

SENATE No. 743

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia S. Creem

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 sentencing guidelines.

PETITION OF:

NAME:

Cynthia S. Creem

DISTRICT/ADDRESS:

SENATE No. 743

By Ms. Creem, a petition (accompanied by bill, Senate, No. 743) of Cynthia S. Creem for legislation to establish sentencing guidelines. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1679 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act establishing sentencing guidelines.

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. The General Laws are hereby amended by inserting after chapter
2 211F the following chapter:-

3 CHAPTER 211G

4 SENTENCING GUIDELINES

5 Section 1. Definitions. The following terms as used in this chapter shall have the
6 following meanings:-

7 “Adjudication of delinquency,” a determination or finding pursuant to G.L. c. 119
8 § 58 that a juvenile is a delinquent child.

9 “Conviction,” a finding or verdict of guilt for a criminal offense.

10 “Criminal history group,” the classification of an offender’s previous record of
11 criminal convictions or adjudications of delinquency as set forth on the horizontal axis of the
12 sentencing guidelines grid.

13 “Departure from the guidelines,” a sentence imposed outside the sentencing range
14 contained in the applicable grid cell for the particular offense.

15 “Governing offense,” the offense having the highest offense seriousness level
16 among multiple offenses arising out of the same criminal conduct.

17 “Grid cell,” the intersection on the sentencing guidelines grid between the offense
18 seriousness level and the criminal history group.

19 “Intermediate sanction,” a non-incarcerative sentence, or portion thereof, which
20 includes a level of restriction, such as standard probation, intensive supervision probation,
21 community service, home confinement, and day reporting, and which may be coupled with
22 components, such as residential programming, substance abuse treatment, restitution, continuing
23 education, vocational training, special education, and psychological counseling.

24 “Mandatory minimum sentence,” the provision of a criminal penalty for a
25 particular offense which specifies the minimum term of incarceration and prohibits suspension of
26 any sentence, placement on file, continuance without a finding, probation, and release on parole
27 until the minimum term of imprisonment has been served.

28 “Master crime list,” the list in which offenses in Massachusetts currently
29 punishable by a term of imprisonment are ranked for purposes of the sentencing guidelines.

30 “Offense seriousness levels,” the categories for ranking criminal offenses as set
31 forth in the master crime list and on the vertical axis of the sentencing guidelines grid.

32 “Same criminal conduct,” any two or more offenses committed during a single
33 criminal incident.

34 “Sentencing Commission,” the Massachusetts Sentencing Commission as defined
35 in G.L. c. 211E § 1.

36 “Sentencing event,” an appearance before a court of competent jurisdiction during
37 which sentence is imposed for one or more convictions or adjudications of delinquency.

38 “Sentencing guidelines,” all provisions set forth in this chapter which direct or
39 guide judges in sentencing.

40 “Sentencing guidelines grid,” the sentencing matrix, with offenses classified on a
41 vertical axis and criminal history groups classified on a horizontal axis , and which contains a
42 sentencing guidelines range within each grid cell.

43 “Sentencing guidelines range,” the range of any sentence, including the range of
44 intermediate sanctions, which may be imposed in each grid cell without constituting a departure
45 from the sentencing guidelines.

46 “Split sentence,” a sentence to a house of correction which is suspended in part
47 and includes a specified period of incarceration followed by a specified period of probation or
48 intermediate sanction or both.

49 “Staircased offense,” a criminal offense which is ranked in more than one offense
50 seriousness level on the basis of the existence of a specified factor.

51 “Statutory minimum sentence,” the provision of a criminal penalty for a particular
52 offense which does not require the imposition of incarceration, but specifies the minimum term
53 of incarceration, when incarceration is imposed.

54 Section 2. Sentencing Guidelines Grid. There are established, consistent with the
55 provisions of G.L. c. 211E § 3, sentencing guidelines in the form of a sentencing guidelines grid
56 with offenses classified on the vertical axis according to seriousness and criminal history
57 classified on the horizontal axis according to severity. Within each grid cell there is a sentencing
58 guidelines range, consistent with the provisions of G.L. c. 211E § 3 (a) (3) (C). The sentencing
59 guidelines grid includes three sentencing guidelines zones:- (1) an incarceration zone, where
60 only a sentence to incarceration is within the sentencing guidelines range and a sentence to an
61 intermediate sanction constitutes a departure from the sentencing guidelines; (2) a discretionary
62 zone, where either a sentence to incarceration or a sentence to an intermediate sanction are
63 within the sentencing guidelines range; and, (3) an intermediate sanction zone, where only a
64 sentence to an intermediate sanction is within the sentencing guidelines range and a sentence to
65 incarceration constitutes a departure from the sentencing guidelines. The following sentencing
66 guidelines grid shall be used as a basis for sentencing for convictions of all applicable offenses
67 for which incarceration is a possible sanction under existing statutes, except for those offenses
68 with mandatory minimum sentences listed in § 8 (a) and (b) of this chapter.

