

# SENATE . . . . . No. 743

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## The Commonwealth of Massachusetts

PRESENTED BY:

*Cynthia S. Creem*

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing sentencing guidelines.

PETITION OF:

NAME:

*Cynthia S. Creem*

DISTRICT/ADDRESS:

# SENATE . . . . . No. 743

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By Ms. Creem, a petition (accompanied by bill, Senate, No. 743) of Cynthia S. Creem for legislation to establish sentencing guidelines. The Judiciary.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 1679 OF 2009-2010.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven  
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An Act establishing sentencing guidelines.

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

1                   SECTION 1. The General Laws are hereby amended by inserting after chapter  
2 211F the following chapter:-

3                   CHAPTER 211G

4                   SENTENCING GUIDELINES

5                   Section 1. Definitions. The following terms as used in this chapter shall have the  
6 following meanings:-

7                   “Adjudication of delinquency,” a determination or finding pursuant to G.L. c. 119  
8 § 58 that a juvenile is a delinquent child.

9                   “Conviction,” a finding or verdict of guilt for a criminal offense.

“Criminal history group,” the classification of an offender’s previous record of criminal convictions or adjudications of delinquency as set forth on the horizontal axis of the sentencing guidelines grid.

“Departure from the guidelines,” a sentence imposed outside the sentencing range contained in the applicable grid cell for the particular offense.

“Governing offense,” the offense having the highest offense seriousness level among multiple offenses arising out of the same criminal conduct.

“Grid cell,” the intersection on the sentencing guidelines grid between the offense seriousness level and the criminal history group.

“Intermediate sanction,” a non-incarcerative sentence, or portion thereof, which includes a level of restriction, such as standard probation, intensive supervision probation, community service, home confinement, and day reporting, and which may be coupled with components, such as residential programming, substance abuse treatment, restitution, continuing education, vocational training, special education, and psychological counseling.

“Mandatory minimum sentence,” the provision of a criminal penalty for a particular offense which specifies the minimum term of incarceration and prohibits suspension of any sentence, placement on file, continuance without a finding, probation, and release on parole until the minimum term of imprisonment has been served.

“Master crime list,” the list in which offenses in Massachusetts currently punishable by a term of imprisonment are ranked for purposes of the sentencing guidelines.

“Offense seriousness levels,” the categories for ranking criminal offenses as set forth in the master crime list and on the vertical axis of the sentencing guidelines grid.

“Same criminal conduct,” any two or more offenses committed during a single criminal incident.

“Sentencing Commission,” the Massachusetts Sentencing Commission as defined in G.L. c. 211E § 1.

“Sentencing event,” an appearance before a court of competent jurisdiction during which sentence is imposed for one or more convictions or adjudications of delinquency.

“Sentencing guidelines,” all provisions set forth in this chapter which direct or guide judges in sentencing.

“Sentencing guidelines grid,” the sentencing matrix, with offenses classified on a vertical axis and criminal history groups classified on a horizontal axis , and which contains a sentencing guidelines range within each grid cell.

“Sentencing guidelines range,” the range of any sentence, including the range of intermediate sanctions, which may be imposed in each grid cell without constituting a departure from the sentencing guidelines.

“Split sentence,” a sentence to a house of correction which is suspended in part and includes a specified period of incarceration followed by a specified period of probation or intermediate sanction or both.

“Staircased offense,” a criminal offense which is ranked in more than one offense seriousness level on the basis of the existence of a specified factor.

“Statutory minimum sentence,” the provision of a criminal penalty for a particular offense which does not require the imposition of incarceration, but specifies the minimum term of incarceration, when incarceration is imposed.

Section 2. Sentencing Guidelines Grid. There are established, consistent with the provisions of G.L. c. 211E § 3, sentencing guidelines in the form of a sentencing guidelines grid with offenses classified on the vertical axis according to seriousness and criminal history classified on the horizontal axis according to severity. Within each grid cell there is a sentencing guidelines range, consistent with the provisions of G.L. c. 211E § 3 (a) (3) (C). The sentencing guidelines grid includes three sentencing guidelines zones:- (1) an incarceration zone, where only a sentence to incarceration is within the sentencing guidelines range and a sentence to an intermediate sanction constitutes a departure from the sentencing guidelines; (2) a discretionary zone, where either a sentence to incarceration or a sentence to an intermediate sanction are within the sentencing guidelines range; and, (3) an intermediate sanction zone, where only a sentence to an intermediate sanction is within the sentencing guidelines range and a sentence to incarceration constitutes a departure from the sentencing guidelines. The following sentencing guidelines grid shall be used as a basis for sentencing for convictions of all applicable offenses for which incarceration is a possible sanction under existing statutes, except for those offenses with mandatory minimum sentences listed in § 8 (a) and (b) of this chapter.

