapter 6, as so appearing, is hereby amended by
467 striking out, in line 1, the words “The board”, and inserting in place thereof the following
468 words:- The commissioner may approve research programs to obtain criminal offender record
469 information, provided that research programs shall not publish any information that either
470 identifies or tends to identify the subject of the criminal offender record information, and the
471 commissioner

472

473 SECTION 24. Said section 173 of said chapter 6, as so appearing, is hereby further
474 amended by striking out, in lines 7, 9 and 10 the word “board”, and inserting in place thereof, in
475 each instance, the following word:- commissioner.

476

477 SECTION 25. Said chapter 6, as so appearing, is hereby further amended by striking out
478 section 175 and inserting in place thereof the following section:-

479

480 Section 175. A subject shall have the right to inspect, and if practicable, obtain a
481 copy of all criminal offender record information that refers to the subject. The commissioner
482 shall publish and furnish, upon request, guidelines for individuals on how to correct inaccurate or
483 incomplete information. Subject to appropriation, the department shall provide assistance to
484 individuals that have requested assistance to correct inaccurate or incomplete criminal offender
485 record information. Such assistance shall include but not be limited to cooperation with
486 appropriate entities to correct, modify or appropriately supplement criminal offender record

487 information that has been determined to be inaccurate or incomplete. If criminal offender record
488 information is corrected by the office of the commissioner of probation or the courts, any
489 corrections made by such commissioner or court shall be transmitted forthwith to the department
490 and the department's database shall reflect the corrected criminal offender record information.

491

492 Requestors shall prescribe reasonable hours and places for subjects to inspect
493 their criminal offender record information under subsection (d)(1) of section 172 and shall
494 impose such additional restrictions as are reasonably necessary both to ensure the record's
495 security and to verify the identities of those who seek to inspect them.

496

497 SECTION 26. Said chapter 6 is hereby further amended by striking out section 178, as
498 so appearing, and inserting in place thereof the following two sections:-

499

500 Section 178. Any person who knowingly requests, obtains or attempts to obtain
501 criminal offender record information or a self-audit from the department under false pretenses,
502 knowingly communicates or attempts to communicate criminal offender record information to
503 any person except in accordance with the provisions of sections 168 through 175, or knowingly
504 falsifies criminal offender record information, or any records relating thereto, or who requests or
505 requires a person to provide a copy of his or her criminal offender record information except as
506 authorized under section 172, shall for each offense be imprisoned in a jail or house of correction

507 for not more than one year or fined not more than \$5,000 or both, and in the case of a person that
508 is not a natural person, the amount of the fine may be not more than \$50,000 for each violation.

509

510 Any person who knowingly requests, obtains or attempts to obtain juvenile
511 delinquency records from the department under false pretenses, knowingly communicates or
512 seeks to communicate juvenile criminal records to any person except in accordance with the
513 provisions of sections 168 through 175, or knowingly falsifies juvenile criminal records, shall for
514 each offense be imprisoned in a jail or house of correction for not more than one year or fined
515 not more than \$7,500, or both, and in the case of a person that is not a natural person entity, the
516 amount of the fine may be not more than \$75,000 for each violation.

517 This section shall not apply to, and no prosecution shall be brought against, a law
518 enforcement officer who, in good faith, obtains or seeks to obtain or communicates or seeks to
519 communicate criminal offender record information in the furtherance of his or her official duties.

520

521 Section 178 ½. Whoever uses criminal offender record information to commit a crime
522 against the subject of the criminal offender record information or to engage in harassment of the
523 subject, shall be punished by not more than \$5,000 or imprisoned in a jail or house of correction
524 for not more than one year, or both. For purposes of this section, "harassment" shall mean
525 willfully and maliciously engaging in conduct or acts directed at a specific person, which
526 seriously alarms that person and would cause a reasonable person to suffer emotional distress.

527 SECTION 27. Said chapter 6 is hereby further amended by striking out section 178A, as
528 so appearing, and inserting in place thereof the following section:-

529
530 Section 178A. A victim of crime, witness, or family member of a homicide victim, all as
531 defined by section 1 of chapter 258B, may obtain all available criminal offender record
532 information of the offender. Criminal justice agencies may also disclose to such persons such
533 additional information, including but not limited to evaluative information, as such agencies
534 determine is reasonably necessary for the security and well being of such persons.