69 Sentencing Guidelines Grid

70 Criminal History Group

71 Offense A B C D E

72 Seriousness Level No/Minor

73 Record Moderate

74 Record Serious

75 Record Violent or

76 Repetitive Serious

77 Violent

78

79 9 Life Life Life Life Life

80

81

82

83 8 96 - 144 Mos. 108 - 162 Mos. 120 - 180 Mos. 144 - 216

84 Mos. 204 - 306 Mos.

85

86

87

88 7 60 - 90 Mos. 68 - 102 Mos. 84 - 126 Mos. 108 - 162 Mos. 160 -

89 240 Mos.

90

91						
92						
93	6	40 - 60 Mos.	45 - 67 Mos.	50 - 75 Mos.	60 - 90 Mos.	80 - 120 Mos.
94						
95						
96	5	12 - 36 Mos.	24 - 36 Mos.	36 - 54 Mos.	48 - 72 Mos.	60 - 90 Mos.
97		IS-IV	IS-IV			
98		IS-III	IS-III			
99		IS-II	IS-II			
100	4	0 - 24 Mos.	3 - 30 Mos.	6 - 30 Mos.	20 - 30 Mos.	24 - 36 Mos.
101		IS-IV	IS-IV	IS-IV		
102		IS-III	IS-III	IS-III		
103		IS-II	IS-II	IS-II		
104	3	0 - 12 Mos.	0 - 15 Mos.	0 - 18 Mos.	0 - 24 Mos.	6 - 24 Mos.
105		IS-IV	IS-IV	IS-IV	IS-IV	IS-IV
106		IS-III	IS-III	IS-III	IS-III	IS-III
107		IS-II	IS-II	IS-II	IS-II	IS-II

108		IS-I	IS-I	IS-I		
109	2		0 - 6 Mos.	0 - 6 Mos.	0 - 9 Mos.	0 - 12 Mos.
110				IS-IV	IS-IV	
111		IS-III	IS-III	IS-III	IS-III	IS-III
112		IS-II	IS-II	IS-II	IS-II	IS-II
113		IS-I	IS-I	IS-I	IS-I	IS-I
114	1			0 - 3 Mos.	0 - 6 Mos.	
115				IS-IV	IS-IV	
116			IS-III	IS-III	IS-III	IS-III
117		IS-II	IS-II	IS-II	IS-II	IS-II
118		IS-I	IS-I	IS-I	IS-I	IS-I
119						
120		Sentencing Guidelines Zones			Intermediate Sanctions Levels	
121						
122		Incarceration Zone			IS-IV	24-Hour Restriction
123				IS-III	Daily Accountability	
124		Discretionary Zone			IS-II	Standard Supervision

125

126

Intermediate Sanction Zone

127

Section 3. Master Crime List. Offenses which permit incarceration are ranked

128 according to offense seriousness level. Murder, as defined in G.L. c. 265 § 1, is placed at the

129 highest level of the sentencing guidelines grid and for this offense the sentencing provisions of

130 G.L. c. 265 § 2 apply. The offense seriousness rankings are set forth in the following master

131 crime list, which contains the following information:-

132

(a) "Grid." A "YES" in this column denotes application of the sentencing

133 guidelines grid. A "NO" in this column indicates the sentencing guideline grid is not applicable,

134 and an alternate penalty provision as provided for in this chapter is applicable.

135

(b) "Offense seriousness level." All offenses on the master crime list are ranked

136 according to seriousness. For offenses to which the sentencing guidelines grid applies, the

137 offense seriousness level of the governing offense determines the placement of the offender on

138 the vertical axis.

139

For all offenses, the offense seriousness level also represents the level to which a

140 prior conviction is to be assigned for purposes of determining the criminal history group.

141

(c) "Notes." The following notes apply to certain offenses contained in the master

142 crime list:

143

(1) "Note A" refers to offenses where the sentencing guidelines range exceeds the

144 statutory maximum sentence in certain grid cells. In such circumstances, the sentencing

145 guidelines range applies, except that no sentence imposed may exceed the statutory maximum
146 sentence, as provided in § 9 of this chapter.

147 (2) “Note B” refers to offenses where the statutory minimum sentence exceeds the
148 sentencing guidelines range in certain grid cells. In such circumstances, it is not a departure
149 from the sentencing guidelines for a judge to impose a sentence within the sentencing guidelines
150 range, nor is it a departure from the sentencing guidelines for a judge to impose the statutory
151 minimum sentence, as provided in § 8 (e) of this chapter.

152 (3) “Note C” refers to offenses with mandatory minimum sentences in violation of
153 G.L. c. 94C. The sentencing guidelines for these offenses are set forth in § 8 (c) of this chapter.

154 (4) “Note D” refers to certain firearms offenses and certain offenses pertaining to
155 operating a motor vehicle or boat under the influence which may have mandatory minimum
156 sentences. The sentencing guidelines for these offenses are set forth in § 8 (a) and (b) of this
157 chapter.

