HOUSE . . . . . No. 3935

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, October 4, 2017.

The committee on the Judiciary to whom was referred the message from His Excellency the Governor relative to implementing the joint recommendations of the Massachusetts Criminal Justice Review (House, No. 74), reports recommending that the accompanying bill (House, No. 3935) ought to pass.

For the committee,

CLAIRE D. CRONIN.

FILED ON: 9/29/2017

HOUSE . . . . . No. 3935

The Commonwealth of Massachusetts

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

An Act implementing the joint recommendations of the Massachusetts criminal justice review.

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

SECTION 1. Section 32H of chapter 94C of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by inserting after the figure "127," in line 15, the following words:- except as authorized pursuant to section 32H½.

SECTION 2. Said section 32H of said chapter 94C, as so appearing, is hereby further amended by inserting after the figure "32E," in line 18, the following words:- , section 32H½.

SECTION 3. Said chapter 94C is hereby further amended by inserting after section 32H the following section:-

Section 32H ½. (a) As used in this section, the words "ineligible offender" shall have the following meaning: any person sentenced to a mandatory minimum term of imprisonment in the state prison upon conviction for (1) violating sections 32, 32F or 32K, or subsection (c) of section 32E; (2) violating section 32A by knowingly or intentionally manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute or dispense a controlled substance defined in clauses (1), (2) or (3) of paragraph (a), or in clause (6) of paragraph (b) of

Class B of section thirty-one or any other offense under this chapter involving the illegal manufacturing, distribution, dispensing, or possession with intent to manufacture, distribute or dispense a naturally occurring, synthetic or semi-synthetic opioid; or (3) violating this chapter, upon a finding that any 1 of the following aggravating circumstances is an element of the offense: (i) the person used violence or threats of violence or possessed a firearm, rifle, shotgun, machine gun or a weapon described in paragraph (b) of section 10 of chapter 269, or induced another participant to do so, during the commission of the offense; (ii) the person engaged in a course of conduct whereby he directed the activities of another who committed any felony in violation of chapter 94C; or (iii) the offense was committed during the commission or attempted commission of a violation of section 32F or section 32K of chapter 94C.

(b) No person serving a mandatory minimum term of imprisonment in the state prison for violating any provision of this chapter as set forth in section 32H shall be eligible for deductions from his sentence for good conduct under subsection (b) of section 129D of chapter 127 until he shall have served such mandatory minimum term of imprisonment. Any person serving a mandatory minimum term of imprisonment in the state prison for violating any provision of this chapter as set forth in section 32H shall be eligible for deductions from his sentence for good conduct under subsection (d) of section 129D of chapter 127, except that an ineligible offender serving such a mandatory minimum term shall not be eligible for such deductions until the ineligible offender shall have served such mandatory minimum term of imprisonment.

(c) Notwithstanding subsection (i) of section 130B of chapter 127, any person serving a mandatory minimum term of imprisonment for violating any provision of this chapter set forth in section 32H shall be eligible for a parole permit pursuant to section 130B of chapter 127 on the date determined under subsection (a) of said section 130B, except that an ineligible offender

shall not be eligible for such a permit until the ineligible offender shall have served such mandatory minimum term of imprisonment.

(d) Any person serving a mandatory minimum term of imprisonment in the state prison for violating any provision of this chapter set forth in section 32H shall be eligible for work release, except that an ineligible offender serving such a mandatory minimum term shall not be eligible for work release until such ineligible offender has served such mandatory minimum term of imprisonment

SECTION 4. Subsection (g) of section 1 of chapter 124 of the General Laws is hereby amended by inserting after the word “and,” in line 34, the following words:- , after consultation with the parole board,.

