

SENATE No. 802

The Commonwealth of Massachusetts

PRESENTED BY:

Kenneth J. Donnelly

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 reforming pretrial process.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Kenneth J. Donnelly</i>	<i>Fourth Middlesex</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Sonia Chang-Diaz</i>	<i>Second Suffolk</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Daniel A. Wolf</i>	<i>Cape and Islands</i>
<i>Cynthia S. Creem</i>	<i>First Middlesex and Norfolk</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>

<i>Thomas M. McGee</i>	<i>Third Essex</i>
<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>

SENATE No. 802

By Mr. Donnelly, a petition (accompanied by bill, Senate, No. 802) of Kenneth J. Donnelly, Tom Sannicandro, Sean Garballey, Patricia D. Jehlen and other members of the General Court for legislation to reform pretrial process. The Judiciary.

The Commonwealth of Massachusetts

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

An Act reforming pretrial process.

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 16 of chapter 125 of the General Laws, as appearing in 2012
2 Official Edition, is hereby amended by adding, at the end thereof, the following sentence:-

3 The commissioner of corrections may upon approval of the commissioner place female
4 prisoners held for trial in a community corrections program under chapter 211F.

5 SECTION 2. Section 4 of chapter 126, as appearing in the 2012 Official Edition, is
6 hereby amended by inserting, after the first sentence, the following sentence:-

7 The sheriff, superintendent, keeper or other officer in charge of the jail may upon
8 approval of the commissioner place a person, who is charged with crime and committed for trial,
9 in a community corrections program under chapter 211F.

10 SECTION 3. Section 48 of Chapter 127 of the General Laws, as appearing in the 2012
11 Official Edition, is hereby amended by adding, after the third sentence, the following sentence:-

12 The commissioner or the administrators of county correctional facilities may upon approval of
13 the commissioner place inmates in a community corrections program under chapter 211F.

14 SECTION 4. Section 49 of Chapter 127 of the General Laws, as so appearing, is hereby
15 amended by adding after the word “facility” in line 7 the following sentence:- or to participate in
16 a community corrections program under chapter 211F;

17 SECTION 5. Section 90A of Chapter 127 of the General Laws, as so appearing, is hereby
18 amended by inserting after the figure “(f)” in line 30, the following: - to participate in a
19 community corrections program under chapter 211F; or (g).

20 SECTION 6. Subsection (a) of section 3 of chapter 211F of the General Laws, as
21 appearing in the 2012 Official Edition, is hereby amended by inserting at the end thereof the
22 following sentences:-

23 Under section 49 of chapter 127, the commissioner of corrections or the administrator of
24 a county correctional facility, upon approval of the commissioner may place in a community
25 corrections program an inmate eligible to participate in education, training or employment under
26 section 48 of chapter 127. Under section 16 of chapter 125 or section 4 of chapter 126, the
27 commissioner of corrections or the administrator of a county correctional facility may upon
28 approval of the commissioner place a person who is being held for trial in a community
29 corrections program under chapter 211F.

30 SECTION 7. Subsection (c) of section 3 of chapter 211F of the General Laws, as so
31 appearing, is hereby amended by inserting before the word “sentence” in line 8, the following
32 words:- court-ordered.

33 SECTION 8. Said section 3 of chapter 211F of the General Laws, as so appearing, is
34 hereby further amended by inserting at the end the following subsection:- (e) Participation in a
35 community corrections program may be ordered by the court, in lieu of bail, or as a condition of
36 release consistent with sections 57, 58, and 58A of chapter 276 and subject to the eligibility
37 requirements of this section.

38 SECTION 9. Subsection (b) of section 4 of chapter 211F, as so appearing, is hereby
39 amended by inserting at the end thereof the following sentence: - and by the commissioner of
40 corrections, under sections 48, 49 and 90A of chapter 127, for the purpose of re-entry and
41 reintegration or, under section 16 of chapter 125 or section 4 of chapter 126, for the purpose of
42 community supervision of persons held for trial.

43 SECTION 10. Said section 4 of chapter 211F, as so appearing, is hereby further amended
44 by inserting at the end thereof the following:- (d) Community corrections programs may be
45 utilized by the probation department for pretrial supervision consistent with sections 58, 58A or
46 87 of chapter 276.

47 SECTION 11. Section 42 of chapter 276 of the General Laws, as appearing in the 2012
48 Official Edition, is hereby amended by striking out, in line “and sufficient bail is offered”.

