HOUSE DOCKET, NO. 4161 FILED ON: 9/21/2015

HOUSE . . . . . No. 3830

The Commonwealth of Massachusetts

PRESENTED BY:

Angelo J. Puppolo, Jr. and Michael J. Finn

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 relative to the Commonwealth's right to appeal bail decisions.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Angelo J. Puppolo, Jr.	*12th Hampden*
Michael J. Finn	*6th Hampden*
Domenic J. Sarno	*Mayor's Office Springfield City Hall 36 Court St. Springfield, MA 01103*
Anthony D. Gulluni	*Hampden County District Attorney Hall of Justice 50 State St. Springfield, MA 01103*
Brian M. Ashe	*2nd Hampden*
Gailanne M. Cariddi	*1st Berkshire*
Tackey Chan	*2nd Norfolk*
Steven S. Howitt	*4th Bristol*
Shaunna L. O'Connell	*3rd Bristol*
Alan Silvia	*7th Bristol*
John C. Velis	*4th Hampden*
James T. Welch	*Hampden*
Susannah M. Whipps Lee	*2nd Franklin*

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By Messrs. Puppolo of Springfield and Finn of West Springfield, a petition (subject to Joint Rule 12) of Angelo J. Puppolo, Jr., Michael J. Finn, and others for legislation to authorize the Commonwealth to file appeals of bail decisions. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act relative to the Commonwealth's right to appeal bail decisions.

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

1 SECTION 1. Section 58 of Chapter 276, of the General Laws as appearing in the 2014
2 Official Edition, is hereby amended by striking the sixth and seventh paragraphs and inserting in
3 place thereof the following 4 paragraphs:--

4 A person aforesaid charged with an offense and not released on his personal recognizance
5 without surety by a clerk or assistant clerk of the district court, a bail commissioner or master in
6 chancery shall forthwith be brought before the next session of the district court for a review of
7 the order to recognize in accordance with the standards set forth in the first paragraph of this
8 section. The court shall provide as an explicit condition of release for any person admitted to bail
9 pursuant to this section or Section 57 that should said person be charged with a crime during the
10 period of his release, his bail may be revoked in accordance with this paragraph and the court
11 shall enter in writing on the court docket that the person was so informed and the docket shall
12 constitute prima facie evidence that the person was so informed. If a person is on release pending

13 the adjudication of a prior charge, and the court before which the person is charged with
14 committing a subsequent offense after a hearing at which the person shall have the right to be
15 represented by counsel, finds probable cause to believe that the person has committed a crime
16 during said period of release, the court shall then determine, in the exercise of its discretion,
17 whether the release of said person will seriously endanger any person or the community. In
18 making said determination, the court shall consider the gravity, nature and circumstances of the
19 offenses charged, the person's record of convictions, if any, and whether said charges or
20 convictions are for offenses involving the use or threat of physical force or violence against any

21 person, whether the person is on probation, parole or other release pending completion of
22 sentence for any conviction, whether he is on release pending sentence or appeal for any
23 conviction, the person's mental condition, and any illegal drug distribution or present drug
24 dependency. If the court determines that the release of said person will seriously endanger any
25 person or the community and that the detention of the person is necessary to reasonably assure
26 the safety of any person or the community, the court may revoke bail on the prior charge and
27 may order said person held without bail pending the adjudication of said prior charge, for a
28 period not to exceed sixty days. The hearing shall be held upon the person's first appearance
29 before the court before which the person is charged with committing an offense while on release
30 pending adjudication of a prior charge, unless that person, or the attorney for the commonwealth,
31 seeks

32 and the court allows, a continuance because a witness or document is not immediately
33 available. Except for good cause, a continuance on motion of the person shall not exceed seven
34 days and on motion of the attorney for the commonwealth may not exceed three business days.
35 During such continuance, the person may be detained consistent with the provisions of this

36 section. Said order shall state in writing the reasons therefor and shall be reviewed by the court
37 upon the acquittal of the person, or the dismissal of, any of the cases

38 involved. A person so held shall be brought to trial as soon as reasonably possible.

39 A person aggrieved by the denial of a district court justice to admit him to bail on his
40 personal recognizance without surety may petition the superior court for review of the order of
41 the recognizance and the justice of the district court shall thereupon immediately notify such
42 person of his right to file a petition for review in the superior court. The Commonwealth, with
43 the approval of the District Attorney or the Attorney General, or his or her designee, may petition
44 the superior court for a review of the order of the district court or the detaining authority
45 admitting a person to bail on his personal recognizance without surety, or admitting a person to
46 bail with or without surety. The Commonwealth's petition shall be filed no later than the next
47 business day after the entry of the order of the district court or the detaining authority. The filing
48 of a petition by the Commonwealth shall not stay the order of the district court admitting the
49 person to bail on his personal recognizance without surety or admitting the person to bail with or
50 without surety. The court shall inform the defendant that a petition by the Commonwealth may
51 be filed, that if the Commonwealth files a petition and if the defendant is released on personal
52 recognizance without surety or is released on bail with or without surety, he shall appear at the
53 superior court for the hearing on the morning of the next business day following the filing of the
54 Commonwealth's petition, and that failure to appear in the superior court could result in arrest or
55 revocation of bail.

