

HOUSE No. 4903

The Commonwealth of Massachusetts



CHARLES D. BAKER
GOVERNOR

OFFICE OF THE GOVERNOR
COMMONWEALTH OF MASSACHUSETTS
, MA

KARYN POLITO
LIEUTENANT GOVERNOR

September 7, 2018

To the Honorable House of Representatives,

It is a fundamental responsibility of government to keep our communities safe. Recent tragedies have demonstrated the tremendous damage that can result when our criminal justice system fails to identify and detain dangerous people charged with serious crimes. The alarming frequency of these events confirms that the Commonwealth needs to do a better job of holding until trial defendants who pose a continuing danger to others. Prosecutors are permitted to ask a judge to hold a defendant because of the danger the defendant poses to the community only in a limited number of cases, and under a set of procedures that do not provide the district attorneys or the courts with the information they need to make fully informed decisions. When courts release accused defendants on conditions designed to ensure their compliance with our laws, these conditions are too often violated with little consequence. Police are not authorized to arrest a person who they observe violating a condition of release, and judges’ authority to order someone held for violating release conditions is unreasonably circumscribed.

In order to meet our shared responsibility and provide the criminal justice system with the tools it needs to keep our Commonwealth safe, I am submitting for your consideration “An Act to Protect the Commonwealth from Dangerous Persons.” This legislation redrafts the statutes that govern pretrial release in Massachusetts with a focus on empowering the judicial system to make better decisions regarding the release of potentially dangerous individuals. The law will continue to require proof at a hearing before a judge that no conditions of release can ensure public safety before a person may be held as a danger to the community. This legislation expands the list of offenses which can provide grounds for a dangerousness hearing, and it also

follows the long-standing federal model in including a defendant's history of serious criminal convictions as grounds that may warrant a dangerousness hearing. Current law requires courts to focus on only the crime charged and ignore a defendant's criminal history when determining whether the defendant may be the subject of this sort of hearing.

This legislation also closes loopholes at the start and end of the criminal process that currently limit or prevent effective action to address legitimate safety concerns. It extends the requirement that police take the fingerprints of people arrested for felonies to all people arrested, regardless of the charge, to ensure that decisions about release can be made with knowledge of a person's true identity and full criminal history. It allows, for the first time, bail commissioners and bail magistrates to consider dangerousness in deciding whether to release an arrestee from a police station when court is out of session. It also ensures that a person who a court determines is a danger or who violates his or her conditions of release is held until the time of trial or other disposition of the case, rather than being released after a defined period. A person who is so dangerous that his or her release threatens the safety of a specific victim or of the community at large does not become safe to release merely because three or four months have passed since the time of arrest.

Most individuals arrested in Massachusetts are released pending trial, and that will continue to be the case. This legislation strengthens the ability of judges to enforce the conditions of pre-trial release. First, the legislation empowers police to detain people who they observe violating court-ordered release conditions. Current law does not allow this, and instead requires a court to first issue a warrant. But it is our police officers, not our judges and probation officers, who are on the streets of our cities and towns, and who are in position to see and to act when offenders are violating conditions of release. Second, the legislation empowers judges to revoke a person's release when the offender has violated a court-ordered condition, such as an order to stay away from a victim, or from a public playground. Current law requires an additional finding of dangerousness before release may be revoked.

Additional provisions of this legislation:

- Allow dangerousness hearings at any point during a criminal proceeding, rather than requiring a prosecutor to either seek a hearing immediately or forfeit that ability entirely, even if circumstances later arise indicating that the defendant poses a serious risk to the community.
- Require that the probation department, bail commissioners and bail magistrates notify authorities who can take remedial action when a person who is on pre-trial release commits a new offense anywhere in the Commonwealth or elsewhere.
- Improve the system for notifying victims of crimes of abuse and other dangerous crimes when a defendant is going to be released.

- Create a new felony offense for cutting off a court-ordered GPS device.
- Create a level playing field for appeals of district court release decisions to the superior court by allowing appeals by prosecutors, in addition to defendants, and giving more deference to determinations made in the first instance by our district court judges.
- Require that the courts develop a text message service to remind defendants of upcoming court dates.
- Create a task force to recommend adding information to criminal records so that prosecutors and judges can make more informed recommendations and decisions about conditions of release and possible detention on grounds of dangerousness.

Our criminal justice system is only as strong as the tools provided by statute. This legislation provides a range of new tools that will make Massachusetts safer. I urge your prompt enactment of this legislation.

Respectfully submitted

Charles D. Baker,
Governor

The Commonwealth of Massachusetts

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

An Act to protect the commonwealth from dangerous persons.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to strengthen the statutes under which the judicial system decides questions relating to the pre-trial release of dangerous persons, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety and convenience.

