

SENATE No. 1101

The Commonwealth of Massachusetts

PRESENTED BY:

Patrick M. O'Connor

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 protect victims of crimes and the public.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Patrick M. O'Connor</i>	<i>First Plymouth and Norfolk</i>	
<i>Kathleen R. LaNatra</i>	<i>12th Plymouth</i>	<i>2/27/2023</i>
<i>Alyson M. Sullivan-Almeida</i>	<i>7th Plymouth</i>	<i>3/22/2023</i>

SENATE No. 1101

By Mr. O'Connor, a petition (accompanied by bill, Senate, No. 1101) of Patrick M. O'Connor and Kathleen R. LaNatra for legislation to protect victims of crimes and the public. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 4290 OF 2021-2022.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

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 than
72 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 shall
94 hold a hearing, at which the defendant and his counsel, if any, may participate and inquire into
95 the case, to determine whether the defendant shall be released or detained pending trial of the
96 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; provided,
174 however, that the defendant shall consent to such participation;

175 (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;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

325 (4) the defendant shall be afforded an opportunity to present witnesses, to cross-examine
326 witnesses who appear at the hearing, and to present information by proffer or otherwise;
327 provided, however, that before issuing a summons to an alleged victim, or a member of the
328 alleged victim's family, to appear as a witness at the hearing, the defendant shall demonstrate to
329 the court a good faith and reasonable basis for believing that the testimony from the witness will
330 be material and relevant to support a conclusion that the defendant should not be detained; and

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

333 (d) When a defendant has been released pursuant to section 58 and the attorney for the
334 commonwealth subsequently files a motion seeking to detain the defendant under this section,
335 the attorney for the commonwealth may file such motion ex parte. Upon such ex parte filing, the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

485 SECTION 8. Said chapter 276 is hereby further amended by inserting after section
486 82Athe following section:-

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

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

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

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

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

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

522 SECTION 11. Subsection (c) of section 58 of chapter 276 shall take effect on July 1,
523 2023.