SECTION 5. Chapter 127 of the General Laws is hereby amended by striking out section 129D and inserting in place thereof the following section:-

Section 129D. Prisoners are eligible to earn deductions from sentences and completion credits, collectively known as good conduct deductions, for participation in and completion of programs and activities as follows:

(a) For the satisfactory conduct of a prisoner while confined at a correctional institution of the commonwealth, or any jail or house of correction, but working at a state hospital or state school, satisfactory completion of an educational program leading to the award of a high school equivalency certificate, satisfactory performance of said prisoner in completion of any other educational sequence or any vocational training program established within or without the institution, satisfactory performance of said inmate when he is employed on work-release or in a prison industry, or satisfactory performance of said inmates in any other program or activity

which the superintendent of the institution shall deem valuable to said prisoner's rehabilitation, the commissioner may grant, in addition to the deductions of sentence provided under section 129C, a further deduction of sentence pursuant to this section. For a prisoner serving a sentence to the state prison, such deduction shall not exceed 7.5 days per program or activity for each month while said prisoner is working in a state hospital or school, on work-release or working in a prison industry, or partaking in any of the said programs or activities as aforesaid; provided, however, that in no event shall said deductions exceed a maximum monthly total of 15 days. For a prisoner serving a sentence to the house of correction, such deduction shall not exceed 5 days per program or activity for each month while said prisoner is working in a state hospital or school, on work-release or working in a prison industry, or partaking in any of the said programs or activities as aforesaid; provided, however, that in no event shall said deductions exceed a maximum monthly total of 10 days. Further, the commissioner may grant an additional deduction of sentence of up to 10 days for a prisoner's successful completion of a program or activity, as designated by the commissioner, to be deducted in the month during which successful completion of the designated program or activity is achieved; provided, however, that for a prisoner serving a sentence to the house of correction, such additional deduction of sentence shall be granted only for completion of a program or activity requiring 6 months of satisfactory participation.

(b) All such deductions of sentence shall be added to any deduction to which the prisoner is entitled under section 129C for reducing the term of imprisonment by deduction from the maximum term for which the prisoner may be held under the prisoner's sentence or sentences; provided, however, that in no event shall such deductions reduce the imposed maximum term or aggregate maximum terms by more than 35 per cent.

(c) In addition to the foregoing, the commissioner may also grant up to 80 days of completion credits to a prisoner serving a sentence to the state prison for successful completion of a program or activity, as designated by the commissioner, to be granted in the month during which successful completion of the designated program or activity is achieved; provided, however, that in no event shall the aggregate number of completion credits awarded to a prisoner exceed a maximum of 17.5 per cent of such prisoner's imposed maximum term of imprisonment.

(d) Such deductions granted under subsection (a) and such completion credits granted under subsection (c) shall be added to any deduction to which the prisoner is entitled under section 129C for reducing from the minimum term of the sentence or sentences the good conduct credits earned under this section for parole eligibility as provided under section 133; provided, however, that in no event shall said deductions and such completion credits reduce such imposed minimum term by more than 35 per cent.

(e) No prisoner shall be eligible for any deduction under subsection (a) or any completion credit under subsection (c) unless he has satisfied both the requirements of the program or activity and demonstrated competency in the material, as determined by the commissioner.

(f) A prisoner whose term of imprisonment is reduced from the maximum term for which he may be held under his sentence or sentences shall receive from the commissioner a certificate of discharge on the date which has been determined by such additional deductions from the maximum term of his sentence or sentences.

SECTION 6. Section 130 of chapter 127 of the General Laws, as amended by chapter 165 of the acts of 2014, is hereby further amended by striking out the ninth sentence and inserting in place thereof the following sentence:-

A prisoner to whom a parole permit is granted shall be allowed to go upon parole outside prison walls and inclosure upon such terms and conditions as the parole board shall prescribe, but shall remain, while thus on parole, subject to the jurisdiction of such board until the expiration of the term of imprisonment to which he has been sentenced or until the date which has been determined by deductions from the maximum term of his sentence or sentences for good conduct and any further deductions for compliance credits granted pursuant to section 130C, provided that such combined deductions shall not exceed 35 per cent of the term of imprisonment to which he has been sentenced or until such earlier date as the board shall determine that it is in the public interest for such prisoner to be granted a certificate of termination of sentence.

