

SENATE No. 834

The Commonwealth of Massachusetts

PRESENTED BY:

Kenneth J. Donnelly

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act reforming pretrial process.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | |
|----------------------------|--------------------------------|------------------|
| <i>Kenneth J. Donnelly</i> | <i>Fourth Middlesex</i> | |
| <i>Marjorie C. Decker</i> | <i>25th Middlesex</i> | <i>1/26/2017</i> |
| <i>David M. Rogers</i> | <i>24th Middlesex</i> | <i>1/26/2017</i> |
| <i>Jason M. Lewis</i> | <i>Fifth Middlesex</i> | <i>1/26/2017</i> |
| <i>Thomas M. McGee</i> | <i>Third Essex</i> | <i>1/26/2017</i> |
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> | <i>1/26/2017</i> |
| <i>Jay R. Kaufman</i> | <i>15th Middlesex</i> | <i>1/26/2017</i> |
| <i>Sonia Chang-Diaz</i> | <i>Second Suffolk</i> | <i>1/26/2017</i> |
| <i>Natalie Higgins</i> | <i>4th Worcester</i> | <i>1/27/2017</i> |
| <i>Patricia D. Jehlen</i> | <i>Second Middlesex</i> | <i>1/27/2017</i> |
| <i>Byron Rushing</i> | <i>9th Suffolk</i> | <i>1/30/2017</i> |
| <i>Bud Williams</i> | <i>11th Hampden</i> | <i>1/30/2017</i> |
| <i>Jack Lewis</i> | <i>7th Middlesex</i> | <i>1/31/2017</i> |
| <i>Kay Khan</i> | <i>11th Middlesex</i> | <i>1/31/2017</i> |
| <i>Mike Connolly</i> | <i>26th Middlesex</i> | <i>2/1/2017</i> |
| <i>Frank I. Smizik</i> | <i>15th Norfolk</i> | <i>2/2/2017</i> |
| <i>Sal N. DiDomenico</i> | <i>Middlesex and Suffolk</i> | <i>2/2/2017</i> |
| <i>Michael J. Barrett</i> | <i>Third Middlesex</i> | <i>2/2/2017</i> |

| | | |
|--------------------------------|--|------------------|
| <i>Mary S. Keefe</i> | <i>15th Worcester</i> | <i>2/2/2017</i> |
| <i>Denise Provost</i> | <i>27th Middlesex</i> | <i>2/2/2017</i> |
| <i>Michelle M. DuBois</i> | <i>10th Plymouth</i> | <i>2/2/2017</i> |
| <i>James J. Dwyer</i> | <i>30th Middlesex</i> | <i>2/2/2017</i> |
| <i>Aaron Vega</i> | <i>5th Hampden</i> | <i>2/2/2017</i> |
| <i>Paul R. Heroux</i> | <i>2nd Bristol</i> | <i>2/2/2017</i> |
| <i>Steven Ultrino</i> | <i>33rd Middlesex</i> | <i>2/3/2017</i> |
| <i>Susan Williams Gifford</i> | <i>2nd Plymouth</i> | <i>2/3/2017</i> |
| <i>Elizabeth A. Malia</i> | <i>11th Suffolk</i> | <i>2/3/2017</i> |
| <i>José F. Tosado</i> | <i>9th Hampden</i> | <i>2/3/2017</i> |
| <i>Thomas J. Calter</i> | <i>12th Plymouth</i> | <i>2/3/2017</i> |
| <i>William N. Brownsberger</i> | <i>Second Suffolk and Middlesex</i> | <i>2/3/2017</i> |
| <i>Alice Hanlon Peisch</i> | <i>14th Norfolk</i> | <i>2/3/2017</i> |
| <i>Anne M. Gobi</i> | <i>Worcester, Hampden, Hampshire and Middlesex</i> | <i>2/3/2017</i> |
| <i>Linda Dorcena Forry</i> | <i>First Suffolk</i> | <i>2/3/2017</i> |
| <i>Chris Walsh</i> | <i>6th Middlesex</i> | <i>2/3/2017</i> |
| <i>Cynthia Stone Creem</i> | <i>First Middlesex and Norfolk</i> | <i>2/3/2017</i> |
| <i>Carmine L. Gentile</i> | <i>13th Middlesex</i> | <i>3/23/2017</i> |

SENATE No. 834

By Mr. Donnelly, a petition (accompanied by bill, Senate, No. 834) of Kenneth J. Donnelly, Marjorie C. Decker, David M. Rogers, Jason M. Lewis and other members of the General Court for legislation to reform pretrial process. The Judiciary.

The Commonwealth of Massachusetts

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

An Act reforming pretrial process.

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 16 of chapter 125 of the General Laws, as appearing in 2014
2 Official Edition, is hereby amended by inserting at the end thereof the following sentence:- The
3 commissioner of corrections may upon approval of the commissioner place female prisoners held
4 for trial in a community corrections program under chapter 211F.