#### Sentencing Guidelines Grid

##### Criminal History Group

Offense	A	B	C	D	E
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Seriousness Level	No/Minor
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73 Record Moderate

74 Record Serious

75 Record Violent or

76                      Repetitive                      Serious

77 Violent

78

79	9	Life	Life	Life	Life	Life
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80

81

82

83	8	96 - 144 Mos.	108 - 162 Mos.	120 - 180 Mos.	144 - 216
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84 Mos. 204 - 306 Mos.

85

86

87

88	7	60 - 90 Mos.	68 - 102 Mos.	84 - 126 Mos.	108 - 162 Mos.	160 -
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89 240 Mos.

90

91						
92						
93	6	40 - 60 Mos.	45 - 67 Mos.	50 - 75 Mos.	60 - 90 Mos.	80 - 120 Mos.
94						
95						
96	5	12 - 36 Mos.	24 - 36 Mos.	36 - 54 Mos.	48 - 72 Mos.	60 - 90 Mos.
97		IS-IV	IS-IV			
98		IS-III	IS-III			
99		IS-II	IS-II			
100	4	0 - 24 Mos.	3 - 30 Mos.	6 - 30 Mos.	20 - 30 Mos.	24 - 36 Mos.
101		IS-IV	IS-IV	IS-IV		
102		IS-III	IS-III	IS-III		
103		IS-II	IS-II	IS-II		
104	3	0 - 12 Mos.	0 - 15 Mos.	0 - 18 Mos.	0 - 24 Mos.	6 - 24 Mos.
105		IS-IV	IS-IV	IS-IV	IS-IV	IS-IV
106		IS-III	IS-III	IS-III	IS-III	IS-III
107		IS-II	IS-II	IS-II	IS-II	IS-II

108		IS-I	IS-I	IS-I				
109	2		0 - 6 Mos.	0 - 6 Mos.	0 - 9 Mos.	0 - 12 Mos.		
110				IS-IV	IS-IV			
111		IS-III	IS-III	IS-III	IS-III	IS-III		
112		IS-II	IS-II	IS-II	IS-II	IS-II		
113		IS-I	IS-I	IS-I	IS-I	IS-I		
114	1			0 - 3 Mos.	0 - 6 Mos.			
115				IS-IV	IS-IV			
116		IS-III	IS-III	IS-III	IS-III			
117		IS-II	IS-II	IS-II	IS-II	IS-II		
118		IS-I	IS-I	IS-I	IS-I	IS-I		
119								
120	Sentencing Guidelines Zones					Intermediate Sanctions Levels		
121								
122	Incarceration Zone				IS-IV	24-Hour Restriction		
123				IS-III	Daily Accountability			
124	Discretionary Zone				IS-II	Standard Supervision		



Intermediate Sanction Zone

Section 3. Master Crime List. Offenses which permit incarceration are ranked according to offense seriousness level. Murder, as defined in G.L. c. 265 § 1, is placed at the highest level of the sentencing guidelines grid and for this offense the sentencing provisions of G.L. c. 265 § 2 apply. The offense seriousness rankings are set forth in the following master crime list, which contains the following information:-

(a) “Grid.” A “YES” in this column denotes application of the sentencing guidelines grid. A “NO” in this column indicates the sentencing guideline grid is not applicable, and an alternate penalty provision as provided for in this chapter is applicable.

(b) “Offense seriousness level.” All offenses on the master crime list are ranked according to seriousness. For offenses to which the sentencing guidelines grid applies, the offense seriousness level of the governing offense determines the placement of the offender on the vertical axis.

For all offenses, the offense seriousness level also represents the level to which a prior conviction is to be assigned for purposes of determining the criminal history group.

(c) “Notes.” The following notes apply to certain offenses contained in the master crime list:

(1) “Note A” refers to offenses where the sentencing guidelines range exceeds the statutory maximum sentence in certain grid cells. In such circumstances, the sentencing

guidelines range applies, except that no sentence imposed may exceed the statutory maximum sentence, as provided in § 9 of this chapter.

(2) “Note B” refers to offenses where the statutory minimum sentence exceeds the sentencing guidelines range in certain grid cells. In such circumstances, it is not a departure from the sentencing guidelines for a judge to impose a sentence within the sentencing guidelines range, nor is it a departure from the sentencing guidelines for a judge to impose the statutory minimum sentence, as provided in § 8 (e) of this chapter.

