

SENATE No. 1153

The Commonwealth of Massachusetts

PRESENTED BY:

John C. Velis

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 safely reduce the use of cash bail.

PETITION OF:

NAME:

John C. Velis

DISTRICT/ADDRESS:

Second Hampden and Hampshire

SENATE No. 1153

By Mr. Velis, a petition (accompanied by bill, Senate, No. 1153) of John C. Velis for legislation to safely reduce the use of cash bail. The Judiciary.

The Commonwealth of Massachusetts

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

An Act to safely reduce the use of cash bail.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to which is to improve the effectiveness of the pretrial release system in order to protect the public and reduce the reliance on cash bail, 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 42A of chapter 276 of the General Laws is hereby amended by
2 striking out the first six paragraphs and inserting in place thereof the following paragraph:-

3 As part of the disposition of any criminal complaint involving a crime of abuse, as
4 defined in section 57, the court may establish such terms and conditions of probation to ensure
5 the safety of the person who has suffered such abuse or threat and will prevent the recurrence of
6 such abuse or threat.

7 SECTION 2. Said chapter 276 is hereby amended by striking out sections 57 through
8 58B, inclusive, as appearing in the 2018 Official Edition, and inserting in place thereof the
9 following 6 sections:-

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

“Controlled substance”, a drug, substance, controlled substance analogue or immediate precursor in any schedule or class as referred to in section 1 of chapter 94C.

“Crime of abuse”, a crime that involves assault and battery, trespass, threat to commit a crime, or any other criminal conduct and that involves the infliction, or the imminent threat of infliction, of physical harm upon a person by such person’s family or household member as defined in section 1 of chapter 209A; any violation of an order issued pursuant to section 18 or 34B of chapter 208, section 32 of chapter 209, section 3, 4 or 5 of chapter 209A or section 15 or 20 of chapter 209C; or any act that would constitute abuse, as defined in section 1 of chapter 209A; or a violation of section 13M or 15D of chapter 265.

“Dangerous crime”, any of the following:

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

(B) the crimes of burglary or arson;

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

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

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

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

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

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

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

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

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

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

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

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

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

“Financial condition”, a secured or unsecured bond.

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

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

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

“Unsecured bond”, a defendant’s promise to pay to the court a specified amount of money if the defendant does not appear before the court on a date certain or fails to abide by any conditions of release set under clause (B) of paragraph (1) of subsection (b) of section 58, such amount being an amount that in the discretion of the judicial officer will reasonably assure the presence of a defendant, taking into consideration the defendant’s ability to pay.

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

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

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

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

(3) Detained under section 58A;

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

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

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

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

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

99 Any hearing under section 58 may be reopened by the judicial officer, and any hearing
100 under section 58A may be reopened by the judge. Any hearing under either section may also be
101 reopened upon motion of the commonwealth or the defendant, provided that the judicial officer
102 or judge determines by a preponderance of the evidence that: (1) information exists that was not
103 known to the movant at the time of the hearing or there has been a material change in
104 circumstances; and (2) such information or change in circumstances has a substantial bearing on
105 the issue of whether the defendant's detention, defendant's release on conditions, or conditions
106 imposed on the defendant are necessary and sufficient to reasonably assure the appearance of the
107 defendant and the safety of any other person and the community. In any such reopened hearing,
108 the judicial officer shall consider the defendant's compliance with any previously ordered
109 conditions of release.

110 Section 58. (a) Unless the attorney for the commonwealth has moved for detention under
111 section 58A, the judicial officer shall order the pretrial release of a defendant on personal
112 recognizance, subject to the condition that the defendant not commit a new crime during the
113 period of release, unless the judicial officer determines, in the exercise of his or her discretion,

114 that the release will not reasonably assure the appearance of the defendant or will endanger the
115 safety of any other person or the community.

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

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

120 (A) the condition that the defendant does not commit a new crime during the period of
121 release; and

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

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

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

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

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

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

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

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

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

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

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

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

(C) the least restrictive further condition, or combination of conditions, that the judicial officer determines will reasonably assure the safety of any other person and the community,

153 which may include the condition or combination of conditions that the defendant during the
154 period of release shall:

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

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

159 (iii) refrain from possessing a firearm, rifle, shotgun, destructive device, or other
160 dangerous weapon;

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

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

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

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

169 (viii) satisfy any other condition that is reasonably necessary to assure the safety of any
170 other person and the community.