5 SECTION 2. Section 4 of chapter 126, as appearing in the 2014 Official Edition, is
6 hereby amended by inserting after the first sentence the following sentence:- The sheriff,
7 superintendent, keeper or other officer in charge of the jail may upon approval of the
8 commissioner place a person, who is charged with crime and committed for trial, in a community
9 corrections program under chapter 211F.

10 SECTION 3. Section 48 of chapter 127 of the General Laws, as appearing in the 2014
11 Official Edition, is hereby amended by adding, after the third sentence, the following sentence:-

12 The commissioner or the administrators of county correctional facilities may upon approval of
13 the commissioner place inmates in a community corrections program under chapter 211F.

14 SECTION 4. Section 49 of said chapter 127, as so appearing, is hereby amended by
15 inserting after the word “facility”, in line 7 and 8, the following words:- or to participate in a
16 community corrections program under chapter 211F;

17 SECTION 5. Section 90A of said chapter 127, as so appearing, is hereby amended by
18 inserting after the word “(f)”, in line 32, the following words:- to participate in a community
19 corrections program under chapter 211F; or (g).

20 SECTION 6. Subsection (a) of section 3 of chapter 211F of the General Laws, as
21 appearing in the 2014 Official Edition, is hereby amended by inserting at the end thereof the
22 following sentences:-

23 Under section 49 of chapter 127, the commissioner of corrections or the administrator of
24 a county correctional facility, upon approval of the commissioner, may place in a community
25 corrections program an inmate eligible to participate in education, training or employment under
26 section 48 of chapter 127. Under section 16 of chapter 125 or section 4 of chapter 126, the
27 commissioner of corrections or the administrator of a county correctional facility may, upon
28 approval of the commissioner, place a person who is being held for trial in a community
29 corrections program under chapter 211F.

30 SECTION 7. Subsection (c) of said section 3 of said chapter 211F, as so appearing, is
31 hereby amended by inserting before the word “sentence”, in line 8, the following words:- court-
32 ordered.

33 SECTION 8. Said section 3 of said chapter 211F, as so appearing, is hereby further
34 amended by inserting after subsection (d) the following subsection:-

35 (e) Participation in a community corrections program may be ordered by the court, in lieu
36 of bail, or as a condition of release consistent with sections 57, 58, and 58A of chapter 276 and
37 subject to the eligibility requirements of this section.

38 SECTION 9. Subsection (b) of section 4 of said chapter 211F, as so appearing, is hereby
39 amended by inserting after the word “supervision.”, in line 36, the following words:- and by the
40 commissioner of corrections, under sections 48, 49 and 90A of chapter 127, for the purpose of
41 re-entry and reintegration or, under section 16 of chapter 125 or section 4 of chapter 126, for the
42 purpose of community supervision of persons held for trial.

43 SECTION 10. Said section 4 of said chapter 211F, as so appearing, is hereby further
44 amended by inserting after subsection (c) the following subsection:- (d) Community corrections
45 programs may be utilized by the probation department for pretrial supervision consistent with
46 sections 58, 58A or 87 of chapter 276.

47 SECTION 11. Section 42 of chapter 276 of the General Laws, as appearing in the 2014
48 Official Edition, is hereby amended by striking out, in line 4, the words “and sufficient bail is
49 offered”.

50 SECTION 12. The second paragraph of section 42A of said chapter 276, as so appearing,
51 is hereby amended by striking out the figure “57” and inserting in place thereof the following
52 figure:- 58.

53 SECTION 13. Said chapter 276, as so appearing, is hereby amended by striking out
54 section 57 and inserting in place thereof the following section:-

55 Section 57. The following words, as used in section 57 through section 82A, inclusive,
56 unless the context otherwise requires, shall have the following meanings:-

57 “Bail”, the process by which a person is released from custody, either subject to
58 conditions of release or on his or her own recognizance.

59 “Conditions of release”, the conditions included in paragraph (B) of section 58A.

60 “Default”, any failure to abide by a specific condition of pretrial release, including, but
61 not limited to, a failure to appear at a specified court date, a failure to follow an order to stay
62 away from a witness or victim, a failure to attend a treatment program stipulated in a release
63 order or any other failure to abide by a condition of release.

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

65 “Judicial officer”, a justice of the supreme judicial or superior court, a justice or a clerk or
66 assistant clerk of the superior, juvenile, Boston Municipal, housing or district court or the clerk
67 of the superior court for criminal business in the county of Suffolk, a standing or special
68 commissioner appointed by either of said courts or a bail commissioner.

69 “Pretrial services”, the division of pretrial services established in section 59 of this
70 chapter.

71 “Risk assessment tool”, an empirically developed uniform tool validated in the
72 commonwealth that analyzes risk factors, created or chosen and implemented by pretrial services
73 to produce the risk assessment score for a defendant that will aid the judicial officer in

74 determining the pretrial release, with or without conditions, that will reasonably assure
75 appearance of the defendant before the court.