(3) “Note C” refers to offenses with mandatory minimum sentences in violation of G.L. c. 94C. The sentencing guidelines for these offenses are set forth in § 8 (c) of this chapter.

(4) “Note D” refers to certain firearms offenses and certain offenses pertaining to operating a motor vehicle or boat under the influence which may have mandatory minimum sentences. The sentencing guidelines for these offenses are set forth in § 8 (a) and (b) of this chapter.

(5) “Note E” refers to certain other offenses which have mandatory minimum sentences. The sentencing guidelines for these offenses are set forth in § 8 (d) of this chapter.

(6) “Note F” refers to certain offenses for which a sentence to an intermediate sanction constitutes a departure from the sentencing guidelines.

(7) “Note G” refers to staircased offenses. The staircase factors are described in § 4 (a) of this chapter.

(8) “Note H” refers to offenses for which the criminal history group of the defendant is enhanced as described in § 4 (b) of this chapter.

(9) “Note I” refers to offenses for which the level is contingent on the level assigned to the underlying substantive offense and is the same as the level assigned to the underlying substantive offense, except that no sentence may exceed the statutory maximum sentence, as provided in § 9 of this chapter.

(10) “Note J” refers to offenses for which the level is contingent on the level assigned to the underlying substantive offense and is one level lower than the level assigned to the underlying substantive offense, except that no sentence may exceed the statutory maximum sentence, as provided in § 9 of this chapter.

(d) “Offense Reference” - the Massachusetts General Law reference for a particular offense.

(e) “Offense Penalty Reference” - the Massachusetts General Law reference for a particular offense penalty provision when different from the offense reference.

(f) “Staircase Factor” - a specified factor, beyond the required elements of for an offense, which determines the offense seriousness level.

(g) The master crime list also incorporates information existing elsewhere in the General Laws. Any discrepancies between the following items of information reproduced in the master crime list and as they appear in the General Laws are to be resolved in favor of those provisions of the General Laws which set forth the penalties for the particular offense.

(1) “Offense” - an abbreviated offense description;

(2) “Penalty Type” - felony or misdemeanor;

(3) “Mandatory Time” - the mandatory minimum sentence, where applicable;

187 (4) “Min H/C” - the statutory minimum sentence to the house of correction, where  
188 applicable;

189 (5) “Max H/C” - the statutory maximum sentence to the house of correction,  
190 where applicable;

191 (6) “Min Prison” - the statutory minimum sentence to the state prison, where  
192 applicable; and,

193 (7) “Max Prison” - the statutory maximum sentence to the state prison where  
194 applicable.

195 Where an offense is not found in the master crime list, the judge shall impose an  
196 appropriate sentence, having due regard for the purposes of sentencing set forth in G.L. c. 211E  
197 § 2. The master crime list follows:-

198 Section 4. (a) Staircasing certain offenses. Certain offenses, broadly defined to  
199 encompass a wide range of behavior, are placed at more than one offense seriousness level in the  
200 master crime list. These offenses are identified by a staircased notation on the master crime list  
201 based on the following considerations:-

202 (1) Manslaughter in violation of G.L. c. 265 § 13 is a level eight offense where it  
203 is voluntary manslaughter and a level six offense where it is involuntary manslaughter.

204 (2) Assault and battery by means of a dangerous weapon in violation of G.L. c.  
205 265 § 15A is ranked according to the degree of injury to the victim as follows:-

206 Assault and battery by means of a dangerous weapon is a level six offense where  
207 there is significant injury to the victim. Significant injury includes: injuries which are

characterized by a protracted period of total disability or long term impairment of function, loss of function of any body members, organ, or mental faculty; injuries, not necessarily permanently disabling, which require long term medical care or rehabilitative therapy; injuries which involve a gross disfigurement; and, injuries which result in a permanent residual disability or loss of function to a significant degree.

Assault and battery by means of a dangerous weapon is a level four offense where there is moderate injury to the victim. Moderate injury includes: injuries which involve extreme physical pain and some discernible disability or loss of function of some body member, organ, or mental faculty, such as fractures, internal injuries or wounds which are serious but not life threatening; and, psychological trauma that results in some temporary or partial disability.

Assault and battery by means of a dangerous weapon is a level three offense where there is no injury or minor injury to the victim. Minor injury includes: injuries which require some emergency treatment, such as lacerations, contusions, or abrasions, which have no residual effect; concussions without lasting neurological impact; physical injuries that are painful and obvious but not in any way disabling; and, minimal, psychological trauma without lasting effect.