535
536 SECTION 28. Section 178K of said chapter 6, as so appearing, is hereby amended by
537 striking out, in lines 1 to2, the words “in the criminal history systems board, but not subject to its
538 jurisdiction”, and inserting in place thereof the following words:- in the executive office of
539 public safety and security.

540
541 SECTION 29. Chapter 6A of the General Laws, as so appearing, is hereby amended by
542 striking out section 18 and inserting in place thereof the following section:-

543
544 Section 18. The following state agencies are hereby declared to be within the executive
545 office of public safety and security: the department of public safety; the department of fire
546 services; the office of grants and research and the highway safety division; the municipal police
547 training committee; the Massachusetts department of criminal justice information services; the

548 state 911 department; the department of state police; the office of the chief medical examiner; the
549 Massachusetts emergency management agency; the military department; the department of
550 correction, including the parole board; the sex offender registry board; and all other agencies and
551 boards within said departments, committees, and boards.

552 SECTION 30. Section 5 of chapter 27 of the General Laws, as so appearing, is hereby
553 amended by adding the following sentence:- The parole board shall administer and oversee
554 mandatory post-release supervision functions as set forth in section 133D(a) of chapter 127 and
555 in chapter 127A.

556 SECTION 31. Chapter 30A of the General Laws, as so appearing, is hereby amended by
557 inserting after section 1C the following section:- Section 1D. The criminal record review board
558 shall be subject to sections 1 through 8, inclusive, and shall not otherwise be subject to this
559 chapter.

560

561 SECTION 32. Section 52 of chapter 93 of the General Laws, as so appearing, is hereby
562 amended by inserting after the word “more;”, in line 21, the following word:- or.

563

564 SECTION 33. Said section 52 of said chapter 93, as so appearing, is hereby further
565 amended by striking out, in lines 24 to 27, inclusive, the words “; or (3) the employment of any
566 individual at annual salary which equals or which may reasonably be expected to equal twenty
567 thousand dollars or more”.

568

569 SECTION 34. Section 32 of chapter 94C of the General Laws, as so appearing, is
570 hereby amended by adding the following subsection:-

571 (c) Any person serving a mandatory minimum sentence for violating any provision of this
572 section shall be eligible for parole after serving two-thirds of the minimum term of the sentence
573 if the sentence is to a state prison or after serving one-half of the minimum term of the sentence
574 if the sentence is to a house of correction.

575 SECTION 35. Section 32A of said chapter 94C, as so appearing, is hereby amended by
576 adding the following subsection:-

577 (e) Any person serving a mandatory minimum sentence for violating any provision of this
578 section shall be eligible for parole after serving two-thirds of the minimum term of the sentence
579 if the sentence is to a state prison or after serving one-half of the minimum term of the sentence
580 if the sentence is to a house of correction.

581

582 SECTION 36. Section 32B of said chapter 94C, as so appearing, is hereby amended by
583 adding the following subsection:-

584 (c) Any person serving a mandatory minimum sentence for violating any provision of this
585 section shall be eligible for parole after serving two-thirds of the minimum term of the sentence
586 if the sentence is to a state prison or after serving one-half of the minimum term of the sentence
587 if the sentence is to a house of correction.

588 SECTION 37. Section 32E of said chapter 94C, as so appearing, is hereby amended by
589 adding the following subsection:-

590 (d) Any person serving a mandatory minimum sentence for violating any provision of
591 this section shall be eligible for parole after serving two-thirds of the minimum term of the
592 sentence if the sentence is to a state prison or after serving one-half of the minimum term of the
593 sentence if the sentence is to a house of correction.

594 SECTION 38. Section 32F of said chapter 94C, as so appearing, is hereby amended by
595 adding the following subsection:-

596 (e) Any person serving a mandatory minimum sentence for violating any provision of this
597 section shall be eligible for parole after serving two-thirds of the minimum term of the sentence
598 if the sentence is to a state prison or after serving one-half of the minimum term of the sentence
599 if the sentence is to a house of correction.

