

HOUSE No. 2208

The Commonwealth of Massachusetts

PRESENTED BY:

Bradley H. Jones, Jr.

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 establishing mandatory post release supervision in the Commonwealth.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|--------------------------------|-----------------------|
| <i>Bradley H. Jones, Jr.</i> | <i>20th Middlesex</i> |
| <i>Donald F. Humason, Jr.</i> | <i>4th Hampden</i> |
| <i>Sheila C. Harrington</i> | <i>1st Middlesex</i> |
| <i>F. Jay Barrows</i> | <i>1st Bristol</i> |
| <i>George T. Ross</i> | <i>2nd Bristol</i> |
| <i>Todd M. Smola</i> | <i>1st Hampden</i> |
| <i>Steven L. Levy</i> | <i>4th Middlesex</i> |
| <i>Paul K. Frost</i> | <i>7th Worcester</i> |
| <i>George N. Peterson, Jr.</i> | <i>9th Worcester</i> |
| <i>Elizabeth A. Poirier</i> | <i>14th Bristol</i> |
| <i>Viriato Manuel deMacedo</i> | <i>1st Plymouth</i> |

HOUSE No. 2208

By Mr. Jones of North Reading, a petition (accompanied by bill, House, No. 2208) of Bradley H. Jones, Jr., and others relative to mandatory post-release supervision. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1446 OF 2009-2010.]

The Commonwealth of Massachusetts

—————
In the Year Two Thousand Eleven
—————

An Act establishing mandatory post release supervision in the Commonwealth.

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 5 of chapter 27, as appearing in the 2008 Official Edition, is hereby
2 amended by adding the following at the end of the last sentence of the first paragraph:—

3 The parole board shall administer and oversee mandatory post-release supervision
4 functions as set forth in section 133D of chapter 127 and chapter 127A.

5 SECTION 2. The General Laws, as so appearing, are hereby further amended by
6 inserting after chapter 127 the following chapter:—

7 CHAPTER 127A.

8 MANDATORY POST-RELEASE SUPERVISION.

9 Section 1. All sentences to incarceration in a house of correction, jail or state prison shall
10 include a period of post-release supervision, excluding those for whom parole eligibility is
11 determined by section 133A of chapter 127. Except as provided in this chapter, for individuals
12 who complete the incarceration portion of their sentences without supervised release or are re-
13 incarcerated for the remainder of the sentence for violating the terms of parole or probation, the
14 period of mandatory post-release supervision shall be 25 percent of the maximum term of
15 incarceration imposed at sentencing but in no case shall be less than nine months. Where an
16 individual is sentenced to incarceration on multiple offenses, the greater of the maximum terms
17 imposed at sentencing shall be used to calculate the mandatory post-release supervision period.
18 Mandatory post-release supervision as established in this chapter shall not be imposed upon any
19 individual who successfully completes a period of probation imposed by a court at sentencing,
20 upon an individual who is granted a parole permit under chapter 127 and successfully completes
21 a period of parole supervision, or upon an individual sentenced to lifetime community parole
22 under the provisions of section 45 of chapter 265 and section 133D of chapter 127. An individual
23 subject to the provisions of this chapter may be supervised in another jurisdiction in accordance
24 with sections 151A through 151L of chapter 127 and shall be considered on parole for the
25 purposes of supervision.

26 Section 2. Upon release, an individual sentenced to a term of incarceration for not more
27 than one year in a house of corrections or jail shall be subject to the supervision and jurisdiction
28 of the office of the commissioner of probation during the period of mandatory post-release
29 supervision. Upon release, an individual sentenced to a term of incarceration in a house of
30 corrections or jail for more than one year, or in a state prison for any length of time shall be
31 subject to the supervision and jurisdiction of the parole board during the period of mandatory

32 post-release supervision. All persons under such supervision of the office of the commissioner of
33 probation shall be subject to the provisions of law, rules and regulations governing probation. All
34 persons under such supervision of the parole board shall be subject to the provisions of law, rules
35 and regulations governing parole. The commissioner of probation and the chairman of the parole
36 board shall establish uniform regulations for post-release supervision consistent with applicable
37 provisions of chapter 127 and chapter 276. Nothing in this section or within said regulations shall
38 limit the authority of the superior, municipal, district or juvenile court to impose conditions of
39 probation supervision to protect the public or promote the rehabilitation of any person.