(3) Armed robbery in violation of G.L. c. 265 § 17 is a level seven offense where there is a display of a gun. Any other violation of G.L. c. 265 § 17 is a level six offense with the exception of certain violations of G.L. c. 265 § 17 that are subject to the provisions of § 4 (b) of this chapter.

(4) Breaking and entering in violation of G.L. c. 266 §§ 16 through 18 is a level four offense where the breaking and entering involves a dwelling. Any other violation of G.L. c. 266 §§ 16 through 18 is a level three offense.

(5) Certain property offenses are ranked according to the value of property lost or destroyed as follows:-

Where the value of the property lost or destroyed is \$50,000 or over, the offense is a level five offense.

Where the value of the property lost or destroyed is between \$10,000 and \$50,000, the offense is a level four offense.

Where the value of the property lost or destroyed is \$10,000 or under, the offense is a level three offense.

In determining the appropriate offense seriousness level for a staircased offense, the judge may consider any evidence received during the proceedings; any victim impact statement; any presentence report, when the judge requests one; and, any other information that the judge deems credible.

(b) Second and subsequent convictions. When a statute provides for a more severe penalty upon a second and subsequent conviction for an offense, the second or subsequent offense is elevated one level on the offense seriousness scale on the master crime list. Where the offense is at level eight, the offender shall be moved over one cell to the right to the next more serious criminal history group in the grid. When a defendant is charged as a second or subsequent offender under the relevant statute, the prior conviction or convictions that served as

the basis for the second or subsequent charge shall not be counted in determining criminal history placement on the grid. Offenses that are subject to a more severe penalty for second and subsequent conviction are so designated in the master crime list.

Section 5. Criminal History Groups. There are five criminal history groups on the horizontal axis of the sentencing guidelines grid as follows:-

(a) Criminal History Group A, No/Minor Record, refers to a criminal record that contains no prior convictions of any kind; or, one to five prior convictions in any combination for offenses in levels one or two.

(b) Criminal History Group B, Moderate Record, refers to a criminal record that contains six or more prior convictions in any combination for offenses in levels one or two; or, one or two prior convictions in any combination for offenses in levels three or four.

(c) Criminal History Group C, Serious Record, refers to a criminal record that contains three to five prior convictions in any combination for offenses in levels three or four; or, one prior conviction for offenses in levels five or six.

(d) Criminal History Group D, Violent or Repetitive Record, refers to a criminal record that contains six or more prior convictions in any combination for offenses in levels three, four, five, or six; or, two or more prior convictions in any combination for offenses in levels five or six; or, one prior conviction for offenses in levels seven through nine.

(e) Criminal History Group E, Serious Violent Record, refers to a criminal record that contains two or more prior convictions in any combination for offenses in levels seven through nine.

Section 6. Determining Criminal History. In determining placement in the appropriate criminal history group on the sentencing guidelines grid, the following provisions shall apply:-

(a) Conviction-based criminal history. Only those prior offenses which resulted in a conviction shall be counted for criminal history placement on the sentencing guidelines grid. All convictions that occurred prior to the present sentencing event shall be counted for criminal history placement on the sentencing guidelines grid. The offense seriousness level of each prior conviction shall be determined by reference to the version of the master crime list in effect at the time of the sentencing event for the present offense.

(b) Incident-based criminal history. Multiple prior convictions arising from the same criminal conduct shall be counted as one prior conviction, based on the most serious offense. There shall be a rebuttable presumption that multiple prior convictions that have the same arraignment date shall be counted as one prior conviction, based on the most serious offense. Multiple convictions with the same arraignment date may each be counted separately for purposes of criminal history placement on the sentencing guidelines grid where each such conviction is not part of the same criminal conduct. Multiple convictions with different arraignment dates may be counted as a single conviction for purposes of criminal history placement on the sentencing guidelines grid where each such conviction was part of the same criminal conduct.

(c) Juvenile record. Adjudications of delinquency for offenses classified in offense seriousness levels seven through nine on the master crime list shall be considered as convictions of the offenses involved and counted for purposes of criminal history. Adjudications



of delinquency for offenses classified below level seven shall not be counted for purposes of criminal history, but the existence of such adjudications may be considered as an aggravating factor for departure from the sentencing guidelines range.

. Prior convictions in federal and other jurisdictions shall be counted for criminal history purposes. The offense of prior conviction shall be assigned to the same offense seriousness level as the Massachusetts offense in the master crime list with the same or substantially the same elements.

(e) Prior convictions for staircased offenses. Where the prior conviction is a staircased offense and the offense seriousness level of the staircased offense is not apparent from the criminal record, there is a rebuttable presumption that the prior conviction is in the lowest staircased level for that offense in the master crime list.