158 (5) “Note E” refers to certain other offenses which have mandatory minimum
159 sentences. The sentencing guidelines for these offenses are set forth in § 8 (d) of this chapter.

160 (6) “Note F” refers to certain offenses for which a sentence to an intermediate
161 sanction constitutes a departure from the sentencing guidelines.

162 (7) “Note G” refers to staircased offenses. The staircase factors are described in §
163 4 (a) of this chapter.

164 (8) “Note H” refers to offenses for which the criminal history group of the
165 defendant is enhanced as described in § 4 (b) of this chapter.

166 (9) “Note I” refers to offenses for which the level is contingent on the level
167 assigned to the underlying substantive offense and is the same as the level assigned to the
168 underlying substantive offense, except that no sentence may exceed the statutory maximum
169 sentence, as provided in § 9 of this chapter.

170 (10) “Note J” refers to offenses for which the level is contingent on the level
171 assigned to the underlying substantive offense and is one level lower than the level assigned to
172 the underlying substantive offense, except that no sentence may exceed the statutory maximum
173 sentence, as provided in § 9 of this chapter.

174 (d) “Offense Reference” - the Massachusetts General Law reference for a
175 particular offense.

176 (e) “Offense Penalty Reference” - the Massachusetts General Law reference for a
177 particular offense penalty provision when different from the offense reference.

178 (f) “Staircase Factor” - a specified factor, beyond the required elements of for an
179 offense, which determines the offense seriousness level.

180 (g) The master crime list also incorporates information existing elsewhere in the
181 General Laws. Any discrepancies between the following items of information reproduced in the
182 master crime list and as they appear in the General Laws are to be resolved in favor of those
183 provisions of the General Laws which set forth the penalties for the particular offense.

184 (1) “Offense” - an abbreviated offense description;

185 (2) “Penalty Type” - felony or misdemeanor;

186 (3) “Mandatory Time” - the mandatory minimum sentence, where applicable;

187 (4) “Min H/C” - the statutory minimum sentence to the house of correction, where
188 applicable;

189 (5) “Max H/C” - the statutory maximum sentence to the house of correction,
190 where applicable;

191 (6) “Min Prison” - the statutory minimum sentence to the state prison, where
192 applicable; and,

193 (7) “Max Prison” - the statutory maximum sentence to the state prison where
194 applicable.

195 Where an offense is not found in the master crime list, the judge shall impose an
196 appropriate sentence, having due regard for the purposes of sentencing set forth in G.L. c. 211E
197 § 2. The master crime list follows:-

198 Section 4. (a) Staircasing certain offenses. Certain offenses, broadly defined to
199 encompass a wide range of behavior, are placed at more than one offense seriousness level in the
200 master crime list. These offenses are identified by a staircased notation on the master crime list
201 based on the following considerations:-

202 (1) Manslaughter in violation of G.L. c. 265 § 13 is a level eight offense where it
203 is voluntary manslaughter and a level six offense where it is involuntary manslaughter.

204 (2) Assault and battery by means of a dangerous weapon in violation of G.L. c.
205 265 § 15A is ranked according to the degree of injury to the victim as follows:-

206 Assault and battery by means of a dangerous weapon is a level six offense where
207 there is significant injury to the victim. Significant injury includes: injuries which are

208 characterized by a protracted period of total disability or long term impairment of function, loss
209 of function of any body members, organ, or mental faculty; injuries, not necessarily permanently
210 disabling, which require long term medical care or rehabilitative therapy; injuries which involve
211 a gross disfigurement; and, injuries which result in a permanent residual disability or loss of
212 function to a significant degree.

213 Assault and battery by means of a dangerous weapon is a level four offense where
214 there is moderate injury to the victim. Moderate injury includes: injuries which involve extreme
215 physical pain and some discernible disability or loss of function of some body member, organ, or
216 mental faculty, such as fractures, internal injuries or wounds which are serious but not life
217 threatening; and, psychological trauma that results in some temporary or partial disability.

218 Assault and battery by means of a dangerous weapon is a level three offense
219 where there is no injury or minor injury to the victim. Minor injury includes: injuries which
220 require some emergency treatment, such as lacerations, contusions, or abrasions, which have no
221 residual effect; concussions without lasting neurological impact; physical injuries that are painful
222 and obvious but not in any way disabling; and, minimal, psychological trauma without lasting
223 effect.

224 (3) Armed robbery in violation of G.L. c. 265 § 17 is a level seven offense where
225 there is a display of a gun. Any other violation of G.L. c. 265 § 17 is a level six offense with the
226 exception of certain violations of G.L. c. 265 § 17 that are subject to the provisions of § 4 (b) of
227 this chapter.

228 (4) Breaking and entering in violation of G.L. c. 266 §§ 16 through 18 is a level
229 four offense where the breaking and entering involves a dwelling. Any other violation of G.L. c.
230 266 §§ 16 through 18 is a level three offense.