40 Section 3. An individual subject to mandatory post-release supervision and who has
41 successfully completed 9 months of supervision shall be eligible for early termination of such
42 supervision. In the case of a person under the supervision of the office of the commissioner of
43 probation, early termination may only occur upon an order of a court of competent jurisdiction.
44 In the case of a person under the supervision of the parole board, early termination may only
45 occur in accordance with procedure to be promulgated in the regulations of the parole board. In
46 all proceedings under this section, the uniform criteria for early termination of mandatory post-
47 release supervision shall be established jointly by the commissioner of probation and the
48 chairman of the parole board and shall include, but not be limited to, the amount of time the
49 individual has successfully spent under post-release supervision, success in finding permanent
50 employment, success in establishing adequate housing, completing all counseling or substance
51 abuse treatment programs and successful passing of all mandated post-release testing programs.

52 Section 4. An individual who violates a condition of mandatory post-release supervision
53 shall be subject to the provisions of this section and subject to modification or revocation
54 proceedings initiated by the agency responsible for the violator's supervision. The laws and

55 judicial rules governing probation violation proceedings shall govern such modification or
56 revocation proceedings for an individual subject to the jurisdiction of the office of the
57 commissioner of probation. The laws and regulations governing parole violation proceedings
58 shall govern such modification or revocation proceedings for an individual subject to the
59 jurisdiction of the parole board. In all proceedings under this section, upon a violation, the
60 individual may be placed under increased supervision, subjected to other conditions and
61 intermediate sanctions, or incarcerated for not more than the maximum remaining period of post-
62 release supervision or the remaining unserved portion of the sentence, whichever is greater, if
63 such violation does not otherwise constitute a criminal offense. In all cases where the individual
64 is not being incarcerated for a violation, such individual shall participate in an intermediate
65 sanction through the office of community corrections as established in chapter 211F, the level of
66 which is to be determined by the commissioner of probation or the chairman of the parole board,
67 whoever has supervision authority over the individual. In the case of any violation for use of
68 controlled substances or an offense for operating under the influence of drugs or alcohol, the
69 period of mandatory post-release supervision shall be extended to accommodate an appropriate
70 substance abuse program, but the total shall not exceed the maximum supervisory period
71 permitted by section 1 of chapter 127A. For any violation of the conditions of mandatory post-
72 release supervision, the period of supervision shall be stayed during a period of incarceration and
73 it shall be resumed upon release. If such violation constitutes a criminal offense, said period of
74 incarceration shall be served on and after any sentence received as a result of the new offense.
75 Upon subsequent release, the greater of the maximum sentences of the original offense and
76 subsequent offense shall be used to calculate the new mandatory post-release supervision period.

77 Section 5. All mandatory post-release supervision shall be deemed completed if any of
78 the following conditions are met: except as provided in section 4 of this chapter, the individual
79 serves a post-release supervision period of 25 percent of the maximum term of incarceration
80 imposed at sentencing, or nine months, whichever is greater; the individual is granted early
81 termination under section 3 of this chapter; or if upon completion of the sentence, the individual
82 is immediately committed to the custody of any other state to serve a period of incarceration
83 greater than or equal to the post-release supervision period required under this chapter; or if upon
84 completion of the sentence, the individual is immediately committed to the custody of any
85 federal or immigration authority. Mandatory post-release supervision shall be stayed for any
86 period an individual is in custody pursuant to any order of custody under chapter 123A.

87 Section 6. Where any provision of this chapter or the application thereof to any person or
88 circumstance, shall, for any reason, be held invalid, the remainder of this chapter or the
89 application of such provision to persons or circumstances other than those as to which it is held
90 invalid shall not be affected thereby.

91 SECTION 3. Section 85 of chapter 276, as so appearing, is hereby amended by adding
92 the following at the end of the last sentence:—

93 Probation officers powers and duties shall include mandatory post-release supervision as
94 set forth in chapter 127A.

95 SECTION 4. Section 99 of chapter 276, as so appearing, is hereby amended by adding
96 the following at the end of the last sentence:—

97 The commissioner shall oversee mandatory post-release supervision functions as set forth
98 in chapter 127A.

99 SECTION 5. Section 24 of chapter 279, as so appearing, is hereby amended by inserting
100 in line 6 after the word “convicted” the following words:—

101 and must be at least 20 percent greater than the minimum term.

102 SECTION 6. The provisions of this chapter shall take effect on January 1, 2012 and the
103 provisions contained herein shall apply to all felonies and misdemeanors committed on or after
104 that date. All offenses committed prior to January 1, 2012 shall be governed by the laws,
105 including but not limited to those on sentencing, parole, and probation, in effect at the time the
106 offense is committed.