

**HOUSE** . . . . . No. 4290

# The Commonwealth of Massachusetts



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LIEUTENANT GOVERNOR

December 15, 2021

To the Honorable Senate and House of Representatives,

To meet the fundamental government responsibility of keeping our Commonwealth safe, I am submitting for your consideration “An Act to Protect Victims of Crimes and the Public.” This updated version of legislation I first filed several years ago is part of a package of proposals I am filing today that together will strengthen protections for survivors and our communities.

Since I first filed this legislation and throughout the time our administration has advocated for it, we have heard personal stories of survivors and the families of victims whose lives have been upended by the gaps in our state law that do not provide adequate protections from dangerous persons. In our efforts to promote this legislation, we have been grateful to partner with survivors, domestic violence providers, advocacy organizations and others who speak to the urgency of enacting these critical public safety reforms. Those individuals have shared stories of dangerous individuals whose actions had wreaked havoc on their lives. And in many cases, the procedures by which the court system deals with such individuals failed to provide them with the protection and peace of mind they deserve. These stories underscore the importance of acting quickly to enact these reforms. To announce the filing of this legislation today, Lt. Governor Polito and I held a roundtable event where we heard several such stories from survivors, which deepened our commitment to this proposal that will protect our families and communities.

This bill does not change the legal standard applicable to dangerousness hearings, and will continue to require that, before detaining an individual, a judge hold a hearing and determine

that no conditions of release can ensure public safety. But the existing limitations on the current system of pretrial detention unnecessarily expose victims to potential harm. For example, a prosecutor must either seek a dangerousness hearing during a defendant's first appearance in court or forfeit that ability entirely, ignoring the possibility that circumstances arise after that first court appearance that no less conclusively establish that the community is at risk from the defendant. It also means that a defendant initially held on cash bail cannot later be subject to a dangerousness hearing. The tragic consequence of that limitation was evident in the summer of 2020, when a defendant charged with rape was held on a high cash bail, obviating the need for a dangerousness hearing. When a non profit organization posted that bail on the defendant's behalf, however, prosecutors could not argue that he should be detained because he was also dangerous, and the defendant then allegedly committed another rape while on release. The provisions of this legislation could have avoided that result by permitting prosecutors to request a dangerousness hearing after the defendant had been released on bail.

This bill also aligns the pretrial detention statute with a commonsense understanding about how criminal behavior poses a danger to community members. A person alleged to have committed an indecent assault and battery on a child or a statutory rape is not currently subject to a dangerousness hearing, and a defendant's history of serious criminal convictions is also not grounds for that hearing. It does the public little good to have a dangerousness statute that fails to protect victims from conduct that plainly puts the public at risk. Furthermore, the current statute only provides for protection for a defined period, rather than until the disposition of the criminal charges. A person who is so dangerous that his or her release threatens the safety of a specific victim or of the community at large does not become safe to release merely because three or four months have passed since the time of arrest. The bill I am filing today ensures that dangerous crimes are not exempt from a dangerousness hearing, and that a dangerousness detention lasts until the underlying criminal proceedings are final.

Most individuals arrested in Massachusetts are released pending trial, and that will continue to be the case. But when a person is arrested and released on pretrial conditions—aimed at ensuring the person obeys the law—victims and other members of the public should be able to rely on those conditions for protection and to trust that there will be consequences for a defendant who violates them. First, the legislation improves the system for notifying victims of crimes of abuse and other dangerous crimes when a defendant is going to be released. Next, the bill empowers police to detain people who they observe violating court-ordered release conditions. Current law does not allow this, and instead requires a court to first issue a warrant. But it is our police officers, not our judges and probation officers, who are on the streets of our cities and towns, and who are in position to see and to act when offenders are violating conditions of release. Finally, the legislation authorizes judges to revoke a person's release when the offender has violated a court-ordered condition, such as an order to stay away from a victim, or from a public playground. Current law requires an additional finding of dangerousness before release may be revoked.

Additional provisions of this legislation:

- Extend the requirement that police take the fingerprints of people arrested for felonies to all people arrested, regardless of the charge, and allows a court to order fingerprinting of any person arraigned on any criminal charge, to ensure that decisions about release can be made with knowledge of a person's true identity and full criminal history.
- Enhance the collection and value of data for the cross-tracking system required by G.L. c. 6A, § 18 $\frac{3}{4}$ , by ensuring that information about an individual who is arrested or arraigned can be linked to a unique fingerprint identifier.
- Require that the probation department, bail commissioners and bail magistrates notify authorities who can take remedial action when a person who is on pre-trial release commits a new offense anywhere in the Commonwealth or elsewhere.
- Allow bail commissioners and bail magistrates to consider dangerousness in deciding whether to release an arrestee from a police station when court is out of session.
- Create a new felony offense for cutting off a court-ordered GPS device.
- Create a level playing field for appeals of district court release decisions to the superior court by allowing appeals by prosecutors, in addition to defendants, and giving more deference to determinations made in the first instance by our district court judges.
- Require that the courts develop a text message service to remind defendants of upcoming court dates.
- Create a task force to recommend adding information to criminal records so that prosecutors and judges can make more informed recommendations and decisions about conditions of release and possible detention on grounds of dangerousness.
- Clarify the permissible sentences following conviction for certain serious crimes: that probation is not a permissible sentence for home invasion or commission of a felony after two prior significant felony convictions; and that the sentence imposed on a person convicted of committing a felony while in possession of a firearm is a minimum mandatory sentence.