231 (5) Certain property offenses are ranked according to the value of property lost or
232 destroyed as follows:-

233 Where the value of the property lost or destroyed is \$50,000 or over, the offense
234 is a level five offense.

235 Where the value of the property lost or destroyed is between \$10,000 and
236 \$50,000, the offense is a level four offense.

237 Where the value of the property lost or destroyed is \$10,000 or under, the offense
238 is a level three offense.

239 In determining the appropriate offense seriousness level for a staircased offense,
240 the judge may consider any evidence received during the proceedings; any victim impact
241 statement; any presentence report, when the judge requests one; and, any other information that
242 the judge deems credible.

243 (b) Second and subsequent convictions. When a statute provides for a more
244 severe penalty upon a second and subsequent conviction for an offense, the second or
245 subsequent offense is elevated one level on the offense seriousness scale on the master crime list.
246 Where the offense is at level eight, the offender shall be moved over one cell to the right to the
247 next more serious criminal history group in the grid. When a defendant is charged as a second or
248 subsequent offender under the relevant statute, the prior conviction or convictions that served as

249 the basis for the second or subsequent charge shall not be counted in determining criminal
250 history placement on the grid. Offenses that are subject to a more severe penalty for second and
251 subsequent conviction are so designated in the master crime list.

252 Section 5. Criminal History Groups. There are five criminal history groups on
253 the horizontal axis of the sentencing guidelines grid as follows:-

254 (a) Criminal History Group A, No/Minor Record, refers to a criminal record that
255 contains no prior convictions of any kind; or, one to five prior convictions in any combination
256 for offenses in levels one or two.

257 (b) Criminal History Group B, Moderate Record, refers to a criminal record that
258 contains six or more prior convictions in any combination for offenses in levels one or two; or,
259 one or two prior convictions in any combination for offenses in levels three or four.

260 (c) Criminal History Group C, Serious Record, refers to a criminal record that
261 contains three to five prior convictions in any combination for offenses in levels three or four; or,
262 one prior conviction for offenses in levels five or six.

263 (d) Criminal History Group D, Violent or Repetitive Record, refers to a criminal
264 record that contains six or more prior convictions in any combination for offenses in levels three,
265 four, five, or six; or, two or more prior convictions in any combination for offenses in levels five
266 or six; or, one prior conviction for offenses in levels seven through nine.

267 (e) Criminal History Group E, Serious Violent Record, refers to a criminal record
268 that contains two or more prior convictions in any combination for offenses in levels seven
269 through nine.

270 Section 6. Determining Criminal History. In determining placement in the
271 appropriate criminal history group on the sentencing guidelines grid, the following provisions
272 shall apply:-

273 (a) Conviction-based criminal history. Only those prior offenses which resulted
274 in a conviction shall be counted for criminal history placement on the sentencing guidelines grid.
275 All convictions that occurred prior to the present sentencing event shall be counted for criminal
276 history placement on the sentencing guidelines grid. The offense seriousness level of each prior
277 conviction shall be determined by reference to the version of the master crime list in effect at the
278 time of the sentencing event for the present offense.

279 (b) Incident-based criminal history. Multiple prior convictions arising from the
280 same criminal conduct shall be counted as one prior conviction, based on the most serious
281 offense. There shall be a rebuttable presumption that multiple prior convictions that have the
282 same arraignment date shall be counted as one prior conviction, based on the most serious
283 offense. Multiple convictions with the same arraignment date may each be counted separately
284 for purposes of criminal history placement on the sentencing guidelines grid where each such
285 conviction is not part of the same criminal conduct. Multiple convictions with different
286 arraignment dates may be counted as a single conviction for purposes of criminal history
287 placement on the sentencing guidelines grid where each such conviction was part of the same
288 criminal conduct.

289 (c) Juvenile record. Adjudications of delinquency for offenses classified in
290 offense seriousness levels seven through nine on the master crime list shall be considered as
291 convictions of the offenses involved and counted for purposes of criminal history. Adjudications

292 of delinquency for offenses classified below level seven shall not be counted for purposes of
293 criminal history, but the existence of such adjudications may be considered as an aggravating
294 factor for departure from the sentencing guidelines range.

295 . Prior convictions in federal and other jurisdictions shall be counted for criminal history
296 purposes. The offense of prior conviction shall be assigned to the same offense seriousness level
297 as the Massachusetts offense in the master crime list with the same or substantially the same
298 elements.

299 (e) Prior convictions for staircased offenses. Where the prior conviction is a
300 staircased offense and the offense seriousness level of the staircased offense is not apparent from
301 the criminal record, there is a rebuttable presumption that the prior conviction is in the lowest
302 staircased level for that offense in the master crime list.

303 (f) Determination of criminal history. The judge shall decide any material
304 contested issues relating to criminal history.