49 SECTION 12. The second paragraph of section 42A of said chapter 276, as amended by
50 chapter 260 of the acts of 2014, is hereby amended by striking out the figure “57” and replacing
51 it with the figure “58”.

52 SECTION 13. Said chapter 276, as so appearing, is hereby amended by striking out
53 section 57 in its entirety and inserting in place thereof the following:-

54 “Section 57. The following words, as used in section 57 through section 82A, unless the
55 context otherwise requires, shall have the following meanings:—

56 “Bail”, the process by which a person is released from custody, either subject to
57 conditions of release or on his or her own recognizance.

58 “Conditions of release”, the conditions included in paragraph (B) of section 58A.

59 “Default”, any failure to abide by a specific condition of pretrial release, including, but
60 not limited to a failure to appear at a specified court date, a failure to follow an order to stay
61 away from a witness or victim, a failure to attend a treatment program stipulated in a release
62 order or any other failure to abide by a condition of release.

63 “Financial condition”, a secured or unsecured bond.

64 “Judicial officer”, a justice of the supreme judicial or superior court, a justice or a clerk or
65 assistant clerk of the superior, juvenile, Boston Municipal, housing or district court or the clerk
66 of the superior court for criminal business in the county of Suffolk, a standing or special
67 commissioner appointed by either of said courts or a bail commissioner.

68 “Pretrial services”, the division of pretrial services established in section 59 of this
69 chapter.

70 “Risk assessment tool”, an empirically developed uniform tool validated in the
71 commonwealth that analyzes risk factors, created or chosen and implemented by pretrial services
72 to produce the risk assessment score for a defendant that will aid the judicial officer in
73 determining the pretrial release with or without conditions that will reasonably assure appearance
74 of the defendant before the court.

75 “Risk factors”, items specific to a defendant that are accounted for by the risk assessment
76 tool that may include but are not limited to the following: the nature and circumstances of the
77 offense charged, the potential penalty the person faces, the person’s family ties, financial
78 resources, employment record and history of mental illness, his reputation and the length of
79 residence in the community, his record of convictions, if any, any illegal drug distribution or
80 present drug dependency, any flight to avoid prosecution or fraudulent use of an alias or false
81 identification, any failure to appear at any court proceeding to answer to an offense, whether the
82 person is on bail pending adjudication of a prior charge, whether the acts alleged involve abuse
83 as defined in section one of chapter 209A, or violation of a temporary or permanent order issued
84 pursuant to sections 18 or 34B of chapter 208, section 32 of chapter 209, sections 3, 4 or 5 of
85 chapter 209A, or sections 15 or 20 of chapter 209C, whether the person has any history of orders
86 issued against him pursuant to the aforesaid sections, whether he is on probation, parole, or other
87 release pending completion of sentence for any conviction, and whether he is on release pending
88 sentence or appeal for any conviction.

89 “Secured bond”, an amount of cash or pledged property that in the discretion of the
90 judicial officer would reasonably assure the presence of a defendant as required, taking into
91 consideration the individual characteristics of the defendant including the defendant’s financial
92 means.

93 “Surety”, an individual, individuals or organization who without any compensation
94 promises to ensure the presence of a criminal defendant at proceedings or who pledges an
95 unsecured bond or both.

96 “Unsecured bond”, an agreement between the district or superior court and a defendant in
97 a criminal case or a surety that if said defendant does not appear on a date certain before the
98 court or fails to abide by any explicit conditions of release, the defendant or surety will forfeit to
99 the court a specified amount of money or property due at the time of any default by the
100 defendant.”

101 SECTION 14. Section 58 of said chapter 276, as so appearing, is hereby amended, in
102 lines 1 and 2, by striking the words “A justice or a clerk or assistant clerk of the district court, a
103 bail commissioner or master in chancery” and inserting in place thereof the following:- “A
104 judicial officer”.

105 SECTION 15. Said section 58 of said chapter 276, as so appearing, is hereby further
106 amended by striking out, in lines 2 and 3, the words “the applicable provisions of section fifty-
107 seven” and inserting in place thereof the following words:- “this section”.

108 SECTION 16. Said section 58 of said chapter 276, as so appearing, is hereby further
109 amended by striking out, in lines 4 and 5, the words “for an offense other than an offense
110 punishable by death,”.

111 SECTION 17. Said section 58 of said chapter 276, as so appearing, is hereby further
112 amended by striking out, in line 6, the words “fifty-eight” and inserting in place thereof the
113 following figure:- “58”.