600 SECTION 39 Section 32H of said chapter 94C, as so appearing, is hereby amended by
601 striking out the second paragraph and inserting in place thereof the following paragraph:-

602 A person convicted of violating any provisions of said sections shall not, until he shall
603 have served the mandatory minimum term of imprisonment established in said sections, be
604 eligible for probation, furlough or receive any deduction from his sentence for good conduct
605 under sections 129C and 129D of chapter 127; provided, however, that the commissioner of
606 correction may, on the recommendation of the warden, superintendent or other person in charge
607 of the correctional institution, grant to the offender a temporary release, subject to the rules and
608 regulations of the institution and under the direction, control and supervision of the officers
609 thereof, for the following purposes: to attend the funeral of a relative, to visit a critically ill
610 relative, to obtain emergency medical or psychiatric services unavailable at said institution; to
611 participate in education, training, or employment programs established under section 48 of

612 chapter 127; to engage in employment pursuant to a work release program in accordance with
613 the provisions of sections 49 and 49A of chapter 127; or to participate in a program to provide
614 services under sections 49B or 49C of chapter 127. The provisions of section 87 of chapter 276
615 shall not apply to any person 17 years of age or over, charged with a violation of said sections, or
616 to any child between age 14 and 17 so charged by indictment under section 54 of chapter 119.

617 SECTION 40. Section 32J of said chapter 94C, as so appearing, is hereby amended by
618 adding the following paragraph:-

619 Any person serving a mandatory minimum sentence for violating any provision of this
620 section shall be eligible for parole after serving two-thirds of the minimum term of the sentence
621 if the sentence is to a state prison or after serving one-half of the minimum term of the sentence
622 if the sentence is to a house of correction.

623 SECTION 41. Section 14 of chapter 123A of the General Laws, as so appearing, is
624 hereby amended by striking out the first sentence and inserting in place thereof the following two
625 sentences:- The district attorney or the attorney general at the request of the district attorney may
626 petition the court for a trial. In any trial held pursuant to this section, either the person named in
627 the petition or the petitioning party may demand in writing that the case be tried to a jury, and
628 upon such demand the case shall be tried to a jury.

629 SECTION 42. Section 1 of chapter 125 of the General Laws, as so appearing, is hereby
630 amended by striking out subsections (g) to (p), inclusive, and inserting in place thereof the
631 following subsections:-

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

- 634 (h) “department”, the department of correction;
- 635 (i) “gainful employment”, employment within or without any correctional facility
636 including but not limited to labor for the operation and maintenance of any correctional facility;
- 637 (j) “inmate”, a committed offender or such other person as is placed in custody in a
638 correctional facility in accordance with law;
- 639 (k) “institution”, facility;
- 640 (l) “penal institution”, correctional facility;
- 641 (m) “prison”, correctional facility;
- 642 (n) “prisoner”, a committed offender and such other person as is placed in custody in a
643 correctional facility in accordance with law;
- 644 (o) “state correctional facility”, any correctional facility owned, operated, administered or
645 subject to the control of the department of correction, including but not limited to: Massachusetts
646 Correctional Institution, Cedar Junction; Massachusetts Correctional Institution, Norfolk;
647 Massachusetts Correctional Institution, Concord; Massachusetts Correctional Institution,
648 Framingham; Massachusetts Correctional Institution, Bridgewater; Massachusetts Correctional
649 Institution, Plymouth; Massachusetts Correctional Institution, Warwick; Massachusetts
650 Correctional Institution, Monroe;
- 651 (p) “state prison”, Massachusetts Correctional Institution, Cedar Junction;
- 652 (q) “superintendent”, the chief administrative officer of a state correctional facility.

653 SECTION 43. Section 16 of chapter 126 of the General Laws, as so appearing, is hereby
654 amended by striking out the first sentence and inserting in place thereof the following sentence:-

655 The sheriff shall have custody and control of the jails in his county, and except in Suffolk
656 county, of the houses of correction therein, and shall have custody and physical or constructive
657 control of all prisoners committed thereto, and shall keep the same himself or by his deputy as
658 jailer, superintendent or keeper, and shall be responsible for them.