305 Section 7. Sentencing Pursuant to the Sentencing Guidelines Grid. Sentencing
306 pursuant to the sentencing guidelines grid shall be based on the offense or offenses of conviction
307 and the criminal history of the defendant. The offense seriousness level for each offense of
308 conviction shall be determined from the master crime list. The appropriate level of staircased
309 offenses shall be determined by taking into account the relevant staircasing factors set forth
310 herein. The number and types of prior convictions shall be determined in accordance with § 5 of
311 this chapter to determine the appropriate criminal history group for the offender. The sentencing
312 guidelines range shall be determined by identifying that grid cell where the seriousness level of

313 the governing offense on the vertical axis intersects with the classification of the criminal history
314 group on the horizontal axis.

315 (a) Sentencing within the guideline range. The sentencing judge may impose a
316 sentence to incarceration within the sentencing guidelines range by imposing a maximum
317 sentence from within the guideline range of the appropriate grid cell. Unless otherwise noted
318 herein, the minimum sentence will always be two-thirds of the maximum sentence and will
319 establish the initial parole eligibility date. This applies to all sentences of incarceration of two
320 months or longer to houses of correction and all sentences to the state prison. Where the
321 maximum sentence of incarceration to a house of correction is less than two months, the
322 minimum sentence need not be two-thirds of the maximum sentence. Where the maximum
323 sentence is selected from the guideline range in the applicable grid cell, the sentence will be
324 within the guidelines and no written explanation is necessary.

325 (b) Departing from the guidelines range. The sentencing judge may impose a
326 sentence below or above the sentencing guidelines range by setting forth in writing reasons for
327 departing from that range on a sentencing statement, consistent with the provisions of G.L. c.
328 211E, § 3 (h). Any departure shall be based on a finding that one or more mitigating or
329 aggravating circumstances exist as provided in this chapter. In imposing a sentence of
330 incarceration that departs from the sentencing guidelines range, the minimum sentence shall be
331 two-thirds of the maximum sentence. A sentence that departs below the guidelines range may
332 include a sentence to any lesser term of incarceration or any intermediate sanction.

333 (1) Mitigating and aggravating circumstances. The following non-exclusive
334 mitigating and aggravating circumstances may guide departures from the sentencing guidelines

335 range. The presence of any such circumstance may warrant departure from the sentencing
336 guidelines range in the discretion of the sentencing judge. In determining mitigation or
337 aggravation, the judge may consider any evidence received during the proceedings; any victim
338 impact statement; any presentence report, when the judge requests one; and, any other
339 information that the judge deems credible.

340 (A) Mitigating circumstances. The non-exclusive list of mitigating
341 circumstances includes the following:-

- 342 1. The defendant was a minor participant in the criminal conduct.
- 343 2. The defendant was suffering from a mental or physical condition that significantly
344 reduced the culpability of the defendant for the offense.
- 345 3. The victim was an initiator, aggressor, or provoker of the offense.
- 346 4. The sentence was imposed in accordance with a jointly agreed recommendation.
- 347 5. The age of the defendant at the time of the offense.
- 348 6. The defendant verifies current involvement in, or successful completion of, a
349 substance abuse or other treatment program that began after the date of the offense.

350 (B) Aggravating circumstances. The non-exclusive list of aggravating
351 circumstances includes the following:-

- 352 1. The victim was especially vulnerable due to age or physical or mental disability.
- 353 2. The victim was treated with particular cruelty.

354 3. The defendant used position or status to facilitate commission of the offense, such
355 as a position of trust, confidence or fiduciary relationship.

356 4. The defendant was a leader in the commission of an offense involving two or more
357 criminal actors.

358 5. The defendant committed the offense while on probation, on parole, or during
359 escape.

360 6. The defendant has committed repeated offenses against the same victim.

361 The sentencing judge shall not be required to conduct an evidentiary hearing in
362 determining aggravating or mitigating factors.

363 (c) Concurrent or consecutive sentencing. When a defendant is convicted of multiple
364 offenses arising out of the same criminal conduct, the judge may impose concurrent or
365 consecutive sentences, subject to the following provisions. The judge shall impose a consecutive
366 sentence when the imposition of a consecutive sentence is required by the terms of the statute
367 pertaining to a particular offense. The judge may impose concurrent or consecutive sentences of
368 incarceration in the house of correction for each offense where such incarceration is permitted by
369 law. The judge may impose concurrent or consecutive sentences of incarceration in the state
370 prison for each offense where such incarceration is permitted by law, subject to the following
371 limitation. The judge may impose consecutive sentences to the state prison by selecting a
372 sentence from the guidelines range in the applicable grid cell for each offense to be sentenced
373 consecutively. The total of such consecutive sentences may be combined up to twice the upper
374 limit of the sentencing guidelines range in the grid cell of the governing offense. Where the total
375 of the combined sentences exceeds twice that upper limit, it shall be considered a departure from

376 the guidelines and the judge is required to provide written reasons. The existence of multiple
377 victims is recognized as an aggravating circumstance which may justify such a departure.