171 (2) When setting any conditions under clause (B) of paragraph (1), the judicial officer
172 shall consider where relevant the following factors concerning the defendant:

- 173 (A) financial resources;
- 174 (B) family ties;
- 175 (C) any record of convictions under the laws of the commonwealth or the laws of
176 another state, the United States, or a military, territorial or Indian tribal authority in any other
177 state;
- 178 (D) potential penalty the defendant faces;
- 179 (E) any illegal drug distribution or present drug dependency;
- 180 (F) any employment record;
- 181 (G) any history of mental illness;
- 182 (H) any flight to avoid prosecution or fraudulent use of an alias or false identification;
- 183 (I) any failure to appear at any court proceedings to answer to a charge;
- 184 (J) any prior violation of conditions of release, probation, or parole, or of a temporary or
185 permanent order issued under section 18 or 34B of chapter 208, section 32 of chapter 209,
186 section 3, 4 or 5 of chapter 209A or section 15 or 20 of chapter 209C;
- 187 (K) the nature and circumstances of the crimes charged;
- 188 (L) whether the defendant was, at the time of the crime charged, on release pending
189 adjudication, sentencing or appeal of a prior charge;

(M) whether the defendant was, at the time of the crime charged, under the supervision of the commissioner of probation, the parole board or any other comparable authority of this or another state or of the federal government.

(3) When setting any conditions under clause (C) of paragraph (1), the judicial officer shall consider where relevant the following factors concerning the defendant:

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

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

(C) any history of orders issued against the defendant pursuant to section 18 or 34B of chapter 208, section 32 of chapter 209, section 3, 4 or 5 of chapter 209A or section 15 or 20 of chapter 209C; and

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

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

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

(B) Where it appears, based on credible evidence, that the defendant lacks sufficient financial resources to post any secured bond required by the judicial officer, such that requiring such secured bond will result in the long-term pretrial detention of the defendant, the judicial officer must provide findings of fact and a statement of reasons for the decision, either in writing

or orally on the record, confirming that the judicial officer considered the defendant's financial resources and explaining why the defendant's risk of non-appearance is so great that no alternative, less restrictive financial or nonfinancial conditions will suffice to assure the defendant's presence at future court proceedings and explaining how the amount was calculated after taking the person's financial resources into account and why the commonwealth's interest in a financial condition outweighs the potential adverse impact on the person, their immediate family or dependents resulting from pretrial detention.

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

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

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

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

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

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

(C) Advise the defendant of:

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

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

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

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

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

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

(2) where the defendant is charged with a crime for which the potential penalty includes a sentence to the state prison and there are specific, articulable facts and circumstances demonstrating a serious risk that the defendant may attempt to threaten, injure, or intimidate a law enforcement officer, an officer of the court, or a prospective witness or juror in any criminal investigation or judicial proceeding.

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

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

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

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

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

(c) In conducting a hearing under this section:

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

(A) any of the factors listed in paragraphs (2) and (3) of subsection (b) of section 58 where relevant;

and

(B) the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release;

(2) the defendant shall have the right to be represented by counsel at a hearing under this section and, if financially unable to obtain adequate representation, to have counsel appointed;

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

(4) the defendant shall be afforded an opportunity to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise; provided, however, that before issuing a summons to an alleged victim, or a member of the alleged victim's family, to appear as a witness at the hearing, the defendant shall demonstrate to

the court a good faith and reasonable basis for believing that the testimony from the witness will be material and relevant to support a conclusion that the defendant should not be detained; and

(5) the law concerning admissibility of evidence in criminal trials shall not apply to the presentation and consideration of information at a hearing under this section.

(d) When a defendant has been released pursuant to section 58 and the attorney for the commonwealth subsequently files a motion seeking to detain the defendant under this section, the attorney for the commonwealth may file such motion ex parte. Upon such ex parte filing, the court may, for good cause shown, issue a warrant for the defendant's arrest to secure his presence for such hearing. Any such hearing shall occur as otherwise set forth in this section.

