SENATE DOCKET, NO. 2731 FILED ON: 7/30/2010

SENATE . . . . . No. 2583

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

An Act reforming the administrative procedures relative to criminal offender record information and pre- and post-trial supervised release.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 116C of chapter 6 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out, in lines 16 and 31, the words 'criminal history systems board' and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 2. Section 167 of said chapter 6 of the General Laws, as so appearing, is hereby amended by striking out, in line 2, the words "one hundred and sixty-eight to one hundred seventy-eight" and inserting in place thereof the following words:- 168 to 178L, inclusive.

SECTION 3. Said section 167 of said chapter 6, as so appearing, is hereby further amended by inserting before the definition of "Criminal justice agencies" the following 3 definitions:-

"All available criminal offender record information", adult and youthful offender convictions, non-convictions and pending criminal court appearances, but excluding criminal

records sealed under section 34 of chapter 94C or sections 100A to 100C, inclusive, of chapter 276 or the existence of such records.

"Board", the criminal record review board established under section 168.

"Commissioner", the commissioner of criminal justice information services under section 167A.

SECTION 4. Said section 167 of said chapter 6, as so appearing, is hereby further amended by inserting after the definition of "Criminal justice agencies" the following 2 definitions:-

"Criminal offender record information", records and data in any communicable form compiled by a Massachusetts criminal justice agency which concern an identifiable individual and relate to the nature or disposition of a criminal charge, an arrest, a pre-trial proceeding, other judicial proceedings, sentencing, incarceration, rehabilitation, or release. Such information shall be restricted to that recorded as the result of the initiation of criminal proceedings or any consequent proceedings related thereto. Criminal offender record information shall not include evaluative information, statistical and analytical reports and files in which individuals are not directly or indirectly identifiable, or intelligence information. Criminal offender record information shall be limited to information concerning persons who have attained the age of 17 and shall not include any information concerning criminal offenses or acts of delinquency committed by any person before he attained the age of 17; provided, however, that if a person under the age of 17 is adjudicated as an adult, information relating to such criminal offense shall be criminal offender record information. Criminal offender record information shall not include information concerning any offenses which are not punishable by incarceration.

“Department”, the department of criminal justice information services established pursuant to section 167A.

SECTION 5. Said section 167 of said chapter 6, as so appearing, is hereby further amended by inserting after the definition of “Evaluative information” the following definition:-

“Executive office”, the executive office of public safety and security.

SECTION 6. Said section 167 of said chapter 6, as so appearing, is hereby further amended by inserting after the definition of “Interstate systems” the following definition:-

“Person”, a natural person, corporation, association, partnership or other legal entity acting as a decision maker on an application or interacting directly with a subject.

SECTION 7. Said section 167 of said chapter 6, as so appearing, is hereby further amended by inserting after the definition of “Purge” the following 4 definitions:-

“Requestor”, a person, other than a criminal justice agency, submitting a request for criminal offender record information to the department.

‘Secretary’, the secretary of public safety and security.

“Self-audit”, an inquiry made by a subject or his legally authorized designee to obtain a log of all queries to the department by any individual or entity, other than a criminal justice agency, for the subject’s criminal offender record information, but excluding any information relative to any query conducted by a criminal justice agency.

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

SECTION 8. Said chapter 6 is hereby further amended by inserting after section 167 the following section:-

Section 167A. (a) There shall be within the executive office a department of criminal justice information services which shall be under the supervision and control of a commissioner. The commissioner shall be appointed by the secretary and shall be a person of skill and experience in the field of criminal justice. The commissioner shall be the executive and administrative head of the department and shall be responsible for administering and enforcing the provisions of law relative to the department and to each administrative unit thereof. The commissioner shall serve at the pleasure of the secretary, shall receive such salary as may be determined by law and shall devote his full time to the duties of his office. In the case of an absence or vacancy in the office of the commissioner, or in the case of disability as determined by the secretary, the secretary may designate an acting commissioner to serve as commissioner until the vacancy is filled or the absence or disability ceases. The acting commissioner shall have all the powers and duties of the commissioner and shall have similar qualifications as the commissioner. The commissioner shall not be subject to the provisions of chapter 31 or section 9A of chapter 30.

(b) The commissioner may appoint such persons, including experts and consultants, as he shall deem necessary to perform the functions of the department. The provisions of chapter 31 and section 9A of chapter 30 shall not apply to any person holding any such appointment. Every person so appointed to any position in the department shall have experience and skill in the field of such position. So far as practicable in the judgment of the commissioner, appointments to such positions in the department shall be made by promoting or transferring employees of the commonwealth serving in positions which are classified under chapter 31 and such appointments

shall at all times reflect the professional needs of the administrative unit affected. If an employee serving in a position which is classified under chapter 31 or in which an employee has tenure by reason of said section 9A of said chapter 30 shall be appointed to a position within the department which is not subject to said chapter 31, the employee shall, upon termination of his service in such position, be restored to the position which he held immediately prior to such appointment; provided, however, that his service in such position shall be determined by the civil service commission in accordance with the standards applied by said commission in administering said chapter 31. Such restoration shall be made without impairment of civil service status or tenure under said section 9A of said chapter 30 and without loss of seniority, retirement or other rights to which uninterrupted service in such prior position would have entitled the employee. During the period of such appointment, each person so appointed from a position in the classified civil service shall be eligible to take any competitive promotional examination for which he would otherwise have been eligible.

(c) The department shall provide for and exercise control over the installation, operation and maintenance of data processing and data communication systems, hereinafter called the public safety information system, which shall include, but shall not be limited to, the criminal justice information system. The system shall be designed to ensure the prompt collection, exchange, dissemination and distribution of such public safety information as may be necessary for the efficient administration and operation of criminal justice agencies and to connect such systems directly or indirectly with similar systems in this or other states. The department shall be responsible for all data processing, management of the public safety information system, supervision of all personnel associated with the system and the appointment of all such personnel.

(d) The department shall provide access to the public safety information system to criminal justice agencies, as defined in section 167. The department may, subject to chapter 30A, hear and investigate complaints pertaining to misuse of the public safety information system and issue sanctions and penalties for misuse. The commissioner may refer complaints for further review to the criminal record review board, any state or federal agency or prosecuting authority.

(e) The department may, in consultation with the board, adopt rules and regulations for: (i) the implementation, administration and enforcement of this section; (ii) the control, installation and operation of the public safety information system accessed and utilized by criminal justice agencies; and the collection, storage, access, dissemination, content, organization and use of criminal offender record information by requestors; provided, however, any consumer reporting agency accessing the criminal offender record information from the department shall be deemed in compliance with any rule or regulation promulgated hereunder so long as its applicable policies are in compliance with the state and federal Fair Credit Reporting Acts.

(f) The department shall ensure that no backlog of criminal offender records requests develop that impedes the processing of necessary information related to employment, housing and other essential activities and services. If a backlog develops, the commissioner shall report the nature of the backlog and its impact on services to the secretary of public safety and shall take action to remediate the cause of the backlog.

(g) The department may enter into contracts and agreements with, and accept gifts, grants, contributions and bequests of funds from, any department, agency or subdivision of federal, state, county or municipal government and any individual, foundation, corporation, association, or public authority for the purpose of providing or receiving services, facilities or

staff assistance in connection with its work. Such funds shall be deposited with the state treasurer and may be expended by the department in accordance with the conditions of the gift, grant, contribution or bequest, without specific appropriation.

SECTION 9. Section 168 of said chapter 6, as appearing in the 2008 Official Edition, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

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

SECTION 10. Said section 168 of said chapter 6, as so appearing, is hereby further amended by striking out, in lines 50 and 51, the words “five hundred dollars for each willful violation thereof, after notice and hearing as provided by applicable law” and inserting in place thereof the following words:- $1,000 for a knowing violation thereof, $2,500 for a second knowing violation, and $5,000 for a third or subsequent knowing violation, after notice and hearing as provided by applicable law; provided, however, that the board shall not issue any orders, sanctions or fines against a law enforcement officer who, in good faith, obtains or seeks to obtain or communicates or seeks to communicate criminal offender record information in the furtherance of the officer’s official duties.

SECTION 11. Said section 168 of said chapter 6, as so appearing, is hereby further amended by striking out the fourth and sixth paragraphs.

SECTION 12. Said chapter 6, as so appearing, is hereby further amended by striking out section 168 and inserting in place thereof the following section:-

Section 168. (a) There shall be a criminal record review board within the department of criminal justice information services consisting of the following persons: the secretary of public safety and security, who shall serve as chair, the attorney general, the secretary of labor and workforce development, the chair of the Massachusetts sentencing commission, the chief counsel for the committee for public counsel services, the chair of the parole board, the commissioner of correction, the commissioner of probation, the commissioner of youth services, the colonel of state police and the presidents of the Massachusetts District Attorneys Association, the Massachusetts Sheriffs’ Association and the Massachusetts Chiefs of Police Association, or their designees, all of whom shall serve ex officio, and 5 persons to be appointed by the governor, 1 of

whom shall represent private users of criminal offender record information, 1 of whom shall be a victim of crime, 1 of whom shall have experience in the areas of workforce development or ex-offender rehabilitation and 2 of whom shall be persons who have experience in issues relating to personal privacy. Upon the expiration of the term of any appointive member, his successor shall be appointed in a like manner for a term of 3 years.

The chair shall hold regular meetings, 1 of which shall be an annual meeting, and shall notify all board members of the time and place of all meetings. Special meetings may be called at any time by a majority of the board members and shall be called by the chair upon written application of 9 or more members. Members of the board shall serve without compensation but shall be reimbursed for their expenses actually and necessarily incurred in the discharge of their official duties.