76 “Risk factors”, items specific to a defendant that are accounted for by the risk assessment
77 tool that may include, but are not limited to, the following: the nature and circumstances of the
78 offense charged, the potential penalty the person faces, the person’s family ties, financial
79 resources, employment record and history of mental illness, his reputation and the length of
80 residence in the community, his record of convictions, if any, any illegal drug distribution or
81 present drug dependency, any flight to avoid prosecution or fraudulent use of an alias or false
82 identification, any failure to appear at any court proceeding to answer to an offense, whether the
83 person is on bail pending adjudication of a prior charge, whether the acts alleged involve abuse,
84 as defined in section 1 of chapter 209A, or violation of a temporary or permanent order issued
85 pursuant to sections 18 or 34B of chapter 208, section 32 of chapter 209, sections 3, 4 or 5 of
86 chapter 209A, or sections 15 or 20 of chapter 209C, whether the person has any history of orders
87 issued against him pursuant to the aforesaid sections, whether he is on probation, parole, or other
88 release pending completion of sentence for any conviction, and whether he is on release pending
89 sentence or appeal for any conviction.

90 “Secured bond”, an amount of cash or pledged property that, in the discretion of the
91 judicial officer, would reasonably assure the presence of a defendant as required, taking into
92 consideration the individual characteristics of the defendant, including the defendant’s financial
93 means.

94 “Surety”, an individual, individuals or organization that, without any compensation,
95 promises to ensure the presence of a criminal defendant at proceedings or who pledges an
96 unsecured bond or both.

97 “Unsecured bond”, an agreement between the district or superior court and a defendant in
98 a criminal case or a surety that, if said defendant does not appear on a date certain before the
99 court or fails to abide by any explicit conditions of release, the defendant or surety will forfeit to
100 the court a specified amount of money or property due at the time of any default by the
101 defendant.

102 SECTION 14. Section 58 of said chapter 276, as so appearing, is hereby amended, in
103 lines 1 and 2, by striking out the words “A justice or a clerk or assistant clerk of the district court,
104 a bail commissioner or master in chancery” and inserting in place thereof the following words:-
105 A judicial officer.

106 SECTION 15. Said section 58 of said chapter 276, as so appearing, is hereby further
107 amended by striking out, in line 3, the words “the applicable provisions of section fifty-seven”
108 and inserting in place thereof the following words:- this section.

109 SECTION 16. Said section 58 of said chapter 276, as so appearing, is hereby further
110 amended by striking out, in line 5, the words “for an offense other than an offense punishable by
111 death,”.

112 SECTION 17. Said section 58 of said chapter 276, as so appearing, is hereby further
113 amended by striking out, in line 7, the words “fifty-eight” and inserting in place thereof the
114 following figure:- 58.

115 SECTION 18. Said section 58 of said chapter 276, as so appearing, is hereby further
116 amended by inserting after the word “surety”, in line 11, the following words:- or financial
117 condition.

118 SECTION 19. Said section 58 of said chapter 276, as so appearing, is hereby further
119 amended by striking out, in lines 10 and 11, the words “justice, clerk or assistant clerk, bail
120 commissioner or master in chancery” and inserting in place thereof the following words:-
121 judicial officer.

122 SECTION 20. Said section 58 of said chapter 276, as so appearing, is hereby further
123 amended by inserting after the word “discretion”, in line 13, the following words:- after
124 consulting the risk assessment tool.

125 SECTION 21. Said section 58 of said chapter 276, as so appearing, is hereby further
126 amended by inserting after the first sentence the following sentence:- All persons authorized to
127 take bail under this section shall be governed by the rules established by the supreme judicial or
128 trial court.

129 SECTION 22. Said section 58 of said chapter 276, as so appearing, is hereby further
130 amended by striking out the second sentence, in lines 14 through 37, inclusive, and inserting in
131 place thereof the following sentence:- The judicial officer setting bail shall not impose a financial
132 condition that results in the pretrial detention of the person.

133 SECTION 23. Said section 58 of said chapter 276, as so appearing, is hereby further
134 amended by striking out the word “person”, in line 37, and inserting in place thereof the
135 following words:- judicial officer.

136 SECTION 24. Said section 58 of said chapter 276, as so appearing, is hereby further
137 amended by striking out, in lines 39 and 40, the words “or section fifty-seven that”.

138 SECTION 25. Said section 58 of said chapter 276, as so appearing, is hereby further
139 amended by striking out the words “his bail may be revoked in accordance with the third
140 paragraph of this section”, in lines 41 and 42, and inserting in place thereof the following words:-
141 the commonwealth may present a motion under section 58B for pretrial detention or change in
142 conditions of release.