I urge your prompt enactment of this legislation.

Respectfully submitted,

Charles D. Baker,  
*Governor*

## The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court  
(2021-2022)**

## An Act to protect victims of crimes and the public.

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to strengthen the protections for victims of crime and the public of statutes under which the judicial system decides questions relating to the pre-trial release of dangerous persons, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety and convenience.

*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 1A of chapter 263 of the General Laws, as appearing in the 2020  
2 Official Edition, is hereby amended by striking out, in line 3, the word "felony" and inserting in  
3 place thereof the following word:- crime.

4 SECTION 2. Said section 1A of said chapter 263, as so appearing, is hereby further  
5 amended by adding the following sentence:- A judge may order that any person arraigned on a  
6 criminal charge at the time of arraignment or as soon thereafter as is practicable be photographed  
7 and fingerprinted according to the system of the department of state police by a law enforcement  
8 agency with jurisdiction over the charge, or by any other entity with that capability.

9 SECTION 3. The second paragraph of section 18B of chapter 265, as so appearing, is  
10 hereby amended by striking out the first sentence and inserting in place thereof the following 2

11 sentences:- No sentence imposed under the provisions of this section shall be for less or reduced  
12 to less than the minimum term of imprisonment. No person convicted under this section be  
13 eligible for probation, parole, furlough or work release or receive any deduction from his  
14 sentence for good conduct until he shall have served the minimum term of such additional  
15 sentence; provided, however, that the commissioner of correction may, on the recommendation  
16 of the warden, superintendent or other person in charge of a correctional institution or the  
17 administrator of a county correctional institution, grant to such offender a temporary release in  
18 the custody of an officer of such institution for the following purposes only: (i) to attend the  
19 funeral of a spouse or next of kin; (ii) to visit a critically ill close relative or spouse; or (iii) to  
20 obtain emergency medical services unavailable at such institution.

21 SECTION 4. Section 18C of said chapter 265, as so appearing, is hereby amended by  
22 adding the following sentence:- No sentence imposed under this section shall be reduced or  
23 suspended nor shall such person so sentenced be eligible for probation, parole, work release or  
24 furlough or receive any deduction from such person's sentence for good conduct.

25 SECTION 5. Chapter 268 of the General Laws is hereby amended by inserting after  
26 section 13E the following section:-

27 Section 13F. Whoever unlawfully removes, destroys, damages, or interferes with the  
28 proper functioning of a geolocation monitoring device, breath-testing instrument, or other  
29 mechanism intended to facilitate recognizance or compliance with conditions of pretrial release,  
30 probation or parole, shall be punished by imprisonment in the state prison for not more than 10  
31 years or imprisonment in a house of correction for not more than 2 and ½ years. In any  
32 proceeding under section 58, 58A, 58B or 59 of chapter 276, the fact of a person's prior

33 conviction pursuant to this section shall be prima facie evidence that there is no financial  
34 condition or other condition of release that will reasonably assure the presence of the person so  
35 convicted.

36 SECTION 6. Section 42A of chapter 276 of the General Laws, as appearing in the 2020  
37 Official Edition, is hereby amended by striking out the first 6 paragraphs and inserting in place  
38 thereof the following paragraph:-

39 As part of the disposition of any criminal complaint involving a crime of abuse, as  
40 defined in section 57, the court may establish such terms and conditions of probation as will  
41 insure the safety of the person who has suffered such abuse or threat thereof, and will prevent the  
42 recurrence of such abuse or threat thereof.

43 SECTION 7. Said chapter 276 is hereby amended by striking out sections 57 through  
44 58B, inclusive, as so appearing, and inserting in place thereof the following 6 sections:-

45 Section 57. (a) As used in sections 57 through 59, the following words shall, unless the  
46 context clearly requires otherwise, have the following meanings:

47 “Controlled substance”, the same meaning as in section 1 of chapter 94C.

48 “Crime of abuse”, a crime that involves assault and battery, trespass, threat to commit a  
49 crime, or any other criminal conduct and that involves the infliction, or the imminent threat of  
50 infliction, of physical harm upon a person by such person’s family or household member as  
51 defined in section 1 of chapter 209A; any violation of an order issued pursuant to section 18 or  
52 34B of chapter 208, section 32 of chapter 209, section 3, 4 or 5 of chapter 209A or section 15 or

53     20 of chapter 209C; or any act that would constitute abuse, as defined in section 1 of chapter  
54     209A; or a violation of section 13M or 15D of chapter 265.