(b) The board may hear complaints and investigate any incidents alleging that a person that has requested or received criminal offender record information has failed to provide the subject with the criminal offender record information in his possession prior to questioning the subject about his criminal history in connection with a decision regarding employment, volunteer opportunities, housing or professional licensing or in connection with an adverse decision on such an application on the basis of the criminal offender record information. The board may hear complaints and investigate any incidents alleging any other violation of sections 168 to 178A, inclusive, or violation of board rules and regulations. The board may charge and collect a fee, established by the secretary, as a condition for filing a complaint, which fee may be waived upon a finding of indigency. Any complaint filed with the board shall be supported by a written declaration by the complainant that it is made under the penalties of perjury. An answer filed by a responding party shall be signed under the penalties of perjury by an individual with personal

knowledge of its contents. In conducting investigations and hearings, the board, or department staff designated by the board, shall have the power to summons witnesses, compel their attendance and testimony, require the production of books, records and documents, administer oaths and have access to all criminal offender record information. The chair of the board may appoint a member, panel of 3 board members or a hearing officer to conduct hearings, according to the standard rules of adjudicatory procedure or other rules which the department may adopt, in consultation with the board. Following review of a complaint by a member, panel or hearing officer, the board, by a vote of two-thirds of the members present and voting, shall issue a ruling as to the findings of the board. In accordance with its findings, the board may issue orders and sanctions enforcing this section and the board's rules and regulations, including, but not limited to, a remand for additional fact finding, the imposition of civil fines payable to the commonwealth not to exceed $5,000 for each knowing violation and conditions on continued access to criminal offender record information or revocation of access; provided, however, that the board shall not issue any orders, sanctions or fines against a law enforcement officer who, in good faith, obtains or seeks to obtain, or communicates or seeks to communicate criminal offender record information in the furtherance of the officer's official duties. The board may at any time refer a complaint for criminal prosecution under section 178 of this chapter.

The board shall make an annual report of the volume and disposition of complaints without identifying data on any complainant or other information that would include criminal offender record information relative to any person reviewed by the board to the governor and file a copy thereof with the state secretary, the attorney general, the clerk of the house of representatives and the clerk of the senate. The annual report shall also be available to the public upon request.

SECTION 13. Section 168A of said chapter 6, as so appearing, is hereby amended by striking out, in lines 3 and 4, the words “criminal history systems board” and inserting in place thereof the following word:- department.

SECTION 14. Section 168B of said chapter 6, as so appearing, is hereby amended by striking out, in lines 1 and 2, the words ‘criminal history systems board’ and inserting in place thereof the following words:- department.

SECTION 15. Section 168C of said chapter 6, as so appearing, is hereby amended by striking out, in lines 4 and 5, the words ‘criminal history systems board’ and inserting in place thereof the following words:- department.

SECTION 16. Section 171 of said chapter 6, as so appearing, is hereby amended by striking out, in lines 1 and 10, the word ”board” and inserting in place thereof, in each instance, the following word:- department.

SECTION 17. Section 171 of said chapter 6, as so appearing, is hereby amended by striking out, in lines 3 to 7, inclusive, the words “(b) assuring the prompt and complete purging of criminal record information, insofar as such purging is required by any statute or administrative regulation, by the order of any court of competent jurisdiction, or to correct any errors shown to exist in such information; and (c) ” and inserting in place thereof the following words:- ;and (b).

SECTION 18. Said section 171 of said chapter 6, as so appearing, is hereby further amended by striking out, in lines 35to48, inclusive, the words “Any individual aggrieved by an agency’s decision denying access to evaluative information may appeal the denial in writing within thirty days thereafter to the board or to a three member panel thereof, as the board may

determine, and the board or such panel or any court under section one hundred and seventy-seven shall have access to any certificate. The adoption of such regulations by each criminal justice agency shall be subject to the approval of the board, and shall be promulgated within time limits set by the board. If any criminal justice agency holding evaluative information fails to promulgate such regulations, then the board shall promulgate such regulations with respect to that criminal justice agency. Evaluative information shall be subject to the provisions of section one hundred and seventy-two and section one hundred and seventy-eight, as if such information was criminal offender record information."

SECTION 19. Said chapter 6, as so appearing, is hereby further amended by inserting after section 171 the following section:-

Section 171A. In connection with any decision regarding employment, volunteer opportunities, housing or professional licensing, a person in possession of an applicant's criminal offender record information shall provide the applicant with the criminal history record in the person's possession, whether obtained from the department or any other source prior to questioning the applicant about his criminal history. If the person makes a decision adverse to the applicant on the basis of his criminal history, the person shall also provide the applicant with the criminal history record in the person's possession, whether obtained from the department or any other source; provided, however, that if the person has provided the applicant with a copy of his criminal offender record information prior to questioning the person is not required to provide the information a second time in connection with an adverse decision based on this information.

Failure to provide such criminal history information to an applicant pursuant to this section may subject the offending person to investigation, hearing and sanctions by the board. Nothing in this section shall be construed to prohibit a person from making an adverse decision on the basis of an individual's criminal history or to provide or permit a claim of an unlawful practice under chapter 151B or an independent cause of action in a court of civil jurisdiction for a claim arising out of an adverse decision based on criminal history except as otherwise provided under chapter 151B.

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

SECTION 20. Section 172 of said chapter 6, as appearing in the 2008 Official Edition, is hereby amended by inserting after the word "privacy", in lines 14 and 40, the following words, in each instance:- and the importance and value of successful reintegration of ex-offenders.

SECTION 21. Said chapter 6, as so appearing, is hereby further amended by striking out section 172 and inserting in its place thereof the following section:-

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

(1) Criminal justice agencies may obtain all criminal offender record information, including sealed records, for the actual performance of their criminal justice duties. Licensing authorities, as defined in section 121 of chapter 140, may obtain all criminal offender record information, including sealed records, for the purpose of firearms licensing in accordance with sections 121 to131P, inclusive, of chapter 140. The criminal record review board may obtain all criminal offender record information, including sealed records, for the actual performance of its duties.

(2) A requestor authorized or required by statute, regulation or accreditation requirement to obtain criminal offender record information other than that available under clause (3) may obtain such information to the extent and for the purposes authorized to comply with said statute, regulation or accreditation requirement.

(3) A requestor or the requestor's legally designated representative may obtain criminal offender record information for any of the following purposes: (i) to evaluate current and prospective employees including full-time, part-time, contract, internship employees or volunteers; (ii) to evaluate applicants for rental or lease of housing; (iii) to evaluate volunteers for services; and (iv) to evaluate applicants for a professional or occupational license issued by a state or municipal entity. Criminal offender record information made available under this section shall be limited to the following: (i) felony convictions for 10 years following the disposition thereof, including termination of any period of incarceration or custody, (ii) misdemeanor convictions for 5 years following the disposition thereof, including termination of any period of incarceration or custody , and (iii) pending criminal charges, which shall include cases that have been continued without a finding until such time as the case is dismissed pursuant to section 18 of chapter 278; provided, however, that prior misdemeanor and felony conviction records shall

be available for the entire period that the subject's last available conviction record is available under this section; and provided further, that a violation of section 7 of chapter 209A and a violation of section 9 of chapter 258E shall be treated as a felony for purposes of this section.

(4) Any member of the general public may upon written request to the department and in accordance with regulations established by the department obtain the following criminal offender record information on a subject: (i) convictions for any felony punishable by a term of imprisonment of 5 years or more; (ii) information indicating custody status and placement within the correction system for an individual who has been convicted of any offense and sentenced to any term of imprisonment, and at the time of the request: is serving a sentence of probation or incarceration, or is under the custody of the parole board; (iii) felony convictions for 2 years following the disposition thereof, including any period of incarceration or custody; and (iv) misdemeanor convictions for 1 year following the disposition thereof, including any period of incarceration or custody.

(5) A subject who seeks to obtain his own criminal offender record information and the subject's legally designated representative may obtain all criminal offender record information from the department pertaining to the subject under section 175.

(6) The commissioner may provide access to criminal offender record information to persons other than those entitled to obtain access under this section, if the commissioner finds that such dissemination to such requestor serves the public interest. Upon such a finding, the commissioner shall also determine the extent of access to criminal offender record information necessary to sustain the public interest. The commissioner shall make an annual report to the governor and file a copy of the report with the state secretary, the attorney general, the clerk of

the house of representatives and the clerk of the senate documenting all access provided under this paragraph, without inclusion of identifying data on a subject. The annual report shall be available to the public upon request.

(7) Housing authorities operating pursuant to chapter 121B may obtain from the department conviction and pending criminal offender record information for the sole purpose of evaluating applications for housing owned by such housing authority, in order to further the protection and well-being of tenants of such housing authorities.

(8) The department of telecommunications and energy may obtain from the department all available criminal offender record information for the purpose of screening applicants for motor bus driver certificates and applicants who regularly transport school age children or students under chapter 71B in the course of their job duties. The department of public utilities shall not disseminate such information for any purpose other than to further the protection of children.

(9) The department of children and families and the department of youth services may obtain from the department data permitted under section 172B.

(10) A person providing services in a home or community-based setting for any elderly person or disabled person or who will have direct or indirect contact with such elderly or disabled person or access to such person’s files may obtain from the department data permitted under section 172C.

(11) The IV-D agency as set forth in chapter 119A may obtain from the department data permitted under section 172D and section 14 of chapter 119A.