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 1A of chapter 263 of the General Laws, as inserted by section 125
2 of chapter 69 of the acts of 2018, is hereby amended by striking out the word “felony” and
3 inserting in place thereof the following word:- crime.

4 SECTION 2. Chapter 268 of the General Laws is hereby amended by inserting after
5 section 13D the following section:-

6 Section 13E. Whoever unlawfully removes, destroys, damages, or interferes with the
7 proper functioning of a geolocation monitoring device, breath-testing instrument, or other
8 mechanism intended to facilitate recognizance or compliance with conditions of pretrial release,
9 probation or parole, shall be punished by imprisonment in the state prison for not more than 10
10 years or imprisonment in a house of correction for not more than 2 and ½ years. In any
11 proceeding under section 58, 58A, 58B or 59 of chapter 276, the fact of a person’s prior

12 conviction pursuant to this section shall be prima facie evidence that there is no financial
13 condition or other condition of release that will reasonably assure the presence of the person so
14 convicted.

15 SECTION 3. Section 42A of chapter 276 of the General Laws is hereby amended by
16 striking out the first six paragraphs and inserting in place thereof the following paragraph:-

17 As part of the disposition of any criminal complaint involving a crime of abuse, as
18 defined in section 57, the court may establish such terms and conditions of probation as will
19 insure the safety of the person who has suffered such abuse or threat thereof, and will prevent the
20 recurrence of such abuse or threat thereof.

21 SECTION 4. Said chapter 276 is hereby amended by striking out sections 57 through
22 58B, inclusive, as appearing in the 2016 Official Edition, and inserting in place thereof the
23 following 6 sections:-

24 Section 57. (a) As used in sections 57 through 59, the following words shall, unless the
25 context clearly requires otherwise, have the following meanings:-

26 “Controlled substance”, the same meaning as in section 1 of chapter 94C.

27 “Crime of abuse”, a crime that involves assault and battery, trespass, threat to commit a
28 crime, or any other criminal conduct and that involves the infliction, or the imminent threat of
29 infliction, of physical harm upon a person by such person’s family or household member as
30 defined in section 1 of chapter 209A; any violation of an order issued pursuant to section 18 or
31 34B of chapter 208, section 32 of chapter 209, section 3, 4 or 5 of chapter 209A or section 15 or

32 20 of chapter 209C; or any act that would constitute abuse, as defined in section 1 of chapter
33 209A; or a violation of section 13M or 15D of chapter 265.

34 “Dangerous crime”, any of the following:

35 (A) a felony that has as an element of the crime the use, attempted use or threatened use
36 of physical force against the person of another;

37 (B) the crimes of burglary or arson;

38 (C) a violation of an order pursuant to section 18, 34B or 34C of chapter 208, section 32
39 of chapter 209, section 3, 4 or 5 of chapter 209A or section 15 or 20 of chapter 209C;

40 (D) a misdemeanor or felony involving abuse as defined in section 1 of chapter 209A;

41 (E) a sex offense involving a child as defined in section 178C of chapter 6;

42 (F) a violation of section 13B of chapter 268;

43 (G) a violation of section 13, 13 ½, 13B, 13B ½, 13 B ¾, 13F, 18B, 22, 22A, 22B, 22C,
44 23, 23A, 23B, 24, 25, 26B, 26C, 37, 43A, 50 or 51 of chapter 265 or a violation of section 13D
45 of said chapter 265 in which the public employee is a police officer;

46 (H) a violation of section 4A, 4B, 16, 29A, 29B, 29C, 77 or 105 of chapter 272;

47 (I) a violation of section 24G of chapter 90 which occurs under the influence of alcohol
48 or drugs, or a violation of section 8B of chapter 90B; or a third or subsequent violation of section
49 24 of chapter 90 or section 8 of chapter 90B;

50 (J) a crime under chapter 94C for which the maximum term of imprisonment is more
51 than 10 years;

52 (K) any violation of section 102, or a malicious violation of section 127 of chapter 266;

53 (L) a violation of section 131N of chapter 140 or subsection (a), (b), (c), (d), (h), (j) or
54 (m) of section 10 or section 11C of chapter 269;

55 (M) a violation of section 10A, 10E, or 10G of chapter 269;

56 (N) threats to kill, rape, or cause serious bodily injury;

57 (O) conspiracy or solicitation to commit any of the above enumerated crimes.

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

59 “Judicial officer”, a judge or a clerk or assistant clerk of the superior, district, Boston
60 municipal, or juvenile court.

61 “Release order”, any order releasing a defendant on personal recognizance or on
62 conditions, regardless of whether the defendant has satisfied any financial condition.

63 “Secured bond”, payment to the court of a specified amount of money that in the
64 discretion of the judicial officer will reasonably assure the presence of a defendant, taking into
65 consideration the defendant’s ability to pay.