(f) Determination of criminal history. The judge shall decide any material contested issues relating to criminal history.

Section 7. Sentencing Pursuant to the Sentencing Guidelines Grid. Sentencing pursuant to the sentencing guidelines grid shall be based on the offense or offenses of conviction and the criminal history of the defendant. The offense seriousness level for each offense of conviction shall be determined from the master crime list. The appropriate level of staircased offenses shall be determined by taking into account the relevant staircasing factors set forth herein. The number and types of prior convictions shall be determined in accordance with § 5 of this chapter to determine the appropriate criminal history group for the offender. The sentencing guidelines range shall be determined by identifying that grid cell where the seriousness level of

the governing offense on the vertical axis intersects with the classification of the criminal history group on the horizontal axis.

(a) Sentencing within the guideline range. The sentencing judge may impose a sentence to incarceration within the sentencing guidelines range by imposing a maximum sentence from within the guideline range of the appropriate grid cell. Unless otherwise noted herein, the minimum sentence will always be two-thirds of the maximum sentence and will establish the initial parole eligibility date. This applies to all sentences of incarceration of two months or longer to houses of correction and all sentences to the state prison. Where the maximum sentence of incarceration to a house of correction is less than two months, the minimum sentence need not be two-thirds of the maximum sentence. Where the maximum sentence is selected from the guideline range in the applicable grid cell, the sentence will be within the guidelines and no written explanation is necessary.

(b) Departing from the guidelines range. The sentencing judge may impose a sentence below or above the sentencing guidelines range by setting forth in writing reasons for departing from that range on a sentencing statement, consistent with the provisions of G.L. c. 211E, § 3 (h). Any departure shall be based on a finding that one or more mitigating or aggravating circumstances exist as provided in this chapter. In imposing a sentence of incarceration that departs from the sentencing guidelines range, the minimum sentence shall be two-thirds of the maximum sentence. A sentence that departs below the guidelines range may include a sentence to any lesser term of incarceration or any intermediate sanction.

(1) Mitigating and aggravating circumstances. The following non-exclusive mitigating and aggravating circumstances may guide departures from the sentencing guidelines

range. The presence of any such circumstance may warrant departure from the sentencing guidelines range in the discretion of the sentencing judge. In determining mitigation or aggravation, the judge may consider any evidence received during the proceedings; any victim impact statement; any presentence report, when the judge requests one; and, any other information that the judge deems credible.

(A) Mitigating circumstances. The non-exclusive list of mitigating circumstances includes the following:-

1. The defendant was a minor participant in the criminal conduct.
2. The defendant was suffering from a mental or physical condition that significantly reduced the culpability of the defendant for the offense.
3. The victim was an initiator, aggressor, or provoker of the offense.
4. The sentence was imposed in accordance with a jointly agreed recommendation.
5. The age of the defendant at the time of the offense.
6. The defendant verifies current involvement in, or successful completion of, a substance abuse or other treatment program that began after the date of the offense.

(B) Aggravating circumstances. The non-exclusive list of aggravating circumstances includes the following:-

1. The victim was especially vulnerable due to age or physical or mental disability.
2. The victim was treated with particular cruelty.

354           3.     The defendant used position or status to facilitate commission of the offense, such  
355 as a position of trust, confidence or fiduciary relationship.

356           4.     The defendant was a leader in the commission of an offense involving two or more  
357 criminal actors.

358           5.     The defendant committed the offense while on probation, on parole, or during  
359 escape.

360           6.     The defendant has committed repeated offenses against the same victim.

361                     The sentencing judge shall not be required to conduct an evidentiary hearing in  
362 determining aggravating or mitigating factors.

363           (c) Concurrent or consecutive sentencing. When a defendant is convicted of multiple  
364 offenses arising out of the same criminal conduct, the judge may impose concurrent or  
365 consecutive sentences, subject to the following provisions. The judge shall impose a consecutive  
366 sentence when the imposition of a consecutive sentence is required by the terms of the statute  
367 pertaining to a particular offense. The judge may impose concurrent or consecutive sentences of  
368 incarceration in the house of correction for each offense where such incarceration is permitted by  
369 law. The judge may impose concurrent or consecutive sentences of incarceration in the state  
370 prison for each offense where such incarceration is permitted by law, subject to the following  
371 limitation. The judge may impose consecutive sentences to the state prison by selecting a  
372 sentence from the guidelines range in the applicable grid cell for each offense to be sentenced  
373 consecutively. The total of such consecutive sentences may be combined up to twice the upper  
374 limit of the sentencing guidelines range in the grid cell of the governing offense. Where the total  
375 of the combined sentences exceeds twice that upper limit, it shall be considered a departure from

the guidelines and the judge is required to provide written reasons. The existence of multiple victims is recognized as an aggravating circumstance which may justify such a departure.