378 Any sentence imposed as concurrent or consecutive to a governing offense may
379 be for a period of incarceration that is less than the lower limit of the sentencing guidelines range
380 contained in the applicable grid cell or for any level of intermediate sanction, without
381 constituting a departure from the sentencing guidelines.

382 When a defendant is convicted of multiple offenses which do not arise out of the
383 same criminal conduct or when a defendant at the time of sentencing is currently serving a
384 sentence for another criminal offense, the judge may impose either a concurrent or consecutive
385 sentence from within the sentencing guidelines range of the applicable grid cell without the
386 limitation on consecutive sentences to the state prison set forth in this section.

387 Section 8. Sentencing for Offenses with Mandatory Minimum Terms. Sentencing
388 guidelines for offenses with mandatory minimum terms are as follows:-

389 (a) Firearms offenses. No departures below the mandatory minimum sentences
390 for firearms offenses in violation of G.L. c. 269 §§ 10 (a), 10 (c), 10 (d), or 10E are permitted.
391 These enumerated mandatory firearms offenses are not integrated into the guidelines grid. The
392 sentencing guidelines for these mandatory firearms offenses are the mandatory sentencing
393 provisions of the existing statutes. The minimum term of incarceration shall be no less than the
394 mandatory minimum sentence provided in the statutes enumerated in this paragraph. The
395 sentencing judge is required to impose a minimum and a maximum sentence, but the minimum
396 sentence need not be two-thirds of the maximum. For purposes of determining the criminal
397 history group for a defendant with prior mandatory firearms convictions, the master crime list

398 provides the offense seriousness level corresponding to the sentencing guidelines grid for each
399 firearms offense with a mandatory minimum sentence.

400 (b) Operating under the influence offenses. (1) For purposes of this chapter,
401 operating under the influence offenses refer to offenses enumerated in the second paragraph of c.
402 90 § 23, in c. 90 § 24 (1) (a) (1), and in c. 90B § 8 (a) (1) (A). With the exception of the
403 departure enumerated in sub-paragraph (b) (2) of this section, no departures below any
404 mandatory minimum sentences for operating under the influence offenses are permitted. These
405 operating under the influence offenses are not integrated into the guidelines grid. The sentencing
406 guidelines for these operating under the influence offenses are the mandatory sentencing
407 provisions of the existing statutes. The minimum term of incarceration shall be no less than any
408 mandatory minimum sentence provided in the statutes enumerated in this paragraph. The
409 sentencing judge is required to impose a minimum and a maximum sentence, but the minimum
410 sentence need not be two-thirds of the maximum.

411 (2) A judge may sentence a defendant, who has been previously convicted of a
412 violation of c. 90 § 24 (1) (a) (1) or c. 90B § 8 (a) (1) (A) or assigned to an alcohol or controlled
413 substance education, treatment, or rehabilitation program by a court of the commonwealth or any
414 other jurisdiction because of a like violation not more than two times within ten years preceding
415 the date of the commission of the operating under the influence offense for which he has been
416 convicted, to a long term residential substance abuse treatment program, approved by the office
417 of community corrections, as established in G.L. c. 211F § 2 (a), in lieu of imposing the
418 mandatory minimum sentence. No other departures below any mandatory minimum sentences
419 for operating under the influence offenses are permitted.

420 (3) For purposes of determining the criminal history group for a defendant with
421 prior convictions for operating under the influence offenses, the master crime list provides the
422 offense seriousness level for each operating under the influence offense.

423 (4) Nothing in this section shall be found to prohibit a sentence pursuant to c. 90
424 § 24 (1) (a) (4) or c. 90B § 8 (a) (3) (A).

425 (c) Offenses in violation of the controlled substances act. Controlled substances
426 offenses with mandatory minimum terms are integrated into the sentencing guidelines grid. As
427 set forth in the master crime list, violations of G.L. c. 94C § 32E (b) (4) and § 32E (c) (4) are
428 level eight offenses; violations of G.L. c. 94C §§ 32E (a) (4), 32E (b) (3), 32E (c) (2), and 32E
429 (c) (3) are level seven offenses; violations of G.L. c. 94C §§ 32 (b), 32A (d), 32E (a) (3), 32E
430 (b) (2), 32E (c) (1), 32F (a), 32F (d), and 32K are level six offenses; violations of G.L. c. 94C §§
431 32A (b), 32B (b), 32E (a) (2), 32E (b) (1), 32F (b), and 32F (c) are level five offenses; and,
432 violations of G.L. c. 94C §§ 32A (c), 32E (a) (1), and 32J are level four offenses.

433 For the offenses enumerated in the preceding paragraph, a judge shall provide
434 written reasons for sentencing below a mandatory minimum term even though the judge may be
435 imposing sentence that is within the guidelines range of the sentencing guidelines grid. The
436 standard for sentencing below the mandatory minimum term is more stringent than the standard
437 for departure below a sentencing guidelines range. A departure below a mandatory minimum
438 sentence for the controlled substances offenses enumerated above is not permitted unless the
439 defendant has no prior conviction for a controlled substance offense in level seven or eight and
440 the sentencing judge finds the existence of one or more mitigating circumstances.