(12) A long-term care facility, as defined in section 72W of chapter 111, an assisted living residence as defined in section 1 of chapter 19D, and any continuing care facility as defined in section 1 of chapter 40D may obtain from the department data permitted under section 172E.

(13) The department of early education and care may obtain from the department data permitted under section 172F.

(14) Operators of camps for children may obtain from the department data permitted under section 172G.

(15) An entity or organization primarily engaged in providing activities or programs to children 18 years of age or younger that accepts volunteers may obtain from the department data permitted under section 172H.

(16) School committees or superintendents that have contracted with taxicab companies to provide for the transportation of pupils pursuant to section 7A of chapter 71 may obtain from the department data permitted under section 172I.

(17) The commissioner of banks may obtain from the department data permitted under section 172J, section 3 of chapter 255E and section 3 of chapter 255F.

(18) A children's camp or school that plans to employ a person or accept a volunteer for a climbing wall or challenge course program may obtain from the department data permitted under section 172K.

(19) A victim of a crime, a witness or a family member of a homicide victim, as defined in section 1 of chapter 258B, may obtain from the department data permitted under section 178A.

(20) The motor vehicle insurance merit rating board may obtain from the department data permitted under section 183.

(21) The department of early education and care, or its designee, may obtain from the department data permitted under sections 6 and 8 of chapter 15D.

(22) The district attorney may obtain from the department data permitted under section 2A of chapter 38.

(23) A school committee and superintendent of any city, town or regional school district and the principal, by whatever title the position be known, of a public or accredited private school of any city, town or regional school district, may obtain from the department data permitted under section 38R of chapter 71.

(24) The Massachusetts Port Authority may obtain from the department data permitted under section 61 of chapter 90.

(25) The department of social services may obtain from the department data permitted under section 26A of chapter 119, section 3B of chapter 210 (26) The state racing commission may obtain from the department data permitted under section 9A of chapter 128A.

(27) A court, office of jury commissioner, and the clerk of court or assistant clerk may obtain from the department data permitted under section 33 of chapter 234A.

(28) The pension fraud unit within the public employee retirement administration commission may obtain from the department data permitted under section 1 of chapter 338 of the acts of 1990.

(29) Special education school programs approved under chapter 71B may obtain from the department all criminal offender record information provided for in paragraph (3) of subsection (a).

(30) The department shall configure the database to allow for the exchange, dissemination, distribution and direct connection of the criminal record information system to criminal record information systems in other states and relevant federal agencies including the Federal Bureau of Investigation and Immigration and Customs Enforcement that utilize fingerprint or iris scanning and similar databases.

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

(c) The department shall specify the information that a requestor shall provide to query the database, including, but not limited to, the subject's name, date of birth and the last 4 digits of the subject's social security number; provided, however, that a member of the public accessing information under paragraph (4) of subsection (a) shall not be required to provide the last four digits of the subject's social security number. To obtain criminal offender record information concerning a subject pursuant to subsection (a)(2) or (a)(3), the requestor must

certify under the penalties of perjury that the requestor is an authorized designee of a qualifying entity, that the request is for a purpose authorized under subsection (a)(2) or (a)(3), and that the subject has signed an acknowledgement form authorizing the requestor to obtain the subject's criminal offender record information. The requestor must also certify that he has verified the identity of the subject by reviewing a form of government-issued identification. Each requestor shall maintain acknowledgement forms for a period of 1 year from the date the request is submitted. Such forms shall be subject to audit by the department. The department may establish rules or regulations imposing other requirements or affirmative obligations upon requestors as a condition of obtaining access to the database; provided, however, that such additional rules and regulations are not in conflict with the state and federal Fair Credit Reporting Acts.

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

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

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

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

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

(f) A requestor shall not disseminate criminal offender record information except upon request by a subject; provided, however, that a requestor may share criminal offender record information with individuals within the requesting entity that have a need to know the contents of the criminal offender record information to serve the purpose for which the information was obtained; and provided further, that upon request, a requestor shall share criminal offender record information with the government entities charged with overseeing, supervising, or regulating them. A requestor shall maintain a secondary dissemination log for a period of one year following the dissemination of a subject's criminal offender record information. The log shall include the following information: (i) name of subject; (ii) date of birth of the subject; (iii) date of the dissemination; (iv) name of person to whom it was disseminated; and (v) the purpose for the dissemination. The secondary dissemination log shall be subject to audit by the department.

Unless otherwise provided by law or court order, a requestor shall not maintain a copy, electronic or otherwise, of requested criminal offender record information obtained from the department for more than 7 years from the last date of employment, volunteer service or residency or from the date of the final decision of the requestor regarding the subject.

(g) The department shall maintain a log of all queries that shall indicate the name of the requestor, the name of the subject, the date of the query, and the certified purpose of the query. A self-audit may be requested for no fee once every 90 days. The commissioner may impose a fee in an amount as determined by the secretary of public safety and security, for self-audit requests made more than once every 90 days. Upon request, the commissioner may transmit the self-audit electronically. Further, if funding is available and technology reasonably allows, the department shall establish a mechanism that will notify a subject, or an advocate or agent

designated by the subject, by electronic mail or other communication mechanism whenever a query is made regarding the subject. The self-audit log and query log shall not be considered a public record.

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

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

(j) The parole board, subject to sections 130 and 154 of chapter 127, the department of correction, a county correctional authority or a probation officer with the approval of a justice of the appropriate division of the trial court may, in its discretion, make available a summary, which may include references to criminal offender record information or evaluative information,

concerning a decision to release an individual on a permanent or temporary basis, to deny such release, or to change the individual's custody status.

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

(l) Any individual or entity that receives or obtains criminal offender record information from any source in violation of sections 168 through 175 of this chapter, whether directly or through an intermediary, shall not collect, store, disseminate, or use such criminal offender record information in any manner or for any purpose.

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

(n) The commissioner, upon the advice of the board, shall promulgate rules and regulations to carry out the provisions of this section.

SECTION 22. Said chapter 6, as appearing in the 2008 Official Edition, is hereby further amended by striking out section 172A and inserting in place thereof the following section:-

Section 172A. The commissioner shall assess a fee for each request for criminal offender record information or self-audit, according to a fee structure established by the secretary of public safety and security. No fee shall be assessed for a request made by a victim of crime or a witness or a family member of a homicide victim, all as defined in section 1 of chapter 258B, or for a request made by any local, state or federal government entity. The commissioner shall waive the fee or a portion of the fee from such other persons as provided in the department's rules and regulations. The department is authorized to enter into contracts and agreements for reduced or bulk fees for requestors who make extensive use of the database.

The department shall be authorized, subject to appropriation, to retain a portion of the revenues received by the commonwealth under this section for the following purposes: to assist ex-offenders in obtaining and maintaining employment, including, but not limited to, workforce development training and other applicable training programs, training and auditing requestors described in subsection (a) of section 172, providing education and assistance regarding the correction of criminal records, including but not limited to, training judges, providing the necessary information to employers and other applicable persons in possession of an applicant's criminal offender record information, and to operate and maintain the public safety information system and the criminal records review board.

SECTION 23. Said chapter 6, as so appearing, is hereby further amended by inserting after section 172B the following section:-

Section 172B 1/2. Municipalities may, by local ordinance, require applicants for licenses in specified occupations to submit a full set of fingerprints for the purpose of conducting a state and national criminal history records check pursuant to sections 168 and 172 and 28 U.S.C.

§534. Fingerprint submissions may be submitted by the licensing authority to the identification unit within the department of state police through the criminal history systems board, or its successor, for a state criminal records check and to the Federal Bureau of Investigation for a national criminal records check.

Municipalities may, by local ordinance, establish the appropriate fee charged to applicants for administering a fingerprinting system. For the purposes of section 2LLL of chapter 29, $30 of the fee shall be deposited into the Firearms Fingerprint Identity Verification Trust Fund and the remainder of the fee may be retained by the licensing authority for costs associated with the administration of the system.

SECTION 24. Section 172C of said chapter 6, as so appearing, is hereby amended by striking out, in lines 30 and 31, the words “criminal history systems board” and inserting in place thereof the following word:- department.

SECTION 25. Said chapter 6 is hereby further amended by striking out section 172E, as so appearing, and inserting in place thereof the following section:-

Section 172E. Notwithstanding any provision of section 172 to the contrary, criminal offender record information shall be available to a long term care facility, as defined in section 72W of chapter 111, an assisted living residence as defined in section 1 of chapter 19D, and to any continuing care facility as defined in section 1 of chapter 40D, for the purpose of evaluating applicants under final consideration as, or an individual currently working as, an employee, a volunteer or a provider of care, treatment, education, training, transportation, delivery of meals, instruction, counseling, supervision, recreation or other services for an elderly or disabled person or for the purpose of evaluating applicants under final consideration for, or an individual

currently working in, a position involving direct or indirect contact with such elderly or disabled persons or access to such persons' personal information. A long-term care facility, assisted living residence or continuing care facility shall obtain all available criminal offender record information from the department on such applicant or current staff member. A long-term care facility, assisted living residence or continuing care facility which obtains information under this section shall prohibit the dissemination of such information for any purpose other than to further the protection of the elderly or the disabled; provided, further that dissemination among and between long term care facilities, assisted living residences or continuing care facilities shall be permitted.

SECTION 26. Section 172G of said chapter 6, as so appearing, is hereby amended by striking out, in line 5, the words 'criminal history systems board' and inserting in place thereof the following word:- department.

SECTION 27. Section 172H of said chapter 6, as so appearing, is hereby amended by striking out, in line 4, the words "that accepts volunteers,".