55                 “Dangerous crime”, any of the following:

56                 (A) a felony that has as an element of the crime the use, attempted use or threatened use  
57     of physical force against the person of another;

58                 (B) the crimes of burglary or arson;

59                 (C) a violation of an order pursuant to section 18, 34B or 34C of chapter 208, section 32  
60     of chapter 209, section 3, 4 or 5 of chapter 209A or section 15 or 20 of chapter 209C;

61                 (D) a misdemeanor or felony involving abuse as defined in section 1 of chapter 209A;

62                 (E) a sex offense involving a child as defined in section 178C of chapter 6;

63                 (F) a violation of section 13B of chapter 268;

64                 (G) a violation of section 13, 13 ½, 13B, 13B ½, 13 B ¾, 13F, 18B, 22, 22A, 22B, 22C,  
65     23, 23A, 23B, 24, 25, 26B, 26C, 37, 43A, 50 or 51 of chapter 265 or a violation of section 13D  
66     of said chapter 265 in which the public employee is a police officer;

67                 (H) a violation of section 4A, 4B, 16, 29A, 29B, 29C, 77 or 105 of chapter 272;

68                 (I) a violation of section 24G of chapter 90 which occurs under the influence of alcohol  
69     or drugs, or a violation of section 8B of chapter 90B; or a third or subsequent violation of section  
70     24 of chapter 90 or section 8 of chapter 90B;

71                   (J) a crime under chapter 94C for which the maximum term of imprisonment is more  
72 than 10 years;

73                   (K) any violation of sections 102 or 102A, or a malicious violation of section 127 of  
74 chapter 266;

75                   (L) a violation of section 131N of chapter 140 or subsection (a), (b), (c), (d), (h), (j) or  
76 (m) of section 10 or section 11C of chapter 269;

77                   (M) a violation of section 10A, 10E, or 10G of chapter 269;

78                   (N) threats to kill, rape, or cause serious bodily injury;

79                   (O) conspiracy or solicitation to commit any of the above enumerated crimes.

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

81                   “Judicial officer”, a judge or a clerk or assistant clerk of the superior, district, Boston  
82 municipal, or juvenile court.

83                   “Release order”, any order releasing a defendant on personal recognizance or on  
84 conditions, regardless of whether the defendant has satisfied any financial condition.

85                   “Secured bond”, payment to the court of a specified amount of money that in the  
86 discretion of the judicial officer will reasonably assure the presence of a defendant, taking into  
87 consideration the defendant’s ability to pay.

88                   “Unsecured bond”, a defendant’s promise to pay to the court a specified amount of  
89 money if the defendant does not appear before the court on a date certain or fails to abide by any  
90 conditions of release set under clause (B) of paragraph (1) of subsection (b) of section 58, such

91 amount being an amount that in the discretion of the judicial officer will reasonably assure the  
92 presence of a defendant, taking into consideration the defendant's ability to pay.

93                 (b) Upon the appearance of a defendant charged with a crime, the judicial officer  
94 shall hold a hearing, at which the defendant and his counsel, if any, may participate and inquire  
95 into the case, to determine whether the defendant shall be released or detained pending trial of  
96 the case, as provided in this section and sections 58, 58A, and 58B. At the hearing, the judicial  
97 officer shall have immediate access to all pending and prior criminal offender record  
98 information, board of probation records, out of state criminal records, and police and incident  
99 reports related to the defendant, upon oral, telephonic, facsimile or electronic mail request, to the  
100 extent practicable.

101                 At the conclusion of such hearing, the judicial officer shall issue an order that, pending  
102 trial, the defendant be:

103                 (1) Released on personal recognizance under clause (A) of paragraph (1) of subsection  
104 (b) of section 58;

105                 (2) Released on financial or other conditions under clauses (B) or (C) of paragraph (1) of  
106 subsection (b) of section 58;

107                 (3) Detained under section 58A;

108                 (4) Released on financial or other conditions under section 58A; or

109                 (4) Temporarily detained to permit an opportunity for the attorney for the commonwealth  
110 to move for revocation of conditional release under section 58B.

111                   (c)     For a person who is arrested and not released under section 59, a hearing under  
112 section 58 shall take place no later than the next day that the superior, district, Boston municipal,  
113 or juvenile court in the place of jurisdiction is in session, provided that, in a case that involves a  
114 crime of abuse, (1) the commonwealth shall be the only party permitted to move for arraignment  
115 within 3 hours of a complaint being signed by a magistrate or a magistrate's designee; and (2) a  
116 defendant arrested, who has attained the age of 18 years, shall not be released sooner than 6  
117 hours after arrest, except by a judge in open court.

118                   Any hearing under section 58A shall be held immediately upon the motion of the  
119 commonwealth unless the defendant, or the attorney for the commonwealth, seeks a continuance.  
120 Except for good cause, a continuance on motion of the defendant may not exceed 5 business  
121 days, and a continuance on motion of the attorney for the commonwealth may not exceed 3  
122 business days. During a continuance, the individual shall be detained. The commonwealth may  
123 move for an initial hearing under section 58A at any time before disposition of the case. Once a  
124 hearing under section 58A commences, the defendant shall be detained pending completion of  
125 the hearing.

126                   In any pending case where the defendant has been first arraigned in the district, Boston  
127 municipal, or juvenile court and is subsequently arraigned in superior court for the same or  
128 related crimes arising out of the same incident, the superior court may conduct a new hearing  
129 under section 58 or, upon motion of the commonwealth, section 58A, provided that any order of  
130 the district, Boston municipal, or juvenile court concerning the defendant issued under section 58  
131 or 58A shall remain in effect until such time as the superior court issues a new order under  
132 section 58 or 58A. In any such new hearing in the superior court, the judicial officer shall  
133 consider the defendant's compliance with any previously ordered conditions of release.

