

SENATE No. 2198

Senate, October 26, 2017 -- Text of Amendment #156 (Welch) to the Senate Bill relative to criminal justice reform (Senate, No. 2185)

The Commonwealth of Massachusetts

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

1 by inserting at the end thereof the following new section:-

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

5 A person aforesaid charged with an offense and not released on his personal recognizance
6 without surety by a clerk or assistant clerk of the district court, a bail commissioner or master in
7 chancery shall forthwith be brought before the next session of the district court for a review of
8 the order to recognize in accordance with the standards set forth in the first paragraph of this
9 section. The court shall provide as an explicit condition of release for any person admitted to bail
10 pursuant to this section or section fifty-seven that should said person be charged with a crime
11 during the period of his release, his bail may be revoked in accordance with this paragraph and
12 the court shall enter in writing on the court docket that the person was so informed and the
13 docket shall constitute prima facie evidence that the person was so informed. If a person is on
14 release pending the adjudication of a prior charge, and the court before which the person is
15 charged with committing a subsequent offense after a hearing at which the person shall have the
16 right to be represented by counsel, finds probable cause to believe that the person has committed

17 a crime during said period of release, the court shall then determine, in the exercise of its
18 discretion, whether the release of said person will seriously endanger any person or the
19 community. In making said determination, the court shall consider the gravity, nature and
20 circumstances of the offenses charged, the person's record of convictions, if any, and whether
21 said charges or convictions are for offenses involving the use or threat of physical force or
22 violence against any person, whether the person is on probation, parole or other release pending
23 completion of sentence for any conviction, whether he is on release pending sentence or appeal
24 for any conviction, the person's mental condition, and any illegal drug distribution or present
25 drug dependency. If the court determines that the release of said person will seriously endanger
26 any person or the community and that the detention of the person is necessary to reasonably
27 assure the safety of any person or the community, the court may revoke bail on the prior charge
28 and may order said person held without bail pending the adjudication of said prior charge, for a
29 period not to exceed sixty days. The hearing shall be held upon the person's first appearance
30 before the court before which the person is charged with committing an offense while on release
31 pending adjudication of a prior charge, unless that person, or the attorney for the commonwealth,
32 seeks and the court allows, a continuance because a witness or document is not immediately
33 available. Except for good cause, a continuance on motion of the person shall not exceed seven
34 days and on motion of the attorney for the commonwealth may not exceed three business days.
35 During such continuance, the person may be detained consistent with the provisions of this
36 section. Said order shall state in writing the reasons therefor and shall be reviewed by the court
37 upon the acquittal of the person, or the dismissal of, any of the cases involved. A person so held
38 shall be brought to trial as soon as reasonably possible.

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

56 When a petition for review is filed in the district court or with the detaining authority
57 subsequent to defendant's district court appearance, the clerk of the district court or the detaining
58 authority, as the case may be, shall immediately notify by telephone, or by writing delivered in
59 hand or by facsimile or electronic transmission that same day, the clerk and probation officer of
60 the district court, the defendant, the district attorney for the district in which the district court is
61 located, the prosecuting officer, the defendant's counsel, if any, and the clerk of courts of the

62 county to which the petition is to be transmitted. The clerk of the district court, upon the filing
63 of a petition for review, either in the district court or with the detaining authority, shall forthwith
64 transmit the petition for review, a copy of the complaint and the record of the court, including the
65 appearance of the attorney, if any is entered, and a summary of the court's reasons for denying
66 the release of the defendant on his personal recognizance without surety, or for releasing the
67 defendant on his personal recognizance without surety, or for setting bail in the amount
68 determined, to the superior court for the county in which the district court is located, if a justice
69 thereof is then sitting, or to the superior court of the nearest county in which a justice is then
70 sitting; the probation officer of the district court shall transmit forthwith to the probation officer
71 of the superior court, copies of all records of the probation office of said district court pertaining
72 to the defendant, including the defendant's record of prior convictions, if any, as currently
73 verified by inquiry of the commissioner of probation. The district court or the detaining
74 authority, as the case may be, shall cause any defendant in its custody to be brought before the
75 said superior court on the same day the petition shall have been filed, unless the district court or
76 the detaining authority shall determine that such appearance and hearing on the petition cannot
77 practically take place before the adjournment of the sitting of said superior court for that day and
78 in which event, the defendant shall be caused to be brought before said court for such hearing
79 during the morning of the next business day of the sitting of said superior court. Where the
80 Commonwealth has filed a petition for review and where the defendant has been released on
81 personal recognizance without surety, or has posted bail and has been released from custody, the
82 superior court shall order the defendant to appear before the court for review on the next business
83 day following the filing of the Commonwealth's petition for review, and such hearing shall not
84 be continued absent extraordinary circumstances. The district court is authorized to order any

85 officer authorized to execute criminal process to transfer the defendant and any papers herein
86 above described from the district court or the detaining authority to the superior court, and to
87 coordinate the transfer of the defendant and the papers by such officer. The petition for review
88 shall constitute authority in the person or officer having custody of the defendant to transport the
89 defendant to said superior court without the issuance of any writ or other legal process, provided,
90 however, that any district or superior court is authorized to issue a writ of habeas corpus for the
91 appearance forthwith of the defendant before the superior court.

