

# SENATE . . . . . No. 1140

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## The Commonwealth of Massachusetts

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PRESENTED BY:

*John C. Velis*

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*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 relative to dangerousness hearings.

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PETITION OF:

NAME:

*John C. Velis*

DISTRICT/ADDRESS:

*Hampden and Hampshire*

# SENATE . . . . . No. 1140

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By Mr. Velis, a petition (accompanied by bill, Senate, No. 1140) of John C. Velis for legislation relative to dangerousness hearings. The Judiciary.

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## The Commonwealth of Massachusetts

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

An Act relative to dangerousness hearings.

*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. Said chapter 276 is hereby amended by striking out subsection (1) of  
2   section 58A, as appearing in the 2022 Official Edition, and inserting in place thereof the  
3   following subsection:-

4           The commonwealth may move, based on dangerousness, for an order of pretrial detention  
5   or release on conditions when a defendant has been charged with any of the following: (a) felony  
6   offense that has as an element of the offense the use, attempted use or threatened use of physical  
7   force against the person of another; (b) the crimes of burglary or arson; (c) a violation of an order  
8   pursuant to section 18, 34B or 34C of chapter 208, section 32 of chapter 209, section 3, 4 or 5 of  
9   chapter 209 A or section 15 or 20 of chapter 209C; (d) a misdemeanor or felony involving abuse  
10   as defined in section 1 of said chapter 209A or while an order of protection issued under said  
11   chapter 209A was in effect against such person; (e) an offense for which a maximum penalty of  
12   ten years or more is prescribed in chapter 94C; (f) a violation of section 13B of chapter 268; (g) a  
13   third or subsequent violation of section 24 of chapter 90 or section 8 of chapter 90B; or 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; (h) a violation of section 131N of chapter 140 or subsection (a), (b), (c), (d), (h), (j) or (m) of section 10 or section 10A, 10E, 10G or 11 C of chapter 269, provided, however, that the commonwealth may not move for an order of detention under this section based on possession of a large capacity feeding device without simultaneous possession of a large capacity weapon; torture of animals, or any abuse of animals which constitutes a violation of section 77 or 94 of chapter 272, or of section 112 of chapter 266; a sex offense involving a child as defined in section 178C of chapter 6; 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 or firefighter engaged in the performance of his or her duties; a violation of section 4A, 4B, 16, 29A, 29B, 29C, 77 or 105 of chapter 272; a violation of section 102, or a malicious violation of section 127 of chapter 266; threats to kill, rape, or cause serious bodily injury; conspiracy or solicitation to commit any of the above enumerated crimes.

SECTION 2. Said chapter 276 is hereby amended by striking out subsection (3) of section 58A and inserting in place thereof the following subsection:-

(a) If, after a hearing pursuant to the provisions of subsection (4), the district or superior court justice finds by clear and convincing evidence that no conditions of release will reasonably assure the safety of any other person or the community, said justice shall order the detention of the person prior to trial. A person so detained shall be detained until the disposition of the case and shall brought to trial as soon as reasonably possible and subject to the requirements of Rule 36.

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

(c) A hearing under this section may be reopened by the judge, at any time before trial, or upon a motion of the commonwealth or the person detained if the judge finds that: (i) information exists that was not known at the time of the hearing or that there has been a change in circumstances and (ii) that such information or change in circumstances has a material bearing on the issue of whether there are conditions of release that will reasonably assure the safety of any other person or the community.

(d) On an annual basis, the Secretary of Public Safety shall conduct an analysis of prosecutorial decisions to seek dangerousness hearings within the Commonwealth, and judicial determinations of dangerousness when a hearing is conducted. Such analysis shall examine the treatment of offenders and determine whether offenders who are charged with the same offenses and who have similar criminal histories are treated equally to one another, or whether there is disparate impact by race, gender, or ethnicity. The trial court shall provide to the Department of Criminal Justice Information Services data regarding the number and location of dangerousness-eligible offenses, the number of dangerousness hearings that are conducted, the outcome of such hearings, and the demographic information of the accused parties. The analysis of the Secretary of Public Safety shall be presented to the General Court and shall be a public document.

SECTION 3. Said chapter 276 is hereby amended by adding to the conclusion of section 58, as appearing in the 2016 Official Edition, the following subsection:-

(1) Any adult who has been charged with a crime, and any adult guardian of a juvenile who has been charged with an act of delinquency, shall be requested to voluntarily provide the

58 court with his or her cellular telephone number, if the defendant or guardian has such a device,  
59 but may decline to do so; provided, however, that upon the order of a judicial officer a defendant  
60 may be required to provide such information. The executive office of the trial court shall  
61 procure or establish a service using a system of automated text messaging to remind criminal  
62 defendants of mandatory court appearance dates in advance of the date of such appearance. Such  
63 service shall be made available to all criminal defendants and to the guardians of juvenile  
64 defendants free of charge. Information so provided by a criminal defendant or the guardian of a  
65 juvenile defendant pursuant to this subsection shall not be deemed to be a public record, shall not  
66 be provided to law enforcement agencies for criminal investigative purposes, and may not be  
67 used against the defendant in any criminal proceeding; provided, however, that the fact that a  
68 party did or did not participate in this system shall be marked on the docket, and such fact may  
69 be used in a proceeding if otherwise admissible. This subsection shall take effect on July 1, 2023.

70 SECTION 4. Said chapter 276 is hereby amended by inserting after section 82A the  
71 following section:-

72 Section 82B. (1) A person who violates any non-financial condition of release ordered  
73 under section 58 of chapter 119, section 58, 58A, 58B, 59, or 87 of this chapter, or section 1 or  
74 1A of chapter 279; or any other non-financial condition of probation imposed by a court after  
75 conviction or admission to sufficient facts; or any non-financial term or condition of parole  
76 imposed by the parole board; may be arrested upon probable cause by a sheriff, deputy sheriff or  
77 police officer and kept in custody in a convenient place, not more than 24 hours, Sunday  
78 excepted, until notice of the violation can be given to the probation service, and such person be  
79 taken before the issuing court upon a warrant obtained by the probation service; or, in the case of  
80 a person under parole supervision, to the parole board.

(2) The trial court, the probation service and the parole board shall promptly provide to the department of criminal justice information services records of all non-financial conditions of release imposed upon criminal defendants and delinquent children, and all non-financial conditions of probation and parole, and the department of criminal justice information services shall make such information accessible in electronic format to sheriffs, deputy sheriffs and police officers.

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

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