134        Any hearing under section 58 may be reopened by the judicial officer, and any hearing  
135    under section 58A may be reopened by the judge. Any hearing under either section may also be  
136    reopened upon motion of the commonwealth or the defendant, provided that the judicial officer  
137    or judge determines by a preponderance of the evidence that: (1) information exists that was not  
138    known to the movant at the time of the hearing or there has been a material change in  
139    circumstances; and (2) such information or change in circumstances has a substantial bearing on  
140    the issue of whether the defendant's detention, defendant's release on conditions, or conditions  
141    imposed on the defendant are necessary and sufficient to reasonably assure the appearance of the  
142    defendant and the safety of any other person and the community. In any such reopened hearing,  
143    the judicial officer shall consider the defendant's compliance with any previously ordered  
144    conditions of release.

145        Section 58. (a) Unless the attorney for the commonwealth has moved for detention under  
146    section 58A, the judicial officer shall order the pretrial release of a defendant on personal  
147    recognizance, subject to the condition that the defendant not commit a new crime during the  
148    period of release, unless the judicial officer determines, in the exercise of his or her discretion,  
149    that the release will not reasonably assure the appearance of the defendant or will endanger the  
150    safety of any other person or the community.

151        (b) If the judicial officer determines, in the exercise of his or her discretion, that the  
152    release described in subsection (a) will not reasonably assure the appearance of the defendant or  
153    will endanger the safety of any other person or the community:

154        (1) the judicial officer shall order the pretrial release of the defendant subject to:

155                   (A) the condition that the defendant not commit a new crime during the period of release;

156                  and

157                   (B) the least restrictive further condition, or combination of conditions, that the judicial  
158                  officer determines will reasonably assure the appearance of the defendant, which may include the  
159                  condition or combination of conditions that the defendant during the period of release shall:

160                   (i) abide by specified restrictions on place of abode or travel;

161                   (ii) report on a regular basis to a designated law enforcement agency, pretrial services  
162                  agency, or other agency;

163                   (iii) refrain from use of alcohol, marijuana, or other intoxicants, and from use of any  
164                  controlled substance, except as prescribed or certified by a licensed medical practitioner;

165                   (iv) submit to random testing to monitor compliance with any conditions ordered under  
166                  subclause (iii);

167                   (v) comply with a specified curfew or home confinement;

168                   (vi) undergo medical, psychological, or psychiatric treatment, including treatment for  
169                  substance or alcohol use disorder, if available, and remain in a specified institution if required for  
170                  that purpose;

171                   (vii) submit to electronic monitoring, provided that any condition of electronic  
172                  monitoring may include either specified inclusion or exclusion zones or a curfew;

173                   (viii) participate in a community corrections program pursuant to chapter 211F;  
174                  provided, however, that the defendant shall consent to such participation;

(ix) participate in a notification program pursuant to subsection (c);

176 (x) provide an unsecured or secured bond to satisfy a financial condition that the judicial  
177 officer may specify; provided that a financial condition shall be set in an amount no higher than  
178 what would reasonably assure the appearance of the person before the court after taking into  
179 account the person's financial resources; provided, however, that a higher than affordable  
180 financial condition may be set if neither alternative nonfinancial conditions nor an amount which  
181 the person could likely afford would adequately assure the person's appearance before the court;  
182 and provided further that for crimes that do not carry a penalty of incarceration, no secured bond  
183 may be ordered unless the defendant has previously failed to appear on that charge; and

184 (xi) satisfy any other condition that is reasonably necessary to assure the appearance of  
185 the defendant; and

186                   (C) the least restrictive further condition, or combination of conditions, that the judicial  
187 officer determines will reasonably assure the safety of any other person and the community,  
188 which may include the condition or combination of conditions that the defendant during the  
189 period of release shall:

190 (i) refrain from abusing and harassing any alleged victim of the charged crime and any  
191 potential witness who may testify concerning the charged crime;

192 (ii) stay away from and have no contact with an alleged victim of the charged crime and  
193 with any potential witness who may testify concerning the charged crime;

196 (iv) comply with restrictions on personal associations, a curfew or home confinement;

197 (v) refrain from use of alcohol, marijuana, or other intoxicants, and from use of any

198 controlled substance except as prescribed or certified by a licensed medical practitioner;

199 (vi) undergo medical, psychological, or psychiatric treatment, including treatment for

200 substance or alcohol use disorder, if available, and remain in a specified institution if required for

201 that purpose;

202 (vii) submit to electronic monitoring, provided that any condition of electronic

203 monitoring may include either specified inclusion or exclusion zones or a curfew;

204 (viii) satisfy any other condition that is reasonably necessary to assure the safety of any

205 other person and the community.

206 (2) When setting any conditions under clause (B) of paragraph (1), the judicial officer

207 shall consider where relevant the following factors concerning the defendant:

208 (A) financial resources;

209 (B) family ties;

210 (C) any record of convictions under the laws of the commonwealth or the laws of

211 another state, the United States, or a military, territorial or Indian tribal authority;

212 (D) potential penalty the defendant faces;

213 (E) any illegal drug distribution or present drug dependency;

214 (F) any employment record;

215 (G) any history of mental illness;

216 (H) any flight to avoid prosecution or fraudulent use of an alias or false identification;

217 (I) any failure to appear at any court proceedings to answer to a charge;

218 (J) any prior violation of conditions of release, probation, or parole, or of a temporary or

219 permanent order issued under section 18 or 34B of chapter 208, section 32 of chapter 209,

220 section 3, 4 or 5 of chapter 209A or section 15 or 20 of chapter 209C;

221 (K) the nature and circumstances of the crimes charged;

222 (L) whether the defendant was, at the time of the crime charged, on release pending

223 adjudication, sentencing or appeal of a prior charge;

224 (M) whether the defendant was, at the time of the crime charged, under the supervision

225 of the commissioner of probation, the parole board or any other comparable authority of this or

226 another state or of the federal government.