66 “Unsecured bond”, a defendant’s promise to pay to the court a specified amount of
67 money if the defendant does not appear before the court on a date certain or fails to abide by any
68 conditions of release set under clause (B) of paragraph (1) of subsection (b) of section 58, such

69 amount being an amount that in the discretion of the judicial officer will reasonably assure the
70 presence of a defendant, taking into consideration the defendant's ability to pay.

71 (b) Upon the appearance of a defendant charged with a crime, the judicial officer
72 shall hold a hearing, at which the defendant and his counsel, if any, may participate and inquire
73 into the case, to determine whether the defendant shall be released or detained pending trial of
74 the case, as provided in this section and sections 58, 58A, and 58B. At the hearing, the judicial
75 officer shall have immediate access to all pending and prior criminal offender record
76 information, board of probation records, out of state criminal records, and police and incident
77 reports related to the defendant, upon oral, telephonic, facsimile or electronic mail request, to the
78 extent practicable.

79 At the conclusion of such hearing, the judicial officer shall issue an order that, pending
80 trial, the defendant be:

81 (1) Released on personal recognizance under clause (A) of paragraph (1) of subsection
82 (b) of section 58;

83 (2) Released on financial or other conditions under clauses (B) or (C) of paragraph (1) of
84 subsection (b) of section 58;

85 (3) Detained under section 58A;

86 (4) Released on financial or other conditions under section 58A; or

87 (4) Temporarily detained to permit an opportunity for the attorney for the commonwealth
88 to move for revocation of conditional release under section 58B.

89 (c) For a person who is arrested and not released under section 59, a hearing under
90 section 58 shall take place no later than the next day that the superior, district, Boston municipal,
91 or juvenile court in the place of jurisdiction is in session, provided that, in a case that involves a
92 crime of abuse, (1) the commonwealth shall be the only party permitted to move for arraignment
93 within 3 hours of a complaint being signed by a magistrate or a magistrate's designee; and (2) a
94 defendant arrested, who has attained the age of 18 years, shall not be released sooner than 6
95 hours after arrest, except by a judge in open court.

96 Any hearing under section 58A shall be held immediately upon the motion of the
97 commonwealth unless the defendant, or the attorney for the commonwealth, seeks a continuance.
98 Except for good cause, a continuance on motion of the defendant may not exceed 5 business
99 days, and a continuance on motion of the attorney for the commonwealth may not exceed 3
100 business days. During a continuance, the individual shall be detained. The commonwealth may
101 move for an initial hearing under section 58A at any time before disposition of the case. Once a
102 hearing under section 58A commences, the defendant shall be detained pending completion of
103 the hearing.

104 In any pending case where the defendant has been first arraigned in the district, Boston
105 municipal, or juvenile court and is subsequently arraigned in superior court for the same or
106 related crimes arising out of the same incident, the superior court may conduct a new hearing
107 under section 58 or, upon motion of the commonwealth, section 58A, provided that any order of
108 the district, Boston municipal, or juvenile court concerning the defendant issued under section 58
109 or 58A shall remain in effect until such time as the superior court issues a new order under
110 section 58 or 58A. In any such new hearing in the superior court, the judicial officer shall
111 consider the defendant's compliance with any previously ordered conditions of release.

112 Any hearing under section 58 may be reopened by the judicial officer, and any hearing
113 under section 58A may be reopened by the judge. Any hearing under either section may also be
114 reopened upon motion of the commonwealth or the defendant, provided that the judicial officer
115 or judge determines by a preponderance of the evidence that: (1) information exists that was not
116 known to the movant at the time of the hearing or there has been a material change in
117 circumstances; and (2) such information or change in circumstances has a substantial bearing on
118 the issue of whether the defendant's detention, defendant's release on conditions, or conditions
119 imposed on the defendant are necessary and sufficient to reasonably assure the appearance of the
120 defendant and the safety of any other person and the community. In any such reopened hearing,
121 the judicial officer shall consider the defendant's compliance with any previously ordered
122 conditions of release.

123 Section 58. (a) Unless the attorney for the commonwealth has moved for detention under
124 section 58A, the judicial officer shall order the pretrial release of a defendant on personal
125 recognizance, subject to the condition that the defendant not commit a new crime during the
126 period of release, unless the judicial officer determines, in the exercise of his or her discretion,
127 that the release will not reasonably assure the appearance of the defendant or will endanger the
128 safety of any other person or the community.