114 SECTION 18. Said section 58 of said chapter 276, as so appearing, is hereby further
115 amended by inserting after the word “surety” in line 10, the following words:- “or financial
116 condition”.

117 SECTION 19. Said section 58 of said chapter 276, as so appearing, is hereby further
118 amended by striking out, in lines 10 and 11, the words “A justice or a clerk or assistant clerk of
119 the district court, a bail commissioner or master in chancery” and inserting in place thereof the
120 following:- “A judicial officer”.

121 SECTION 20. Said section 58 of said chapter 276, as so appearing, is hereby further
122 amended by inserting after the word “discretion” in line 12, the following words:- “after
123 consulting the risk assessment tool”.

124 SECTION 21. Said section 58 of said chapter 276, as so appearing, is hereby further
125 amended by inserting after the first sentence, the following:- “All persons authorized to take bail
126 under this section shall be governed by the rules established by the supreme judicial or trial
127 court.”.

128 SECTION 22. Said section 58 of said chapter 276, as so appearing, is hereby further
129 amended by striking out, in lines 13-35, the second sentence and inserting in place thereof the
130 following:- “The judicial officer setting bail shall not impose a financial condition that results in
131 the pretrial detention of the person.”

132 SECTION 23. Said section 58 of said chapter 276, as so appearing, is hereby further
133 amended by striking out, in line 35, the word “person” and inserting in place thereof the
134 following:- “judicial officer”.

135 SECTION 24. Said section 58 of said chapter 276, as so appearing, is hereby further
136 amended by striking out, in line 37, the words “or section fifty-seven that”.

137 SECTION 25. Said section 58 of said chapter 276, as so appearing, is hereby further
138 amended by striking out, in lines 38-39, the words “his bail may be revoked in accordance with
139 the third paragraph of this section” and inserting in place thereof the following:- “the
140 commonwealth may present a motion under section 58B for pretrial detention or change in
141 conditions of release”.

142 SECTION 26. Said section 58 of said chapter 276, as so appearing, is hereby further
143 amended by striking out, in lines 40 and 41, the words “justice or clerk or assistant clerk of the
144 district court, the bail commissioner or master in chancery” and inserting in place thereof the
145 following:- “judicial officer”.

146 SECTION 27. Said section 58 of said chapter 276, as so appearing, is hereby further
147 amended by striking out, in lines 41-43, the words “cash bail is required, the person shall be
148 allowed to provide an equivalent amount in a surety company bond” and inserting in place
149 thereof the following:- “personal recognizance without surety or financial condition would not
150 reasonably assure the appearance of the person before the court, the court may require a surety or
151 unsecured bond in addition to any other conditions of release”.

152 SECTION 28. Said section 58 of said chapter 276, as so appearing, is hereby further
153 amended by striking out, in lines 43 and 44, the words “justice or clerk or assistant clerk of the
154 district court, the bail commissioner or master in chancery” and inserting in place thereof the
155 following:- “judicial officer”.

156 SECTION 29. Said section 58 of said chapter 276, as so appearing, is hereby further
157 amended, in line 45, after the words “to abide by” by inserting the following:- “conditions of
158 release or”.

159 SECTION 30. Said section 58 of said chapter 276, as so appearing, is hereby further
160 amended, by inserting after the first paragraph the following paragraphs:-

161 “A person detained as a result of a bail decision under this section shall be brought to a
162 trial as soon as reasonably possible, but in absence of good cause, the person so held shall not be
163 detained for a period exceeding 120 days excluding any period of delay as defined in
164 Massachusetts Rules of Criminal Procedure Rule 36(b)(2). Any order resulting in detention shall
165 be reviewed de novo after its expiration to determine if the order is still necessary and shall be
166 appealable to the superior court under the tenth paragraph of this section.

167 Any bail decision differing from the recommendation of pretrial services on the
168 conditions of release shall be in writing, stating the reasons the judicial officer did not approve of
169 the recommendation.

170 Notwithstanding the foregoing, a person arrested and charged with a violation of an order
171 or judgment issued pursuant to section 18, 34B or 34C of chapter 208, section 32 of chapter 209,
172 section 3, 4 or 5 of chapter 209A, or section 15 or 20 of chapter 209C, or arrested and charged
173 with a misdemeanor or felony involving abuse as defined in section one of said chapter 209A
174 while an order of protection issued under said chapter 209A was in effect against said person,
175 shall not be released out of court by a clerk of courts, clerk of a district court, or bail
176 commissioner.”.