92 The superior court shall in accordance with the standards set forth in the first paragraph
93 of this section, hear the petition for review as speedily as practicable and except for unusual
94 circumstances, on the same day the petition is filed; provided, however, that the court may
95 continue the hearing to the next business day if the required records and other necessary
96 information are not available. If the Commonwealth files a petition and if the defendant is
97 released on personal recognizance without surety or is released on bail with or without surety,
98 absent extraordinary circumstances, the superior court shall hear the petition on the next business
99 day following the filing of the Commonwealth's petition for review. The justices of the superior
100 court may, after a hearing on the petition for review, order that the defendant be released on bail
101 on his personal recognizance without surety, or, in his discretion, to reasonably assure the
102 effective administration of justice, may make any other order of bail or recognizance, including
103 increasing the amount of the recognizance or requiring sufficient surety, or both, or remand the
104 defendant in accordance with the terms of the process by which he was ordered committed by the
105 district court.

106 SECTION 2. Said section 58 of said chapter 276 of the General Laws, as so appearing, is
107 hereby further amended by inserting after the word "review", in line 299, the following words: --
108 "by either the defendant or the Commonwealth."

109 SECTION 3. Said section 58A of said chapter 276 of the General Laws, as so appearing,
110 is hereby amended by striking clause 7, and inserting in place thereof the following clause:--

111 (7) A person aggrieved by the denial of a district court justice to admit him to bail on his
112 personal recognizance without surety, or the Commonwealth, with the approval of the District
113 Attorney or the Attorney General, or his or her designee, may petition the superior court for a
114 review of the order of the recognizance. The justice of the district court shall thereupon
115 immediately notify the defendant and the Commonwealth of the right to file a petition for review
116 in the superior court. The Commonwealth's petition shall be filed no later than the next business
117 day after the entry of the order of the district court or the detaining authority. The filing of a
118 petition by the Commonwealth shall not stay the order of the district court admitting the
119 defendant to bail on his personal recognizance without surety or releasing the defendant on
120 conditions as set forth in subsection (2). The court shall inform the defendant that a petition by
121 the Commonwealth may be filed, that if the Commonwealth files a petition and if the defendant
122 is released, he shall appear at the superior court for the hearing on the morning of the next
123 business day following the filing of the Commonwealth's petition, and that failure to appear
124 could result in arrest or revocation of bail.

125 When a petition for review is filed in the district court or with the detaining authority
126 subsequent to defendant's district court appearance, the clerk of the district court or the detaining
127 authority, as the case may be, shall immediately notify by telephone, or by writing delivered in

128 hand or by facsimile or electronic transmission that same day, the clerk and probation officer of
129 the district court, the defendant, the district attorney for the district in which the district court is
130 located, the prosecuting officer, the defendant's counsel, if any, and the clerk of courts of the
131 county to which the petition is to be transmitted. The clerk of the district court, upon the filing of
132 a petition for review, either in the district court or with the detaining authority, shall forthwith
133 transmit the petition for review, a copy of the complaint and the record of the court, including the
134 appearance of the attorney, if any is entered, and a summary of the court's reasons for the order
135 on the Commonwealth's motion for an order of pretrial detention under subsection (2), to the
136 superior court for the county in which the district court is located, if a justice thereof is then
137 sitting, or to the superior court of the nearest county in which a justice is then sitting; the
138 probation officer of the district court shall transmit forthwith to the probation officer of the
139 superior court, copies of all records of the probation office of said district court pertaining to the
140 defendant, including the defendant's record of prior convictions, if any, as currently verified by
141 inquiry of the commissioner of probation. The district court or the detaining authority, as the
142 case may be, shall cause any defendant in its custody to be brought before the said superior court
143 on the same day the petition shall have been filed, unless the district court or the detaining
144 authority shall determine that such appearance and hearing on the petition cannot practically take
145 place before the adjournment of the sitting of said superior court for that day and in which event,
146 the defendant shall be caused to be brought before said court for such hearing during the morning
147 of the next business day of the sitting of said superior court. Where the Commonwealth petitions
148 for review and where the district court has denied the Commonwealth's motion for an order of
149 pretrial detention and has found that there are conditions of release that will reasonably assure
150 the safety of any other individual or the community and the defendant has been released, or

151 where the district court has released the defendant on personal recognizance, the superior court
152 shall order the defendant to appear before the court for review of the district court's decision on
153 the next business day after the filing of the Commonwealth's petition for review, and such
154 hearing shall not be continued absent extraordinary circumstances. The district court is
155 authorized to order any officer authorized to execute criminal process to transfer the defendant
156 and any papers herein above described from the district court or the detaining authority to the
157 superior court, and to coordinate the transfer of the defendant and the papers by such officer. The
158 petition for review shall constitute authority in the person or officer having custody of the
159 defendant to transport the defendant to said superior court without the issuance of any writ or
160 other legal process; provided, however, that any district or superior court is authorized to issue a
161 writ of habeas corpus for the appearance forthwith of the defendant before the superior court.

162 The superior court shall in accordance with the standards set forth in section fifty-eight
163 A, hear the petition for review under section fifty-eight A as speedily as practicable and except
164 for unusual circumstances, on the same day the petition is filed; provided, however, that the court
165 may continue the hearing to the next business day if the required records and other necessary
166 information are not available. Where the district court has denied the Commonwealth's motion
167 for an order of pretrial detention and has found that there are conditions of release that will
168 reasonably assure the safety of any other individual or the community and the defendant has
169 been released, or where the district court has released the defendant on personal recognizance
170 without surety, the superior court shall hear the Commonwealth's petition for review on the next
171 business day following the filing of the Commonwealth's petition for review. The justice of the
172 superior court may, after a hearing on the petition for review, order that the petitioner be released
173 on bail on his personal recognizance without surety, or, in his discretion, to reasonably assure the

174 effective administration of justice, make any other order of bail or recognizance, including the
175 issuance of an order for pretrial detention, or remand the defendant in accordance with the terms
176 of the process by which he was ordered committed by the district court.