

HOUSE DOCKET, NO. 00460

HOUSE No.
00041

(House – [Enter text], 01/14/2011)



The Commonwealth of Massachusetts

IN THE YEAR TWO THOUSAND ELEVEN

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In the Year Two Thousand Eleven.

January 14, 2011

To the Honorable Senate and House of Representatives:

In light of the tragic death of Woburn Police Officer John Maguire on December 26, 2010, killed responding to an armed robbery perpetrated by an individual while on parole, there has been a deep erosion in the public’s confidence in the parole system. Among other actions I have taken, I am filing for your consideration “An Act To Enhance Public Safety.”

This bill directly addresses how the Parole Board assesses potential parolees by mandating the use of an evidence-based risk and needs assessment in every release decision. The bill also amends the habitual offender laws to guarantee that the most violent, repeat offenders receive sure and severe punishment: anyone who has committed two serious felony crimes—in any jurisdiction—will receive the maximum punishment if convicted of a third felony and will be required to serve that sentence consecutive to any prior sentence. The bill also mandates that criminals who commit crimes while out on bail or other forms of supervision while awaiting trial will receive consecutive, not concurrent, sentences for those crimes. Finally, the bill ends the misleading imposition of so-called “life” sentences that are in reality 15-year-to-life sentences by requiring the sentencing judges to specifically impose a minimum term of 15 years—or more—along with the maximum sentence of life.

The reality remains that most people who spend time in prison will return to the community. A functioning parole system is essential to ensure effective re-entry of formerly incarcerated individuals into society, as a safety valve for an increasingly

overcrowded and volatile prison system, and to best promote public safety. I urge the General Court to take swift action on this bill to help repair the public's confidence in the parole system.

Sincerely,

DEVAL L. PATRICK

AN ACT TO ENHANCE PUBLIC SAFETY

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the au-thority of the same, as follows:

SECTION 1. Section 130 of said chapter 127, as appearing in the 2008 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following words:-

No prisoner shall be granted a parole permit merely as a reward for good conduct. Permits shall only be granted only if the board is of the opinion, after consideration of a risk and needs assessment, that there is a reasonable probability that, if the such prisoner is released with appropriate conditions and parole supervision, the prisoner will live and remain at liberty without violating the law, and that release is not incompatible with the welfare of society. In determining whether to grant a parole permit, the pa-role board shall also consider whether, during the period of incarceration, the prisoner has participated in available work opportunities and education or treatment programs, and demonstrated good behavior, and whether risk reduction programs made available through collaboration with criminal justice agencies would minimize the probability of the prisoner re-offending once released.

SECTION 2. Section 133A of chapter 127 of the General Laws, as so appearing, is hereby amended by inserting after the word "for parole", in line 5, the following words:- at the expiration of the minimum term fixed by the court under section 24 of chapter 279.

SECTION 3. Section 133A of chapter 127 is hereby further amended by striking out, in line 6, the words "fifteen years", and inserting in place thereof the following words:- the minimum term.

SECTION 4. Section 133B of chapter 127 of the General Laws, as so appearing, is hereby amended by inserting after the words "twenty-five", in line 2, the following words:- or section 25A.

SECTION 5. Section 133B of chapter 127 is hereby further amended by striking out, in line 6, the word "half", and inserting in place thereof the following words:- two-thirds.

SECTION 6. Section 133B of chapter 127 is hereby further amended by inserting at the end of the first paragraph the following words:- In the case of a maximum sentence of life, two-thirds of the maximum sentence shall be deemed to expire after 25 years.

SECTION 7. Chapter 279 of the General Laws, as so appearing, is hereby amended by striking out section 8B and inserting in place thereof the following section:-

Section 8B. If a defendant on release subject to the provisions of sections 42A, 58, 58A or 87 of chapter 276 or any other statute that allows the court to set conditions of release during the pendency of a criminal case, commits a crime, the sentences ultimately imposed on the pending crime and the new crime shall run consecutive to each other, without regard to the order or sequence in which those cases are adjudicated.

SECTION 8. Section 24 of chapter 279 of the General Laws, as so appearing, is hereby amended by striking out, in lines 1-2, the words “for life or”.

SECTION 9. Section 24 of chapter 279 is hereby further amended by inserting at the end the following words:- In the case of a life sentence, the court shall fix a minimum term of not less than 15 years.