Any sentence imposed as concurrent or consecutive to a governing offense may be for a period of incarceration that is less than the lower limit of the sentencing guidelines range contained in the applicable grid cell or for any level of intermediate sanction, without constituting a departure from the sentencing guidelines.

When a defendant is convicted of multiple offenses which do not arise out of the same criminal conduct or when a defendant at the time of sentencing is currently serving a sentence for another criminal offense, the judge may impose either a concurrent or consecutive sentence from within the sentencing guidelines range of the applicable grid cell without the limitation on consecutive sentences to the state prison set forth in this section.

Section 8. Sentencing for Offenses with Mandatory Minimum Terms. Sentencing guidelines for offenses with mandatory minimum terms are as follows:-

(a) Firearms offenses. No departures below the mandatory minimum sentences for firearms offenses in violation of G.L. c. 269 §§ 10 (a), 10 (c), 10 (d), or 10E are permitted. These enumerated mandatory firearms offenses are not integrated into the guidelines grid. The sentencing guidelines for these mandatory firearms offenses are the mandatory sentencing provisions of the existing statutes. The minimum term of incarceration shall be no less than the mandatory minimum sentence provided in the statutes enumerated in this paragraph. The sentencing judge is required to impose a minimum and a maximum sentence, but the minimum sentence need not be two-thirds of the maximum. For purposes of determining the criminal history group for a defendant with prior mandatory firearms convictions, the master crime list

provides the offense seriousness level corresponding to the sentencing guidelines grid for each firearms offense with a mandatory minimum sentence.

(b) Operating under the influence offenses. (1) For purposes of this chapter, operating under the influence offenses refer to offenses enumerated in the second paragraph of c. 90 § 23, in c. 90 § 24 (1) (a) (1), and in c. 90B § 8 (a) (1) (A). With the exception of the departure enumerated in sub-paragraph (b) (2) of this section, no departures below any mandatory minimum sentences for operating under the influence offenses are permitted. These operating under the influence offenses are not integrated into the guidelines grid. The sentencing guidelines for these operating under the influence offenses are the mandatory sentencing provisions of the existing statutes. The minimum term of incarceration shall be no less than any mandatory minimum sentence provided in the statutes enumerated in this paragraph. The sentencing judge is required to impose a minimum and a maximum sentence, but the minimum sentence need not be two-thirds of the maximum.

(2) A judge may sentence a defendant, who has been previously convicted of a violation of c. 90 § 24 (1) (a) (1) or c. 90B § 8 (a) (1) (A) or assigned to an alcohol or controlled substance education, treatment, or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like violation not more than two times within ten years preceding the date of the commission of the operating under the influence offense for which he has been convicted, to a long term residential substance abuse treatment program, approved by the office of community corrections, as established in G.L. c. 211F § 2 (a), in lieu of imposing the mandatory minimum sentence. No other departures below any mandatory minimum sentences for operating under the influence offenses are permitted.

(3) For purposes of determining the criminal history group for a defendant with prior convictions for operating under the influence offenses, the master crime list provides the offense seriousness level for each operating under the influence offense.

(4) Nothing in this section shall be found to prohibit a sentence pursuant to c. 90 § 24 (1) (a) (4) or c. 90B § 8 (a) (3) (A).

(c) Offenses in violation of the controlled substances act. Controlled substances offenses with mandatory minimum terms are integrated into the sentencing guidelines grid. As set forth in the master crime list, violations of G.L. c. 94C § 32E (b) (4) and § 32E (c) (4) are level eight offenses; violations of G.L. c. 94C §§ 32E (a) (4), 32E (b) (3), 32E (c) (2), and 32E (c) (3) are level seven offenses; violations of G.L. c. 94C §§ 32 (b), 32A (d), 32E (a) (3), 32E (b) (2), 32E (c) (1), 32F (a), 32F (d), and 32K are level six offenses; violations of G.L. c. 94C §§ 32A (b), 32B (b), 32E (a) (2), 32E (b) (1), 32F (b), and 32F (c) are level five offenses; and, violations of G.L. c. 94C §§ 32A (c), 32E (a) (1), and 32J are level four offenses.

