

SENATE No. 2904

The Commonwealth of Massachusetts

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

1 by inserting after section _ the following sections:-

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

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

10 SECTION XX. The second paragraph of section 18B of chapter 265, as so appearing, is
11 hereby amended by striking out the first sentence and inserting in place thereof the following 2
12 sentences:- No sentence imposed under the provisions of this section shall be for less or reduced
13 to less than the minimum term of imprisonment. No person convicted under this section be
14 eligible for probation, parole, furlough or work release or receive any deduction from his
15 sentence for good conduct until he shall have served the minimum term of such additional
16 sentence; provided, however, that the commissioner of correction may, on the recommendation

17 of the warden, superintendent or other person in charge of a correctional institution or the
18 administrator of a county correctional institution, grant to such offender a temporary release in
19 the custody of an officer of such institution for the following purposes only: (i) to attend the
20 funeral of a spouse or next of kin; (ii) to visit a critically ill close relative or spouse; or (iii) to
21 obtain emergency medical services unavailable at such institution.

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

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

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

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

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

44 SECTION XX. Said chapter 276 is hereby amended by striking out sections 57 through
45 58B, inclusive, as so appearing, and inserting in place thereof the following 6 sections:-

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

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

49 “Crime of abuse”, a crime that involves assault and battery, trespass, threat to commit a
50 crime, or any other criminal conduct and that involves the infliction, or the imminent threat of
51 infliction, of physical harm upon a person by such person’s family or household member as
52 defined in section 1 of chapter 209A; any violation of an order issued pursuant to section 18 or
53 34B of chapter 208, section 32 of chapter 209, section 3, 4 or 5 of chapter 209A or section 15 or
54 20 of chapter 209C; or any act that would constitute abuse, as defined in section 1 of chapter
55 209A; or a violation of section 13M or 15D of chapter 265.

56 “Dangerous crime”, any of the following:

- 57 (A) a felony that has as an element of the crime the use, attempted use or threatened use
58 of physical force against the person of another;
- 59 (B) the crimes of burglary or arson;
- 60 (C) a violation of an order pursuant to section 18, 34B or 34C of chapter 208, section 32
61 of chapter 209, section 3, 4 or 5 of chapter 209A or section 15 or 20 of chapter 209C;
- 62 (D) a misdemeanor or felony involving abuse as defined in section 1 of chapter 209A;
- 63 (E) a sex offense involving a child as defined in section 178C of chapter 6;
- 64 (F) a violation of section 13B of chapter 268;
- 65 (G) a violation of section 13, 13 ½, 13B, 13B ½, 13 B ¾, 13F, 18B, 22, 22A, 22B, 22C,
66 23, 23A, 23B, 24, 25, 26B, 26C, 37, 43A, 50 or 51 of chapter 265 or a violation of section 13D
67 of said chapter 265 in which the public employee is a police officer;
- 68 (H) a violation of section 4A, 4B, 16, 29A, 29B, 29C, 77 or 105 of chapter 272;
- 69 (I) a violation of section 24G of chapter 90 which occurs under the influence of alcohol
70 or drugs, or a violation of section 8B of chapter 90B; or a third or subsequent violation of section
71 24 of chapter 90 or section 8 of chapter 90B;
- 72 (J) a crime under chapter 94C for which the maximum term of imprisonment is more
73 than 10 years;
- 74 (K) any violation of sections 102 or 102A, or a malicious violation of section 127 of
75 chapter 266;

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

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

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

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

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

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

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

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

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

94 (b) Upon the appearance of a defendant charged with a crime, the judicial officer
95 shall hold a hearing, at which the defendant and his counsel, if any, may participate and inquire

96 into the case, to determine whether the defendant shall be released or detained pending trial of
97 the case, as provided in this section and sections 58, 58A, and 58B. At the hearing, the judicial
98 officer shall have immediate access to all pending and prior criminal offender record
99 information, board of probation records, out of state criminal records, and police and incident
100 reports related to the defendant, upon oral, telephonic, facsimile or electronic mail request, to the
101 extent practicable.

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

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

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

108 (3) Detained under section 58A;

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

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

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

117 defendant arrested, who has attained the age of 18 years, shall not be released sooner than 6
118 hours after arrest, except by a judge in open court.

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

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

135 Any hearing under section 58 may be reopened by the judicial officer, and any hearing
136 under section 58A may be reopened by the judge. Any hearing under either section may also be
137 reopened upon motion of the commonwealth or the defendant, provided that the judicial officer
138 or judge determines by a preponderance of the evidence that: (1) information exists that was not

139 known to the movant at the time of the hearing or there has been a material change in
140 circumstances; and (2) such information or change in circumstances has a substantial bearing on
141 the issue of whether the defendant's detention, defendant's release on conditions, or conditions
142 imposed on the defendant are necessary and sufficient to reasonably assure the appearance of the
143 defendant and the safety of any other person and the community. In any such reopened hearing,
144 the judicial officer shall consider the defendant's compliance with any previously ordered
145 conditions of release.