659 SECTION 44. Chapter 127 of the General Laws, as so appearing, is hereby amended by
660 inserting after section 20A the following two sections:-

661 Section 20B. The sheriff of any county may establish a day reporting program under
662 which persons sentenced to the house of correction, except a sex offender as defined in section
663 178C of chapter 6, may be classified to constructive confinement. Such program shall include
664 electronic monitoring of prisoners classified to the day reporting program. Placement of an
665 individual in a day reporting program shall require victim notification as required under section
666 3(t) of Chapter 258B. Any inmate sentenced to such program shall agree in writing to
667 conditions set by the sheriff, who shall retain the right to revoke or alter such classification at
668 will.

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

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

675 Section 20C. The sheriff of any county and in the case of women who are committed as
676 pretrial detainees to the Massachusetts Correctional Institution at Framingham, the commissioner
677 of correction, subject to rules and regulations established in accordance with the provisions of
678 this section, may permit a detainee who is committed to a jail awaiting disposition of any
679 criminal matter, except those being held for offenses listed in this section, or may permit a
680 person committed to the jail for contempt of court, to be classified to a pretrial diversion program
681 operated by the sheriff's office in the county where the court that committed the detainee is
682 sitting.

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

688 For the duration of his participation in the program, the detainee shall be deemed to be in
689 custody as a pretrial detainee for the purpose of receiving credit pursuant to section 129B of
690 chapter 127 and section 33A of chapter 299 toward any sentence he may receive, and may be
691 charged with escape pursuant to section 16 of chapter 268 should he leave the place to which he
692 is classified to pursuant to his participation in the program without authorization or should they
693 escape from custody while they are being transported pursuant to their participation in the
694 program. Additionally for the duration of his participation in this program only, the detainee may
695 receive additional deductions from any sentence that may be imposed in the case he was
696 committed on, for participation in work, education, or treatment programs designated by the
697 sheriff pursuant to section 129D of chapter 127.

698 A detainee shall not be eligible to participate in this program if he is charged with:
699 murder; any offense that carries the possibility of a life sentence; a violation of section 13, 14,
700 15, 15A, 15B, 16, 17, 18, 18A, 19, 20, 21, 24B, 25, or 26 of chapter 265; section 17, 34 or 35 of
701 chapter 272; or an attempt to commit any crime referred to in these sections; or if he is detained
702 under subsection (3) of section 58A of chapter 276. No sex offender, or sexually dangerous
703 person as defined in section 1 of chapter 123A or any person who is charged with committing a
704 sexual offense as defined in said section 1 of said chapter 123A, or any person who who is
705 charged with violating section 24B of chapter 265. Placement of an individual in such program
706 shall require victim notification as required under Chapter 258B section 3(t).

707 SECTION 45. Section 21 of said chapter 127, as so appearing, is hereby amended by
708 inserting after the word “correction” in line 3 the following words:-

709 to physical or constructive confinement,.

710 SECTION 46.

711 SECTION 47.

712

713 SECTION 48. The General Laws, as appearing in the 2008 Official Edition, are hereby
714 amended by inserting after chapter 127 the following chapter:-

715 CHAPTER 127A

716 MANDATORY POST-RELEASE SUPERVISION

717

718 Section 1. All sentences of incarceration to state prison shall include a period of post-
719 release supervision, excluding sentences for those prisoners for whom parole eligibility is
720 determined by section 133 of chapter 127. Except as provided in this chapter, for individuals
721 who complete the incarceration portion of their sentences without supervised release or are re-
722 incarcerated for the remainder of the sentence for violating the terms of parole or probation, the
723 period of mandatory post-release supervision shall be 25 per cent of the maximum term of
724 incarceration imposed at sentencing up to a maximum period of supervision of 2 years, but in no
725 case less than 9 months. Where an individual is sentenced to incarceration on multiple offenses
726 to be served concurrently, the greater of the maximum terms imposed at sentencing shall be used
727 to calculate the mandatory post-release supervision period. Mandatory post-release supervision
728 as established in this chapter shall not be imposed upon any individual who successfully
729 completes a period of probation imposed by a court at sentencing, upon an individual who is
730 granted a parole permit under chapter 127 and successfully completes a period of parole
731 supervision, or upon an individual sentenced to lifetime community parole under section 45 of
732 chapter 265 or section 178H of chapter 6, being supervised under section 133D of chapter 127.
733 An individual subject to this chapter may be supervised in another jurisdiction in accordance
734 with sections 151A through 151N of chapter 127 and shall be considered on parole for the
735 purposes of supervision.