227 (3) When setting any conditions under clause (C) of paragraph (1), the judicial officer

228 shall consider where relevant the following factors concerning the defendant:

229 (A) any factors listed in clauses (B) through (M) of paragraph (2);

230 (B) whether the acts alleged involve a crime of abuse;

231 (C) any history of orders issued against the defendant pursuant to section 18 or 34B of

232 chapter 208, section 32 of chapter 209, section 3, 4 or 5 of chapter 209A or section 15 or 20 of

233 chapter 209C; and

234                   (D) any risk that the defendant will attempt to obstruct justice, or attempt to threaten,  
235                   injure, or intimidate a prospective witness or juror.

236                   (4) In establishing any financial condition under clause (B) of paragraph (1), any order  
237                   must comply with the following requirements:

238                   (A) A judicial officer may not impose a financial condition to assure the safety of any  
239                   other person or the community, but may impose a financial condition when necessary to  
240                   reasonably assure the defendant's appearance.

241                   (B) Where it appears, based on credible evidence, that the defendant lacks sufficient  
242                   financial resources to post any secured bond required by the judicial officer, such that requiring  
243                   such secured bond will result in the long-term pretrial detention of the defendant, the judicial  
244                   officer must provide findings of fact and a statement of reasons for the decision, either in writing  
245                   or orally on the record, confirming that the judicial officer considered the defendant's financial  
246                   resources and explaining why the defendant's risk of non-appearance is so great that no  
247                   alternative, less restrictive financial or nonfinancial conditions will suffice to assure the  
248                   defendant's presence at future court proceedings and explaining how the amount was calculated  
249                   after taking the person's financial resources into account and why the commonwealth's interest  
250                   in a financial condition outweighs the potential adverse impact on the person, their immediate  
251                   family or dependents resulting from pretrial detention.

252                   (C) When reconsidering or reviewing a financial condition in a case where a defendant  
253                   has been detained due to his inability to meet the financial condition, a judicial officer shall  
254                   consider the length of the defendant's pretrial detention and the equities of the case.

255                         (5) If the judicial officer imposes a financial condition, the clerk and assistant clerks of  
256 the court shall accept, without charging any fee, any money tendered in satisfaction of such  
257 financial condition during the regular business hours of that court.

258                         (6) Before ordering the release of any defendant charged with a crime against the person  
259 or property of another, the judicial officer shall comply with the domestic abuse inquiry  
260 requirements of section 56A.

261                         (7) In a release order issued under this section, the judicial officer shall:

262                             (A) Include a written statement that sets forth all the conditions to which the release is  
263 subject, in a manner sufficiently clear and specific to serve as a guide for the defendant's  
264 conduct; and

265                             (B) If the defendant is not released on personal recognizance or unsecured bond, include  
266 a written summary of the reasons for denying such release and detailed reasons for imposing any  
267 financial condition; and

268                             (C) Advise the defendant of:

269                                     (i) The consequences of violating a condition of release, including immediate arrest or  
270 issuance of a warrant for the defendant's arrest, revocation of release, and, if applicable, the  
271 potential that the person may face criminal penalties, including penalties for violating section  
272 13B of chapter 268; and

273                                     (ii) If the defendant is charged with a crime of abuse, informational resources related to  
274 domestic violence, which shall include, but shall not be limited to, a list of certified intimate  
275 partner abuse education programs located within or near the court's jurisdiction.

276                   (c)     A person who has been charged with a crime shall provide the court with his or  
277     her cellular telephone number, if the defendant has such a device, unless the defendant opts out  
278     of the service provided under this subsection; provided, however, that upon the order of a  
279     judicial officer pursuant to subclause (ix) of clause (B) of paragraph (1) of subsection (b), a  
280     defendant may not opt out of such service. The court shall provide a service using a system of  
281     automated text messaging to remind criminal defendants of mandatory court appearance dates in  
282     advance of the date of such appearance. The court shall keep all information provided by a  
283     criminal defendant pursuant to this subsection confidential, and such information may not be  
284     used in any proceeding; provided, however, that the fact that a defendant did or did not  
285     participate in this system shall be marked on the docket and may be used in a proceeding if  
286     otherwise admissible.

287                   (d)     There shall not exist in the case of a person charged with murder a right to release  
288     pending trial; provided, however, that a judge may in his or her discretion, order a defendant so  
289     charged released subject to any conditions enumerated in paragraph (1) of subsection (b).