For the offenses enumerated in the preceding paragraph, a judge shall provide written reasons for sentencing below a mandatory minimum term even though the judge may be imposing sentence that is within the guidelines range of the sentencing guidelines grid. The standard for sentencing below the mandatory minimum term is more stringent than the standard for departure below a sentencing guidelines range. A departure below a mandatory minimum sentence for the controlled substances offenses enumerated above is not permitted unless the defendant has no prior conviction for a controlled substance offense in level seven or eight and the sentencing judge finds the existence of one or more mitigating circumstances.

A judge may impose a sentence below the sentencing guidelines range, provided that:- (a) the criminal history of the defendant falls in criminal history group A or B in the sentencing guidelines grid; and, (b) there is a substantial mitigating factor in addition to the mitigating circumstance or circumstances that justified the departure below the mandatory minimum sentence that should result in a sentence below the sentencing guidelines range.

Where the judge departs below the mandatory minimum sentence and imposes an incarceration sentence within the guidelines range or below the guidelines range, the minimum sentence shall be two-thirds of the maximum sentence; the defendant shall be eligible for parole at the expiration of the minimum sentence; and, the defendant shall be eligible for earned good time, work release, and other pre-release programs deemed appropriate by the correctional authority with custody responsibility, notwithstanding the provisions of G.L. c. 94C § 32H.

Where the judge does not depart from the mandatory minimum sentence and imposes a sentence pursuant to any mandatory sentencing provision, the minimum sentence need not be two-thirds of the maximum sentence, and the defendant shall not be eligible for parole, earned good time, work release, or other pre-release programs until he has served the mandatory minimum sentence, as mandated by G.L. c. 94C, § 32H.

(d) Other offenses with mandatory minimum terms. No departures below any mandatory minimum sentence provided for in these enumerated sections are permitted. As set forth in the master crime list, violations of G.L. c. 90 § 24G (a), c. 90B § 8B (1), c. 272 § 4B, and c. 272 § 6 are level six offenses; violations of G.L. c. 265 § 43 (b), c. 265 § 43 (c), and c. 272 § 4A are level five offenses; violations of G.L. c. 272 § 4A, c. 90 § 24L (1), c. 90B § 8A (1), c. 266 § 27A, . c. 266 § 28 (a), c. 268 § 39, and c. 272 § 7 are level four offenses.



For these offenses the minimum sentence shall be two-thirds of the maximum sentence selected from within the applicable guidelines range, provided that all sentences require a minimum term of incarceration equal to or greater in length than the mandatory minimum sentence. It shall not constitute a departure for a judge to impose a sentence exceeding the guidelines range of the applicable grid cell in order to comply with the requirement that the minimum term of incarceration must be equal to or greater in length than the mandatory minimum sentence and the requirement that the minimum sentence shall be two-thirds of the maximum sentence.

The defendant shall be eligible for parole at the expiration of the minimum sentence. The defendant shall not be eligible for earned good time, work release, and other pre-release programs deemed appropriate by the correctional authority with custody responsibility, until the defendant has served the mandatory minimum sentence.

(e) Offenses with statutory minimum sentences. For those offenses with a statutory minimum sentence, it shall not be considered a departure for the judge to impose a sentence within the sentencing guidelines range, even though the sentence may be below the statutory minimum sentence. Where the statutory minimum sentence exceeds the sentencing guidelines range, the imposition of the statutory minimum sentence shall not constitute a departure from the sentencing guidelines.

Section 9. The Statutory Maximum Term. Notwithstanding G.L. c. 211E § 3 (c), a judge may not impose any sentence which exceeds the statutory maximum term set forth in the statute that establishes the penalty for the particular offense.

Section 10. District and Municipal Court Jurisdiction. When a district or municipal court judge is imposing a sentence and the sentencing guidelines range in the applicable grid cell exceeds the district and municipal court sentencing jurisdiction of two and one half years, the sentencing guidelines range shall be an incarceration zone range of 20 to 30 months and it shall not constitute a departure from the sentencing guidelines for a district or municipal court judge to impose a sentence of incarceration from within the 20 to 30 month sentencing guidelines range.

Section 11. Sentencing to Intermediate Sanctions. Guidelines for sentencing to intermediate sanctions, as defined in G.L. c. 211F § 1, are integrated into the sentencing guidelines grid in the discretionary zone and the intermediate sanctions zone as described in § 2 of this chapter.

There are four levels of intermediate sanctions according to the severity of the restrictions on personal liberty and the intensity of supervision. The four levels of intermediate sanctions are integrated into the grid as follows:-

Level IV, 24-hour restriction, under which the offender is subject to 24-hour restriction and accountability of his whereabouts. This represents the maximum level of restriction and accountability short of incarceration.