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

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

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

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

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

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

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

325 (d) If, following a hearing under this section, the judge does not issue a revocation
326 order, the judge may issue a release order that may include any condition or combination of
327 conditions of release set forth in clauses (B) and (C) of paragraph (1) of subsection (b) of section
328 58.

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

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

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

Section 58C. In a case involving a crime of abuse or a dangerous crime with an identified victim, no person shall be released pursuant to section 58, 58A, 58B or 59 before the alleged victim is notified of the defendant's imminent release; provided, however, that the defendant shall not be held more than 6 hours in order to permit prior notice to the alleged victim.

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

Section 58D. A defendant, if aggrieved by the entry of an order or granting or denial of a motion under section 58, 58A or 58B by the district, Boston municipal or juvenile court, may petition the superior court for a review of such decision. Upon entry of such order or ruling on such motion, the justice of the district, Boston municipal or juvenile court shall immediately notify a defendant of his right to file a petition for review in the superior court. The trial court

shall establish rules for the filing of such petitions, scheduling the hearing of such petitions and ensuring the transmission of necessary information to the superior court and notice to the parties and the probation department. The superior court shall in accordance with such rules, hear the petition for review as speedily as practicable and except for unusual circumstances, on the same day the petition is filed; provided, however, that the court may continue the hearing to the next business day if the required records and other necessary information are not available. The superior court may, after a hearing on the petition for review, grant the petition only upon a finding that the decision of the district, Boston municipal or juvenile court was the result of an error of law or abuse of discretion.

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

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

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

(b) Except as provided in subsection (n), a bail commissioner or bail magistrate shall order the pretrial release of a person arrested and charged with a crime on personal recognizance subject to the condition that the person not commit a new crime during the period of release, unless the bail commissioner or bail magistrate determines that release on personal recognizance will not reasonably assure the appearance of the person or will endanger the safety of any other

person or the community. Prior to issuing a release order or any other order under this section, the bail commissioner or bail magistrate shall have immediate access to all pending and prior criminal offender record information, board of probation records, out of state criminal records, and police and incident reports related to the person detained, upon oral, telephonic, facsimile or electronic mail request, to the extent practicable.

(c) If the bail commissioner or bail magistrate determines that a release on personal recognizance subject to the condition that the person not commit a new crime during the period of release will not reasonably assure the appearance of the person or will endanger the safety of any other person or the community, the bail commissioner or bail magistrate shall order the pretrial release of the person subject to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The consequences of violating a condition of release, including immediate arrest or issuance of a warrant for the person's arrest, revocation of release, and, if applicable, the potential that the person may face criminal penalties, including penalties for intimidation of a witness; and

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

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

(i) When a bail commissioner or bail magistrate releases a person on conditions under subsection (c), the bail commissioner or bail magistrate shall record the conditions and

provide a copy of such conditions to the person and the detaining authority and shall transmit a copy to the court.

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

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

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

SECTION 3. Said chapter 276 is hereby amended by inserting after section 82A, as appearing in the 2016 Official Edition, the following section:-

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

461 SECTION 4. Chapter 268 of the General Laws is hereby amended by inserting after
462 section 13D the following section:-

463 Section 13E. Whoever unlawfully removes, destroys, damages, or interferes with the
464 proper functioning of a geolocation monitoring device, breath-testing instrument, or other
465 mechanism intended to facilitate recognizance or compliance with conditions of pretrial release,
466 probation or parole, shall be punished by imprisonment in the state prison for not more than 10
467 years or imprisonment in a house of correction for not more than 2 and ½ years. In any
468 proceeding under section 58, 58A, 58B or 59 of chapter 276, the fact of a person's prior
469 conviction pursuant to this section shall be prima facie evidence that there is no financial
470 condition or other condition of release that will reasonably assure the presence of the person so
471 convicted.

472 SECTION 5. Subsection (c) of section 58 of chapter 276 shall take effect on July 1,
473 2022.