736

737 Section 2. Upon release, an individual sentenced to a term of incarceration in a state
738 prison for any length of time shall be subject to the supervision and jurisdiction of the parole
739 board during the period of mandatory post-release supervision and shall be subject to the law,
740 rules and regulations governing parole. The chairman of the parole board shall establish

741 regulations for post-release supervision consistent with applicable provisions of chapters 27 and
742 127. The regulations shall establish supervision levels based on risk-needs assessments, ranging
743 from minimum parole supervision for low-risk parolees to maximum parole supervision of high-
744 risk parolees, with a focus on reducing the risk posed by high-risk parolees. The regulations
745 shall include the use of graduated and intermediate sanctions as appropriate in response to non-
746 criminal violations of parole conditions and, in the discretion of the board, for low-level criminal
747 violations. The regulations shall also establish guidelines with specific benchmarks, which if
748 achieved by an individual shall reduce the period of time in which such individual is subject to
749 post-release supervision. Nothing in this section or in the regulations shall limit the authority of
750 the superior, municipal, district or juvenile court to impose conditions of probation supervision
751 to protect the public or promote the rehabilitation of any person.

752

753 Section 3. An individual subject to mandatory post-release supervision who has
754 successfully completed 6 months of supervision shall be eligible for early termination of that
755 supervision. Early termination shall only occur in accordance with procedures to be adopted in
756 the regulations of the parole board. In proceedings for early termination of mandatory post-
757 release supervision, the parole board's considerations shall include, but not be limited to, the
758 amount of time the individual has successfully spent under post-release supervision, efforts and
759 achievements in the areas of employment, housing, education, counseling, substance abuse
760 treatment and required testing programs, and any other circumstances that are relevant to the
761 individual case.

762

763 Section 4. An individual who violates a condition of mandatory post-release supervision
764 shall be subject to this section and to modification or revocation proceedings initiated by the
765 parole board. The laws and regulations governing parole violation proceedings shall govern these
766 modification or revocation proceedings. In all proceedings under this section, an individual who
767 violates a condition of mandatory post-release supervision and such violation does not otherwise
768 constitute a criminal offense may be placed under increased supervision, subjected to other
769 conditions and intermediate sanctions, or upon a determination that such alternative sanctions are
770 not appropriate, incarcerated as follows: Upon a first violation, the individual may be
771 incarcerated for a period no greater than 2 months or the maximum remaining period of
772 postincarceration supervision, whichever is less. Upon a second violation, the prisoner may be
773 incarcerated for a period no greater than 6 months or the maximum remaining period of
774 postincarceration supervision, whichever is less. Upon a third or subsequent violation the
775 prisoner, may be incarcerated for a period no greater than 12 months or the maximum remaining
776 period of postincarceration supervision, whichever is less. In all cases where the individual is
777 not being incarcerated for a violation, the individual shall be subject to the graduated sanctions
778 policy of the parole board. In the case of any violation for use of controlled substances or an
779 offense for operating under the influence of drugs or alcohol where the individual is not
780 incarcerated for the violation, the period of mandatory post-release supervision may be extended
781 to accommodate an appropriate substance abuse program, but the total shall not exceed the
782 maximum supervisory period permitted under section 1. For any violation of the conditions of
783 mandatory post-release supervision, the period of supervision shall be stayed during a period of
784 incarceration and it shall be resumed upon release. If the violation constitutes a criminal offense,
785 the period of incarceration shall be served on and after any sentence received as a result of the

786 new offense. Upon subsequent release, the greater of the maximum sentences of the original
787 offense and subsequent offense shall be used to calculate the new mandatory post-release
788 supervision period.

