

HOUSE No. 1530

The Commonwealth of Massachusetts

PRESENTED BY:

Angelo J. Puppolo, Jr.

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 relative to the Commonwealth’s right to appeal bail decisions.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	<i>1/8/2019</i>
<i>Timothy R. Whelan</i>	<i>1st Barnstable</i>	<i>1/24/2019</i>
<i>David Allen Robertson</i>	<i>19th Middlesex</i>	<i>1/25/2019</i>
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>	<i>2/1/2019</i>
<i>Bud L. Williams</i>	<i>11th Hampden</i>	<i>1/30/2019</i>

HOUSE No. 1530

By Mr. Puppolo of Springfield, a petition (accompanied by bill, House, No. 1530) of Angelo J. Puppolo, Jr., and others for legislation to authorize the Commonwealth to file appeals of bail decisions. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 940 OF 2017-2018.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act relative to the Commonwealth’s right to appeal bail decisions.

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

4 A person aforesaid charged with an offense and not released on his personal recognizance
5 without surety by a clerk or assistant clerk of the district court, a bail commissioner or master in
6 chancery shall forthwith be brought before the next session of the district court for a review of
7 the order to recognize in accordance with the standards set forth in the first paragraph of this
8 section. The court shall provide as an explicit condition of release for any person admitted to bail
9 pursuant to this section or Section 57 that should said person be charged with a crime during the
10 period of his release, his bail may be revoked in accordance with this paragraph and the court

11 shall enter in writing on the court docket that the person was so informed and the docket shall
12 constitute prima facie evidence that the person was so informed. If a person is on release pending
13 the adjudication of a prior charge, and the court before which the person is charged with
14 committing a subsequent offense after a hearing at which the person shall have the right to be
15 represented by counsel, finds probable cause to believe that the person has committed a crime
16 during said period of release, the court shall then determine, in the exercise of its discretion,
17 whether the release of said person will seriously endanger any person or the community. In
18 making said determination, the court shall consider the gravity, nature and circumstances of the
19 offenses charged, the person's record of convictions, if any, and whether said charges or
20 convictions are for offenses involving the use or threat of physical force or violence against any
21 person, whether the person is on probation, parole or other release pending completion of
22 sentence for any conviction, whether he is on release pending sentence or appeal for any
23 conviction, the person's mental condition, and any illegal drug distribution or present drug
24 dependency. If the court determines that the release of said person will seriously endanger any
25 person or the community and that the detention of the person is necessary to reasonably assure
26 the safety of any person or the community, the court may revoke bail on the prior charge and
27 may order said person held without bail pending the adjudication of said prior charge, for a
28 period not to exceed sixty days. The hearing shall be held upon the person's first appearance
29 before the court before which the person is charged with committing an offense while on release
30 pending adjudication of a prior charge, unless that person, or the attorney for the commonwealth,
31 seeks and the court allows, a continuance because a witness or document is not immediately
32 available. Except for good cause, a continuance on motion of the person shall not exceed seven
33 days and on motion of the attorney for the commonwealth may not exceed three business days.

34 During such continuance, the person may be detained consistent with the provisions of this
35 section. Said order shall state in writing the reasons therefor and shall be reviewed by the court
36 upon the acquittal of the person, or the dismissal of, any of the cases involved. A person so held
37 shall be brought to trial as soon as reasonably possible.

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

55 When a petition for review is filed in the district court or with the detaining authority
56 subsequent to defendant's district court appearance, the clerk of the district court or the detaining

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

80 personal recognizance without surety, or has posted bail and has been released from custody, the
81 superior court shall order the defendant to appear before the court for review on the next business
82 day following the filing of the Commonwealth's petition for review, and such hearing shall not
83 be continued absent extraordinary circumstances. The district court is authorized to order any
84 officer authorized to execute criminal process to transfer the defendant and any papers herein
85 above described from the district court or the detaining authority to the superior court, and to
86 coordinate the transfer of the defendant and the papers by such officer. The petition for review
87 shall constitute authority in the person or officer having custody of the defendant to transport the
88 defendant to said superior court without the issuance of any writ or other legal process, provided,
89 however, that any district or superior court is authorized to issue a writ of habeas corpus for the
90 appearance forthwith of the defendant before the superior court.

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

103 defendant in accordance with the terms of the process by which he was ordered committed by the
104 district court.

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

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

110 (7) A person aggrieved by the denial of a district court justice to admit him to bail on his
111 personal recognizance without surety, or the

112 Commonwealth, with the approval of the District Attorney or the Attorney General, or
113 his or her designee, may petition the superior court for a review of the order of the recognizance.
114 The justice of the district court shall thereupon immediately notify the defendant and the
115 Commonwealth of the right to file a petition for review in the superior court. The
116 Commonwealth's petition shall be filed no later than the next business day after the entry of the
117 order of the district court or the detaining authority. The filing of a petition by the
118 Commonwealth shall not stay the order of the district court admitting the defendant to bail on his
119 personal recognizance without surety or releasing the defendant on conditions as set forth in
120 subsection (2). The court shall inform the defendant that a petition by the Commonwealth may
121 be filed, that if the Commonwealth files a petition and if the defendant is released, he shall
122 appear at the superior court for the hearing on the morning of the next business day following the
123 filing of the Commonwealth's petition, and that failure to appear could result in arrest or
124 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 58A, hear
163 the petition for review under Section 58A as speedily as practicable and except for unusual
164 circumstances, on the same day the petition is filed; provided, however, that the court may
165 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.