SECTION 7. Chapter 127 of the General Laws is hereby amended by inserting after section 130A the following 2 sections:-

Section 130B. (a) As used in this section, the following terms shall have the following meanings:

"Parole plan" shall mean a plan, approved by the Parole Board, that includes the general and special conditions of parole and requirements for: (a) a parolee's physical address and co-habitants, if any; (b) verification of employment, efforts to seek employment or inability to obtain employment; and (c) an initial reporting date on which the parolee must report in person to a parole field office.

"Release to supervision date" shall mean the date which has been determined by deductions from the maximum term of a prisoner's sentence for good conduct deductions under subsection (a) of section 129D and a further deduction for any program completion credits earned under subsection (c) of section 129D; provided that in no event shall such date be earlier than the date which has been determined by reducing a prisoner's imposed maximum term of sentence by 35 per cent.

(b) Notwithstanding sections 133 and 136 and the first eight sentences of section 130, if a prisoner serving a sentence to state prison has not been granted a parole permit by the prisoner's release to supervision date, then the parole board shall issue a parole permit to that prisoner for the remainder of his sentence, as reduced by any good conduct deductions pursuant to section 129D(b); provided, however, that in no event shall a parole permit issue pursuant to this section unless the prisoner has been awarded at least 30 days of completion credits under section 129D(c); and provided further, however, that in no event shall a parole permit issue pursuant to this section unless the prospective parolee submits a parole plan approved by the parole board.

(c) The terms and conditions of the prisoner's parole shall be determined by the parole board. The determination of such terms and conditions under this section, as well as their revision, alteration, amendment, and revocation, shall be discretionary exercises of the parole board's authority and shall not be subject to judicial review so long as such exercises are consistent with regulatory, statutory, and constitutional guarantees of due process.

The violation by the holder of such permit or any of its terms or conditions, or of any law of the commonwealth, may render such permit void, and thereupon, or if such permit has been

revoked, the parole board may order his arrest and his return to prison, in accordance with the provisions of sections 149 and 149A.

(d) If a prisoner has two or more sentences to be served otherwise than concurrently, the maximum term of his sentence for purposes of subsection (a) shall be the aggregate maximum term of such sentences. If a prisoner has two or more sentences to be served concurrently, the maximum term of his sentence for purposes of subsection (a) shall be the maximum term of the latest date of such sentences.

(e) A parolee whose permit to be at liberty has been issued pursuant to this section shall enjoy the same privileges and be subject to the same rules, policies, procedures and jurisdiction of the parole board, as if his parole permit had been granted by the parole board pursuant to any other statute authorizing the parole board to grant such permits.

(f) The commissioner shall make available to the parole board all information in his possession relating to any prisoner whose case is under consideration. Such information to be made available shall include the following: (i) information concerning the prisoner's conduct in prison, including a statement as to all infractions of prison rules and discipline, all punishments meted out to such prisoner, and the circumstances connected therewith, (ii) information concerning the extent to which such prisoner has responded to the efforts made in prison to improve his mental and moral condition, including to the extent available, information as to the prisoner's attitude toward society, toward those responsible for his arrest, prosecution, and conviction, and how the prisoner then regards the crime for which he is in prison and his previous criminal career; (iii) information concerning the prisoner's industrial record while in prison, the nature of his occupations while in prison, and recommendations as are available as to

the kind of work he is best fitted to perform and at which he is most likely to succeed when he leaves prison; (iv) information concerning the results of such physical, mental and psychiatric examinations as have been made of such prisoner which so far as practicable shall have been made within two months of the time of his release on parole; (v) information concerning the prisoner's social, physical, mental and psychiatric condition and history; (vi) information concerning the prisoner's record of participation in available work opportunities and education or treatment programs and demonstrated good behavior while in prison, including a description of each program completed by the prisoner, the number of completion credits granted to the prisoner for each program completed, and the date on which the prisoner's permit to be at liberty shall expire; and (vii) information concerning the crime or crimes for which the prisoner is then sentenced, including the circumstances of such crime or crimes, the nature of his sentence or sentences, the court in which he was sentenced, the name of the judge and district attorney, and copies of such probation reports as may have been made.