290                   Section 58A. (a) Upon motion of the attorney for the commonwealth, the judge shall  
291     hold a hearing to determine whether any condition or combination of conditions set forth in  
292     section 58 will reasonably assure the safety of any other person and the community, in a case:

293                   (1) where the defendant is charged with a dangerous crime; or

294                   (2) where the defendant is charged with a crime for which the potential penalty includes a  
295     sentence to the house of correction or state prison and

296                   (A) the defendant has been convicted of a dangerous crime, or has been convicted of a  
297 like violation of the laws of another state, the United States or a military, territorial or Indian  
298 tribal authority; or

299                   (B) there are specific, articulable facts and circumstances demonstrating a serious risk  
300 that the defendant may attempt to obstruct justice, or attempt to threaten, injure, or intimidate a  
301 law enforcement officer, an officer of the court, or a prospective witness or juror in any criminal  
302 investigation or judicial proceeding.

303                   (b)       (1) If, after a hearing, the judge finds by clear and convincing evidence that no  
304 condition or combination of conditions will reasonably assure the safety of any other person and  
305 the community, the judge shall order that the defendant be detained pending trial. Such order  
306 shall:

307                   (A) include written findings of fact and a written statement of the reasons for the  
308 detention;

309                   (B) direct that the defendant be committed to a corrections facility separate, to the extent  
310 practicable, from persons serving sentences; and

311                   (C) direct that the defendant be afforded reasonable opportunity for private consultation  
312 with counsel.

313                   (2) If, after a hearing, the judge does not issue an order under paragraph (1), the  
314 defendant shall be released, pursuant to section 58, on personal recognizance or unsecured bond  
315 or on such conditions as the judge determines to be necessary to reasonably assure the safety of  
316 any other person and the community.

317           (c)     In conducting a hearing under this section:

318           (1) the judge shall take into account available information concerning:

319           (A) any of the factors listed in paragraph (3) of subsection (b) of section 58 where

320          relevant; and

321           (B) the nature and seriousness of the danger to any person or the community that would

322          be posed by the defendant's release;

323           (2) the defendant shall have the right to be represented by counsel at a hearing under this

324          section and, if financially unable to obtain adequate representation, to have counsel appointed;

325           (3) the defendant shall be afforded an opportunity to testify;

326           (4) the defendant shall be afforded an opportunity to present witnesses, to cross-examine

327          witnesses who appear at the hearing, and to present information by proffer or otherwise;

328          provided, however, that before issuing a summons to an alleged victim, or a member of the

329          alleged victim's family, to appear as a witness at the hearing, the defendant shall demonstrate to

330          the court a good faith and reasonable basis for believing that the testimony from the witness will

331          be material and relevant to support a conclusion that the defendant should not be detained; and

332           (5) the law concerning admissibility of evidence in criminal trials shall not apply to the

333          presentation and consideration of information at a hearing under this section.

334           (d)     When a defendant has been released pursuant to section 58 and the attorney for

335          the commonwealth subsequently files a motion seeking to detain the defendant under this

336          section, the attorney for the commonwealth may file such motion ex parte. Upon such ex parte

337 filing, the court may, for good cause shown, issue a warrant for the defendant's arrest to secure  
338 his presence for such hearing. Any such hearing shall occur as otherwise set forth in this section.

339 (e) A defendant detained under this section shall be detained until the disposition of  
340 the case and shall brought to trial as soon as reasonably possible.

341 (f) Nothing in this section shall be construed as modifying or limiting the  
342 presumption of innocence.

343 Section 58B. (a) A defendant who has been released after a hearing pursuant to section  
344 58, 58A, 59 or 87 and who has violated a condition of his release, shall be subject to a revocation  
345 of release and an order of detention following a motion by the attorney for the commonwealth  
346 and a hearing as provided below. If there is probable cause to believe that, while on release, the  
347 defendant committed a felony or a dangerous crime a rebuttable presumption shall arise that no  
348 condition or combination of conditions will assure that the person will not pose a danger to the  
349 safety of any other person or the community.

350 (b) The judge shall enter an order of revocation and detention if after a hearing the  
351 judge finds:

352 (1) that there is probable cause to believe that the defendant has committed a felony or  
353 dangerous crime while on release; and

354 (2) by a preponderance of the evidence, that there are no conditions of release that will  
355 reasonably assure the defendant will not pose a danger to the safety of any other person or the  
356 community, or the defendant is unlikely to abide by any condition or combination of conditions  
357 of release.

358                         (c)     The judge may enter an order of revocation and detention if after a hearing the  
359     judge finds that there is probable cause to believe that the defendant has committed any crime  
360     while on release or clear and convincing evidence that the defendant has violated any other  
361     condition of release.

362                         (d)     If, following a hearing under this section, the judge does not issue a revocation  
363     order, the judge may issue a release order that may include any condition or combination of  
364     conditions of release set forth in clauses (B) and (C) of paragraph (1) of subsection (b) of section  
365     58.

366                         (e)     Upon the defendant's first appearance before the judge in the court which that  
367     conduct proceedings for revocation of a release order under this section, the hearing concerning  
368     revocation shall be held immediately unless the defendant or the attorney for the commonwealth  
369     seeks a continuance. During a continuance the defendant shall be detained. Except for good  
370     cause, a continuance on motion of the defendant shall not exceed 5 business days, a continuance  
371     on motion of the attorney for the commonwealth or probation shall not exceed 3 business days.

372                         (f)     A defendant detained under an order of revocation and detention shall be detained  
373     until the disposition of the case and shall be brought to trial as soon as reasonably possible.