129 (b) If the judicial officer determines, in the exercise of his or her discretion, that the
130 release described in subsection (a) will not reasonably assure the appearance of the defendant or
131 will endanger the safety of any other person or the community:

132 (1) the judicial officer shall order the pretrial release of the defendant subject to:

133 (A) the condition that the defendant not commit a new crime during the period of release;
134 and

135 (B) the least restrictive further condition, or combination of conditions, that the judicial
136 officer determines will reasonably assure the appearance of the defendant, which may include the
137 condition or combination of conditions that the defendant during the period of release shall:

138 (i) abide by specified restrictions on place of abode or travel;

139 (ii) report on a regular basis to a designated law enforcement agency, pretrial services
140 agency, or other agency;

141 (iii) refrain from use of alcohol, marijuana, or other intoxicants, and from use of any
142 controlled substance, except as prescribed or certified by a licensed medical practitioner;

143 (iv) submit to random testing to monitor compliance with any conditions ordered under
144 subclause (iii);

145 (v) comply with a specified curfew or home confinement;

146 (vi) undergo medical, psychological, or psychiatric treatment, including treatment for
147 substance or alcohol use disorder, if available, and remain in a specified institution if required for
148 that purpose;

149 (vii) submit to electronic monitoring, provided that any condition of electronic
150 monitoring may include either specified inclusion or exclusion zones or a curfew;

151 (viii) participate in a community corrections program pursuant to chapter 211F;
152 provided, however, that the defendant shall consent to such participation;

153 (ix) participate in a notification program pursuant to subsection (c);

154 (x) provide an unsecured or secured bond to satisfy a financial condition that the judicial
155 officer may specify; provided that a financial condition shall be set in an amount no higher than
156 what would reasonably assure the appearance of the person before the court after taking into
157 account the person's financial resources; provided, however, that a higher than affordable
158 financial condition may be set if neither alternative nonfinancial conditions nor an amount which
159 the person could likely afford would adequately assure the person's appearance before the court;
160 and provided further that for crimes that do not carry a penalty of incarceration, no secured bond
161 may be ordered unless the defendant has previously failed to appear on that charge; and

162 (xi) satisfy any other condition that is reasonably necessary to assure the appearance of
163 the defendant; and

164 (C) the least restrictive further condition, or combination of conditions, that the judicial
165 officer determines will reasonably assure the safety of any other person and the community,
166 which may include the condition or combination of conditions that the defendant during the
167 period of release shall:

168 (i) refrain from abusing and harassing any alleged victim of the charged crime and any
169 potential witness who may testify concerning the charged crime;

170 (ii) stay away from and have no contact with an alleged victim of the charged crime and
171 with any potential witness who may testify concerning the charged crime;

172 (iii) refrain from possessing a firearm, rifle, shotgun, destructive device, or other
173 dangerous weapon;

174 (iv) comply with restrictions on personal associations, a curfew or home confinement;

175 (v) refrain from use of alcohol, marijuana, or other intoxicants, and from use of any
176 controlled substance except as prescribed or certified by a licensed medical practitioner;

177 (vi) undergo medical, psychological, or psychiatric treatment, including treatment for
178 substance or alcohol use disorder, if available, and remain in a specified institution if required for
179 that purpose;

180 (vii) submit to electronic monitoring, provided that any condition of electronic
181 monitoring may include either specified inclusion or exclusion zones or a curfew;

182 (viii) satisfy any other condition that is reasonably necessary to assure the safety of any
183 other person and the community.

184 (2) When setting any conditions under clause (B) of paragraph (1), the judicial officer
185 shall consider where relevant the following factors concerning the defendant:

186 (A) financial resources;

187 (B) family ties;

188 (C) any record of convictions under the laws of the commonwealth or the laws of
189 another state, the United States, or a military, territorial or Indian tribal authority;

190 (D) potential penalty the defendant faces;

191 (E) any illegal drug distribution or present drug dependency;

192 (F) any employment record;

193 (G) any history of mental illness;

194 (H) any flight to avoid prosecution or fraudulent use of an alias or false identification;

195 (I) any failure to appear at any court proceedings to answer to a charge;

196 (J) any prior violation of conditions of release, probation, or parole, or of a temporary or
197 permanent order issued under section 18 or 34B of chapter 208, section 32 of chapter 209,
198 section 3, 4 or 5 of chapter 209A or section 15 or 20 of chapter 209C;

199 (K) the nature and circumstances of the crimes charged;

200 (L) whether the defendant was, at the time of the crime charged, on release pending
201 adjudication, sentencing or appeal of a prior charge;

202 (M) whether the defendant was, at the time of the crime charged, under the supervision
203 of the commissioner of probation, the parole board or any other comparable authority of this or
204 another state or of the federal government.

205 (3) When setting any conditions under clause (C) of paragraph (1), the judicial officer
206 shall consider where relevant the following factors concerning the defendant:

207 (A) any factors listed in clauses (B) through (M) of paragraph (2);

208 (B) whether the acts alleged involve a crime of abuse;

209 (C) any history of orders issued against the defendant pursuant to section 18 or 34B of
210 chapter 208, section 32 of chapter 209, section 3, 4 or 5 of chapter 209A or section 15 or 20 of
211 chapter 209C; and

212 (D) any risk that the defendant will attempt to obstruct justice, or attempt to threaten,
213 injure, or intimidate a prospective witness or juror.

