HOUSE DOCKET, NO. 2593 FILED ON: 1/19/2017

HOUSE . . . . . No. 2287

The Commonwealth of Massachusetts

PRESENTED BY:

Danielle W. Gregoire

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 to improve probation violation proceedings.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Danielle W. Gregoire	*4th Middlesex*	*1/19/2017*

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HOUSE . . . . . No. 2287

By Miss Gregoire of Marlborough, a petition (accompanied by bill, House, No. 2287) of Danielle W. Gregoire relative to improving probation violation proceedings. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act to improve probation violation proceedings.

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

SECTION 1. Chapter 279 of the General Laws is hereby amended by striking out section 3 and inserting in place thereof the following section:-

Section 3.

(a) If a probation officer has probable cause to believe that a person placed under probation supervision or in the custody or care of a probation officer pursuant to sections 42A, 58, 58A, or 87 of chapter 276 or any other statute that allows the court to set conditions of release, has violated the conditions set by the court, the probation officer may arrest the probationer or may issue a warrant for the temporary custody of the probationer for a period not to exceed 72 hours or until the next sitting of the court, during which period the probation officer shall arrange for the appearance of the probationer before the court pursuant to this section. Such warrant shall constitute sufficient authority to a probation officer and to the superintendent, jailer, or any other person in charge of any jail, house of correction, lockup, or place of detention

to whom it is exhibited, to hold in temporary custody the probationer detained pursuant thereto. A court may issue an arrest warrant upon a showing of probable cause to believe the probationer has violated any condition of probation or release.

(b) The probation officer shall provide a copy of the notice of surrender to the district attorney, and the court shall provide to the district attorney the opportunity to be heard and present evidence at the violation hearing. If a warrant has been issued by the court for the arrest of such a person and he is a prisoner in any correctional institution, jail, or house of correction, the commissioner of correction or the sheriff, as the case may be, shall notify such prisoner that the prisoner has the right to apply to the court for prompt disposition thereof. Such an application shall be in writing and given or sent by such prisoner to the commissioner of correction or sheriff, who shall promptly forward it to the court from which the warrant issued and to the appropriate district attorney. Any such prisoner shall, within six months after such application is received by the court, be brought into court for sentencing or other lawful disposition of his case as hereinbefore provided.

(c) Upon a finding by a preponderance of the evidence that the probationer has violated a condition of probation, a judge may terminate probation supervision, continue probation supervision, modify the terms and duration of probation supervision, or impose a lawful sentence. If a sentence imposed is for less than the maximum sentence permitted by law for the offense, the judge may order probation supervision upon release under such terms and conditions as the judge may set, but not to exceed the original sentence; in which case, a further sentence may be imposed after a subsequent finding of a violation of a condition of probation. In no event shall the total cumulative incarceration of a probationer exceed the maximum sentence permitted by law for the offense. A judge may impose a sentence of less than a previously-

imposed suspended sentence, but the total cumulative incarceration of the probationer for that offense shall not exceed the length of any suspended sentence or the maximum sentence permitted by law for the offense, whichever is less.

(d) Where a judge has previously warned a probationer that the probationer would be subject to detention for any violation of any probation condition, a judge may in the exercise of discretion conduct a prompt hearing on any alleged violation of a condition of probation and commit the probationer to a period of detention in a jail or house of correction not to exceed fourteen days upon finding by a preponderance of the evidence that the probationer has violated a condition of probation. The probationary term shall be stayed during such a period of detention and resume upon the completion of the period of detention, with any modification of the conditions of probation that the judge shall deem prudent. If the judge in the exercise of discretion determines that a sanction of more than fourteen days may be proper, the judge shall permit the probationer upon request no less than seven days to prepare for a probation violation hearing. Notwithstanding the foregoing, no probationer shall be detained for a cumulative period that exceeds the maximum sentence for the conviction upon which the probationer was placed on probation.