

SENATE No. 2391

The Commonwealth of Massachusetts

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In the One Hundred and Ninetieth General Court
(2017-2018)
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SENATE, April 4, 2018

The committee on Ways and Means, to whom was referred the House Bill implementing the joint recommendations of the Massachusetts criminal justice review (House, No. 4012); reports, recommending that the same ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2391.

For the committee,
Karen E. Spilka

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In the One Hundred and Ninetieth General Court
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1 SECTION 1. Section 32H of chapter 94C of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by inserting after the figure “127” in line 15, the following
3 words:- , except as authorized pursuant to section 32H½.

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

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

8 Section 32H ½. (a) As used in this section, the words “ineligible offender” shall have the
9 following meaning: any person sentenced to a mandatory minimum term of imprisonment in the
10 state prison upon conviction for: (1) violating sections 32, 32F or 32K, or subsection (c) of
11 section 32E; (2) violating section 32A by knowingly or intentionally manufacturing, distributing,
12 dispensing or possessing with intent to manufacture, distribute or dispense a controlled substance
13 defined in clauses (1), (2) or (3) of paragraph (a), or in clause (6) of paragraph (b) of Class B of
14 section 31 or any other offense under this chapter involving the illegal manufacturing,
15 distribution, dispensing or possession with intent to manufacture, distribute or dispense a
16 naturally occurring, synthetic or semi-synthetic opioid; or (3) violating this chapter, upon a

17 finding of any 1 of the following aggravating circumstances: (i) the person used violence or
18 threats of violence or possessed a firearm, rifle, shotgun, machine gun or a weapon described in
19 paragraph (b) of section 10 of chapter 269, or induced another participant to do so, during the
20 commission of the offense; (ii) the person engaged in a course of conduct whereby he directed
21 the activities of another who committed any felony in violation of chapter 94C; or (iii) the
22 offense was committed during the commission or attempted commission of a violation of section
23 32F or section 32K of chapter 94C.

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

33 (c) Notwithstanding subsection (i) of section 130B of chapter 127, any person serving a
34 mandatory minimum term of imprisonment for violating any provision of this chapter set forth in
35 section 32H shall be eligible for a parole permit pursuant to section 130B of chapter 127 on the
36 date determined under subsection (a) of said section 130B, except that an ineligible offender
37 shall not be eligible for such a permit until the ineligible offender shall have served such
38 mandatory minimum term of imprisonment.

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

44 SECTION 4. Paragraph (g) of section 1 of chapter 124 of the General Laws, as
45 appearing in the 2016 Official Edition, is hereby amended by inserting after the word “and” in
46 line 34, the following words:- , after consultation with the parole board,.

47 SECTION 5. Chapter 127 of the General Laws is hereby amended by striking out section
48 129D, as so appearing, and inserting in place thereof the following section:-

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

52 (a) For the satisfactory conduct of a prisoner while confined at a correctional institution
53 of the commonwealth, or any jail or house of correction, but working at a state hospital or state
54 school, satisfactory completion of an educational program leading to the award of a high school
55 equivalency certificate, satisfactory performance of said prisoner in completion of any other
56 educational sequence or any vocational training program established within or without the
57 institution, satisfactory performance of said prisoner while the prisoner is employed on work-
58 release or in a prison industry, or satisfactory performance of said prisoner in any other program
59 or activity which the superintendent of the institution shall deem valuable to said prisoner's
60 rehabilitation, the commissioner may grant, in addition to the deductions of sentence provided

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

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

82 (c) In addition to the foregoing, the commissioner may also grant up to 80 days of
83 completion credits to a prisoner serving a sentence to the state prison for successful completion

84 of a program or activity, as designated by the commissioner, to be granted in the month during
85 which successful completion of the designated program or activity is achieved; provided,
86 however, that in no event shall the aggregate number of completion credits awarded to a prisoner
87 exceed a maximum of 17.5 per cent of such prisoner's imposed maximum term of imprisonment.

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

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

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

101 SECTION 6. Section 130 of chapter 127 of the General Laws, as so appearing, is hereby
102 further amended by inserting after the word "conduct", in line 39, the following words:- and any
103 further deductions for compliance credits granted pursuant to section 130C, provided that such
104 combined deductions shall not exceed 35 per cent of the term of imprisonment to which the
105 prisoner has been sentenced,.

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

108 Section 130B. (a) As used in this section, the following terms shall have the following
109 meanings, unless the context clearly requires otherwise:

110 “Parole plan”, a plan, approved by the parole board, that includes the general and special
111 conditions of parole and requirements for: (i) a parolee’s physical address and co-habitants, if
112 any; (ii) verification of employment, efforts to seek employment or inability to obtain
113 employment; and (iii) an initial reporting date on which the parolee must report in person to a
114 parole field office.

115 “Release to supervision date”, the date which has been determined by deductions from
116 the maximum term of a prisoner’s sentence for good conduct deductions under section 129C,
117 subsection (a) of section 129D and a further deduction for any program completion credits
118 earned under subsection (c) of section 129D; provided, however, that such date shall not be
119 earlier than the date which has been determined by reducing a prisoner’s imposed maximum
120 term of sentence by 35 per cent.

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

127 subsection (c) of section 129D; and provided further, that a parole permit shall not issue pursuant
128 to this section unless the prospective parolee submits a parole plan approved by the parole board.

129 (c) The terms and conditions of the prisoner's parole shall be determined by the parole
130 board. The parole board's determination of such terms and conditions under this section shall
131 not be the subject of judicial review. Such terms and conditions may be revised, altered and
132 amended and may be revoked by the parole board at any time. The violation by the holder of
133 such permit or any of its terms or conditions, or of any law of the commonwealth, may render
134 such permit void, and thereupon, or if such permit has been revoked, the parole board may order
135 his arrest and his return to prison, in accordance with the provisions of sections 149 and 149A.