SECTION 28. Said section 172H of said chapter 6, as so appearing, is hereby further amended by striking out, in line 5, the words 'criminal history systems board' and inserting in place thereof the following word:- department.

SECTION 29. Said section 172H of said chapter 6, as so appearing, is hereby further amended by striking out, in line 6, the words "a volunteer" and inserting in place thereof the following words:- an employee, volunteer, vendor or contractor.

SECTION 30. Section 172I of said chapter 6, as so appearing, is hereby amended by striking out, in lines 8 and 9, the words “criminal history systems board” and inserting in place thereof the following word:- department.

SECTION 31. Section 172J of said chapter 6, as so appearing, is hereby amended by striking out, in line 4, the words ‘criminal history systems board,’ and inserting in place thereof the following word:- department.

SECTION 32. Section 172K of said chapter 6 of the General Laws, inserted by section 1 of chapter 43 of the acts of 2009, is hereby amended by striking out, each time they appear, the words “criminal history systems board” and inserting in place thereof the following words:- department.

SECTION 33. Section 173 of said chapter 6, as so appearing, is hereby amended by striking out, in line 1, the words “The board”, and inserting in place thereof the following words:- The commissioner may approve research programs to obtain criminal offender record information; provided, however, that said research programs shall not publish any information that either identifies or tends to identify the subject of the criminal offender record information, and the commissioner.

SECTION 34. Said section 173 of said chapter 6, as so appearing, is hereby further amended by striking out, in lines 7, 9 and 10 the word “board”, and inserting in place thereof, in each instance, the following word:- commissioner.

SECTION 35. Said chapter 6, as so appearing, is hereby further amended by striking out section 175 and inserting in place thereof the following section:-

Section 175. A subject shall have the right to inspect, and if practicable, obtain a copy of all criminal offender record information from the department that refers to the subject. The commissioner shall publish and furnish, upon request, guidelines for individuals on how to correct inaccurate or incomplete information. Subject to appropriation, the department shall provide assistance to individuals that have requested assistance to correct inaccurate or incomplete criminal offender record information. Such assistance shall include but not be limited to cooperation with appropriate entities to correct, modify or appropriately supplement criminal offender record information that has been determined to be inaccurate or incomplete. If criminal offender record information is corrected by the office of the commissioner of probation or the courts, any corrections made by such commissioner or court shall be transmitted forthwith to the department and the department's database shall reflect the corrected criminal offender record information.

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

SECTION 36. Said chapter 6 is hereby further amended by striking out section 178, as so appearing, and inserting in place thereof the following 2 sections:-

Section 178. An individual or entity who knowingly requests, obtains or attempts to obtain criminal offender record information or a self-audit from the department under false pretenses, knowingly communicates or attempts to communicate criminal offender record information to any other individual or entity except in accordance with the provisions of sections

168 through 175, or knowingly falsifies criminal offender record information, or any records relating thereto, or who requests or requires a person to provide a copy of his or her criminal offender record information except as authorized pursuant to section 172, shall for each offense be punished by imprisonment in a jail or house of correction for not more than 1 year or by a fine of not more than $5,000 or by both such fine and imprisonment, and in the case of an entity that is not a natural person, the amount of the fine may not be more than $50,000 for each violation.

An individual or entity who knowingly requests, obtains or attempts to obtain juvenile delinquency records from the department under false pretenses, knowingly communicates or seeks to communicate juvenile criminal records to any other individual or entity except in accordance with the provisions of sections 168 through 175, or knowingly falsifies juvenile criminal records, shall for each offense be punished by imprisonment in a jail or house of correction for not more than 1 year or by a fine of not more than $7,500, or by both such fine and imprisonment, and in the case of an entity that is not a natural person, the amount of the fine may not be more than $75,000 for each violation.

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

Section 178 ½. Whoever uses criminal offender record information to commit a crime against the subject of the criminal offender record information or to engage in harassment of the subject, shall be punished by a fine of not more than $5,000 or by imprisonment in a jail or house of correction for not more than 1 year, or by both such fine and imprisonment. For purposes of this section, "harassment" shall mean willfully and maliciously engaging in a knowing pattern of

conduct or series of acts over a period of time directed at a specific person, which seriously alarms that person and would cause a reasonable person to suffer emotional distress.

SECTION 37. Said chapter 6 is hereby further amended by striking out section 178A, as so appearing, and inserting in place thereof the following section:-

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

SECTION 38. Section 178C of said chapter 6, as so appearing, is hereby amended by striking out, in lines 12 and 13 and in line 51, the words “criminal history systems board” and inserting in place thereof, in each instance, the following word:- department.

SECTION 39. Section 178D of said chapter 6, as so appearing, is hereby amended by striking out, in line 2, the words “criminal history systems board” and inserting in place thereof the following word:- department.

SECTION 40. Section 178F of chapter 6, as so appearing, is hereby amended by striking out, in lines 14 to 16, inclusive, the words “A sex offender who lists a homeless shelter as his residence shall verify registration data every 45 days” and inserting in place thereof the following words: - A homeless sex offender shall verify registration data every 30 days.

SECTION 41. Section 178F½ of chapter 6, as so appearing, is hereby amended by striking out, in lines 14 to 15, the words “Such sex offender who lists a homeless shelter as his residence shall appear in person at such local police department every 45 days” and inserting in place thereof the following words:- A homeless sex offender shall appear in person at such local police department every 30 days.

SECTION 42. Said chapter 6, as so appearing, is hereby amended by inserting, after section 178F½,the following section:-

Section 178F ¾. A homeless sex offender shall wear a global positioning system device, or any

comparable device, administered by the commissioner of probation.

SECTION 43. Section 178K of said chapter 6, as so appearing, is hereby amended by striking out, in lines 1 to 2, the words “in the criminal history systems board, but not subject to its jurisdiction”, and inserting in place thereof the following words:- in the executive office of public safety and security.

SECTION 44. Section 183 of said chapter 6, as so appearing, is hereby amended by striking out, in lines 27 and 32, the words ‘criminal history systems board’ and inserting in place thereof, in each instance, the following words:- department of criminal justice information services.

SECTION 45. Chapter 6A of the General Laws, as so appearing, is hereby amended by striking out section 18 and inserting in place thereof the following section:-

Section 18. The following state agencies are hereby declared to be within the executive office of public safety and security: the department of public safety; the department of fire services; the office of grants and research and the highway safety division; the municipal police training committee; the Massachusetts department of criminal justice information services; the state 911 department; the department of state police; the office of the chief medical examiner; the Massachusetts emergency management agency; the military department; the department of correction, including the parole board; the sex offender registry board; and all other agencies and boards within said departments, committees and boards.

SECTION 46. Section 18 ½ of said chapter 6A, as so appearing, is hereby amended by striking out, in line 10, the words "criminal history systems board" and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 47. Section 18 ¾ of said chapter 6A, as so appearing, is hereby amended by striking out, in lines 2 and 3, the words 'criminal history systems board' and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 48. Section 4 of chapter 18C of the General Laws, as so appearing, is hereby amended by striking out, in lines 22 and 23, the words "executive director of the criminal history systems board" and inserting in place thereof the following words:- commissioner of the department of criminal justice information services.

SECTION 49. Section 1 of chapter 22A of the General Laws, as so appearing , is hereby amended by striking out the definition of 'Board'.

SECTION 50. Said section 1 of said chapter 22A, as so appearing, is hereby further amended by inserting after the definition of 'Central register' the following definition:-

‘Department’, the department of criminal justice information services.

SECTION 51. Section 3 of said chapter 22A, as so appearing, is hereby amended by striking out, in line 10, the word ‘board’ and inserting in place thereof the following word:- department.

SECTION 52. Section 32 of chapter 22C of the General Laws, as so appearing, is hereby amended by striking out, in line 4, the words ‘criminal history systems board’ and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 53. Section 36 of said chapter 22C, as so appearing, is hereby amended by striking out, in line 17, the words “criminal history systems board” and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 54. Section 38 of said chapter 22C, as so appearing, is hereby amended by striking out, in line 25, the words “criminal history systems board” and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 55. Section 9 of chapter 22E of the General Laws, as so appearing, is hereby amended by striking out, in line 5, the words ‘criminal history systems board’ and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 56. Chapter 30A of the General Laws, as so appearing, is hereby amended by inserting after section 1C the following section:-

Section 1D. The criminal record review board shall be subject to sections 1 to 8, inclusive, and shall not otherwise be subject to this chapter.

SECTION 57. Section 36A of chapter 40 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out, in line 25, the words ‘criminal history systems board’ and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 58. Section 10 of chapter 66 of the General Laws, as so appearing, is hereby amended by striking out, in line 50, the words “executive director of the criminal history systems board” and inserting in place thereof the following words:- commissioner of the department of criminal justice information services.

SECTION 59. Said section 10 of said chapter 66, as so appearing, is hereby further amended by striking out, in lines 50 and 51, the words “criminal history systems board” and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 60. Section 1 of chapter 71 of the General Laws, as appearing in the 2008 Official Edition, shall be amended by inserting after the word “development” , in line 19, the following words:- safe and healthy relationships with a focus on preventing sexual and domestic violence.

SECTION 61. Chapter 71 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after section 2B the following section:-

Section 2C. Each school district in the commonwealth, subject to appropriation, shall implement a specific policy and discipline code to address teen dating violence in public schools. The policy shall clearly state that dating violence will not be tolerated and shall include guidelines for addressing alleged incidents of dating violence. The policy may include a teen

dating violence prevention task force comprised of staff, students and parents to provide awareness training and education for the school community. Topics to be covered in the policy include, without limitation, defining the issue of teen dating violence, recognizing warning signs, identifying issues of confidentiality, safety and appropriate legal school-based interventions.