143 SECTION 26. Said section 58 of said chapter 276, as so appearing, is hereby further
144 amended by striking out the words “justice or clerk or assistant clerk of the district court, the bail
145 commissioner or master in chancery”, in lines 42 and 43, and inserting in place thereof the
146 following words:- judicial officer.

147 SECTION 27. Said section 58 of said chapter 276, as so appearing, is hereby further
148 amended by striking out the words “cash bail is required, the person shall be allowed to provide
149 an equivalent amount in a surety company bond”, in lines 44 through 45, and inserting in place
150 thereof the following words:- personal recognizance without surety or financial condition would
151 not reasonably assure the appearance of the person before the court, the court may require a
152 surety or unsecured bond in addition to any other conditions of release.

153 SECTION 28. Said section 58 of said chapter 276, as so appearing, is hereby further
154 amended by striking out the words “justice or clerk or assistant clerk of the district court, the bail
155 commissioner or master in chancery”, in lines 45 through 47, inclusive, and inserting in place
156 thereof the following words:- judicial officer.

157 SECTION 29. Said section 58 of said chapter 276, as so appearing, is hereby further
158 amended by inserting after the words “to abide by”, in line 48, the following words:- conditions
159 of release or.

160 SECTION 30. Said section 58 of said chapter 276, as so appearing, is hereby further
161 amended, by inserting after the first paragraph the following paragraphs:-

162 A person detained as a result of a bail decision under this section shall be brought to a
163 trial as soon as reasonably possible, but in absence of good cause, the person so held shall not be
164 detained for a period exceeding 120 days, excluding any period of delay as defined in
165 Massachusetts Rules of Criminal Procedure Rule 36(b)(2). Any order resulting in detention shall
166 be reviewed de novo after its expiration to determine if the order is still necessary and shall be
167 appealable to the superior court under the tenth paragraph of this section.

168 Notwithstanding the foregoing, a person arrested and charged with a violation of an order
169 or judgment issued pursuant to section 18, 34B or 34C of chapter 208, section 32 of chapter 209,
170 section 3, 4 or 5 of chapter 209A, or section 15 or 20 of chapter 209C, or arrested and charged
171 with a misdemeanor or felony involving abuse as defined in section 1 of chapter 209A while an
172 order of protection issued under chapter 209A was in effect against said person, shall not be
173 released out of court by a clerk of courts, clerk of a district court, or bail commissioner.

174 SECTION 31. The second paragraph of said section 58 of chapter 276, as so appearing, is
175 hereby amended by striking out the figure “57”, in line 53, and inserting in place thereof the
176 following figure:- 58;

177 and by inserting after the word “practicable”, in line 70, the following words:- , and shall
178 take into consideration the following: the nature and circumstances of the offense charged, the

179 potential penalty the person faces, the person’s family ties, employment record and history of
180 mental illness, the person’s reputation, the risk that the person will obstruct or attempt to obstruct
181 justice or threaten, injure or intimidate or attempt to threaten, injure or intimidate a prospective
182 witness or juror, the person’s record of convictions, if any, any illegal drug distribution or
183 present drug dependency, whether the person is on bail pending adjudication of a prior charge,
184 whether the acts alleged involve abuse, as defined in said section 1 of said chapter 209A, a
185 violation of a temporary or permanent order issued pursuant to said sections 18 or 34B of said
186 chapter 208, said section 32 of said chapter 209, said sections 3, 4 or 5 of said chapter 209A or
187 said sections 15 or 20 of said chapter 209C, whether the person has any history of issuance of
188 such orders pursuant to the aforesaid sections, whether the person is on probation, parole or other
189 release pending completion of sentence for any conviction and whether the person is on release
190 pending sentence or appeal for any conviction.

191 SECTION 32. Said section 58 of said chapter 276, as so appearing, is hereby amended by
192 striking out the word “person”, in line 89, and inserting in place thereof the following words:-
193 judicial officer.

194 SECTION 33. Said section 58 of said chapter 276, as so appearing, is hereby further
195 amended by striking out the words “eighty-two A”, in line 90, and inserting in place thereof the
196 following words:- 82A.

197 SECTION 34. Said section 58, as so appearing, is hereby amended by striking out the
198 words “person authorized to take bail may charge the fees authorized by section twenty-four of
199 chapter two hundred and sixty-two”, in lines 92 through 94, inclusive, and inserting in place

200 thereof the following words:- judicial officer may charge the fees authorized by section 24 of
201 chapter 262.

202 SECTION 35. The fifth paragraph of said section 58 of said chapter 276, as so appearing,
203 is hereby amended by inserting at the end thereof the following sentences:- Said fees shall be
204 paid by the court of jurisdiction whether the defendant is released by the judicial officer or
205 detained. After a conviction, plea of guilty or nolo contendere or when the case is continued
206 without a finding on the charged offense, the court may order a defendant to pay restitution in an
207 amount equal to the fees paid by the court pursuant to this paragraph.