These records shall be made available to the parole board so as to be readily accessible when the parole or pardon of such prisoner is being considered.

(g) This section shall not apply to prisoners serving a Massachusetts sentence in a correctional institution of another state or the federal government.

(h) This section shall not apply to prisoners in the custody of the department of correction but who are serving a sentence imposed by another state or the federal government.

(i) A person ineligible for parole because he is serving a mandatory minimum term of imprisonment shall not, until he shall have served such mandatory minimum term of imprisonment, be eligible for a parole permit under subsection (b), except as otherwise provided

by law. Habitual offenders sentenced under subsection (b) of section 25 of chapter 279 shall not be eligible for a parole permit under subsection (b).

Section 130C. (a) For the satisfactory conduct of a parolee under the supervision of the parole board who is serving a sentence to state prison, the chairman of the parole board or his designee may grant compliance credits of up to a maximum monthly total of 15 days; provided, however, that no compliance credits may be granted to a person serving a mandatory minimum sentence until he shall have served the mandatory minimum term. Any compliance credits so granted and not rescinded pursuant to subsection (b) shall reduce the period of time that a parolee is subject to the jurisdiction of the parole board under section 130.

(b) The parole board shall issue regulations governing the rescission of compliance credits for violation of the terms and conditions of parole.

(c) The award or rescission of credits pursuant to this section shall not be the subject of judicial review.

(d) This section shall not apply to a prisoner who has been sentenced for life.

(e) This section shall not apply to a parolee who received his parole permit pursuant to section 130B.

SECTION 8. Section 1 of chapter 211F of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by adding the following 2 definitions:-

“Pretrial services plan”, a written proposal submitted to the executive director for approval and funding as a pretrial services program.

"Pretrial services program", any program that is operated by a state, local, or private service agency, that the office of community corrections has deemed appropriate for a person awaiting trial. Pretrial service programs shall be a separate track of programming from community correction programs offered under section 3 of this chapter. Sanctions under said section 3 shall not be applicable to the pretrial service program track.

SECTION 9. Section 2 of said chapter 211F, as so appearing, is hereby amended by inserting after the word "of", in line 3, the following words:- pretrial services program and.

SECTION 10. Said section 2 of said chapter 211F, as so appearing, is hereby further amended by inserting the word "developing," in line 5, the following words:- pretrial services programs and.

SECTION 11. Said section 2 of said chapter 211F, as so appearing, is hereby further amended by inserting after the word "corrections," in line 9, the following words:- and pretrial services.

SECTION 12. Said chapter 211F is hereby amended by inserting after section 3 the following 2 sections:-

Section 3A. (a) Participation in a pretrial services program may be ordered by the court, in lieu of bail or as a condition of release consistent with sections 57, 58, and 58A of chapter 276. The court may dictate the duration and conditions of the pretrial services program. Any conditions should be imposed to ensure return of the defendant to court or, where permitted by law, to assure the safety of any person or the community.

(b) The probation department may utilize pretrial services programs for pretrial supervision consistent with sections 87 and 87A of chapter 276, upon agreement by the person before the court who is charged with an offense or crime.

(c) If the sheriff who has custody of a person held on bail under section 57 or 58 of chapter 276 determines that the person would benefit from entering a pretrial services program, the sheriff shall provide a written recommendation of such determination to the court, the commissioner of probation, the prosecuting office, and the person, or where applicable the person's attorney. The prosecuting office may notify the victim of the sheriff's recommendation upon receipt of such recommendation. If the commissioner of probation or the prosecuting office objects to such recommendation, they shall file a written objection with the court within fourteen days of receipt of such notice. Upon receipt of such objection, the court may set the matter for hearing. After expiration of the time for filing objections and after hearing, if applicable, the court shall either decline to modify its earlier bail order or make an order under subsection (a) of this section authorizing the person's participation in a pretrial services program. In no event shall the person held on bail be ordered under this paragraph to enter a pretrial services program without that person's consent.