214 (4) In establishing any financial condition under clause (B) of paragraph (1), any order
215 must comply with the following requirements:

216 (A) A judicial officer may not impose a financial condition to assure the safety of any
217 other person or the community, but may impose a financial condition when necessary to
218 reasonably assure the defendant's appearance.

219 (B) Where it appears, based on credible evidence, that the defendant lacks sufficient
220 financial resources to post any secured bond required by the judicial officer, such that requiring
221 such secured bond will result in the long-term pretrial detention of the defendant, the judicial
222 officer must provide findings of fact and a statement of reasons for the decision, either in writing
223 or orally on the record, confirming that the judicial officer considered the defendant's financial
224 resources and explaining why the defendant's risk of non-appearance is so great that no
225 alternative, less restrictive financial or nonfinancial conditions will suffice to assure the
226 defendant's presence at future court proceedings and explaining how the amount was calculated
227 after taking the person's financial resources into account and why the commonwealth's interest
228 in a financial condition outweighs the potential adverse impact on the person, their immediate
229 family or dependents resulting from pretrial detention.

230 (C) When reconsidering or reviewing a financial condition in a case where a defendant
231 has been detained due to his inability to meet the financial condition, a judicial officer shall
232 consider the length of the defendant's pretrial detention and the equities of the case.

233 (5) If the judicial officer imposes a financial condition, the clerk and assistant clerks of
234 the court shall accept, without charging any fee, any money tendered in satisfaction of such
235 financial condition during the regular business hours of that court.

236 (6) Before ordering the release of any defendant charged with a crime against the person
237 or property of another, the judicial officer shall comply with the domestic abuse inquiry
238 requirements of section 56A.

239 (7) In a release order issued under this section, the judicial officer shall:

240 (A) Include a written statement that sets forth all the conditions to which the release is
241 subject, in a manner sufficiently clear and specific to serve as a guide for the defendant's
242 conduct; and

243 (B) If the defendant is not released on personal recognizance or unsecured bond, include
244 a written summary of the reasons for denying such release and detailed reasons for imposing any
245 financial condition; and

246 (C) Advise the defendant of:

247 (i) The consequences of violating a condition of release, including immediate arrest or
248 issuance of a warrant for the defendant's arrest, revocation of release, and, if applicable, the
249 potential that the person may face criminal penalties, including penalties for violating section
250 13B of chapter 268; and

251 (ii) If the defendant is charged with a crime of abuse, informational resources related to
252 domestic violence, which shall include, but shall not be limited to, a list of certified intimate
253 partner abuse education programs located within or near the court's jurisdiction.

254 (c) A person who has been charged with a crime shall provide the court with his or
255 her cellular telephone number, if the defendant has such a device, unless the defendant opts out
256 of the service provided under this subsection; provided, however, that upon the order of a
257 judicial officer pursuant to subclause (ix) of clause (B) of paragraph (1) of subsection (b), a
258 defendant may not opt out of such service. The court shall provide a service using a system of
259 automated text messaging to remind criminal defendants of mandatory court appearance dates in
260 advance of the date of such appearance. The court shall keep all information provided by a
261 criminal defendant pursuant to this subsection confidential, and such information may not be
262 used in any proceeding; provided, however, that the fact that a defendant did or did not
263 participate in this system shall be marked on the docket and may be used in a proceeding if
264 otherwise admissible.

265 (d) There shall not exist in the case of a person charged with murder a right to release
266 pending trial; provided, however, that a judge may in his or her discretion, order a defendant so
267 charged released subject to any conditions enumerated in paragraph (1) of subsection (b).

268 Section 58A. (a) Upon motion of the attorney for the commonwealth, the judge shall
269 hold a hearing to determine whether any condition or combination of conditions set forth in
270 section 58 will reasonably assure the safety of any other person and the community, in a case:

271 (1) where the defendant is charged with a dangerous crime; or

272 (2) where the defendant is charged with a crime for which the potential penalty includes a
273 sentence to the house of correction or state prison and

274 (A) the defendant has been convicted of a dangerous crime, or has been convicted of a
275 like violation of the laws of another state, the United States or a military, territorial or Indian
276 tribal authority; or

277 (B) there are specific, articulable facts and circumstances demonstrating a serious risk
278 that the defendant may attempt to obstruct justice, or attempt to threaten, injure, or intimidate a
279 law enforcement officer, an officer of the court, or a prospective witness or juror in any criminal
280 investigation or judicial proceeding.