374                         (g)     Where a person who is released under section 58, 58A, this section or 59 is the  
375     subject of a new criminal charge, the probation officer of the court issuing the new criminal  
376     charge shall notify the probation officer and the attorney for the commonwealth for the court or  
377     courts that have ordered the defendant's release on any earlier criminal charges

378                         Section 58C. In a case involving a crime of abuse or a dangerous crime with an  
379     identified victim, no person shall be released pursuant to section 58, 58A, 58B or 59 before the

380     alleged victim is notified of the defendant's imminent release; provided, however, that the  
381     defendant shall not be held more than 6 hours in order to permit prior notice to the alleged  
382     victim.

383                 When a defendant is to be released from the custody of a police department, such notice  
384     shall be provided by the police department. When a defendant is to be released from a  
385     courthouse, such notice shall be provided by the attorney for the commonwealth. When a  
386     defendant is to be released from a jail or correctional facility, such notice shall be provided by  
387     the superintendent. The person or agency responsible for providing notice shall undertake to  
388     provide notice promptly.

389                 Section 58D. Either the defendant or the attorney for the commonwealth, if aggrieved  
390     by the entry of an order or granting or denial of a motion under section 58, 58A or 58B by the  
391     district, Boston municipal or juvenile court, may petition the superior court for a review of such  
392     decision. Upon entry of such order or ruling on such motion, the justice of the district, Boston  
393     municipal or juvenile court shall immediately notify a defendant of his right to file a petition for  
394     review in the superior court. The trial court shall establish rules for the filing of such petitions,  
395     scheduling the hearing of such petitions and ensuring the transmission of necessary information  
396     to the superior court and notice to the parties and the probation department. The superior court  
397     shall in accordance with such rules, hear the petition for review as speedily as practicable and  
398     except for unusual circumstances, on the same day the petition is filed; provided, however, that  
399     the court may continue the hearing to the next business day if the required records and other  
400     necessary information are not available. The superior court may, after a hearing on the petition  
401     for review, grant the petition only upon a finding that the decision of the district, Boston  
402     municipal or juvenile court was the result of an error of law or abuse of discretion.

403           Section 59. (a) As used in this section, the following words, unless the context clearly  
404 requires otherwise, shall have the following meanings:-

405           “Bail commissioner”, a person other than a statutorily authorized magistrate or a superior  
406 court assistant clerk appointed by the trial court to admit people to bail after court hours.

407           “Bail magistrate”, a clerk-magistrate or assistant clerk-magistrate of the district, Boston  
408 municipal, or juvenile court departments, or a clerk of court of the superior court department or  
409 an assistant clerk of the superior court who has been approved by the trial court to admit people  
410 to bail after court hours.

411           (b) Except as provided in subsection (n), a bail commissioner or bail magistrate shall  
412 order the pretrial release of a person arrested and charged with a crime on personal recognizance  
413 subject to the condition that the person not commit a new crime during the period of release,  
414 unless the bail commissioner or bail magistrate determines that release on personal recognizance  
415 will not reasonably assure the appearance of the person or will endanger the safety of any other  
416 person or the community. Prior to issuing a release order or any other order under this section,  
417 the bail commissioner or bail magistrate shall have immediate access to all pending and prior  
418 criminal offender record information, board of probation records, out of state criminal records,  
419 and police and incident reports related to the person detained, upon oral, telephonic, facsimile or  
420 electronic mail request, to the extent practicable.

421           (c) If the bail commissioner or bail magistrate determines that a release on personal  
422 recognizance subject to the condition that the person not commit a new crime during the period  
423 of release will not reasonably assure the appearance of the person or will endanger the safety of

424 any other person or the community, the bail commissioner or bail magistrate shall order the  
425 pretrial release of the person subject to:

426 (1) the condition that the person not commit a new crime during the period of release; and

427 (2) the least restrictive further condition, or combination of conditions, that the bail  
428 commissioner or bail magistrate determines will reasonably assure the appearance of the person  
429 and the safety of any other person and the community, which may include the condition or  
430 combination of conditions that the person during the period of release shall:

431 (A) abide by specified restrictions on place of abode or travel;

432 (B) refrain from use of alcohol, marijuana, or other intoxicants, and from use of any  
433 controlled substance, except as prescribed or certified by a licensed medical practitioner;

434 (C) comply with restrictions on personal associations, a curfew or home confinement;

435 (D) refrain from abusing and harassing any alleged victim of the charged crime and any  
436 potential witness who may testify concerning the charged crime;

437 (E) stay away from and have no contact with an alleged victim of the charged crime and  
438 with any potential witness who may testify concerning the charged crime;

439 (F) refrain from possessing a firearm, rifle, shotgun, destructive device, or other  
440 dangerous weapon;

441 (G) provide unsecured or secured bond to satisfy a financial condition that the bail  
442 commissioner or bail magistrate may specify; or

443                         (H) satisfy any other condition that is reasonably necessary to assure the appearance of  
444                         the person or the safety of any other person or the community.

445                         When setting conditions under this subsection, the bail commissioner or bail magistrate  
446                         shall consider, where relevant, the factors set forth in paragraphs (2) and (3) of subsection (b) of  
447                         section 58.