SECTION 62. Section 38R of chapter 71 of the General Laws, as so appearing, is hereby amended by striking out, in lines 5 and 6 and in lines 11 and 12, the words “criminal history systems board” and inserting in place thereof, in each instance, the following words:- department of criminal justice information services.

SECTION 63. Section 24 of chapter 90 of the General Laws, as so appearing, is hereby amended by striking out, in line 705, the words “criminal history systems board” and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 64. Section 24N of chapter 90 of the General Laws, as so appearing, is hereby amended by striking out, in lines 31, 44 and 83, the words “criminal history systems board” and inserting in place thereof, in each instance, the following words:- department of criminal justice information services.

SECTION 65. Section 52 of chapter 93 of the General Laws, as so appearing, is hereby amended by inserting after the word “more;”, in line 21, the following word:- or.

SECTION 66. Said section 52 of said chapter 93, as so appearing, is hereby further amended by striking out, in lines 24 to 27, inclusive, the words “; or (3) the employment of any individual at annual salary which equals or which may reasonably be expected to equal twenty thousand dollars or more”.

SECTION 67. Section 32 of chapter 94C of the General Laws, as so appearing, is hereby amended by adding the following subsection:-

(c) Any person serving a mandatory minimum sentence for violating any provision of this section shall be eligible for parole after serving one-half of the maximum term of the sentence if the sentence is to the house of correction, except that such person shall not be eligible for parole upon a finding of any 1 of the following aggravating circumstances:

(i) the defendant used violence or threats of violence or possessed a firearm, rifle, shotgun, machine gun or a weapon described in paragraph (b) of section 10 of chapter 269, or induced another participant to do so, during the commission of the offense;

(ii) the defendant engaged in a course of conduct whereby he directed the activities of another who committed any felony in violation of chapter 94C; or

(iii) the offense was committed during the commission or attempted commission of a violation of section 32F or section 32K of chapter 94C.

A condition of such parole may be enhanced supervision; provided, however, that such enhanced supervision may, at the discretion of the parole board, include, but shall not be limited to, the wearing of a global positioning satellite tracking device or any comparable device, which shall be administered by the board at all times for the length of the parole.

SECTION 68. Section 32A of said chapter 94C, as so appearing, is hereby amended by adding the following subsection:-

(e) Any person serving a mandatory minimum sentence for violating this section shall be eligible for parole after serving one-half of the maximum term of the sentence if the sentence is

to the house of correction, provided that said person shall not be eligible for parole upon a finding of any one of the following aggravating circumstances:

(i) the defendant used violence or threats of violence or possessed a firearm, rifle, shotgun, machine gun or a weapon described in paragraph (b) of section 10 of chapter 269, or induced another participant to do so, during the commission of the offense;

(ii) the defendant engaged in a course of conduct whereby he directed the activities of another who committed any felony in violation of chapter 94C; or

(iii) the offense was committed during the commission or attempted commission of a violation of section 32F or section 32K of chapter 94C.

A condition of such parole may be enhanced supervision; provided, however, that such enhanced supervision may, at the discretion of the parole board, include, but shall not be limited to, the wearing of a global positioning satellite tracking device or any comparable device, which shall be administered by the board at all times for the length of the parole.

SECTION 69. Section 32B of said chapter 94C, as so appearing, is hereby amended by adding the following subsection:-

(c) Any person serving a mandatory minimum sentence for violating this section shall be eligible for parole after serving one-half of the maximum term of the sentence if the sentence is to the house of correction, except that such person shall not be eligible for parole upon a finding of any 1 of the following aggravating circumstances:

(i) the defendant used violence or threats of violence or possessed a firearm, rifle, shotgun, machine gun or a weapon described in paragraph (b) of section 10 of chapter 269, or induced another participant to do so, during the commission of the offense;

(ii) the defendant engaged in a course of conduct whereby he directed the activities of another who committed any felony in violation of chapter 94C; or

(iii) the offense was committed during the commission or attempted commission of a violation of section 32F or section 32K of chapter 94C.

A condition of such parole may be enhanced supervision; provided, however, that such enhanced supervision may, at the discretion of the parole board, include, but shall not be limited to, the wearing of a global positioning satellite tracking device or any comparable device, which shall be administered by the board at all times for the length of the parole.

SECTION 70. Section 32E of said chapter 94C, as so appearing, is hereby amended by adding the following subsection:-

(d) Any person serving a mandatory minimum sentence for violating this section shall be eligible for parole after serving one-half of the maximum term of the sentence if the sentence is to the house of correction, except that such person shall not be eligible for parole upon a finding of any 1 of the following aggravating circumstances:

(i) the defendant used violence or threats of violence or possessed a firearm, rifle, shotgun, machine gun or a weapon described in paragraph (b) of section 10 of chapter 269, or induced another participant to do so, during the commission of the offense;

(ii) the defendant engaged in a course of conduct whereby he directed the activities of another others who committed any felony in violation of chapter 94C; or

(iii) the offense was committed during the commission or attempted commission of a violation of section 32F or section 32K of chapter 94C.

A condition of such parole may be enhanced supervision; provided, however, that such enhanced supervision may, at the discretion of the parole board, include, but shall not be limited to, the wearing of a global positioning satellite tracking device or any comparable device, which shall be administered by the board at all times for the length of the parole.

SECTION 71. Section 32H of said chapter 94C, as so appearing, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

A person convicted of violating said sections shall not, until he shall have served the mandatory minimum term of imprisonment established in said sections, be eligible for probation, furlough, work release or receive any deduction from his sentence for good conduct under sections 129C and 129D of chapter 127, nor shall he be eligible for parole except as authorized pursuant to subsection (c) of Section 32, subsection (e) of section 32A, subsection (c) of section 32B, subsection (d) of section 32E, or section 32J; provided, however, that the commissioner of correction, on the recommendation of the warden, superintendent or other person in charge of the correctional institution, or a sheriff, on the recommendation of the administrator of a county correctional institution, may grant to said offender a temporary release, subject to the rules and regulations of the institution and under the direction, control and supervision of the officers thereof, for the following purposes: (1) to attend the funeral of a relative, to visit a critically ill relative, to obtain emergency medical or psychiatric services unavailable at said institution; (2) to

participate in education, training, or employment programs established under section 48 of chapter 127; or (3) to participate in a program to provide services under section 49B or 49C of chapter 127. Section 87 of chapter 276 shall not apply to any person, 17 years of age or older, charged with a violation of said sections, or to any child between age 14 and 17, so charged by indictment under section 54 of chapter 119.

SECTION 72. Section 32J of said chapter 94C, as so appearing, is hereby amended by adding the following paragraph:-

Any person serving a mandatory minimum sentence for violating this section shall be eligible for parole after serving one-half of the maximum term of the sentence if the sentence is to a house of correction, except that such person shall not be eligible for parole upon a finding of any 1 of the following aggravating circumstances:

(i) the defendant used violence or threats of violence or possessed a firearm, rifle, shotgun, machine gun or a weapon described in paragraph (b) of section 10 of chapter 269, or induced another participant to do so, during the commission of the offense;

(ii) the defendant engaged in a course of conduct whereby he directed the activities of another who committed any felony in violation of chapter 94C.

(iii) the offense was committed during the commission or attempted commission of the a violation of section 32F or section 32K of chapter 94C.

A condition of such parole may be enhanced supervision; provided, however, that such enhanced supervision may, at the discretion of the parole board, include, but shall not be limited

to, the wearing of a global positioning satellite tracking device or any comparable device, which shall be administered by the board at all times for the length of the parole.

SECTION 73. Section 34 of chapter 101 of the General Laws, as so appearing, is hereby amended by striking out, in line 91 and in lines 96 and 97, the words ‘criminal history systems board’ and inserting in place thereof, in each instance, the following words:- department of criminal justice information services.

SECTION 74. Section 71 of chapter 111 of the General Laws, as so appearing, is hereby amended by striking out, in lines 43 and 44, the words “criminal history systems board” and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 75. Section 12A ½ of chapter 112 of the General Laws, as so appearing, is hereby amended by striking out, in line 5, the words “criminal history systems board” and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 76. Section 9 of chapter 123A of the General Laws, as so appearing, is hereby amended by striking out, in line 51, the words ‘criminal history systems board’ and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 77. Section 14 of chapter 123A of the General Laws, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following 2 sentences:- The district attorney, or the attorney general at the request of the district attorney, may petition the court for a trial. In any trial held pursuant to this section, either the person

named in the petition or the petitioning party may demand, in writing, that the case be tried to a jury and, upon such demand, the case shall be tried to a jury.

SECTION 78. Section 2 of chapter 127 of the General Laws, as so appearing, is hereby amended by striking out, in lines 5 and 6, the words ‘criminal history systems board’ and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 79. Said chapter 127 is hereby further amended by inserting after section 20A the following section:-

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

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

For the duration of his participation in the program, the detainee shall be deemed to be in custody as a pretrial detainee for the purpose of receiving credit pursuant to section 129B of

chapter 127 and section 33A of chapter 279 toward any sentence he may receive, and may be charged with escape pursuant to section 16 of chapter 268 should he leave the place to which he is classified pursuant to his participation in the program without authorization or should he escape from custody while he is being transported pursuant to his participation in the program. Additionally for the duration of his participation in this program only, the detainee may receive additional deductions from any sentence that may be imposed for the offense for which he was detained, for participation in work, education or treatment programs designated by the sheriff pursuant to section 129D of chapter 127.