281 (b) (1) If, after a hearing, the judge finds by clear and convincing evidence that no
282 condition or combination of conditions will reasonably assure the safety of any other person and
283 the community, the judge shall order that the defendant be detained pending trial. Such order
284 shall:

285 (A) include written findings of fact and a written statement of the reasons for the
286 detention;

287 (B) direct that the defendant be committed to a corrections facility separate, to the extent
288 practicable, from persons serving sentences; and

289 (C) direct that the defendant be afforded reasonable opportunity for private consultation
290 with counsel.

291 (2) If, after a hearing, the judge does not issue an order under paragraph (1), the
292 defendant shall be released, pursuant to section 58, on personal recognizance or unsecured bond
293 or on such conditions as the judge determines to be necessary to reasonably assure the safety of
294 any other person and the community.

295 (c) In conducting a hearing under this section:

296 (1) the judge shall take into account available information concerning:

297 (A) any of the factors listed in paragraph (3) of subsection (b) of section 58 where
298 relevant; and

299 (B) the nature and seriousness of the danger to any person or the community that would
300 be posed by the defendant's release;

301 (2) the defendant shall have the right to be represented by counsel at a hearing under this
302 section and, if financially unable to obtain adequate representation, to have counsel appointed;

303 (3) the defendant shall be afforded an opportunity to testify;

304 (4) the defendant shall be afforded an opportunity to present witnesses, to cross-examine
305 witnesses who appear at the hearing, and to present information by proffer or otherwise;
306 provided, however, that before issuing a summons to an alleged victim, or a member of the
307 alleged victim's family, to appear as a witness at the hearing, the defendant shall demonstrate to
308 the court a good faith and reasonable basis for believing that the testimony from the witness will
309 be material and relevant to support a conclusion that the defendant should not be detained; and

310 (5) the law concerning admissibility of evidence in criminal trials shall not apply to the
311 presentation and consideration of information at a hearing under this section.

312 (d) When a defendant has been released pursuant to section 58 and the attorney for
313 the commonwealth subsequently files a motion seeking to detain the defendant under this
314 section, the attorney for the commonwealth may file such motion ex parte. Upon such ex parte

315 filing, the court may, for good cause shown, issue a warrant for the defendant's arrest to secure
316 his presence for such hearing. Any such hearing shall occur as otherwise set forth in this section.

317 (e) A defendant detained under this section shall be detained until the disposition of
318 the case and shall be brought to trial as soon as reasonably possible.

319 (f) Nothing in this section shall be construed as modifying or limiting the
320 presumption of innocence.

321 Section 58B. (a) A defendant who has been released after a hearing pursuant to section
322 58, 58A, 59 or 87 and who has violated a condition of his release, shall be subject to a revocation
323 of release and an order of detention following a motion by the attorney for the commonwealth
324 and a hearing as provided below. If there is probable cause to believe that, while on release, the
325 defendant committed a felony or a dangerous crime a rebuttable presumption shall arise that no
326 condition or combination of conditions will assure that the person will not pose a danger to the
327 safety of any other person or the community.

328 (b) The judge shall enter an order of revocation and detention if after a hearing the
329 judge finds:

330 (1) that there is probable cause to believe that the defendant has committed a felony or
331 dangerous crime while on release; and

332 (2) by a preponderance of the evidence, that there are no conditions of release that will
333 reasonably assure the defendant will not pose a danger to the safety of any other person or the
334 community, or the defendant is unlikely to abide by any condition or combination of conditions
335 of release.

336 (c) The judge may enter an order of revocation and detention if after a hearing the
337 judge finds that there is probable cause to believe that the defendant has committed any crime
338 while on release or clear and convincing evidence that the defendant has violated any other
339 condition of release.

340 (d) If, following a hearing under this section, the judge does not issue a revocation
341 order, the judge may issue a release order that may include any condition or combination of
342 conditions of release set forth in clauses (B) and (C) of paragraph (1) of subsection (b) of section
343 58.

344 (e) Upon the defendant's first appearance before the judge in the court which that
345 conduct proceedings for revocation of a release order under this section, the hearing concerning
346 revocation shall be held immediately unless the defendant or the attorney for the commonwealth
347 seeks a continuance. During a continuance the defendant shall be detained. Except for good
348 cause, a continuance on motion of the defendant shall not exceed 5 business days, a continuance
349 on motion of the attorney for the commonwealth or probation shall not exceed 3 business days.

350 (f) A defendant detained under an order of revocation and detention shall be detained
351 until the disposition of the case and shall be brought to trial as soon as reasonably possible.

352 (g) Where a person who is released under section 58, 58A, this section or 59 is the
353 subject of a new criminal charge, the probation officer of the court issuing the new criminal
354 charge shall notify the probation officer and the attorney for the commonwealth for the court or
355 courts that have ordered the defendant's release on any earlier criminal charges

356 Section 58C. In a case involving a crime of abuse or a dangerous crime with an
357 identified victim, no person shall be released pursuant to section 58, 58A, 58B or 59 before the

358 alleged victim is notified of the defendant's imminent release; provided, however, that the
359 defendant shall not be held more than 6 hours in order to permit prior notice to the alleged
360 victim.