789

790 Section 5. Mandatory post-release supervision shall be considered stayed under the
791 following circumstances: (a) the individual is immediately committed to the custody of any other
792 state or of the United States to serve a period of incarceration less than the post-release
793 supervision period required under this chapter; (b) the individual is immediately committed to
794 the custody of the United States immigration authorities; or (c) the individual is committed
795 pursuant to an order of custody under chapter 123A.

796

797 Section 6. Mandatory post-release supervision shall be considered completed under the
798 following circumstances: (a) except as provided in sections 3 and 4, the individual serves a post-
799 release supervision period of 25 per cent of the maximum term of incarceration imposed at
800 sentencing up to a maximum period of supervision of 2 years, but in no case less than 9 months;
801 (b) the individual is granted early termination under section 3; (c) upon completion of the
802 sentence, the individual is immediately committed to the custody of any other state or of the
803 United States to serve a period of incarceration greater than or equal to the post-release
804 supervision period required under this chapter; or (d) upon completion of the sentence, the
805 individual is physically removed from the United States by immigration authorities for the
806 purpose of permanent deportation.

807 SECTION 48A. Section 130 of said chapter 127, as so appearing, is hereby amended by
808 striking out the first sentence and inserting in place thereof the following 3 sentences:— No
809 prisoner shall be granted a parole permit merely as a reward for good conduct but only if the
810 parole board is of the opinion that there is a reasonable probability that, if such prisoner is
811 released, in light of appropriate conditions and community supervision, he will live and remain
812 at liberty without violating the law and that his release is not incompatible with the welfare of
813 society. In making this determination, the board shall consider whether, during the period of
814 incarceration, the prisoner has participated in available work opportunities and education or
815 treatment programs, and demonstrated good behavior. The board shall also consider whether risk
816 reduction programs made available through collaboration with criminal justice agencies would
817 minimize the probability of the prisoner re-offending once released. In making this
818 determination, the board shall not consider the availability of post-release supervision as
819 authorized under chapter 127A

820 Section 49. Section 4 of chapter 151B of the General Laws, as so appearing, is hereby
821 amended by inserting, after paragraph (9), the following paragraph:-

822 (9 ½) For an employer to request on a written application form criminal offender record
823 information; provided, however, that if an applicant is applying for a position for which federal
824 or state laws or regulations create mandatory or presumptive disqualification based on certain
825 criminal offenses the employer may inquire about such offenses on the applicant's application
826 form.

827

828

829 SECTION 50. Section 21 of chapter 233 of the General Laws, as so appearing, is hereby
830 amended by inserting, at the end, the following paragraph:-

831

832 Upon order of the court, a party may obtain a witness's criminal offender record
833 information from the department of criminal justice information services.

834

835

836 SECTION 51. Section 16 of chapter 268 of the General Laws, as so appearing, is hereby
837 amended by inserting after the word "branch," in line 10, the following words:-

838 "or who, on any other form of constructive confinement, knowingly disables or attempts
839 to disable or defeat electronic monitoring of the prisoner,"

840 SECTION 52. Section 100A of chapter 276 of the General Laws, as so appearing, is
841 hereby amended by inserting after the word "misdemeanor," in line 8, the following words:-
842 record to be sealed.

843

844 SECTION 53. Said section 100A of said chapter 276, as so appearing, is hereby further
845 amended by striking out, in line 8, the word "ten" and inserting in place thereof the following
846 figure:- 5five.

847

848 SECTION 54. Said section 100A of said chapter 276, as so appearing, is hereby further
849 amended by inserting after the word “felony,” in line 11, the following words:- record to be
850 sealed.

851

852 SECTION 55. Said section 100A of said chapter 276, as so appearing, is hereby further
853 amended by striking out, in line 11, the word “fifteen” and inserting in place thereof the
854 following figure:- 10ten.

855

856 SECTION 56. Said section 100A of said chapter 276, as so appearing, is hereby further
857 amended by striking out, in line 13, the words “ten years preceding such request” and inserting in
858 place thereof the following words:- in the case of a misdemeanor, 5 years preceding such
859 request, and in the case of a felony, 10 years preceding such request.