A detainee shall not be eligible to participate in this program if he is charged with: murder; any offense that carries the possibility of a life sentence; a violation of: paragraph (b) of 32 of chapter 94C; paragraphs (b), (c) and (d) of section 32A of said chapter 94C; paragraph (b) of 32B of said chapter 94C; sections 32B, 32E, 32F, 32J, 32K or 37 of said chapter 94C; a violation of section 13, 14, 15, 15A, 15B, 16, 17, 18, 18A, 19, 20, 21, 24B, 25, 26 or 26A of chapter 265; section 17, 34 or 35 of chapter 272; or an attempt to commit any offense referred to in these sections; or if he is detained under subsection (3) of section 58A of chapter 276. No sex offender, or sexually dangerous person as defined in section 1 of chapter 123A or any person who is charged with committing a sexual offense as defined in said section 1 of said chapter 123A shall be eligible to participate in this program. Placement of an individual in such program shall require victim notification as required under clause (t) of section 3 of chapter 258B.

SECTION 80. Section 2 of chapter 127 of the General Laws, as so appearing, is hereby amended by striking out, in lines 5 and 6, the words “criminal history systems board” and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 81. Section 28 of said chapter 127, as so appearing, is hereby amended by striking out, in line 9, the words “criminal history systems board” and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 82. Section 29 of said chapter 127, as so appearing, is hereby amended by striking out, in line 13, the words “criminal history systems board” and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 83. Section 133E of said chapter 127, as so appearing, is hereby amended by striking out, in line 3, the words “criminal history systems board” and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 84. Section 122 of chapter 140 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out, in lines 21 and 22, the words “executive director of the criminal history systems board” and inserting in place thereof the following words:- commissioner of the department of criminal justice information services.

SECTION 85. Section 122A of said chapter 140, as so appearing, is hereby amended by striking out, in line 5, the words “criminal history systems board” and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 86. Said section 122A of said chapter 140, as so appearing, is hereby further amended by striking out, in lines 5 and 6 and in lines 9 and 10, the words “executive director of the criminal history systems board” and inserting in place thereof, in each instance, the following words:- commissioner of the department of criminal justice information services.

SECTION 87. Section 122B of said chapter 140, as so appearing, is hereby amended by striking out, in lines 14 and 15 and in lines 24 and 25, the words “executive director of the criminal history systems board” and inserting in place thereof, in each instance, the following words:- commissioner of the department of criminal justice information services.

SECTION 88. Section 123 of said chapter 140, as so appearing, is hereby amended by striking out, in lines 7 and 8 line 27, and in lines 106 and 107, the words “executive director of the criminal history systems board” and inserting in place thereof, in each instance, the following words:- commissioner of the department of criminal justice information services.

SECTION 89. Section 125 of said chapter 140, as so appearing, is hereby amended by striking out, in lines 11 and 12, the words “executive director of the criminal history systems board” and inserting in place thereof the following words:- commissioner of the department of criminal justice information services.

SECTION 90. Section 127 of said chapter 140, as so appearing, is hereby amended by striking out, in line 6, the words “executive director of the criminal history systems board” and inserting in place thereof the following words:- commissioner of the department of criminal justice information services.

SECTION 91. Section 128A of said chapter 140, as so appearing, is hereby amended by striking out, in lines 27 and 28, the words “executive director of the criminal history systems board” and inserting in place thereof the following words:- commissioner of the department of criminal justice information services.

SECTION 92. Section 128B of said chapter 140, as so appearing, is hereby amended by striking out, in lines 11 and 12, the words “executive director of the criminal history systems

board” and inserting in place thereof the following words:- commissioner of the department of criminal justice information services.

SECTION 93. Section 129B of said chapter 140, as so appearing, is hereby amended by striking out, in lines 112, 148 and 159, the words “executive director of the criminal history systems board” and inserting in place thereof the following words:- commissioner of the department of criminal justice information services.

SECTION 94. Section 129C of said chapter 140, as so appearing, is hereby amended by striking out, in lines 12 and 13 and in lines 16 and 17, the words “executive director of the criminal history systems board” and inserting in place thereof, in each instance, the following words:- commissioner of the department of criminal justice information services.

SECTION 95. Section 130B of said chapter 140, as so appearing, is hereby amended by striking out, in line 2, the words “criminal history systems board” and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 96. Said section 130B of said chapter 140, as so appearing, is hereby further amended by striking out, in line 4, the words “criminal history systems board appointed by the executive director” and inserting in place thereof the following words:- department of criminal justice information services appointed by the commissioner.

SECTION 97. Section 131 of said chapter 140, as so appearing, is hereby amended by striking out, in lines 55 and 56, line 163, and in lines 193 and 194, the words “executive director of the criminal history systems board,” and inserting in place thereof, in each instance, the following words:- commissioner of the department of criminal justice information services.

SECTION 98. Section 131½ of said chapter 140, as so appearing, is hereby amended by striking out, in lines 6 and 7, the words “criminal history systems board,” and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 99. Section 131A of said chapter 140, as so appearing, is hereby amended by striking out, in line 12 and 13, the words “executive director of the criminal history systems board,” and inserting in place thereof the following words:- commissioner of the department of criminal justice information services.

SECTION 100. Section 25 of chapter 151A of the General Laws, as so appearing, is hereby amended by striking out, in lines 251 and 252 and in line 254, the words “criminal history systems board,” and inserting in place thereof, in each instance, the following words:- department of criminal justice information services.

SECTION 101. Section 4 of chapter 151B of the General Laws, as so appearing, is hereby amended by inserting, after subsection 9, the following subsection:-

9½. For an employer to request on its initial written application form criminal offender record information; provided, however, that except as otherwise prohibited by subsection 9, an employer may inquire about any criminal convictions on an applicant’s application form if: (i) the applicant is applying for a position for which any federal or state law or regulation creates mandatory or presumptive disqualification based on a conviction for 1 or more types of criminal offenses; or (ii) the employer or an affiliate of such employer is subject to an obligation imposed by any federal or state law or regulation not to employ persons, in either 1 or more positions, who have been convicted of 1 or more types of criminal offenses.

SECTION 102. Section 7 of chapter 152 of the General Laws, as so appearing, is hereby amended by striking out, in line 42 and in lines 44 and 45, the words “criminal history systems board,” and inserting in place thereof, in each instance, the following words:- department of criminal justice information services.

SECTION 103. Section 6 of chapter 209A of the General Laws, as so appearing, is hereby amended by striking out, in line 97, the words “criminal history systems board” and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 104. Section 34A of chapter 215 of the General Laws, as so appearing, is hereby amended by striking out, in lines 47 and 48, the words “criminal history systems board,” and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 105. Section 21 of chapter 233 of the General Laws, as so appearing, is hereby amended by inserting, at the end, the following paragraph:-

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

SECTION 106. Section 3 of chapter 255E of the General Laws, as so appearing, is hereby amended by striking out, in line 12, the words ‘criminal history systems board,’ and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 107. Section 1 of chapter 258C of the General Laws, as so appearing, is hereby amended by inserting after the definition of “Crime” the following definition:-

“Crime scene cleanup”, the removal of, or the attempted removal of, blood or other stains that are the direct result of the commission of a crime or other dirt and debris caused by the processing of the crime scene; provided, however, that crime scene cleanup shall not include the replacement or repair of property damaged during the commission of the crime, in accordance with section 4.

SECTION 108. Section 1 of chapter 258C of the General Laws, as so appearing, is hereby amended by inserting after the definition of “Out-of-pocket loss” the following definition:-

“Security measures”, the replacement, repair or installation of locks, windows or other security devices deemed to be reasonably necessary for the promotion of the victim’s safety by the program director after taking into consideration the nature of the crime in accordance with section 4.

SECTION 109. Subsection (f) of section 2 of said chapter 258C of the General Laws is hereby repealed.

SECTION 110. Subsection (b) of section 3 of said chapter 258C, as so appearing, is hereby amended by striking out paragraph (1) and inserting in place thereof the following 2 paragraphs:-

(1)(A) The maximum award or compensation for funeral and burial expenses shall be $6,500. A legal guardian, dependent or other family member of the victim or a person who

actually incurs funeral and burial expenses directly related to the death of a victim shall be eligible for compensation for such funeral and burial expenses.

(B) The maximum award or compensation for expenses other than funeral and burial expenses associated with the interment of a victim whose death is the direct result of a crime shall be $800. For purposes of this subsection compensable expenses shall include, but not be limited to, transportation of the victim to the location of interment, travel of a legal guardian or family member to accompany the victim to the location of interment, memorial markers at the location of interment or other associated expenses as determined by the program director in accordance with section 4.

SECTION 111. Said section 3 of said chapter 258C, as so appearing, is hereby further amended, in lines 22 and 25, by striking out the words “one hundred and eighteen F,” and inserting in place thereof the following word:- 118G.

SECTION 112. Said section 3 of said chapter 258C, as so appearing, is hereby further amended by inserting after the word “victim” , in line 40, the following words:- , parent or legal guardian of a victim who is a minor in accordance with section 4.

SECTION 113. Subsection (b) of said section 3 of said chapter 258C, as so appearing, is hereby further amended by adding the following 3 subparagraphs:-

(G) Expenses incurred for professional crime scene cleanup services necessary as the direct result of the commission of a crime at a private residence or in a motor vehicle that is owned or leased by a victim, family member or other dependent shall be compensable in accordance with this chapter; provided, however, that the maximum amount of compensation shall not exceed $1,500.