361 When a defendant is to be released from the custody of a police department, such notice
362 shall be provided by the police department. When a defendant is to be released from a
363 courthouse, such notice shall be provided by the attorney for the commonwealth. When a
364 defendant is to be released from a jail or correctional facility, such notice shall be provided by
365 the superintendent. The person or agency responsible for providing notice shall undertake to
366 provide notice promptly.

367 Section 58D. Either the defendant or the attorney for the commonwealth, if aggrieved
368 by the entry of an order or granting or denial of a motion under section 58, 58A or 58B by the
369 district, Boston municipal or juvenile court, may petition the superior court for a review of such
370 decision. Upon entry of such order or ruling on such motion, the justice of the district, Boston
371 municipal or juvenile court shall immediately notify a defendant of his right to file a petition for
372 review in the superior court. The trial court shall establish rules for the filing of such petitions,
373 scheduling the hearing of such petitions and ensuring the transmission of necessary information
374 to the superior court and notice to the parties and the probation department. The superior court
375 shall in accordance with such rules, hear the petition for review as speedily as practicable and
376 except for unusual circumstances, on the same day the petition is filed; provided, however, that
377 the court may continue the hearing to the next business day if the required records and other
378 necessary information are not available. The superior court may, after a hearing on the petition
379 for review, grant the petition only upon a finding that the decision of the district, Boston
380 municipal or juvenile court was the result of an error of law or abuse of discretion.

381 Section 59. (a) As used in this section, the following words, unless the context clearly
382 requires otherwise, shall have the following meanings:-

383 “Bail commissioner”, a person other than a statutorily authorized magistrate or a superior
384 court assistant clerk appointed by the trial court to admit people to bail after court hours.

385 “Bail magistrate”, a clerk-magistrate or assistant clerk-magistrate of the district, Boston
386 municipal, or juvenile court departments, or a clerk of court of the superior court department or
387 an assistant clerk of the superior court who has been approved by the trial court to admit people
388 to bail after court hours.

389 (b) Except as provided in subsection (n), a bail commissioner or bail magistrate shall
390 order the pretrial release of a person arrested and charged with a crime on personal recognizance
391 subject to the condition that the person not commit a new crime during the period of release,
392 unless the bail commissioner or bail magistrate determines that release on personal recognizance
393 will not reasonably assure the appearance of the person or will endanger the safety of any other
394 person or the community. Prior to issuing a release order or any other order under this section,
395 the bail commissioner or bail magistrate shall have immediate access to all pending and prior
396 criminal offender record information, board of probation records, out of state criminal records,
397 and police and incident reports related to the person detained, upon oral, telephonic, facsimile or
398 electronic mail request, to the extent practicable.

399 (c) If the bail commissioner or bail magistrate determines that a release on personal
400 recognizance subject to the condition that the person not commit a new crime during the period
401 of release will not reasonably assure the appearance of the person or will endanger the safety of

402 any other person or the community, the bail commissioner or bail magistrate shall order the
403 pretrial release of the person subject to:

404 (1) the condition that the person not commit a new crime during the period of release; and

405 (2) the least restrictive further condition, or combination of conditions, that the bail
406 commissioner or bail magistrate determines will reasonably assure the appearance of the person
407 and the safety of any other person and the community, which may include the condition or
408 combination of conditions that the person during the period of release shall:

409 (A) abide by specified restrictions on place of abode or travel;

410 (B) refrain from use of alcohol, marijuana, or other intoxicants, and from use of any
411 controlled substance, except as prescribed or certified by a licensed medical practitioner;

412 (C) comply with restrictions on personal associations, a curfew or home confinement;

413 (D) refrain from abusing and harassing any alleged victim of the charged crime and any
414 potential witness who may testify concerning the charged crime;

415 (E) stay away from and have no contact with an alleged victim of the charged crime and
416 with any potential witness who may testify concerning the charged crime;

417 (F) refrain from possessing a firearm, rifle, shotgun, destructive device, or other
418 dangerous weapon;

419 (G) provide unsecured or secured bond to satisfy a financial condition that the bail
420 commissioner or bail magistrate may specify; or

421 (H) satisfy any other condition that is reasonably necessary to assure the appearance of
422 the person or the safety of any other person or the community.

423 When setting conditions under this subsection, the bail commissioner or bail magistrate
424 shall consider, where relevant, the factors set forth in paragraphs (2) and (3) of subsection (b) of
425 section 58.