860

861 SECTION 57. Said section 100A of said chapter 276, as so appearing, is hereby further
862 amended by striking out, in line 19, the words “within the preceding ten years” and inserting in
863 place thereof the following words:- in the case of a misdemeanor, within the preceding 5 years,
864 and in the case of a felony, within the preceding 10 years.

865

866 SECTION 58. Said section 100A of said chapter 276, as so appearing, is hereby further
867 amended by inserting, after line 40, the following words:-

868 5. For purposes of this section, any violation of section 7 of chapter 209A shall be
869 treated as a felony.

870 6. Sex offenses, as defined in section 178C of chapter 6, shall not be eligible for sealing
871 for 10 years following their disposition, including termination of supervision, probation or any
872 period of incarceration, or for so long as the offender is under a duty to register in the
873 commonwealth or in any other state where the offender resides or would be under such a duty if
874 residing in the commonwealth, whichever is longer.

875

876 SECTION 59. Said section 100A of said chapter 276, as so appearing, is hereby further
877 amended by inserting after the word “proceedings”, in line 52, the following words:- , and except
878 that in any proceedings under sections 1 to 39I, inclusive, of chapter 119, sections 2 to 5,
879 inclusive, of chapter 201, chapters 208, 209, 209A, 209B, 209C, or sections 1 to 11A, inclusive,
880 of chapter 210, a party may, upon motion for good cause shown, inspect in camera the sealed
881 records of another party and may introduce such sealed records into evidence, provided that the
882 court determines the records are otherwise relevant and admissible, and, provided further, that
883 such records are not discussed in open court and, if admitted, are impounded and made available
884 only to the parties, their attorneys, and court personnel who have a demonstrated need to receive
885 them.

886

887 SECTION 60. Section 100C of said chapter 276, as so appearing, is hereby amended by
888 striking out, in lines 11-12, the words “except in cases in which an order of probation has been
889 terminated,”.

890

891 SECTION 61. Said section 100C of said chapter 276, as so appearing, is hereby further
892 amended by inserting after the word “commissioner”, in line 29, the following words:- or the
893 clerk of courts in any district, superior, or the Boston municipal court,

894

895 SECTION 62. Chapter 276 of the General Laws, as so appearing, is hereby amended by
896 inserting after section 100C the following section:-

897

898 Section 100D. Notwithstanding any provision of section 100A, 100B, or 100C of this
899 chapter, criminal justice agencies as defined in section 167 of chapter 6 shall have immediate
900 access to, and be permitted to use as necessary for the performance of their criminal justice
901 duties, any sealed criminal offender record information as defined in section 167 of chapter 6 and
902 any sealed information concerning criminal offenses or acts of delinquency committed by any
903 person before he attained the age of 17.

904 SECTION 63. Section 34 of chapter 279 of the General Laws, as so appearing, is hereby
905 amended by inserting after the word “accordingly”, in line 5, the following words,- “for the
906 duration of the sentence and within classification guidelines of the facility to which said convict
907 is committed.”

908 SECTION 64. Notwithstanding any general or special law to the contrary, this section
909 shall facilitate the orderly transfer of the employees, proceedings, rules and regulations, property

910 and legal obligations of the criminal history systems board, as the transferor agency, to the
911 department of criminal justice information services, as the transferee agency, as follows:

912

913 (a) Subject to appropriation, the employees of the criminal history systems board,
914 including those who immediately before the effective date of this act hold permanent
915 appointment in positions classified under chapter 31 of the General Laws or have tenure in their
916 positions as provided by section 9A of chapter 30 of the General Laws or do not hold such
917 tenure, or hold confidential positions, are hereby transferred to the department of criminal justice
918 information services, without interruption of service within the meaning of said section 9A of
919 said chapter 31, without impairment of seniority, retirement or other rights of the employee, and
920 without reduction in compensation or salary grade, notwithstanding any change in title or duties
921 resulting from such reorganization, and without loss of accrued rights to holidays, sick leave,
922 vacation and benefits, and without change in union representation or certified collective
923 bargaining unit as certified by the state labor relations commission or in local union
924 representation or affiliation. Any collective bargaining agreement in effect immediately before
925 the transfer date shall continue in effect and the terms and conditions of employment therein
926 shall continue as if the employees had not been so transferred. The reorganization shall not
927 impair the civil service status of any such reassigned employee who immediately before the
928 effective date of this act either holds a permanent appointment in a position classified under
929 chapter 31 of the General Laws or has tenure in a position by reason of section 9A of chapter 30
930 of the General Laws.