177 SECTION 31. The second paragraph of said section 58 of said chapter 276, as so
178 appearing, is hereby amended by striking out, in line 50, the word “person” and inserting in place
179 thereof the following:- “judicial officer”.

180 SECTION 32. The second paragraph of said section 58 of said chapter 276, as so
181 appearing, is hereby further amended by striking out, in line 52, the word “eighty-two A” and
182 inserting in place thereof the following:- “82A”.

183 SECTION 33. The second sentence of the second paragraph of said section 58, as so
184 appearing, is hereby amended by striking out, in line 54-56, the words “person authorized to take
185 bail may charge the fees authorized by section twenty-four of chapter two hundred and sixty-
186 two” and inserting in place thereof the following:- “judicial officer may charge the fees
187 authorized by section 24 of chapter 262”.

188 SECTION 34. The second paragraph of said section 58 of said chapter 276, as so
189 appearing, is hereby further amended by inserting at the end thereof the following:- “Said fees
190 shall be paid by the court of jurisdiction whether the defendant is released by the judicial officer
191 or detained. After a conviction, plea of guilty or nolo contendere or when the case is continued
192 without a finding on the charged offense, the court may order a defendant to pay restitution in an
193 amount equal the fees paid by the court pursuant to this paragraph.”.

194 SECTION 35. Said section 58 of said chapter 276, as so appearing, is hereby amended,
195 by striking the third paragraph and inserting in place thereof the following paragraphs:-

196 “A person aforesaid charged with an offense and not released on his personal
197 recognizance without surety by a clerk or assistant clerk of the district court, or a bail
198 commissioner shall forthwith be brought before the next session of the district court for a review
199 of the order to recognize in accordance with the standards set forth in the first paragraph of this
200 section. The court shall provide as an explicit condition of release for any person admitted to bail
201 pursuant to this section that should said person be charged with a crime during the period of his

202 release, his bail may be revoked in accordance with section 58B and the court shall enter in
203 writing on the court docket that the person was so informed and the docket shall constitute prima
204 facie evidence that the person was so informed.

205 A person aggrieved by the denial of a district court justice to admit him to bail on his
206 personal recognizance without surety or financial condition may petition the superior court for a
207 review of the order of the recognizance and the justice of the district court shall thereupon
208 immediately notify such person of his right to file a petition for review in the superior court.
209 When a petition for review is filed in the district court or with the detaining authority subsequent
210 to petitioner's district court appearance, the clerk of the district court or the detaining authority,
211 as the case may be, shall immediately notify by telephone, the clerk and probation officer of the
212 district court, the district attorney for the district in which the district court is located, the
213 prosecuting officer, the petitioner's counsel, if any, and the clerk of courts of the county to which
214 the petition is to be transmitted. The clerk of the district court, upon the filing of a petition for
215 review, either in the district court or with the detaining authority, shall forthwith transmit the
216 petition for review, a copy of the complaint and of the record of the court, including the
217 appearance of the attorney, if any is entered, and a summary of the court's reasons for denying
218 the release of the defendant on his personal recognizance without surety to the superior court for
219 the county in which the district court is located, if a justice thereof is then sitting, or to the
220 superior court of the nearest county in which a justice is then sitting; the probation officer of the
221 district court shall transmit forthwith to the probation officer of the superior court, copies of all
222 records of the probation office of said district court pertaining to the petitioner, including the
223 petitioner's record of prior convictions, if any, as currently verified by inquiry of the
224 commissioner of probation. The district court or the detaining authority, as the case may be, shall

225 cause any petitioner in its custody to be brought before the said superior court on the same day
226 the petition shall have been filed, unless the district court or the detaining authority shall
227 determine that such appearance and hearing on the petition cannot practically take place before
228 the adjournment of the sitting of said superior court for that day and in which event, the
229 petitioner shall be caused to be brought before said court for such hearing during the morning of
230 the next business day of the sitting of said superior court. The district court is authorized to order
231 any officer authorized to execute criminal process to transfer the petitioner and any papers herein
232 above described from the district court or the detaining authority to the superior court, and to
233 coordinate the transfer of the petitioner and the papers by such officer. The petition for review
234 shall constitute authority in the person or officer having custody of the petitioner to transport the
235 petitioner to said superior court without the issuance of any writ or other legal process, provided,
236 however, that any district or superior court is authorized to issue a writ of habeas corpus for the
237 appearance forthwith of the petitioner before the superior court.”.