(H) A victim shall be eligible for compensation for the reasonable replacement costs of clothing and bedding seized as evidence or rendered unusable as the result of a criminal investigation that is the direct result of a crime; provided, however, that the maximum compensable amount shall not exceed $250.

(I) A victim or a family member residing with the victim at the time a crime is committed, shall be eligible for compensation for the costs associated with the implementation of security measures; provided, however, that the maximum compensable amount shall not exceed $500.

SECTION 114. Section 8 of said chapter 258C, as so appearing, is hereby amended by striking out, in line 1, the word “fifteen” and inserting in place thereof the following figure:- 20

SECTION 115. Said section 8 of said chapter 258C, as so appearing, is hereby further amended by striking out, in line 12, the word “twenty”, and inserting in place thereof the following figure:- 30.

SECTION 116. Section 9 of said chapter 258C, as so appearing, is hereby amended by striking out, in line 7, the word “twenty” and inserting in place thereof the following figure:- 30.

SECTION 117. Section 10 of said chapter 258C, as so appearing, is hereby amended by inserting after the word “insurance,”, in line 6, the following words:- , including, but not limited to, homeowner’s insurance, renter’s insurance, automobile insurance.

SECTION 118. Section 7 of chapter 258D of the General Laws, as so appearing, is hereby amended by striking out, in lines 4 and 5, the words ‘criminal history systems board’ and

inserting in place thereof the following words:- department of criminal justice information services.

SECTION 119. Chapter 265 of the General Laws is hereby amended by adding the following section:-

Section 48. A sex offender, as defined by section 178C of chapter 6, who engages in ice cream truck vending, as defined in section 25 of chapter 270, shall be punished by imprisonment in the house of correction for not more than 2½ years or by a fine of $1,000, or by both such fine and imprisonment. A police officer or officer authorized to serve criminal process may arrest, without a warrant, any person whom he has probable cause to believe has violated this section.

SECTION 120. Section 13B of chapter 268 of the General Laws, as so appearing, is hereby amended by striking out clauses (iv) and (v) and inserting in place thereof the following 2 clauses:-

(iv) a person who is furthering a civil or criminal proceeding, including criminal investigation, grand jury proceeding, trial, other criminal proceeding of any type, probate and family proceeding, juvenile proceeding, housing proceeding, land proceeding, clerk's hearing, court ordered mediation, any other civil proceeding of any type; or

(v) a person who is or was attending or had made known his intention to attend a civil or criminal proceeding, including criminal investigation, grand jury proceeding, trial, other criminal proceeding of any type, probate and family proceeding, juvenile proceeding, housing proceeding, land proceeding, clerk's hearing, court-ordered mediation, any other civil proceeding of any type with the intent to impede, obstruct, delay, harm, punish or otherwise interfere thereby, or do so with reckless disregard, with such a proceeding shall be punished by

imprisonment in a jail or house of correction for not more than 2 and one-half years or by imprisonment in a state prison for not more than 10 years, or by a fine of not less than $1,000 nor more than $5,000, or by both such fine and imprisonment.

SECTION 121. Section 16 of chapter 268 of the General Laws, as so appearing, is hereby amended by inserting after the word “branch,” in line 10, the following words:- or who knowingly disables or attempts to disable or defeat electronic monitoring of the prisoner,.

SECTION 122 Chapter 270 of the General Laws is hereby amended by adding the following section:-

Section 25. (a) For the purposes of this section, the following words shall have the following meanings:-

“Ice cream”, any frozen dairy or frozen water-based food product.

“Ice cream truck”, any motor vehicle used for selling, displaying or offering to sell ice cream.

“Ice cream truck vending”, the selling, displaying or offering to sell ice cream or any other prepackaged food product from an ice cream truck.

“Permitting authority”, the chief of police or the board or officer having control of the police in a city or town, or person authorized by them.

(b) No person shall engage in ice cream truck vending unless he shall have been issued a valid permit to do so by the permitting authority within the municipality wherein the permit applicant lives or intends to operate an ice cream truck. Such permit shall be conspicuously displayed and clearly visible on the windshield of any ice cream truck operated or from which

ice cream or any other prepackaged food product is sold. Whoever violates this section shall be assessed a fine of $500. Each day that such person is in operation in violation of this section may be considered a separate violation.

(c) The department of public safety shall adopt regulations relative to the annual permitting of ice cream truck vendors. Such regulations shall include, but not be limited to:

(i) a requirement that all applications for an ice cream truck vending permit or applications for renewal thereof shall include the applicant's fingerprints and a current photo of the applicant;

(ii) adoption of a uniform permit application and permit form, to be used by all municipalities;

(iii) a requirement that a permitting authority conduct an investigation into the criminal history of a permit applicant to determine eligibility therefore; and

(iv) a provision restricting a permitting authority from issuing an ice cream truck vending permit to any sex offender, as defined by section 178C of chapter 6 of the General Laws.

SECTION 123. Section 23A of chapter 276 of the General Laws, as so appearing, is hereby amended by striking out, in line 8 and in lines 21 and 22, the words 'criminal history systems board,' and inserting in place thereof, in each instance, the following words:- department of criminal justice information services.

SECTION 124. Section 23B of said chapter 276, as so appearing, is hereby amended by striking out, in line 9 and lines 10 and 11, and in lines 12 and 13, the words 'criminal history

systems board,' and inserting in place thereof, in each instance, the following words:- department of criminal justice information services.

SECTION 125. Section 58A of chapter 276 of the General Laws, as so appearing, is hereby amended by striking out subsection (1) and inserting in place thereof the following subsection:-

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

SECTION 126. Section 100 of said chapter 276, as so appearing, is hereby amended by striking out, in line 30, the words “criminal history systems board” and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 127. Said section 100 of said chapter 276, as so appearing, is hereby further amended by striking out, in line 33, the word “board” and inserting in place thereof the following word:- department.

SECTION 128. Section 100A of chapter 276 of the General Laws, as so appearing, is hereby amended by striking the first paragraph and inserting in place thereof the following paragraph:-

Any person having a record of criminal court appearances and dispositions in the commonwealth on file with the office of the commissioner of probation may, on a form furnished by the commissioner and signed under the penalties of perjury, request that the commissioner seal the file. The commissioner shall comply with the request provided that: (1) the person’s court appearance and court disposition records, including any period of incarceration or custody for any misdemeanor record to be sealed occurred not less than 5 years before the request; (2) the person’s court appearance and court disposition records, including any period of incarceration or custody for any felony record to be sealed occurred not less than 10 years before the request; (3) the person had not been found guilty of any criminal offense within the commonwealth in the case of a misdemeanor, 5 years before the request, and in the case of a felony, 10 years before request, except motor vehicle offenses in which the penalty does not exceed a fine of $50; (4) the form includes a statement by the petitioner that he has not been convicted of any criminal offense in any other state, United States possession or in a court of

federal jurisdiction, except such motor vehicle offenses, as aforesaid, and has not been imprisoned in any state or county in the case of a misdemeanor, within the preceding 5 years, and in the case of a felony, within the preceding 10 years; and (5) the person's record does not include convictions of offenses other than those to which this section applies. This section shall apply to court appearances and dispositions of all offenses; provided, however, that this section shall not apply in case of convictions for violations of sections 121 to 131H, inclusive, of chapter 140 or for violations of chapter 268 or chapter 268A.

SECTION 129. Said section 100A of said chapter 276, as so appearing, is hereby further amended by inserting, after line 40, the following clauses:-

5. Any violation of section 7 of chapter 209A or section 9 of chapter 258E shall be treated as a felony.

6. Sex offenses, as defined in section 178C of chapter 6, shall not be eligible for sealing for 15 years following their disposition, including termination of supervision, probation or any period of incarceration, or for so long as the offender is under a duty to register in the commonwealth or in any other state where the offender resides or would be under such a duty if residing in the commonwealth, whichever is longer; provided, however, that any sex offender who has at any time been classified as a level 2 or level 3 sex offender, pursuant to section 178K of chapter 6, shall not be eligible for sealing of sex offenses.

SECTION 130. Said section 100A of said chapter 276, as so appearing, is hereby further amended by inserting after the word "proceedings", in line 52, the following words:- ", and except that in any proceedings under sections 1 to 39I, inclusive, of chapter 119, sections 2 to 5, inclusive, of chapter 201, chapters 208, 209, 209A, 209B, 209C, or sections 1 to 11A, inclusive,

of chapter 210, a party having reasonable cause to believe that information in a sealed criminal record of another party may be relevant to (1) an issue of custody or visitation of a child, (2) abuse, as defined in section 1 of chapter 209A or (3) the safety of any person may upon motion seek to introduce the sealed record into evidence. The judge shall first review such records in camera and determine those records that are potentially relevant and admissible. The judge shall then conduct a closed hearing on the admissibility of those records determined to be potentially admissible; provided, however, that such records shall not be discussed in open court and, if admitted, shall be impounded and made available only to the parties, their attorneys and court personnel who have a demonstrated need to receive them.

SECTION 131. Section 100C of said chapter 276, as so appearing, is hereby amended by striking out, in lines 11to12, inclusive, the words “except in cases in which an order of probation has been terminated,”.

SECTION 132. Said section 100C of said chapter 276, as so appearing, is hereby further amended by inserting after the word “commissioner”, in line 29, the following words:- or the clerk of courts in any district or superior court or the Boston municipal court.