931

932 Notwithstanding any general or special law to the contrary, all such employees shall
933 continue to retain their right to collectively bargain pursuant to chapter 150E of the General
934 Laws and shall be considered employees for the purposes of said chapter 150E.

935

936 Nothing in this section shall be construed to confer upon any employee any right not held
937 immediately before the date of said transfer, or to prohibit any reduction of salary grade, transfer,
938 reassignment, suspension discharge layoff or abolition of position not prohibited before such
939 date.

940

941 (b) All petitions, requests, investigations and other proceedings appropriately and duly
942 brought before or referred to the executive director of the criminal history systems board by the
943 transferor agency and pending before the executive director before the effective date of this act,
944 shall continue unabated and remain in force, but shall be assumed and completed by the
945 department of criminal justice information services.

946

947 (c) All orders, rules and regulations duly made and all approvals duly granted by the
948 criminal history systems board, which are in force immediately before the effective date of this
949 act, shall continue in force and shall thereafter be enforced by the department of criminal justice
950 information systems, until superseded, revised, rescinded or canceled, in accordance with law.

951

952 (d) All books, papers, records, documents, equipment, buildings, facilities, cash and other
953 property, both personal and real, including all such property held in trust, which immediately
954 before the effective date of this act are in the custody of the criminal history systems board shall
955 be transferred to the department of criminal justice information services.

956

957 (e) All duly existing contracts, leases and obligations of the criminal history systems
958 board shall continue in effect but shall be assumed by the department of criminal justice
959 information services. No existing right or remedy of any character shall be lost, impaired or
960 affected by this act.

961 SECTION 65. The department, in consultation with the information technology
962 division, shall regularly report on its progress in building the information technology system
963 necessary to fulfill the requirements established in subsection (a) of section 172 of chapter 6 of
964 the General Laws, as amended by section 16 of this act. The department shall file such reports
965 with the chairpersons of the joint committee on the judiciary, the joint committee on public
966 safety and homeland security, the chairpersons of the House and Senate committees on bonding,
967 capital expenditures and state assets and the chairpersons of the House and Senate committees on
968 ways and means and shall post such reports on the department's publicly-accessible website. The
969 department shall file such reports 6, 12, 15 and 18 months after this act is approved by the
970 governor, and at 3-month intervals thereafter, if necessary, until the project is complete. Each
971 report shall include a description of the progress made in the planning, design and construction
972 of the system since the preceding report, and shall include a comparison of actual expenditures to
973 budgeted expenditures and of budgeted timelines to actual timelines. Such report shall also

974 include a certification whether the department expects the complete information technology
975 system to be fully operational 18 months after this act is approved by the governor, as required in
976 this act.

977

978 SECTION 66. Notwithstanding the provisions of sections 32, 32A, 32B, 32E, 32F, and
979 32J of chapter 94C of the General Laws, or any other general or special law to the contrary, a
980 person serving a mandatory minimum sentence for violating any provision of the above
981 referenced sections as of the effective date of this act, shall be eligible for parole after serving
982 two-thirds of the minimum term of the sentence if the sentence is to a state prison, or after
983 serving one-half of the minimum term of the sentence if the sentence is to a house of correction.

984 SECTION 67. Notwithstanding any general or special law to the contrary, chapter 127A
985 of the General Laws shall apply to any felony, as defined in section 1 of chapter 274 of the
986 General Laws, committed on or after the effective date of this act.

987 SECTION 68. Section 5A of this act is hereby repealed.

988 SECTION 69. Sections 1-5, 11-14, 16-17, 22-27, 31-33, 50, 52-62, 64 and 68 shall take
989 effect 18 months after this act is approved by the Governor.