238 SECTION 36. The fifth paragraph of said section 58 of said chapter 276, as so
239 appearing, is hereby amended, in line 162, by striking the words “has posted” and inserting in
240 place thereof the following:- “was released on”;

241 and, in line 164, by striking the words “holding the defendant’s bail” and inserting in
242 place thereof the following:- “that released the defendant on bail”;

243 and, in lines 165 and 166, by striking the words “the amount of any bail bond posted” and
244 inserting in place thereof the following:- “any secured or unsecured bond or record of surety or
245 pledge”;

246 and, in line 167, by striking the words “bail bond” and inserting in place thereof the
247 following:- “financial condition”;

248 and, in line 168, by striking the words “the amount” .

249 SECTION 37. The sixth paragraph of said section 58 of said chapter 276, as so
250 appearing, is hereby amended, in line 178, by striking the words “either by increasing the
251 amount of the recognizance or requiring sufficient surety or both,” and inserting in place thereof
252 the following:- “by requiring additional conditions of release, sufficient surety or unsecured
253 bond,”;

254 and, in line 182, by striking the word “third” and inserting in place thereof the following:-
255 “eighth”.

256 SECTION 38. The eighth paragraph of said section 58 of said chapter 276, as so
257 appearing, is hereby amended, by striking the words “fifty-eight-A,” in each instance it appears
258 and inserting in place thereof the following:- “58A”.

259 SECTION 39. Clause (2) of section 58A of said chapter 276, as amended by chapter 260
260 of the acts of 2014, is hereby amended, in line 26, by inserting after the figure “(4)” the
261 following word:- “and”.

262 SECTION 40. The second paragraph of said clause (2) of section 58A of said chapter
263 276, as so appearing, is hereby amended, in lines 30-31, by striking the words “will not
264 reasonably assure the appearance of the person as required or”.

265 SECTION 41. Subclause (xii) of subparagraph (B) of clause (2) of section 58A of said
266 chapter 276, as so appearing, is hereby amended, in lines 68-75, by striking the words “a bail

267 bond with solvent sureties; who will execute an agreement to forfeit in such amount as is
268 reasonably necessary to assure appearance of the person as required and shall provide the court
269 with information regarding the value of the assets and liabilities of the surety if other than an
270 approved surety and the nature and extent of encumbrances against the surety's property; such
271 surety shall have a net worth which shall have sufficient unencumbered value to pay the amount
272 of the bail bond" and by inserting in place thereof the following:- "a secured or unsecured bond,
273 provided, that the judicial officer shall only impose a financial condition under this clause if said
274 judicial officer finds that no other condition or combination of conditions will reasonably assure
275 the appearance of the person as required".

276 SECTION 42. Subparagraph (B) of clause (2) of section 58A of said chapter 276, as so
277 appearing, is hereby amended, in lines 78-80, by striking the subclause (xiv) and by inserting in
278 place thereof the following new subclauses:-

279 "(xiv) participate in a diversion program under chapter 276A, an alternative adjudication
280 program, or in a drug, mental health, veteran or other treatment court program; and

281 (xv) satisfy any other condition that is reasonably necessary to assure the appearance of
282 the person as required and to assure the safety of any other person and the community.".

283 SECTION 43. Clause (2) of said section 58A of chapter 276, as so appearing, is hereby
284 amended, in lines 95-97, by striking the last sentence.

285 SECTION 44. Clause (5) of said section 58A of chapter 276, as so appearing, is hereby
286 amended, in lines 95-97, by inserting after the word "shall" the following:- "in addition to
287 consulting the results of the risk assessment tool,".

288 SECTION 45. The second paragraph of section 58B of said chapter 276, as amended by
289 chapter 260 of the acts of 2014, is hereby amended, in line 37, by striking the word “ninety” and
290 inserting in place thereof the following:- “60”.

291 SECTION 46. Chapter 276 of the General Laws, as appearing in the 2012 Official
292 Edition, is hereby amended, by striking section 59 in its entirety and inserting in place thereof the
293 following new sections:-

294 “Section 59. There shall be within the office of probation a pretrial services division,
295 hereinafter referred to as pretrial services. Pretrial services shall collect and present necessary
296 information to compile and present risk assessments scores, and consistent with court policy,
297 provide the court with evidence-based release recommendations required by the judicial officer
298 in making release decisions, including the defendant’s eligibility for diversion, treatment or other
299 alternative adjudication programs. The pretrial services division shall be headed by a director of
300 pretrial services. The director shall be a person of ability and experience in the pretrial process,
301 chosen and appointed by the commissioner for the office of probation.