Level III, daily accountability, under which the offender is subject to daily accountability of his whereabouts. This represents the level of restriction and accountability that falls in between 24-hour restriction and standard probation supervision.

Level II, standard probation supervision, under which the offender is subject to weekly accountability of his whereabouts. This represents the level of restriction and accountability that is typically associated with standard probation supervision.

Level I, financial accountability, which represents the level of restriction and accountability that is typically associated with administrative probation. It is primarily designed to monitor the timely payment of restitution, fines, victim/witness fees, and the like, by the offender.

A sentence to an intermediate sanction shall be imposed as a condition of probation, consistent with the provisions of G.L. c. 211F § 3 (c). The length of the probation period that may be imposed shall be consistent with the provisions of G.L. c. 276 § 87. The sentencing judge shall specify the intermediate sanction level at which the offender will start serving the term of probation and may also include a minimum period during which the offender is required to be supervised at that level. The supervising probation officer has the discretion to move a probationer down in level or levels in appropriate circumstances, without judicial consultation, consistent with any special conditions or time restrictions specified by the judge. Such a reduction in the intermediate sanction level by a probation officer shall not go below the guideline levels set forth in the grid cell in which the offender was sentenced.

A judge has the exclusive authority to increase an intermediate sanction level or add program components.

Section 12. Revocation of Probation. The sentencing guidelines do not apply to a probation revocation hearing. In imposing a sentence at a probation revocation hearing, the judge has the discretion to impose any sentence up to the statutory maximum. When imposing a sentence of incarceration, the judge shall impose both a minimum sentence and a maximum sentence and the minimum sentence must be two-thirds of the maximum sentence.

Section 13. Split Sentences. A sentence to the state prison shall not be suspended in whole or in part. A sentence to a house of correction shall not be suspended in whole, but a sentence to a house of correction may be suspended in part to permit the imposition of a split sentence. In imposing a split sentence, a judge shall impose a minimum and a maximum term as provided by § 6 (a) of this chapter and shall specify the period of incarceration to be served in the house of correction. The judge shall also specify the term of probation to be served subsequent to the period of incarceration.

Section 14. Financial Sanctions. When appropriate, a judge shall order fines or restitution or both as part of any sentence. Restitution to the victim shall be a priority of the judge at the time of sentencing, regardless of whether the offender is incarcerated.

Section 15. Imposing a Sentence. In sentencing a defendant after trial or after acceptance of a guilty plea pursuant to either Rule 12 of the Rules of Criminal Procedure or Rule 4 (c) of the District/Municipal Court Rules of Criminal Procedure, the court shall comply with the provisions of Rule 28 of the Massachusetts Rules of Criminal Procedure. The judge shall allow both parties to be heard at sentencing on all sentencing issues. In determining the sentence, the judge may rely on any evidence received during the proceedings; any victim impact statement; any presentence report, when the judge requests one; and, any other information the judge deems credible. A sentencing statement shall be completed in accordance with G.L. c. 211E § 3 (h) for each defendant being sentenced. The sentencing judge shall sign the completed sentencing statement and a copy shall be submitted to the Sentencing Commission as provided in G.L. c. 211E § 3 (h).

Section 16. Right of Appeal. The defendant or the commonwealth may appeal a sentence imposed pursuant to sentencing guidelines, to the extent an appeal is permitted in accordance with the provisions of section 4 of chapter 211E of the General Laws. The provisions of sections 28A and 28B of chapter 278 of the General Laws shall not apply to any offense committed on or after the effective date of this chapter.

SECTION 2. Severability. Where any provision of this chapter or the application thereof to any person or circumstance, shall, for any reason, be held invalid, the remainder of this chapter or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

SECTION 3. Split Sentences. Section 3 (a) (2) of chapter 211E of the General Laws is hereby amended by inserting after the phrase, "Said sentence shall not be suspended in whole or in part," the following: "except for the imposition of split sentences to the house of correction pursuant to chapter 211G."

SECTION 4. Section 3 (e) of chapter 211E of the General Laws is hereby amended by inserting after the phrase "impose a sentence below any mandatory minimum term prescribed by statute," the following: "only to the extent provided by chapter 211G,".

SECTION 5. Effective Date. The provisions of this chapter shall take effect on January 1, 2010, and the sentencing guidelines and other related provisions contained herein shall apply to all felonies and misdemeanors committed on or after that date. All offenses committed prior to January 1, 2010, shall be governed by the laws, including but not limited to those on sentencing, parole, and probation, in effect at the time the offense is committed. Any

569 amendments to the sentencing guidelines shall apply to all offenses committed on or after the  
570 effective date of the amendment.