SECTION 133. Said chapter 276 is hereby amended by inserting after section 100C the following section:-

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

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

SECTION 134. Section 1 of chapter 279 of the General Laws, as so appearing, is hereby amended by striking out, in line 42, the words ‘criminal history systems board’ and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 135. Notwithstanding any general or special law to the contrary, this section shall facilitate the orderly transfer of the employees, proceedings, rules and regulations, property and legal obligations of the criminal history systems board, as the transferor agency, to the department of criminal justice information services, as the transferee agency, as follows:

(a) Subject to appropriation, the employees of the criminal history systems board, including those who immediately before the effective date of this act hold permanent appointment in positions classified under chapter 31 of the General Laws or have tenure in their positions as provided by section 9A of chapter 30 of the General Laws or do not hold such tenure, or hold confidential positions, are hereby transferred to the department of criminal justice information services, without interruption of service within the meaning of said section 9A of said chapter 31, without impairment of seniority, retirement or other rights of the employee, and without reduction in compensation or salary grade, notwithstanding any change in title or duties resulting from such reorganization, and without loss of accrued rights to holidays, sick leave, vacation and benefits, and without change in union representation or certified collective bargaining unit as certified by the state labor relations commission or in local union representation or affiliation. Any collective bargaining agreement in effect immediately before the transfer date shall continue in effect and the terms and conditions of employment therein

shall continue as if the employees had not been so transferred. The reorganization shall not impair the civil service status of any such reassigned employee who immediately before the effective date of this act either holds a permanent appointment in a position classified under chapter 31 of the General Laws or has tenure in a position by reason of section 9A of chapter 30 of the General Laws.

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

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

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

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

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

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

SECTION 136. The Massachusetts department of criminal justice information systems, in consultation with the information technology division, shall regularly report on its progress in building the information technology system necessary to fulfill the requirements established in subsection (a) of section 172 of chapter 6 of the General Laws, as amended by section 21 of this act. The department shall file such reports with the joint committee on the judiciary, the joint committee on public safety and homeland security, the house and senate committees on bonding, capital expenditures and state assets and the house and senate committees on ways and means and shall post such reports on the department's publicly-accessible website. The department shall file such reports 6, 12, 15 and 18 months after the effective date of this act, and at 3-month intervals thereafter, if necessary, until the project is complete. Each report shall include a description of the progress made in the planning, design and construction of the system since the preceding report, and shall include a comparison of actual expenditures to budgeted expenditures and of budgeted timelines to actual timelines. Each report shall also include a certification as to whether the department expects the complete information technology system to be fully operational 18 months after the effective date of this act.

SECTION 137. Notwithstanding the provisions of sections 32, 32A, 32B, 32E, and 32J of chapter 94C of the General Laws, or any other general or special law to the contrary, a person serving a mandatory minimum sentence for violating any provision of the above-referenced sections as of the effective date of this act, shall be eligible for parole after serving one-half of the maximum term of the sentence if the sentence is to a house of correction; provided, however, that said person shall not be eligible for parole if the parole board finds that any one of the following aggravating circumstances apply:

(i) the defendant used violence or threats of violence or possessed a firearm, rifle, shotgun, machine gun or a weapon described in paragraph (b) of section 10 of chapter 269, or induced another participant to do so, during the commission of the offense;

(ii) the defendant engaged in a course of conduct whereby he directed the activities of another who committed a felony in violation of Chapter 94C; or

(iii) the offense was committed during the commission or attempted commission of the offenses set forth in section 32F or section 32K of chapter 94C.

SECTION 138. The executive office of public safety, in conjunction with the department of public health, the trial court, the department of probation and the office of community correction, shall promulgate regulations establishing a resource guide for law enforcement personnel, sheriffs and judges on substance abuse treatment programs and options, including but not limited to, providing information on civil commitment programs, jail diversion and public and private treatment options, including the Massachusetts Alcohol and Substance Abuse Center, the Men’s Addiction Treatment Center and the Women’s Addiction Treatment Center. The

Bureau of Substance Abuse Services shall provide technical assistance related to producing said resource guide.

SECTION 139. The executive office of public safety and security and the department of correction, in conjunction with the department of public health, shall adopt regulations to create a substance abuse education program in state prisons and houses of corrections. Such program shall focus on, but not be limited to, screening inmates for substance use disorders, preparing inmates with substance use disorders for reentry into the community, providing training relative to obtaining housing, employment and the necessary substance abuse treatment once an inmate is released.

SECTION 140. The department of probation, in conjunction with the criminal history systems board shall conduct a study on rehabilitation. That study shall include an examination of:

(a) enabling a person convicted of or adjudicated delinquent by reason of any felony or misdemeanor charges in the commonwealth or a person who has been charged with a crime in the commonwealth but which charges did not result in a conviction to petition the superior court of the trial court department in the county in which he then resides for a certificate of rehabilitation, or a certificate of recovery and rehabilitation if the charges were a consequence of substance abuse, for ascertainment and declaration of the fact of his rehabilitation or recovery and rehabilitation if certain conditions are met, for example if the person: (1) has not been sentenced to incarceration since being discharged from a felony or misdemeanor or since the termination of any ancillary proceedings related to such felony or misdemeanor including, but not limited to, any period of probation, parole or continuation; (2) is not the subject of a

probationary or parole term for the commission of any other felony or misdemeanor; (3) presents satisfactory evidence of 2 years residence in the commonwealth prior to the filing of the petition; (4) has demonstrated a period of rehabilitation, as provided in section 176C of the General Laws, and (5) in the case of a person seeking a certificate of recovery and rehabilitation, has completed a substance abuse treatment program approved by the bureau of substance abuse treatment services;

(b) the standard the petitioner must demonstrate his rehabilitation or recovery;

(c) the duration of rehabilitation required to be eligible for a certificate of rehabilitation or recovery;

(d) any recommended provision of notice of the filing of a petition to the district attorney of the county in which a petition is filed, to the district attorney of the county in which the petitioner was convicted of an offense, to the attorney general and to the governor;

(e) whether a petitioner for a certification of rehabilitation or recovery may be represented by counsel and whether the court shall appoint counsel for certain petitioners;

(f) whether the court in which the petition is filed may require such testimony as it deems necessary, and who should be required to produce and pay for the cost of production of all records and reports relating to the petitioner and the offense for which he was charged;

(g) which information the court may request upon the filing of the application for a certificate, from the district attorney in which the petition was filed including, but not limited to: the place of residence of the petitioner; the criminal record of the petitioner as shown by the records of the Department of Justice; any representation made to the court by the petitioner; the

conduct of the petitioner during his period of rehabilitation; and any other information the court may deem necessary in making its determination;

(h) under what conditions a court should deny a petition for a certificate of rehabilitation or recovery;

(i) under what conditions a court should issue a certificate of rehabilitation or recovery and whether such a certificate should become a part of the petitioner's criminal offender record information;

(j) to whom the court should forward such a certificate and whether any recommendations should be included;

(k) whether such a certificate should be provided to any person lawfully seeking information relative to the offense for which a petitioner has received a certificate;

(l) whether any forms would be required to effectuate such a process and who should develop them;

(m) any notice requirements that are recommended for defendants or individuals being released from custody, discharged from probation or parole, or concluding substance abuse treatment;

(n) any other factors that may or may not be included within the determination of whether to issue a benefit granted by the awarding of such a certificate;

(o) any rights that an individual who has been denied the benefits of attaining a certificate of rehabilitation or recovery should have, including the right to appeal such a decision;

(p) what the appropriate forum should be for such an appeal; and

(q) any punishments that should be levied against an individual who fraudulently uses such a certificate.

The department shall report its findings to the clerks of the house and senate by December 31, 2010, who shall forward that report to the chairmen of the house committee on ways and means, the senate committee on ways and means and the joint committee on mental health and substance abuse.

SECTION 141. The parole board shall conduct a study to determine the benefit and cost of establishing a substance abuse treatment program to be included as a requirement for individuals during a period of post-release supervision.

The board shall file the findings of its study by December 31, 2010, with the clerks of the house and the senate, who shall forward the report to the chairmen of the house committee on ways and means, the senate committee on ways and means, the joint committee on mental health and substance abuse and the joint committee on the judiciary.

SECTION 142. The department of corrections, in consultation with the department of public health shall conduct a study on the establishment of jail diversion programs for nonviolent low-level offenders with substance use disorders. The study shall include, but not be limited to, the establishment of jail diversion programs, innovative ways for the courts to divert substance abusers from the criminal justice system into specified substance abuse treatment options and the cost estimates for implementing such a program.

The department shall file the findings of its study by December 31, 2010, with the clerks of the house and the senate, who shall forward the report to the chairmen of the house committee on ways and means, the senate committee on ways and means and the joint committee on mental health and substance abuse.

SECTION 143. The administrative office of the trial court shall conduct a study to examine the bail review process including, but not limited to, personal recognizance, challenges to the amount of bail for an accused and the provision of notice to a petitioner relative to future court appearances. The administrative office shall report to the joint committee on the judiciary not later than December 31, 2010.

SECTION 144. The department of public safety shall adopt the regulations required under section 25 of chapter 270 of the General Laws, not later than 90 days from the effective date of this act.

SECTION 145. Sections 2 to 8, inclusive, 12, 16 to 26, inclusive, 28, 30, 31, 33 to 37, inclusive, 56, 62, 65 to 67, inclusive, 105, 119, 122, 128 to 133, inclusive, and 135shall take effect 18 months from the effective date of this act.

SECTION 146. Section 144 shall take effect 180 days from the effective date of this act.