208 SECTION 36. Said section 58 of said chapter 276, as so appearing, is hereby amended,
209 by striking out the sixth paragraph and inserting in place thereof the following paragraphs:-

210 A person aforesaid charged with an offense and not released on his personal recognizance
211 without surety by a clerk or assistant clerk of the district court, or a bail commissioner shall
212 forthwith be brought before the next session of the district court for a review of the order to
213 recognize in accordance with the standards set forth in the first paragraph of this section. The
214 court shall provide as an explicit condition of release for any person admitted to bail pursuant to
215 this section that should said person be charged with a crime during the period of his release, his
216 bail may be revoked in accordance with section 58B and the court shall enter in writing on the
217 court docket that the person was so informed and the docket shall constitute prima facie evidence
218 that the person was so informed.

219 A person aggrieved by the denial of a district court justice to admit him to bail on his
220 personal recognizance without surety or financial condition may petition the superior court for a
221 review of the order of the recognizance and the justice of the district court shall thereupon

222 immediately notify such person of his right to file a petition for review in the superior court.

223 When a petition for review is filed in the district court or with the detaining authority subsequent
224 to petitioner's district court appearance, the clerk of the district court or the detaining authority,
225 as the case may be, shall immediately notify by telephone, the clerk and probation officer of the
226 district court, the district attorney for the district in which the district court is located, the
227 prosecuting officer, the petitioner's counsel, if any, and the clerk of courts of the county to which
228 the petition is to be transmitted. The clerk of the district court, upon the filing of a petition for
229 review, either in the district court or with the detaining authority, shall forthwith transmit the
230 petition for review, a copy of the complaint and of the record of the court, including the
231 appearance of the attorney, if any is entered, and a summary of the court's reasons for denying
232 the release of the defendant on his personal recognizance without surety to the superior court for
233 the county in which the district court is located, if a justice thereof is then sitting, or to the
234 superior court of the nearest county in which a justice is then sitting; the probation officer of the
235 district court shall transmit forthwith to the probation officer of the superior court, copies of all
236 records of the probation office of said district court pertaining to the petitioner, including the
237 petitioner's record of prior convictions, if any, as currently verified by inquiry of the
238 commissioner of probation. The district court or the detaining authority, as the case may be, shall
239 cause any petitioner in its custody to be brought before the said superior court on the same day
240 the petition shall have been filed, unless the district court or the detaining authority shall
241 determine that such appearance and hearing on the petition cannot practically take place before
242 the adjournment of the sitting of said superior court for that day and in which event, the
243 petitioner shall be caused to be brought before said court for such hearing during the morning of
244 the next business day of the sitting of said superior court. The district court is authorized to order

245 any officer authorized to execute criminal process to transfer the petitioner and any papers herein
246 above described from the district court or the detaining authority to the superior court, and to
247 coordinate the transfer of the petitioner and the papers by such officer. The petition for review
248 shall constitute authority in the person or officer having custody of the petitioner to transport the
249 petitioner to said superior court without the issuance of any writ or other legal process, provided,
250 however, that any district or superior court is authorized to issue a writ of habeas corpus for the
251 appearance forthwith of the petitioner before the superior court.

252 SECTION 37. The eighth paragraph of said section 58 of said chapter 276, as so
253 appearing, is hereby amended by striking out the words “has posted”, in line 204, and inserting
254 in place thereof the following words:- was released on;

255 and, by striking out the words “holding the defendant’s bail”, in lines 206 and 207, and
256 inserting in place thereof the following words:- that released the defendant on bail;

257 and, by striking out the words “the amount of any bail bond posted”, in line 208, and
258 inserting in place thereof the following words:- any secured or unsecured bond or record of
259 surety or pledge;

260 and, by striking out the words “bail bond”, in line 209, and inserting in place thereof the
261 following words:- financial condition;

262 and, by striking out, in line 210, the words “the amount”.

263 SECTION 38. The sixth paragraph of said section 58 of said chapter 276, as so
264 appearing, is hereby amended by striking the words “either by increasing the amount of the
265 recognizance or requiring sufficient surety or both,”, in lines 220 and 221, and inserting in place

266 thereof the following words:- by requiring additional conditions of release, sufficient surety or
267 unsecured bond,;

268 and, by striking out the word “third”, in line 182, and inserting in place thereof the
269 following word:- “eighth”.

270 SECTION 39. The eleventh paragraph of said section 58 of said chapter 276, as so
271 appearing, is hereby amended by striking out the words “fifty-eight-A,” in each instance it
272 appears, and inserting in place thereof the following words:- 58A.

273 SECTION 40. Clause (2) of section 58A of said chapter 276, as so appearing, is hereby
274 amended by inserting after the figure “(4)”, in line 31, the following word:- and.