441 A judge may impose a sentence below the sentencing guidelines range, provided
442 that:- (a) the criminal history of the defendant falls in criminal history group A or B in the
443 sentencing guidelines grid; and, (b) there is a substantial mitigating factor in addition to the
444 mitigating circumstance or circumstances that justified the departure below the mandatory
445 minimum sentence that should result in a sentence below the sentencing guidelines range.

446 Where the judge departs below the mandatory minimum sentence and imposes an
447 incarceration sentence within the guidelines range or below the guidelines range, the minimum
448 sentence shall be two-thirds of the maximum sentence; the defendant shall be eligible for parole
449 at the expiration of the minimum sentence; and, the defendant shall be eligible for earned good
450 time, work release, and other pre-release programs deemed appropriate by the correctional
451 authority with custody responsibility, notwithstanding the provisions of G.L. c. 94C § 32H.

452 Where the judge does not depart from the mandatory minimum sentence and
453 imposes a sentence pursuant to any mandatory sentencing provision, the minimum sentence need
454 not be two-thirds of the maximum sentence, and the defendant shall not be eligible for parole,
455 earned good time, work release, or other pre-release programs until he has served the mandatory
456 minimum sentence, as mandated by G.L. c. 94C, § 32H.

457 (d) Other offenses with mandatory minimum terms. No departures below any
458 mandatory minimum sentence provided for in these enumerated sections are permitted. As set
459 forth in the master crime list, violations of G.L. c. 90 § 24G (a), c. 90B § 8B (1), c. 272 § 4B, and
460 c. 272 § 6 are level six offenses; violations of G.L. c. 265 § 43 (b), c. 265 § 43 (c), and c. 272 §
461 4A are level five offenses; violations of G.L. c. 272 § 4A, c. 90 § 24L (1), c. 90B § 8A (1), c.
462 266 § 27A, . c. 266 § 28 (a), c. 268 § 39, and c. 272 § 7 are level four offenses.

463 For these offenses the minimum sentence shall be two-thirds of the maximum
464 sentence selected from within the applicable guidelines range, provided that all sentences require
465 a minimum term of incarceration equal to or greater in length than the mandatory minimum
466 sentence. It shall not constitute a departure for a judge to impose a sentence exceeding the
467 guidelines range of the applicable grid cell in order to comply with the requirement that the
468 minimum term of incarceration must be equal to or greater in length than the mandatory
469 minimum sentence and the requirement that the minimum sentence shall be two-thirds of the
470 maximum sentence.

471 The defendant shall be eligible for parole at the expiration of the minimum
472 sentence. The defendant shall not be eligible for earned good time, work release, and other pre-
473 release programs deemed appropriate by the correctional authority with custody responsibility,
474 until the defendant has served the mandatory minimum sentence.

475 (e) Offenses with statutory minimum sentences. For those offenses with a
476 statutory minimum sentence, it shall not be considered a departure for the judge to impose a
477 sentence within the sentencing guidelines range, even though the sentence may be below the
478 statutory minimum sentence. Where the statutory minimum sentence exceeds the sentencing
479 guidelines range, the imposition of the statutory minimum sentence shall not constitute a
480 departure from the sentencing guidelines.

481 Section 9. The Statutory Maximum Term. Notwithstanding G.L. c. 211E § 3 (c),
482 a judge may not impose any sentence which exceeds the statutory maximum term set forth in the
483 statute that establishes the penalty for the particular offense.

484 Section 10. District and Municipal Court Jurisdiction. When a district or municipal
485 court judge is imposing a sentence and the sentencing guidelines range in the applicable grid cell
486 exceeds the district and municipal court sentencing jurisdiction of two and one half years, the
487 sentencing guidelines range shall be an incarceration zone range of 20 to 30 months and it shall
488 not constitute a departure from the sentencing guidelines for a district or municipal court judge to
489 impose a sentence of incarceration from within the 20 to 30 month sentencing guidelines range.

490 Section 11. Sentencing to Intermediate Sanctions. Guidelines for sentencing to
491 intermediate sanctions, as defined in G.L. c. 211F § 1, are integrated into the sentencing
492 guidelines grid in the discretionary zone and the intermediate sanctions zone as described in § 2
493 of this chapter.

494 There are four levels of intermediate sanctions according to the severity of the
495 restrictions on personal liberty and the intensity of supervision. The four levels of intermediate
496 sanctions are integrated into the grid as follows:-

497 Level IV, 24-hour restriction, under which the offender is subject to 24-hour restriction
498 and accountability of his whereabouts. This represents the maximum level of restriction and
499 accountability short of incarceration.

500 Level III, daily accountability, under which the offender is subject to daily accountability
501 of his whereabouts. This represents the level of restriction and accountability that falls in
502 between 24-hour restriction and standard probation supervision.