56 When a petition for review is filed in the district court or with the detaining authority
57 subsequent to defendant’s district court appearance, the clerk of the district court or the detaining

58 authority, as the case may be, shall immediately notify by telephone, or by writing delivered in
59 hand or by facsimile or electronic transmission that same day, the clerk and probation officer of
60 the district court, the defendant, the district attorney for the district in which the district court is
61 located, the prosecuting officer, the defendant's counsel, if any, and the clerk of courts of the
62 county to which the petition is to be transmitted. The clerk of the district court, upon the filing of
63 a petition for review, either in the district court or with the detaining authority, shall forthwith
64 transmit the petition for review, a copy of the complaint and the record of the court, including the
65 appearance of the attorney, if any is entered, and a summary of the court's reasons for denying
66 the release of the defendant on his personal recognizance without surety, or for releasing the
67 defendant on his

68 personal recognizance without surety, or for setting bail in the amount determined, to the
69 superior court for the county in which the district court is located, if a justice thereof is then
70 sitting, or to the superior court of the nearest county in which a justice is then sitting; the
71 probation officer of the district court shall transmit forthwith to the probation officer of the
72 superior court, copies of all records of the probation office of said district court pertaining to the
73 defendant, including the defendant's record of prior convictions, if any, as

74 currently verified by inquiry of the commissioner of probation. The district court or the
75 detaining authority, as the case may be, shall cause any defendant in its custody to be brought
76 before the said superior court on the same day the petition shall have been filed, unless the
77 district court or the detaining authority shall determine that such appearance and hearing on the
78 petition cannot practically take place before the adjournment of the sitting of said superior court
79 for that day and in which event, the defendant shall be caused to be

80 brought before said court for such hearing during the morning of the next business day of
81 the sitting of said superior court. Where the Commonwealth has filed a petition for review and
82 where the defendant has been released on personal recognizance without surety, or has posted
83 bail and has been released from custody, the superior court shall order the defendant to appear
84 before the court for review on the next business day following the filing of the Commonwealth's
85 petition for review, and such hearing shall not be continued absent extraordinary circumstances.
86 The district court is authorized to order any officer authorized to execute criminal process to
87 transfer the defendant and any papers herein above described from the district court or the
88 detaining authority to the superior court, and to coordinate the transfer of the defendant and the
89 papers by such officer. The petition for review shall constitute authority in the person or officer
90 having custody of the defendant to transport the defendant to said superior court without the
91 issuance of any writ or other legal process, provided, however, that any district or superior court
92 is authorized to issue a writ of habeas corpus for the appearance forthwith of the defendant
93 before the superior court.

94 The superior court shall in accordance with the standards set forth in the first paragraph
95 of this section, hear the petition for review as speedily as practicable and except for unusual
96 circumstances, on the same day the petition is filed; provided, however, that the court may
97 continue the hearing to the next business day if the required records and other necessary
98 information are not available. If the Commonwealth files a petition and if the defendant is
99 released on personal recognizance without surety or is released on bail with or without surety,
100 absent extraordinary circumstances, the superior court shall hear the petition on the next business
101 day following the filing of the Commonwealth's petition for review. The justices of the superior
102 court may, after a hearing on the petition for review, order that the defendant be released on bail

103 on his personal recognizance without surety, or, in his discretion, to reasonably assure the
104 effective administration of justice, may make any other order of bail or recognizance, including
105 increasing the amount of the recognizance or requiring sufficient surety, or both, or remand the
106 defendant in accordance with the terms of the process by which he was ordered committed by the
107 district court.

108 SECTION 2. Said Section 58 of said Chapter 276 of the General Laws, as so appearing,
109 is hereby further amended by inserting after the word “review”, in line 299, the following words:
110 -- "by either the defendant or the Commonwealth."