302 Section 59A. Pretrial services shall perform the following duties for the trial courts:

303 (a) create or chose a risk assessment tool, provided, that the tool shall be tested validated
304 in the commonwealth to identify and eliminate unintended economic, race or gender bias
305 included in the tool;

306 (b) establish a procedure for the screening of persons who are to be, or have been,
307 presented in court for first appearance to assist the trial court in determining the appropriate
308 terms and conditions of pretrial release; provided, that said procedure shall use a uniform risk
309 assessment tool;

310 (c) record information received from the arrested person as a result of any division
311 interview on a uniform risk assessment tool;

312 (d) verify and supplement to the extent possible the information required by the risk
313 assessment tool before submitting its report, provided, that minimum verification shall include
314 the arrestee's prior criminal record, residency, and employment circumstances;

315 (e) submit written reports of any interviews to the presiding judicial officer, all parties
316 and counsel of record, based on the results of the risk assessment tool, along with such findings
317 and recommendations, if any, as may be necessary to assess the appropriate conditions of release
318 which shall be imposed that reasonably assure the presence of the arrestee in court and the safety
319 of the public or aid the orderly administration of justice before trial;

320 (f) cooperate with the court and all other criminal justice agencies in the development of
321 programs to minimize unnecessary pretrial detention and protect the public against breaches of
322 pretrial release conditions;

323 (g) monitor the local operations of the pretrial release system and maintain accurate and
324 comprehensive records of program activities;

325 (h) provide notification to supervised persons of court appearance obligations, and as
326 needed, require periodic reporting by letter, telephone or personal appearance to verify
327 compliance with conditions of release;

328 (i) assist persons released prior to trial in securing any necessary employment, medical,
329 drug, mental or other health treatment, legal or other needed social services that would increase
330 the chances of successful compliance with conditions of pretrial release; and

331 (j) regularly monitor the arrest records of local law enforcement agencies to determine
332 whether any supervised person has been formally charged with the commission of a new offense
333 in violation of the uniform release order. In such event, the pretrial services shall prepare a
334 formal report of that fact and present same to the court. A copy of the report shall be provided to
335 the prosecuting officer who may aid pretrial services in presenting such violation.

336 No person shall be interviewed by a pretrial services division unless he or she has first
337 been apprised of the identity and purpose of the interview, the scope of the interview, the right to
338 counsel, and the right to refuse cooperation. Inquiry of the defendant shall carefully exclude
339 questions concerning the details of the current charge. Statements made by the defendant during
340 the interview or evidence derived therefrom, are admissible in evidence only when the court is
341 considering the imposition of pretrial conditions to bail or recognizance, or when considering the
342 modification of a prior release order and shall not be admissible in the course of any other
343 proceeding.

344 A representative of pretrial services shall, where feasible, be present or otherwise
345 available to the trial court at the first appearance or such later hearings at which the division
346 report is to be considered by the trial court. At such hearings, the factual findings, conclusions
347 and recommendations in the written report may be challenged by the defendant, his or her
348 counsel, or the prosecuting attorney, by the presentation of any relevant evidence; and if so
349 ordered by the trial court, pretrial services shall prepare and submit for the court's approval and
350 signature a release order on a uniform release form in all cases where a defendant may be
351 released from custody under conditions contained in an division report. Such conditions shall
352 become part of the conditions of release. A copy of the uniform release order shall be provided to
353 the defendant, the defendant's attorney of record, and the prosecutor.

354 Pretrial services shall have primary responsibility for reporting non-compliance by
355 criminal defendants with the terms and conditions of pretrial release specified in the uniform
356 release order entered under this section. Pretrial services shall monitor and supervise compliance
357 with pretrial release of supervised persons before trial and promptly submit reports to the court,
358 defendant, the defendant's attorney of record and prosecuting officer whenever: (i) apparent
359 violations of other conditions imposed by the court under the uniform release order have
360 occurred; or (ii) modification of the uniform release order and conditions thereof are deemed in
361 the best interests of either the accused or the community.

362 Section 59B. (a) Pretrial services shall collect data and maintain records of individuals
363 processed by pretrial services.