503 Level II, standard probation supervision, under which the offender is subject to weekly
504 accountability of his whereabouts. This represents the level of restriction and accountability that
505 is typically associated with standard probation supervision.

506 Level I, financial accountability, which represents the level of restriction and
507 accountability that is typically associated with administrative probation. It is primarily designed
508 to monitor the timely payment of restitution, fines, victim/witness fees, and the like, by the
509 offender.

510 A sentence to an intermediate sanction shall be imposed as a condition of
511 probation, consistent with the provisions of G.L. c. 211F § 3 (c). The length of the probation
512 period that may be imposed shall be consistent with the provisions of G.L. c. 276 § 87. The
513 sentencing judge shall specify the intermediate sanction level at which the offender will start
514 serving the term of probation and may also include a minimum period during which the offender
515 is required to be supervised at that level. The supervising probation officer has the discretion to
516 move a probationer down in level or levels in appropriate circumstances, without judicial
517 consultation, consistent with any special conditions or time restrictions specified by the judge.
518 Such a reduction in the intermediate sanction level by a probation officer shall not go below the
519 guideline levels set forth in the grid cell in which the offender was sentenced.

520 A judge has the exclusive authority to increase an intermediate sanction level or
521 add program components.

522 Section 12. Revocation of Probation. The sentencing guidelines do not apply to a
523 probation revocation hearing. In imposing a sentence at a probation revocation hearing, the
524 judge has the discretion to impose any sentence up to the statutory maximum. When imposing a
525 sentence of incarceration, the judge shall impose both a minimum sentence and a maximum
526 sentence and the minimum sentence must be two-thirds of the maximum sentence.

527 Section 13. Split Sentences. A sentence to the state prison shall not be suspended
528 in whole or in part. A sentence to a house of correction shall not be suspended in whole, but a
529 sentence to a house of correction may be suspended in part to permit the imposition of a split
530 sentence. In imposing a split sentence, a judge shall impose a minimum and a maximum term as
531 provided by § 6 (a) of this chapter and shall specify the period of incarceration to be served in
532 the house of correction. The judge shall also specify the term of probation to be served
533 subsequent to the period of incarceration.

534 Section 14. Financial Sanctions. When appropriate, a judge shall order fines or
535 restitution or both as part of any sentence. Restitution to the victim shall be a priority of the
536 judge at the time of sentencing, regardless of whether the offender is incarcerated.

537 Section 15. Imposing a Sentence. In sentencing a defendant after trial or after
538 acceptance of a guilty plea pursuant to either Rule 12 of the Rules of Criminal Procedure or Rule
539 4 (c) of the District/Municipal Court Rules of Criminal Procedure, the court shall comply with
540 the provisions of Rule 28 of the Massachusetts Rules of Criminal Procedure. The judge shall
541 allow both parties to be heard at sentencing on all sentencing issues. In determining the
542 sentence, the judge may rely on any evidence received during the proceedings; any victim impact
543 statement; any presentence report, when the judge requests one; and, any other information the
544 judge deems credible. A sentencing statement shall be completed in accordance with G.L. c.
545 211E § 3 (h) for each defendant being sentenced. The sentencing judge shall sign the completed
546 sentencing statement and a copy shall be submitted to the Sentencing Commission as provided in
547 G.L. c. 211E § 3 (h).

548 Section 16. Right of Appeal. The defendant or the commonwealth may appeal a
549 sentence imposed pursuant to sentencing guidelines, to the extent an appeal is permitted in
550 accordance with the provisions of section 4 of chapter 211E of the General Laws. The
551 provisions of sections 28A and 28B of chapter 278 of the General Laws shall not apply to any
552 offense committed on or after the effective date of this chapter.

553 SECTION 2. Severability. Where any provision of this chapter or the application
554 thereof to any person or circumstance, shall, for any reason, be held invalid, the remainder of this
555 chapter or the application of such provision to persons or circumstances other than those as to
556 which it is held invalid shall not be affected thereby.

557 SECTION 3. Split Sentences. Section 3 (a) (2) of chapter 211E of the General
558 Laws is hereby amended by inserting after the phrase, “Said sentence shall not be suspended in
559 whole or in part,” the following: “except for the imposition of split sentences to the house of
560 correction pursuant to chapter 211G.”

561 SECTION 4. Section 3 (e) of chapter 211E of the General Laws is hereby
562 amended by inserting after the phrase “impose a sentence below any mandatory minimum term
563 prescribed by statute,” the following: “only to the extent provided by chapter 211G,”.

564 SECTION 5. Effective Date. The provisions of this chapter shall take effect on
565 January 1, 2010, and the sentencing guidelines and other related provisions contained herein
566 shall apply to all felonies and misdemeanors committed on or after that date. All offenses
567 committed prior to January 1, 2010, shall be governed by the laws, including but not limited to
568 those on sentencing, parole, and probation, in effect at the time the offense is committed. Any

569 amendments to the sentencing guidelines shall apply to all offenses committed on or after the
570 effective date of the amendment.