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

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

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

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

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

- 161 (i) abide by specified restrictions on place of abode or travel;
- 162 (ii) report on a regular basis to a designated law enforcement agency, pretrial services
163 agency, or other agency;
- 164 (iii) refrain from use of alcohol, marijuana, or other intoxicants, and from use of any
165 controlled substance, except as prescribed or certified by a licensed medical practitioner;
- 166 (iv) submit to random testing to monitor compliance with any conditions ordered under
167 subclause (iii);
- 168 (v) comply with a specified curfew or home confinement;
- 169 (vi) undergo medical, psychological, or psychiatric treatment, including treatment for
170 substance or alcohol use disorder, if available, and remain in a specified institution if required for
171 that purpose;
- 172 (vii) submit to electronic monitoring, provided that any condition of electronic
173 monitoring may include either specified inclusion or exclusion zones or a curfew;
- 174 (viii) participate in a community corrections program pursuant to chapter 211F;
175 provided, however, that the defendant shall consent to such participation;
- 176 (ix) participate in a notification program pursuant to subsection (c);
- 177 (x) provide an unsecured or secured bond to satisfy a financial condition that the judicial
178 officer may specify; provided that a financial condition shall be set in an amount no higher than
179 what would reasonably assure the appearance of the person before the court after taking into
180 account the person's financial resources; provided, however, that a higher than affordable

181 financial condition may be set if neither alternative nonfinancial conditions nor an amount which
182 the person could likely afford would adequately assure the person's appearance before the court;
183 and provided further that for crimes that do not carry a penalty of incarceration, no secured bond
184 may be ordered unless the defendant has previously failed to appear on that charge; and

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

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

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

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

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

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

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

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

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

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

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

209 (A) financial resources;

210 (B) family ties;

211 (C) any record of convictions under the laws of the commonwealth or the laws of
212 another state, the United States, or a military, territorial or Indian tribal authority;

213 (D) potential penalty the defendant faces;

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

215 (F) any employment record;

216 (G) any history of mental illness;

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

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

219 (J) any prior violation of conditions of release, probation, or parole, or of a temporary or
220 permanent order issued under section 18 or 34B of chapter 208, section 32 of chapter 209,
221 section 3, 4 or 5 of chapter 209A or section 15 or 20 of chapter 209C;

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

223 (L) whether the defendant was, at the time of the crime charged, on release pending
224 adjudication, sentencing or appeal of a prior charge;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

269 (C) Advise the defendant of:

270 (i) The consequences of violating a condition of release, including immediate arrest or
271 issuance of a warrant for the defendant's arrest, revocation of release, and, if applicable, the
272 potential that the person may face criminal penalties, including penalties for violating section
273 13B of chapter 268; and

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

277 (c) A person who has been charged with a crime shall provide the court with his or
278 her cellular telephone number, if the defendant has such a device, unless the defendant opts out
279 of the service provided under this subsection; provided, however, that upon the order of a

280 judicial officer pursuant to subclause (ix) of clause (B) of paragraph (1) of subsection (b), a
281 defendant may not opt out of such service. The court shall provide a service using a system of
282 automated text messaging to remind criminal defendants of mandatory court appearance dates in
283 advance of the date of such appearance. The court shall keep all information provided by a
284 criminal defendant pursuant to this subsection confidential, and such information may not be
285 used in any proceeding; provided, however, that the fact that a defendant did or did not
286 participate in this system shall be marked on the docket and may be used in a proceeding if
287 otherwise admissible.

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

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

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

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

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

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

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

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

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

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

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

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

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

320 (A) any of the factors listed in paragraph (3) of subsection (b) of section 58 where
321 relevant; and

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

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

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

327 (4) the defendant shall be afforded an opportunity to present witnesses, to cross-examine
328 witnesses who appear at the hearing, and to present information by proffer or otherwise;

329 provided, however, that before issuing a summons to an alleged victim, or a member of the
330 alleged victim's family, to appear as a witness at the hearing, the defendant shall demonstrate to
331 the court a good faith and reasonable basis for believing that the testimony from the witness will
332 be material and relevant to support a conclusion that the defendant should not be detained; and

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

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

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

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

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

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

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

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

359 (c) The judge may enter an order of revocation and detention if after a hearing the
360 judge finds that there is probable cause to believe that the defendant has committed any crime

361 while on release or clear and convincing evidence that the defendant has violated any other
362 condition of release.

363 (d) If, following a hearing under this section, the judge does not issue a revocation
364 order, the judge may issue a release order that may include any condition or combination of
365 conditions of release set forth in clauses (B) and (C) of paragraph (1) of subsection (b) of section
366 58.

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

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

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

379 Section 58C. In a case involving a crime of abuse or a dangerous crime with an
380 identified victim, no person shall be released pursuant to section 58, 58A, 58B or 59 before the
381 alleged victim is notified of the defendant's imminent release; provided, however, that the

382 defendant shall not be held more than 6 hours in order to permit prior notice to the alleged
383 victim.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

466 (1) The consequences of violating a condition of release, including immediate arrest or
467 issuance of a warrant for the person's arrest, revocation of release, and, if applicable, the
468 potential that the person may face criminal penalties, including penalties for violating section
469 13B of chapter 268; and

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

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

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

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

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

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

489 SECTION X. Said chapter 276 is hereby further amended by inserting after section
490 82Athe following section:-

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

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

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

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

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

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

526 SECTION XX. Subsection (c) of section 58 of chapter 276 shall take effect on July 1,
527 2023.