364 (b) Pretrial services shall submit quarterly reports to the office of probation, the chief
365 justice of the trial court, the court administrator and the supreme judicial court including but not
366 limited to: analysis on demographics of the pretrial population including age, race and sex;
367 number of persons detained before trial; appearance rates; length of detentions; default rates;
368 conditions imposed upon release; caseload of the pretrial services division; length of supervision;
369 and any other analytical data the division deems appropriate; provided, that any data included in
370 the report is presented only in aggregated form and no individual can be identified by data
371 included in the report.

372 (c) Information and records maintained by pretrial services that have not been disclosed
373 in open court during a trial court proceeding shall not be released by pretrial services to any
374 individual or organization, other than any employee of the office of probation or the courts,
375 without the express permission of the interviewed or supervised person at or near the time the

376 information is to be released. An individual shall have access to all information and records
377 about himself or herself maintained by or collected by the pretrial services division. Nothing in
378 this section shall prevent the pretrial services division from making its data available for research
379 purposes to qualified personnel, provided that no records or other information shall be made
380 available in which individuals interviewed or supervised are identified or from which their
381 identities are ascertainable. Records created by pretrial services shall not be part of an
382 individual's criminal offender record information. The information obtained and recorded shall
383 not be regarded as public records and shall not be open for public inspection but aggregate data
384 shall be accessible to the justices, the departments of probation, and youth services, the
385 Massachusetts sentencing commission, and to such local and state governments as the division
386 may determine. Upon payment of a fee as established by the chief justice of the trial court or the
387 court administrator for each search, such aggregate data shall be accessible to such departments
388 of the federal government and to such educational and charitable corporations and institutions as
389 the division may determine.

390 Section 59C. (a) Pretrial services shall develop informational materials and produce
391 training curriculum for staff regarding the functions of pretrial services. The training shall
392 include information on risk assessment tools, risk assessment scores, recommended supervision
393 levels and conditions of release, the difference between probationers and pretrial defendants and
394 their different needs, data collection consistent with best practices, trauma informed pretrial
395 services, and any other information the trial court or pretrial services division deem appropriate.
396 No employee of pretrial services shall determine a risk assessment score, oversee a released
397 defendant or make release recommendations to the court before participating in the mandatory
398 training.

399 (b) The trial court in coordination with pretrial services shall develop curriculum and
400 make training opportunities available on a rolling basis to all judicial officers eligible to make
401 bail decisions. Training shall include information on the risk assessment tools, risk assessment
402 scores and recommended supervision levels, conditions of release, and any other information the
403 trial court or pretrial services division deem appropriate. No bail commissioner shall be eligible
404 to make a bail decision after the implementation of the risk assessment tool, before participating
405 in a training offered under this section.”.

406 SECTION 47. Section 60 of said chapter 276, as so appearing, is hereby amended, in line
407 5, by striking the words “fifty-seven” and inserting in place thereof the following figure:- “58”.

408 SECTION 48. Section 61 of said chapter 276, as so appearing, is hereby amended by
409 inserting after the word “other” in line 8, the following:- “secured or unsecured”;

410 and, in lines 13-17, by striking the words “A surety may, instead of making such
411 certificate, give his personal recognizance as surety and deposit money, bonds or a properly
412 assigned bank book of the kind and in the amount and under the conditions set forth in section
413 fifty-seven for making deposit of like nature.”;

414 and, in line 21, by striking the word “second Monday of each” and inserting in place
415 thereof the following:- “fifteenth of every”.

416 and, in line 22, by striking the word “superior” and inserting in place thereof the
417 following:- “trial”.

418 SECTION 49. Chapter 276 of the General Laws, as appearing in the 2012 Official
419 Edition, is hereby amended, by striking section 61A in its entirety.

420 SECTION 50. Section 61B of said chapter 276, as so appearing in, is hereby amended, by
421 striking the first paragraph in its entirety and inserting in place thereof the following:- “No
422 person proposing to become a surety in a criminal case, shall be accepted as such unless he shall
423 have been registered by the pretrial services division. No surety under this chapter may be
424 compensated for acting as such a surety.”.

425 SECTION 51. The second paragraph of said section 61B of said chapter 276, as so
426 appearing in, is hereby further amended, in line 2, by striking the words “cash or a bail” and
427 inserting in place thereof the following:- “secured or unsecured”;

428 and, in line 37, by striking the words “a bail” and inserting in place thereof the
429 following:- “secured or unsecured”;

430 and, in line 38, by striking the words “a bail bond or cash bail” and inserting in place
431 thereof the following:- “secured or unsecured bond”.