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

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

145 (f) The commissioner shall make available to the parole board all information in the
146 commissioner's possession relating to any prisoner whose case is under consideration. Such
147 information shall include the following: (i) information concerning the prisoner's conduct in
148 prison, including a statement as to all infractions of prison rules and discipline, all punishments

149 meted out to such prisoner, and the circumstances connected therewith; (ii) information
150 concerning the extent to which such prisoner has responded to the efforts made in prison to
151 improve the prisoner's mental and moral condition, including, to the extent available,
152 information as to the prisoner's attitude toward society, toward those responsible for the
153 prisoner's arrest, prosecution and conviction and how the prisoner regards the crime for which
154 the prisoner is in prison and the prisoner's previous criminal career, if any; (iii) information
155 concerning the prisoner's industrial record while in prison, the nature of the prisoner's
156 occupations while in prison and recommendations as to the kind of work the prisoner is best
157 fitted to perform and at which the prisoner is most likely to succeed upon leaving prison; (iv)
158 information concerning the results of such physical, mental and psychiatric examinations as have
159 been made of such prisoner which so far as practicable shall have been made within two months
160 of the time of the prisoner's release on parole; (v) information concerning the prisoner's social,
161 physical, mental and psychiatric condition and history; (vi) information concerning the prisoner's
162 record of participation in available work opportunities and education or treatment programs and
163 demonstrated good behavior while in prison, including a description of each program completed
164 by the prisoner, the number of completion credits granted to the prisoner for each program
165 completed and the date on which the prisoner's permit to be at liberty shall expire; and (vii)
166 information concerning the crime or crimes for which the prisoner is then sentenced, including
167 the circumstances of such crime or crimes, the nature of his sentence or sentences, the court in
168 which the prisoner was sentenced, the name of the judge and district attorney and copies of such
169 probation reports as may have been made.

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

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

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

176 (i) A person ineligible for parole because such person is serving a mandatory minimum
177 term of imprisonment shall not be eligible for a parole permit under subsection (b) until such
178 person shall have served such mandatory minimum term of imprisonment, except as otherwise
179 provided by law. Habitual offenders sentenced under subsection (b) of section 25 of chapter 279
180 shall not be eligible for a parole permit under subsection (b).

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

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

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

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

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

195 SECTION 8. Section 1 of chapter 211F of the General Laws, as appearing in the 2016
196 Official Edition, is hereby amended by adding the following 2 definitions:-

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

199 “Pretrial services program”, any program that is operated by a state, local or private
200 service agency that the office of community corrections has deemed appropriate for a person
201 awaiting trial; provided, however, that pretrial service programs shall be a separate track of
202 programming from community correction programs offered under section 3 of this chapter;
203 provided further, that sanctions under said section 3 shall not be applicable to the pretrial service
204 program track.

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

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

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

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

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

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

223 (c) If the sheriff who has custody of a person held on bail under section 57 or 58 of
224 chapter 276 determines that the person would benefit from entering a pretrial services program,
225 the sheriff shall provide a written recommendation of such determination to the court, the
226 commissioner of probation, the prosecuting office and the person or the person's attorney, where
227 applicable. The prosecuting office may notify any victim of the sheriff's recommendation upon
228 receipt of such recommendation. If the commissioner of probation or the prosecuting office
229 objects to such recommendation, the commissioner or prosecuting office shall file written
230 objection with the court within fourteen days of receipt of such notice. Upon receipt of such
231 objection, the court may set the matter for hearing. After expiration of the time for filing
232 objections and after hearing, if applicable, the court shall either decline to modify its earlier bail
233 order or make an order under subsection (a) of this section authorizing the person's participation

234 in a pretrial services program. In no event shall the person held on bail be ordered under this
235 paragraph to enter a pretrial services program without that person's consent.

236 (d) Placement of a person in a pretrial services program shall require victim notification
237 as required under subsection (t) of section 3 of chapter 258B.

238 Section 3B. (a) For any person sentenced to probation supervision who has not been
239 sentenced to a community corrections program under section 3 of this chapter, the probation
240 department may utilize programs offered through a community corrections program: (i) for
241 participation in court-ordered programming where such programming is available through the
242 community corrections program; or (ii) upon agreement by the person so sentenced.

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

245 SECTION 13. Section 4 of said chapter 211F, as appearing in the 2016 Official Edition,
246 is hereby amended by inserting after the word "plans," in line 3, the following:- and pretrial
247 services plans.

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

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

253 Section 87B. (a) As used in this section, the following words shall have the following
254 meanings, unless the context clearly requires otherwise:

255 “Compliance”, the absence of a judicial finding of a violation of court-ordered conditions
256 of post-disposition probation supervision.

257 “Compliance credits”, credits that an eligible offender earns through compliance with
258 court-ordered terms of post-disposition probation supervision; provided, however, that such
259 credits shall operate to reduce the length of post-disposition probation supervision.

260 “Eligible offender”, an offender whose sentence includes incarceration followed by a
261 term of probation supervision upon conviction of one or more criminal offenses who has been
262 released to probation after serving the incarcerated sentence or incarcerated portion of the
263 sentence, except any such person who is under post-disposition supervision for a sex offense as
264 defined in section 178C of chapter 6.

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

266 (i) an eligible offender shall begin to accrue compliance credits on the first day of the
267 calendar month following one year of supervision on probation;

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

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

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

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

283 (e) The probation service shall calculate an eligible offender's supervision termination
284 date, taking into consideration any earned compliance credits at the end of each calendar quarter.
285 Upon such calculation, the probation service shall inform the eligible offender of the termination
286 date.

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

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

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

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

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

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

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