275 SECTION 41. The second paragraph of said clause (2) of said section 58A of said
276 chapter 276, as so appearing, is hereby amended by striking out, in lines 35 and 36, the words
277 “will not reasonably assure the appearance of the person as required or”.

278 SECTION 42. Subclause (xii) of subparagraph (B) of said clause (2) of said section 58A
279 of said chapter 276, as so appearing, is hereby amended by striking out the words “a bail bond
280 with solvent sureties; who will execute an agreement to forfeit in such amount as is reasonably
281 necessary to assure appearance of the person as required and shall provide the court with
282 information regarding the value of the assets and liabilities of the surety if other than an
283 approved surety and the nature and extent of encumbrances against the surety’s property; such
284 surety shall have a net worth which shall have sufficient unencumbered value to pay the amount
285 of the bail bond”, in lines 75 through 82, inclusive, and inserting in place thereof the following
286 words:- a secured or unsecured bond, provided, that the judicial officer shall only impose a

287 financial condition under this clause if said judicial officer finds that no other condition or
288 combination of conditions will reasonably assure the appearance of the person as required.

289 SECTION 43. Said subparagraph (B) of said clause (2) of said section 58A of said
290 chapter 276, as so appearing, is hereby amended by striking out subclause (xiv), in lines 85
291 through 91, inclusive, and inserting in place thereof the following subclauses:-

292 (xiv) participate in a diversion program under chapter 276A, an alternative adjudication
293 program, or in a drug, mental health, veteran or other treatment court program; and

294 (xv) satisfy any other condition that is reasonably necessary to assure the appearance of
295 the person as required and to assure the safety of any other person and the community.

296 SECTION 44. Said clause (2) of said section 58A of said chapter 276, as so appearing, is
297 hereby amended, in lines 90 and 91, by striking out the last sentence.

298 SECTION 45. Clause (5) of said section 58A of said chapter 276, as so appearing, is
299 hereby amended by inserting after the word “shall”, in line 154, the following words:- in addition
300 to consulting the results of the risk assessment tool,.

301 SECTION 46. The second paragraph of section 58B of said chapter 276, as so appearing,
302 is hereby amended by striking out the figure “ninety”, in line 39, and inserting in place thereof
303 the following figure:- 60.

304 SECTION 47. Said chapter 276, as so appearing, is hereby amended by striking out
305 section 59 and inserting in place thereof the following sections:-

306 Section 59. There shall be within the office of probation a pretrial services division,
307 hereinafter referred to as pretrial services. Pretrial services shall collect and present necessary

308 information to compile and present risk assessments scores, and consistent with court policy,
309 provide the court with evidence-based release recommendations required by the judicial officer
310 in making release decisions, including the defendant's eligibility for diversion, treatment or other
311 alternative adjudication programs. Pretrial services shall be headed by a director of pretrial
312 services. The director shall be a person of ability and experience in the pretrial process, chosen
313 and appointed by the commissioner for the office of probation.

314 Section 59A. Pretrial services shall perform the following duties for the trial courts:

315 (a) create or choose a risk assessment tool, provided, that the tool shall be tested and
316 validated in the commonwealth to identify and eliminate unintended economic, race or gender
317 bias included in the tool;

318 (b) establish a procedure for the screening of persons who are to be, or have been,
319 presented in court for first appearance to assist the trial court in determining the appropriate
320 terms and conditions of pretrial release, provided, that procedure shall use a uniform risk
321 assessment tool;

322 (c) record information received from the arrested person as a result of any division
323 interview on a uniform risk assessment tool;

324 (d) verify and supplement to the extent possible the information required by the risk
325 assessment tool before submitting its report, provided, that minimum verification shall include
326 the arrestee's prior criminal record, residency, and employment circumstances;

327 (e) submit written reports of any interviews to the presiding judicial officer, all parties
328 and counsel of record, based on the results of the risk assessment tool, along with such findings

329 and recommendations, if any, as may be necessary to assess the appropriate conditions of release
330 which shall be imposed that reasonably assure the presence of the arrestee in court and the safety
331 of the public or aid the orderly administration of justice before trial;

332 (f) cooperate with the court and all other criminal justice agencies in the development of
333 programs to minimize unnecessary pretrial detention and protect the public against breaches of
334 pretrial release conditions;

335 (g) monitor the local operations of the pretrial release system and maintain accurate and
336 comprehensive records of program activities;

337 (h) provide notification to supervised persons of court appearance obligations and, as
338 needed, require periodic reporting by letter, telephone or personal appearance to verify
339 compliance with conditions of release;

340 (i) assist persons released prior to trial in securing any necessary employment, medical,
341 drug, mental or other health treatment, legal or other needed social services that would increase
342 the chances of successful compliance with conditions of pretrial release; and

343 (j) regularly monitor the arrest records of local law enforcement agencies to determine
344 whether any supervised person has been formally charged with the commission of a new offense
345 in violation of the uniform release order. In such event, pretrial services shall prepare a formal
346 report of that fact and present the same to the court. A copy of the report shall be provided to the
347 prosecuting officer who may aid pretrial services in presenting such violation.

