

**HOUSE . . . . . No. 3278**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*Michael S. Day*

*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 to improve probation violation proceedings.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Michael S. Day</i>	<i>31st Middlesex</i>
<i>Stephan Hay</i>	<i>3rd Worcester</i>
<i>Paul F. Tucker</i>	<i>7th Essex</i>

**HOUSE . . . . . No. 3278**

By Mr. Day of Stoneham, a petition (accompanied by bill, House, No. 3278) of Michael S. Day, Stephan Hay and Paul F. Tucker relative to probation violation proceedings. The Judiciary.

**The Commonwealth of Massachusetts**

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

An Act to improve probation violation proceedings.

*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. Chapter 279 of the General Laws is hereby amended by striking out section  
2 3 and inserting in place thereof the following section:-

3 Section 3.

4 For the purposes of this section, probation officer shall include a chief probation officer, a  
5 regional probation supervisor, a statewide probation supervisor, the director of the ELMO center,  
6 the deputy commissioner of field services, and any other personnel whom the commissioner of  
7 probation shall direct.

8 (a) If a probation officer has probable cause to believe that a person placed under  
9 probation supervision or in the custody or care of a probation officer pursuant to sections 42A,  
10 58, 58A, or 87 of chapter 276 or any other statute that allows the court to set conditions of  
11 release, has violated the conditions set by the court, the probation officer may arrest the  
12 probationer or may issue a warrant for custody of the probationer. The probation officer shall

13 arrange for the appearance of the probationer before the court pursuant to this section. Such  
14 warrant shall constitute sufficient authority to a probation officer and to the superintendent,  
15 jailer, or any other person in charge of any jail, house of correction, lockup, or place of detention  
16 to whom it is exhibited, to hold in temporary custody the probationer detained pursuant thereto.  
17 A court may issue an arrest warrant upon a showing of probable cause to believe the probationer  
18 has violated any condition of probation or release. Notwithstanding any law to the contrary,  
19 persons held on warrants issued pursuant to this section shall not be admitted to bail.

20 (b) The probation officer shall provide a copy of the notice of surrender to the district  
21 attorney, and the court shall provide to the district attorney the opportunity to be heard and  
22 present evidence at the violation hearing. If a warrant has been issued by the court for the arrest  
23 of such a person and he is a prisoner in any correctional institution, jail, or house of correction,  
24 the commissioner of correction or the sheriff, as the case may be, shall notify such prisoner that  
25 the prisoner has the right to apply to the court for prompt disposition thereof. Such an application  
26 shall be in writing and given or sent by such prisoner to the commissioner of correction or  
27 sheriff, who shall promptly forward it to the court from which the warrant issued and to the  
28 appropriate district attorney. Any such prisoner shall, within six months after such application is  
29 received by the court, be brought into court for sentencing or other lawful disposition of his case  
30 as hereinbefore provided.

31 (c) Upon a finding by a preponderance of the evidence that the probationer has violated a  
32 condition of probation, a judge may terminate probation supervision, continue probation  
33 supervision, modify the terms and duration of probation supervision, or impose a lawful  
34 sentence. If a sentence imposed is for less than the maximum sentence permitted by law for the  
35 offense, the judge may order probation supervision upon release under such terms and conditions

36 as the judge may set, but not to exceed the original sentence; in which case, a further sentence  
37 may be imposed after a subsequent finding of a violation of a condition of probation. In no event  
38 shall the total cumulative incarceration of a probationer exceed the maximum sentence permitted  
39 by law for the offense. A judge may impose a sentence of less than a previously-imposed  
40 suspended sentence, but the total cumulative incarceration of the probationer for that offense  
41 shall not exceed the length of any suspended sentence or the maximum sentence permitted by  
42 law for the offense, whichever is less.

43 (d) Where a judge has previously warned a probationer that the probationer would be  
44 subject to detention for any violation of any probation condition, a judge may in the exercise of  
45 discretion conduct a prompt hearing on any alleged violation of a condition of probation and  
46 commit the probationer to a period of detention in a jail or house of correction not to exceed  
47 fourteen days upon finding by a preponderance of the evidence that the probationer has violated  
48 a condition of probation. The probationary term shall be stayed during such a period of detention  
49 and resume upon the completion of the period of detention, with any modification of the  
50 conditions of probation that the judge shall deem prudent. If the judge in the exercise of  
51 discretion determines that a sanction of more than fourteen days may be proper, the judge shall  
52 permit the probationer upon request no less than seven days to prepare for a probation violation  
53 hearing. Notwithstanding the foregoing, no probationer shall be detained for a cumulative period  
54 that exceeds the maximum sentence for the conviction upon which the probationer was placed on  
55 probation.