Section 3B. (a) For any person sentenced to probation supervision who has not been sentenced to a community corrections program under section 3 of this chapter, the probation department may utilize programs offered through a community corrections program:

(1) for participation in court-ordered programming where such programming is available through the community corrections program; or

(2) upon agreement by the person so sentenced.

(b) The use of programs under subsection (a) of section 3B of this chapter shall not operate as an intermediate sanctions program as defined in section 1 of this chapter.

SECTION 13. Section 4 of said chapter 211F, as appearing in the 2014 Official Edition, is hereby amended by inserting after the word “plans,” in line 3, the following:- and pretrial services plans.

SECTION 14. Section 5 of said chapter 211F, as so appearing, is hereby amended by inserting after the word “commitments,” in line 10, the following words:- , reducing pretrial detention and increasing the court appearance rate.

SECTION 15. Chapter 276 of the General Laws is hereby amended by inserting after section 87A the following section:-

Section 87B.

(a) As used in section 87B, the following words shall have the following meanings:

“Compliance” shall mean the absence of a judicial finding of a violation of court-ordered conditions of post-disposition probation supervision.

“Compliance credits” shall mean credits that an eligible offender earns through compliance with court-ordered terms of post-disposition probation supervision. Such credits shall operate to reduce the length of post-disposition probation supervision.

“Eligible offender” shall mean an offender whose sentence includes incarceration followed by a term of probation supervision upon conviction of one or more criminal offenses and has been released to probation after serving the incarcerated sentence or incarcerated portion

of the sentence, excluding any person who is under post-disposition supervision for a sex offense as defined in section 178C of chapter 6.

(b) An eligible offender shall earn compliance credits as follows:

(i) An eligible offender shall begin to accrue compliance credits on the first day of the calendar month following one year of supervision on probation.

(ii) After completing one year of supervision on probation up to and including completion of two years of supervision on probation, on the first day of each calendar month, an eligible offender shall earn 5 days of compliance credits if the eligible offender was in compliance for the prior calendar month.

(iii) After completing two years of supervision, on the first day of each calendar month, an eligible offender shall earn 10 days of compliance credits if the eligible offender was in compliance for the previous calendar month.

(c) Compliance credits shall not accrue during any calendar month in which a violation of probation is pending. Once a violation of probation hearing is held, if the court does not find a violation, compliance credits shall be awarded retroactive to the filing of the violation.

(d) If the court finds a violation of court-ordered conditions of post-disposition probation supervision, then (i) the eligible offender may not be awarded compliance credits for the time during which the violation was pending; and (ii), the court may also revoke any earned compliance credits. If the court places the eligible offender in a correctional institution upon revocation, any compliance credits previously earned by the eligible offender shall be revoked.

(e) Quarterly the Probation Service shall calculate an eligible offender's supervision termination date, taking into consideration any earned compliance credits. Upon such calculation, the Probation Service shall inform the eligible offender of the termination date.

(f) At sentencing, the court shall notify an eligible offender that compliance with post-disposition supervision conditions shall result in earning compliance credits.

SECTION 16. Section 32H1/2 of chapter 94C of the General Laws shall apply to any sentence for an offense committed after the effective date of this act.

SECTION 17. Any offender who has been granted a parole permit prior to the effective date of this act shall not be eligible to earn compliance credits under section 130C of chapter 127 of the General Laws.

SECTION 18. Subsections (a) and (b) of section 3A of chapter 211F of the General Laws shall apply to persons charged after the effective date of this act and to persons held in jail beginning on the effective date of this act.

SECTION 19. Section 3B of chapter 211F shall apply to persons on probation supervision on or after the effective date of this act.

SECTION 20. Any offender who has started probation supervision prior to the effective date of this act shall not be eligible to earn compliance credits under section 87B of chapter 276 of the General Laws.

SECTION 21. This act shall take effect nine months after passage.