426 (d) In a case that meets the criteria set forth in subsection (a) of section 58A, the bail
427 commissioner or bail magistrate shall order the person held until the next day that court is in
428 session unless the bail commissioner or bail magistrate determines that some condition or
429 combination of conditions will reasonably assure the safety of any alleged victim, any witness to
430 the alleged crime and the community. In making this determination, the bail commissioner or
431 bail magistrate shall consider the factors set forth in subsection (c) of section 58A. The bail
432 commissioner or bail magistrate shall memorialize such determination in a written statement of
433 reasons.

434 (e) Bail commissioners and bail magistrates may not impose a financial condition to
435 assure the safety of any other person or the community, but may impose a financial condition
436 when necessary to reasonably assure the person's appearance.

437 (f) Before issuing any release order under this section for a person who has been
438 charged with a new crime while released pending adjudication of a prior charge or who is on
439 probation, the bail commissioner or bail magistrate shall contact the probation service electronic
440 monitoring center to inform the service of the person's arrest and charge.

441 (g) In a release order issued under this section, the bail commissioner or bail
442 magistrate shall advise the person of:

443 (1) The consequences of violating a condition of release, including immediate arrest or
444 issuance of a warrant for the person's arrest, revocation of release, and, if applicable, the
445 potential that the person may face criminal penalties, including penalties for violating section
446 13B of chapter 268; and

447 (2) if the person is charged with a crime of abuse, informational resources related to
448 domestic violence, which shall include, but are not limited to, a list of certified intimate partner
449 abuse education programs located within or near the court's jurisdiction.

450 (h) The terms and conditions of any order by the bail commissioner or bail magistrate
451 shall remain in effect until the person is brought before the court for arraignment.

452 (i) When a bail commissioner or bail magistrate releases a person on conditions
453 under subsection (c), the bail commissioner or bail magistrate shall record the conditions and
454 provide a copy of such conditions to the person and the detaining authority and shall transmit a
455 copy to the court.

456 (j) If a person released on conditions by a bail commissioner or bail magistrate
457 under subsection (b) or (c) violates any such condition, the person may be subject to an order of
458 revocation of release and detention pursuant to section 58B.

459 (k) All bail commissioners and bail magistrates authorized to release a person on
460 recognizance, release a person on conditions, or detain a person under this section shall be
461 governed by rules established by the chief justice of the trial court, subject to review by the
462 supreme judicial court.

463 (l) Nothing in this section shall authorize a bail commissioner or bail magistrate to
464 release a person arrested and charged with murder or a person arrested and charged with a crime
465 of abuse while an order of protection under chapter 209A was in effect against such person.

466 SECTION 5. Said chapter 276 is hereby amended by inserting after section 82A, as
467 appearing in the 2016 Official Edition, the following section:-

468 Section 82B. A person who is found violating any condition ordered under section 58 of
469 chapter 119, section 58, 58A, 58B, 59, or 87 of this chapter, or section 1 or 1A of chapter 279, or
470 any other condition of probation imposed by a court after conviction or admission to sufficient
471 facts, or any term or condition of parole imposed by the parole board, may be arrested by a
472 sheriff, deputy sheriff or police officer and kept in custody in a convenient place, not more than
473 24 hours, Sunday excepted, until notice of the violation can be given to the probation service,
474 and such person be taken before the court upon a warrant issued by the probation service; or, in
475 the case of a person under parole supervision, to the parole board.

476 SECTION 6. There shall be a task force on criminal history data enhancements. The
477 task force shall develop recommendations for enhancements to the criminal history information
478 available to bail commissioner, bail magistrates, judicial officers, prosecutors and defense
479 counsel that will allow actors in the criminal justice system to make more informed
480 recommendations and decisions regarding questions of pre-trial release and allow for access to
481 pre-trial release conditions by law enforcement. The task force shall consider the value, cost and
482 practicality of adding to a defendant's criminal history information regarding determinations of
483 dangerousness, custody status, release conditions, reasons for detention, incidents of non-
484 compliance with any conditions of pre-trial release and decisions regarding revocation of release.

485 The task force shall identify, with respect to each recommendation, whether it requires
486 legislation and, if so, prepare draft legislation.

487 The task force shall be comprised of the following persons or their designees: the
488 secretary of the executive office of public safety and security, who shall serve as chair; the
489 secretary of the executive office of technology services and security; the chief justice of the trial
490 court; the commissioner of probation; the president of the Massachusetts district attorneys
491 association; the chief counsel of the committee for public counsel services; and the president of
492 the Massachusetts chiefs of police association. The task force shall consult with other individuals
493 who have relevant expertise as needed.

494 The task force shall, within 180 days of the passage of this bill, submit its
495 recommendations to the governor and to the clerks of the senate and house of representatives and
496 the clerks shall forward the report to the senate and house chairs of the joint committee on the
497 judiciary

498 SECTION 7. Subsection (c) of section 58 of chapter 276 shall take effect on July 1,
499 2019.