348 No person shall be interviewed by pretrial services unless he or she has first been
349 apprised of the identity and purpose of the interview, the scope of the interview, the right to

350 counsel, and the right to refuse cooperation. Inquiry of the defendant shall carefully exclude
351 questions concerning the details of the current charge. Statements made by the defendant during
352 the interview or evidence derived therefrom, are admissible in evidence only when the court is
353 considering the imposition of pretrial conditions to bail or recognizance, or when considering the
354 modification of a prior release order and shall not be admissible in the course of any other
355 proceeding.

356 A representative of pretrial services shall, where feasible, be present or otherwise
357 available to the trial court at the first appearance or such later hearings at which the division
358 report is to be considered by the trial court. At such hearings, the factual findings, conclusions
359 and recommendations in the written report may be challenged by the defendant, his or her
360 counsel, or the prosecuting attorney, by the presentation of any relevant evidence; and if so
361 ordered by the trial court, pretrial services shall prepare and submit for the court's approval and
362 signature a release order on a uniform release form in all cases where a defendant may be
363 released from custody under conditions contained in an division report. Such conditions shall
364 become part of the conditions of release. A copy of the uniform release order shall be provided to
365 the defendant, the defendant's attorney of record, and the prosecutor.

366 Pretrial services shall have primary responsibility for reporting non-compliance by
367 criminal defendants with the terms and conditions of pretrial release specified in the uniform
368 release order entered under this section. Pretrial services shall monitor and supervise compliance
369 with pretrial release of supervised persons before trial and promptly submit reports to the court,
370 defendant, the defendant's attorney of record and prosecuting officer whenever: (i) apparent
371 violations of other conditions imposed by the court under the uniform release order have

372 occurred; or (ii) modification of the uniform release order and conditions thereof are deemed in
373 the best interests of either the accused or the community.

374 Section 59B. (a) Pretrial services shall collect data and maintain records of individuals
375 processed by pretrial services.

376 (b) Pretrial services shall submit quarterly reports to the office of probation, the chief
377 justice of the trial court, the court administrator and the supreme judicial court including but not
378 limited to: analysis on demographics of the pretrial population including age, race and sex;
379 number of persons detained before trial; appearance rates; length of detentions; default rates;
380 conditions imposed upon release; caseload of the pretrial services division; length of supervision;
381 and any other analytical data the division deems appropriate; provided, that any data included in
382 the report is presented only in aggregated form and no individual can be identified by data
383 included in the report.

384 (c) Information and records maintained by pretrial services that have not been disclosed
385 in open court during a trial court proceeding shall not be released by pretrial services to any
386 individual or organization, other than any employee of the office of probation or the courts,
387 without the express permission of the interviewed or supervised person at or near the time the
388 information is to be released. An individual shall have access to all information and records
389 about himself or herself maintained by or collected by pretrial services. Nothing in this section
390 shall prevent pretrial services from making its data available for research purposes to qualified
391 personnel, provided that no records or other information shall be made available in which
392 individuals interviewed or supervised are identified or from which their identities are
393 ascertainable. Records created by pretrial services shall not be part of an individual's criminal

394 offender record information. The information obtained and recorded shall not be regarded as
395 public records and shall not be open for public inspection but aggregate data shall be accessible
396 to the justices, the departments of probation, and youth services, the Massachusetts sentencing
397 commission, and to such local and state governments as the division may determine. Upon
398 payment of a fee as established by the chief justice of the trial court or the court administrator for
399 each search, such aggregate data shall be accessible to such departments of the federal
400 government and to such educational and charitable corporations and institutions as the division
401 may determine.

402 Section 59C. (a) Pretrial services shall develop informational materials and produce
403 training curriculum for staff regarding the functions of pretrial services. The training shall
404 include information on risk assessment tools, risk assessment scores, recommended supervision
405 levels and conditions of release, the difference between probationers and pretrial defendants and
406 their different needs, data collection consistent with best practices, trauma informed pretrial
407 services, and any other information the trial court or pretrial services division deem appropriate.
408 No employee of pretrial services shall determine a risk assessment score, oversee a released
409 defendant or make release recommendations to the court before participating in the mandatory
410 training.

411 (b) The trial court, in coordination with pretrial services, shall develop curriculum and
412 make training opportunities available on a rolling basis to all judicial officers eligible to make
413 bail decisions. Training shall include information on the risk assessment tools, risk assessment
414 scores and recommended supervision levels, conditions of release, and any other information the
415 trial court or pretrial services division deem appropriate. No bail commissioner shall be eligible

416 to make a bail decision after the implementation of the risk assessment tool, before participating
417 in a training offered under this section.