448                         (d)         In a case that meets the criteria set forth in subsection (a) of section 58A, the bail  
449                         commissioner or bail magistrate shall order the person held until the next day that court is in  
450                         session unless the bail commissioner or bail magistrate determines that some condition or  
451                         combination of conditions will reasonably assure the safety of any alleged victim, any witness to  
452                         the alleged crime and the community. In making this determination, the bail commissioner or  
453                         bail magistrate shall consider the factors set forth in subsection (c) of section 58A. The bail  
454                         commissioner or bail magistrate shall memorialize such determination in a written statement of  
455                         reasons.

456                         (e)         Bail commissioners and bail magistrates may not impose a financial condition to  
457                         assure the safety of any other person or the community, but may impose a financial condition  
458                         when necessary to reasonably assure the person's appearance.

459                         (f)         Before issuing any release order under this section for a person who has been  
460                         charged with a new crime while released pending adjudication of a prior charge or who is on  
461                         probation, the bail commissioner or bail magistrate shall contact the probation service electronic  
462                         monitoring center to inform the service of the person's arrest and charge.

463                         (g)         In a release order issued under this section, the bail commissioner or bail  
464                         magistrate shall advise the person of:

465                         (1) The consequences of violating a condition of release, including immediate arrest or  
466                         issuance of a warrant for the person's arrest, revocation of release, and, if applicable, the  
467                         potential that the person may face criminal penalties, including penalties for violating section  
468                         13B of chapter 268; and

469                         (2) if the person is charged with a crime of abuse, informational resources related to  
470                         domestic violence, which shall include, but are not limited to, a list of certified intimate partner  
471                         abuse education programs located within or near the court's jurisdiction.

472                         (h)         The terms and conditions of any order by the bail commissioner or bail magistrate  
473                         shall remain in effect until the person is brought before the court for arraignment.

474                         (i)         When a bail commissioner or bail magistrate releases a person on conditions  
475                         under subsection (c), the bail commissioner or bail magistrate shall record the conditions and  
476                         provide a copy of such conditions to the person and the detaining authority and shall transmit a  
477                         copy to the court.

478                         (j)         If a person released on conditions by a bail commissioner or bail magistrate  
479                         under subsection (b) or (c) violates any such condition, the person may be subject to an order of  
480                         revocation of release and detention pursuant to section 58B.

481                         (k)         All bail commissioners and bail magistrates authorized to release a person on  
482                         recognition, release a person on conditions, or detain a person under this section shall be  
483                         governed by rules established by the chief justice of the trial court, subject to review by the  
484                         supreme judicial court.

485                   (l) Nothing in this section shall authorize a bail commissioner or bail magistrate to  
486 release a person arrested and charged with murder or a person arrested and charged with a crime  
487 of abuse while an order of protection under chapter 209A was in effect against such person.

488                   SECTION 8. Said chapter 276 is hereby further amended by inserting after section  
489 82Athe following section:-

490                   Section 82B. A person who is found violating any condition ordered under section 58 of  
491 chapter 119, section 58, 58A, 58B, 59, or 87 of this chapter, or section 1 or 1A of chapter 279, or  
492 any other condition of probation imposed by a court after conviction or admission to sufficient  
493 facts, or any term or condition of parole imposed by the parole board, may be arrested by a  
494 sheriff, deputy sheriff or police officer and kept in custody in a convenient place, not more than  
495 24 hours, Sunday excepted, until notice of the violation can be given to the probation service,  
496 and such person be taken before the court upon a warrant issued by the probation service; or, in  
497 the case of a person under parole supervision, to the parole board.

498                   SECTION 9. Subsection (a) of section 25 of chapter 279 of the General Laws, as  
499 appearing in the 2020 Official Edition, is hereby amended by adding the following sentence:- No  
500 sentence imposed under this subsection shall be reduced or suspended nor shall such person so  
501 sentenced be eligible for probation, parole, work release or furlough or receive any deduction  
502 from such person's sentence for good conduct.

503                   SECTION 10. There shall be a task force on criminal history data enhancements. The  
504 task force shall develop recommendations for enhancements to the criminal history information  
505 available to bail commissioner, bail magistrates, judicial officers, prosecutors and defense  
506 counsel that will allow actors in the criminal justice system to make more informed

507 recommendations and decisions regarding questions of pre-trial release and allow for access to  
508 pre-trial release conditions by law enforcement. The task force shall consider the value, cost and  
509 practicality of adding to a defendant's criminal history information regarding determinations of  
510 dangerousness, custody status, release conditions, reasons for detention, incidents of non-  
511 compliance with any conditions of pre-trial release and decisions regarding revocation of release.  
512 The task force shall identify, with respect to each recommendation, whether it requires  
513 legislation and, if so, prepare draft legislation.

514           The task force shall be comprised of the following persons or their designees: the  
515 secretary of the executive office of public safety and security, who shall serve as chair; the  
516 secretary of the executive office of technology services and security; the chief justice of the trial  
517 court; the commissioner of probation; the president of the Massachusetts district attorneys  
518 association; the chief counsel of the committee for public counsel services; and the president of  
519 the Massachusetts chiefs of police association. The task force shall consult with other individuals  
520 who have relevant expertise as needed.

521           The task force shall, within 180 days of the passage of this bill, submit its  
522 recommendations to the governor and to the clerks of the senate and house of representatives and  
523 the clerks shall forward the report to the senate and house chairs of the joint committee on the  
524 judiciary

525           SECTION 11. Subsection (c) of section 58 of chapter 276 shall take effect on July 1,  
526 2023.