432 SECTION 52. The third paragraph of said section 61B of said chapter 276, as so
433 appearing in, is hereby further amended, in lines 64 and 66, by inserting after the word
434 “administration” in each instance, the following:- “and pretrial services”.

435 SECTION 53. Said section 61B of said chapter 276, as so appearing in, is hereby
436 amended, by striking the fifth paragraph in its entirety.

437 SECTION 54. Section 65 of said chapter 276, as so appearing in, is hereby amended, in
438 line 13, by striking the word “bail” and inserting in place thereof the following:- “secured or
439 unsecured”.

440 SECTION 55. Section 68 of said chapter 276, as so appearing in, is hereby amended, in
441 line 1, by striking the word “Bail” and inserting in place thereof the following:- “A surety”.

442 SECTION 56. Section 69 of said chapter 276, as so appearing in, is hereby amended, in
443 line 1, by striking the word “Bail” and inserting in place thereof the following:- “A surety”;

444 and, in line 6, by striking the word “Bail” and inserting in place thereof the following:-
445 “surety”.

446 SECTION 57. Section 70 of said chapter 276, as so appearing in, is hereby amended, in
447 line 2, by striking the words “bail are” and inserting in place thereof the following:- “surety is”.

448 SECTION 58. Section 71 of said chapter 276, as so appearing in, is hereby amended, in
449 line 5, by striking the words “his obligation” and inserting in place thereof the following:-
450 “including the reason for default, his or her secured or unsecured bond, if any,”.

451 SECTION 59. Chapter 276 of the General Laws, as appearing in the 2012 Official
452 Edition, is hereby further amended, by striking sections 79 and 80 and inserting in place thereof
453 the following sections:-

454 “Section 79. Any judicial officer authorized to make bail decisions shall collect any
455 financial obligation due as a result of the bail decision from a defendant at the time a bail
456 decision is made and at the place where the decision is made if the defendant has means at that
457 time and place to meet the financial obligation.

458 Section 80. At any time after default of the defendant, the court may order the forfeit of
459 the secured or unsecured bond determined or deposited at the time of the recognizance and the
460 court or clerk of the court shall issue an order against the person who pledged an unsecured bond

461 to pay the court the money so forfeited. The court or clerk of the court shall pay to the state
462 treasurer any money so deposited. The court may accept alternatives to cash, including but not
463 limited to bonds. The clerk of the court shall immediately proceed to sell any bonds so deposited
464 either at public or private sale, and shall forthwith pay the proceeds thereof, after deducting all
465 expenses connected with such sale, to the state treasurer. The order for payment issued by the
466 court or clerk of court shall be delivered according to the rules for delivery of a criminal
467 summons, upon the person or persons obligated to pay the court. A person who fails to pay an
468 order for payment may be subject to contempt proceedings. ”.

469 SECTION 60. Section 81 of chapter 276 of the General Laws, as appearing in the 2012
470 Official Edition, is hereby further amended, by striking the first sentence;

471 and, further, in line 6, by striking the word “reception” and inserting in place thereof the
472 following:- “recapture”;

473 and, further, in line 13, by striking the word “recognizance” and inserting in place thereof
474 the following:- “secured or unsecured bond”.

475 SECTION 61. The first paragraph of section 32 of chapter 260 of the acts of 2014 is
476 hereby amended by striking out, in line 1, the figure “57” and inserting in place thereof the
477 following figure:- “58”

478 and, by inserting at the end of the first paragraph of said section 32, after the word
479 “practicable” the following:- “, and shall take into consideration the following: the nature and
480 circumstances of the offense charged, the potential penalty the person faces, the person’s family
481 ties, employment record and history of mental illness, the person’s reputation, the risk that the
482 person will obstruct or attempt to obstruct justice or threaten, injure or intimidate or attempt to

483 threaten, injure or intimidate a prospective witness or juror, the person's record of convictions, if
484 any, any illegal drug distribution or present drug dependency, whether the person is on bail
485 pending adjudication of a prior charge, whether the acts alleged involve abuse, as defined in said
486 section 1 of said chapter 209A, a violation of a temporary or permanent order issued pursuant to
487 said sections 18 or 34B of said chapter 208, said section 32 of said chapter 209, said sections 3, 4
488 or 5 of said chapter 209A or said sections 15 or 20 of said chapter 209C, whether the person has
489 any history of issuance of such orders pursuant to the aforesaid sections, whether the person is on
490 probation, parole or other release pending completion of sentence for any conviction and whether
491 the person is on release pending sentence or appeal for any conviction”