418 SECTION 48. Section 60 of said chapter 276, as so appearing, is hereby amended by
419 striking out the words “fifty-seven”, in line 5, and inserting in place thereof the following
420 figure:- 58.

421 SECTION 49. Section 61 of said chapter 276, as so appearing, is hereby amended by
422 inserting after the word “other”, in line 9, the following words:- secured or unsecured;

423 and by striking out, in lines 13 through 18, inclusive, the words “A surety may, instead of
424 making such certificate, give his personal recognizance as surety and deposit money, bonds or a
425 properly assigned bank book of the kind and in the amount and under the conditions set forth in
426 section fifty-seven for making deposit of like nature.”;

427 and by striking out the words “second Monday of each”, in line 22, and inserting in place
428 thereof the following words:- “fifteenth of every”;

429 and by striking out the word “superior”, in line 23, and inserting in place thereof the
430 following word:- trial.

431 SECTION 50. Said chapter 276, as so appearing, is hereby amended by striking out
432 section 61A.

433 SECTION 51. Section 61B of said chapter 276, as so appearing, is hereby amended by
434 striking out the first paragraph and inserting in place thereof the following paragraph:- No person
435 proposing to become a surety in a criminal case, shall be accepted as such unless he shall have

436 been registered by the pretrial services division. No surety under this chapter may be
437 compensated for acting as such a surety.

438 SECTION 52. The second paragraph of said section 61B of said chapter 276, as so
439 appearing, is hereby further amended by striking out the words “cash or a bail”, in line 33, and
440 inserting in place thereof the following words:- secured or unsecured;

441 and by striking out the word “bail”, in line 39, and inserting in place thereof the following
442 words:- secured or unsecured;

443 and by striking out the words “a bail bond or cash bail”, in lines 40 and 41, and inserting
444 in place thereof the following words:- secured or unsecured bond.

445 SECTION 53. The third paragraph of said section 61B of said chapter 276, as so
446 appearing, is hereby further amended by inserting after the word “administration”, in lines 69
447 and 71, in each instance, the following words:- and pretrial services.

448 SECTION 54. Said section 61B of said chapter 276, as so appearing, is hereby further
449 amended by striking out the fifth paragraph.

450 SECTION 55. Section 65 of said chapter 276, as so appearing, is hereby amended by
451 striking out the word “bail”, in line 14, and inserting in place thereof the following words:-
452 secured or unsecured.

453 SECTION 56. Section 68 of said chapter 276, as so appearing, is hereby amended by
454 striking out the word “Bail”, in line 1, and inserting in place thereof the following words:- A
455 surety.

456 SECTION 57. Section 69 of said chapter 276, as so appearing, is hereby amended by
457 striking out the word “Bail”, on line 1, and inserting in place thereof the following words:- A
458 surety;

459 and by striking out the word “bail”, in line 6, and inserting in place thereof the following
460 word:- surety.

461 SECTION 58. Section 70 of said chapter 276, as so appearing, is hereby amended by
462 striking out the words “bail are”, in line 2, and inserting in place thereof the following words:-
463 surety is.

464 SECTION 59. Section 71 of said chapter 276, as so appearing, is hereby amended by
465 striking out the words “his obligation”, in line 5, and inserting in place thereof the following
466 words:- including the reason for default, his or her secured or unsecured bond, if any,.

467 SECTION 60. Said chapter 276, as so appearing, is hereby further amended by striking
468 out sections 79 and 80 and inserting in place thereof the following sections:-

469 Section 79. Any judicial officer authorized to make bail decisions shall collect any
470 financial obligation due as a result of the bail decision from a defendant at the time a bail
471 decision is made and at the place where the decision is made if the defendant has means at that
472 time and place to meet the financial obligation.

473 Section 80. At any time after default of the defendant, the court may order the forfeit of
474 the secured or unsecured bond determined or deposited at the time of the recognizance and the
475 court or clerk of the court shall issue an order against the person who pledged an unsecured bond
476 to pay the court the money so forfeited. The court or clerk of the court shall pay to the state

477 treasurer any money so deposited. The court may accept alternatives to cash, including but not
478 limited to bonds. The clerk of the court shall immediately proceed to sell any bonds so deposited
479 either at public or private sale, and shall forthwith pay the proceeds thereof, after deducting all
480 expenses connected with such sale, to the state treasurer. The order for payment issued by the
481 court or clerk of court shall be delivered according to the rules for delivery of a criminal
482 summons, upon the person or persons obligated to pay the court. A person who fails to pay an
483 order for payment may be subject to contempt proceedings.

484 SECTION 61. Section 81 of said chapter 276, as so appearing, is hereby amended by
485 striking out the first sentence;

486 and by striking out the word “recaption”, in line 6, and inserting in place thereof the
487 following word:- recapture;

488 and by striking out the word “recognizance”, in line 13, and inserting in place thereof the
489 following words:- secured or unsecured bond.