111 SECTION 3. Said Section 58A of said Chapter 276 of the General Laws, as so appearing,
112 is hereby amended by striking clause 7, and inserting in place thereof the following clause:--

113 (7) A person aggrieved by the denial of a district court justice to admit him to bail on his
114 personal recognizance without surety, or the

115 Commonwealth, with the approval of the District Attorney or the Attorney General, or
116 his or her designee, may petition the superior court for a review of the order of the recognizance.
117 The justice of the district court shall thereupon immediately notify the defendant and the
118 Commonwealth of the right to file a petition for review in the superior court. The
119 Commonwealth's petition shall be filed no later than the next business day after the entry of the
120 order of the district court or the detaining authority. The filing of a petition by the
121 Commonwealth shall not stay the order of the district court admitting the defendant to bail on his
122 personal recognizance without surety or releasing the defendant on conditions as set forth in
123 subsection (2). The court shall inform the defendant that a petition by the

124 Commonwealth may be filed, that if the Commonwealth files a petition and if the
125 defendant is released, he shall appear at the superior court for the hearing on the morning of the
126 next business day following the filing of the Commonwealth's petition, and that failure to appear
127 could result in arrest or revocation of bail.

128 When a petition for review is filed in the district court or with the detaining authority
129 subsequent to defendant's district court appearance, the clerk of the district court or the detaining
130 authority, as the case may be, shall immediately notify by telephone, or by writing delivered in
131 hand or by facsimile or electronic transmission that same day, the clerk and probation officer of
132 the district court, the defendant, the district attorney for the district in which the district court is
133 located, the prosecuting officer, the defendant's counsel, if any, and the clerk of courts of the
134 county to which the petition is to be transmitted. The clerk of the district court, upon the filing of
135 a petition for review, either in the district court or with the detaining authority, shall forthwith
136 transmit the petition for review, a copy of the complaint and the record of the court, including the
137 appearance of the attorney, if any is entered, and a summary of the court's reasons for the order
138 on the Commonwealth's motion for an order of pretrial detention under subsection (2), to the
139 superior court for the county in which the district court is located, if a justice thereof is then
140 sitting, or to the superior court of the nearest county in which a justice is then sitting; the
141 probation officer of the district court shall transmit forthwith to the probation officer of the
142 superior court,

143 copies of all records of the probation office of said district court pertaining to the
144 defendant, including the defendant's record of prior convictions, if any, as currently verified by
145 inquiry of the commissioner of probation. The district court or the detaining authority, as the
146 case may be, shall cause any defendant in its custody to be brought before the said superior court

147 on the same day the petition shall have been filed, unless the district court or the detaining
148 authority shall determine that such appearance and hearing on the petition cannot practically take
149 place before the adjournment of the sitting of said superior court for that day and in which event,
150 the defendant

151 shall be caused to be brought before said court for such hearing during the morning of the
152 next business day of the sitting of said superior court. Where the Commonwealth petitions for
153 review and where the district court has denied the Commonwealth's motion for an order of
154 pretrial detention and has found that there are conditions of release that will reasonably assure
155 the safety of any other individual or the community and the defendant has been released, or
156 where the district court has released the defendant on personal

157 recognizance, the superior court shall order the defendant to appear before the court for
158 review of the district court's decision on the next business day after the filing of the
159 Commonwealth's petition for review, and such hearing shall not be continued absent
160 extraordinary circumstances. The district court is authorized to order any officer authorized to
161 execute criminal process to

162 transfer the defendant and any papers herein above described from the district court or the
163 detaining authority to the superior court, and to coordinate the transfer of the defendant and the
164 papers by such officer. The petition for review shall constitute authority in the person or officer
165 having custody of the defendant to transport the defendant to said superior court without the
166 issuance of any writ or other legal process; provided, however, that any district or superior court
167 is authorized to issue a writ of habeas corpus for the appearance forthwith of the defendant
168 before the superior court.

169 The superior court shall in accordance with the standards set forth in Section 58A, hear
170 the petition for review under Section 58A as speedily as practicable and except for unusual
171 circumstances, on the same day the petition is filed; provided, however, that the court may
172 continue the hearing to the next business day if the required records and other necessary
173 information are not available. Where the district court has denied the Commonwealth's motion
174 for an order of pretrial detention and has found that there are conditions of release that will
175 reasonably assure the safety of any other individual or the community and the defendant has
176 been released, or

177 where the district court has released the defendant on personal recognizance without
178 surety, the superior court shall hear the Commonwealth's petition for review on the next business
179 day following the filing of the Commonwealth's petition for review. The justice of the superior
180 court may, after a hearing on the petition for review, order that the petitioner be released on bail
181 on his

182 personal recognizance without surety, or, in his discretion, to reasonably assure the
183 effective administration of justice, make any other order of bail or recognizance, including the
184 issuance of an order for pretrial detention, or remand the defendant in accordance with the terms
185 of the process by which he was ordered committed by the district court.