SECTION 10. Section 25 of chapter 279 of the General Laws, as so appearing, is hereby amended by inserting after the word “state”, in line 2, the following words:- , or the United States or a military, territorial or Indian tribal authority

SECTION 11. Section 25 of chapter 279 is hereby further amended by striking out, in line 3, the words “another state”, and inserting in place thereof the following words:- any of the sovereigns listed above.

SECTION 12. Chapter 279 of the General Laws, as so appearing, is hereby amended by inserting after section 25 the following sections:-

Section 25A. Whoever has been convicted of 2 or more of the following felonies, or twice convicted of 1 of the following felonies, arising out of separate incidents or involving separate victims, and does not show that a pardon has been granted for either crime, shall, upon conviction of a felony in the superior, district or municipal court be considered an habitual criminal and be punished by imprisonment for the maximum term provided by law as a penalty for the felony for which the person is then to be sentenced:

murder under section 1 of chapter 265; manslaughter under section 13 of chapter 265; manslaughter while operating under the influence under section 13½ of chapter 265; indecent assault and battery on a child under 14 under sections 13B, 13B½ or 13B¾ of chapter 265; indecent assault and battery on a mentally retarded person under section 13F of chapter 265; commission of a felony for hire under section 13G of chapter 265; indecent assault and battery on a person 14 or older under section 13H of chapter 265;

assault and battery on a child resulting in substantial bodily injury under section 13J of chapter 265; assault and battery upon an elderly or disabled person under section 13K of chapter 265; mayhem under section 14 of chapter 265; assault and battery with a dangerous weapon upon a person age sixty or older under section 15A(a) of chapter 265; aggravated assault and battery with a dangerous weapon under section 15A(c) of chapter 265; assault and battery by means of a hypodermic syringe under section 15C of chapter 265; attempted murder under section 16 of chapter 265; armed robbery under section 17 of chapter 265; assault with intent to rob under section 18 of chapter 265; armed assault in a dwelling under section 18A of chapter 265; use of a firearm in the commission of a felony under section 18B of chapter 265; home invasion under section 18C of chapter 265; unarmed robbery of a person over 60 under section 19 of chapter 265; carjacking under section 21A of chapter 265; rape under section 22 of chapter 265; rape of a child by force under section 22A of chapter 265; aggravated rape of a child with force under section 22B of chapter 265; rape of a child by force by certain previously convicted offenders under section 22C of chapter 265; rape and abuse of a child under section 23 of chapter 265; aggravated rape and abuse of a child under section 23A of chapter 265; rape and abuse of a child by certain previously convicted offenders under section 23B of chapter 265; assault with intent to rape under section 24 of chapter 265; assault with intent to rape a child under section 24B of chapter 265; kidnapping under section 26 of chapter 265; drugging persons for kidnapping under section 26B of chapter 265; child enticement under section 26C of chapter 265; poisoning under section 28 of chapter 265; arson of a dwelling house under section 1 of chapter 266; armed burglary under section 14 of chapter 266; unarmed burglary of a dwelling at nighttime under section 15 of chapter 266; breaking and entering at night under section 16 of chapter 266; possession, use, ignition or explosion of an explosive, destructive or incendiary device, substance or weapon under sections 102, 102A, 102B, or 102C of chapter 266; unlawful possession of a firearm, machine gun, sawed-off shotgun, large capacity weapon or large capacity feeding device under section 10 of chapter 269, or an assault weapon under section 131M of chapter 140; trafficking firearms under section 10E of section 269; airport security violation under subsection (e) of section 12F of section 269; drugging for sex under section 3 of chapter 272; incest under section 17 of chapter 272; posing or exhibiting child in a state of nudity or sexual conduct under section 29A of chapter 272; dissemination of visual material of child in state of nudity or sexual conduct under section 29B of chapter 272; possession of child pornography under section 29C of chapter 272; or a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority.

A sentence imposed under this section shall run from and after any sentence the defendant is serving at the time of sentencing.

Section 25B. (a) A prosecution commenced under section 25 or 25A shall not be continued without a finding or placed on file and no offender sentenced under section 25 or 25A shall be eligible for probation.

(b) In any prosecution commenced under section 25 or 25A, introduction into evidence of a prior conviction by either certified attested copies of original court papers, or certified attested copies of the defendant's biographical and informational data from records of the department of probation, any jail or house of correction or the department of correction showing that defendant served a sentence or probationary term for the offense in question, shall be prima facie evidence that the defendant before the court has been convicted previously by a court of the commonwealth or any other jurisdiction. Such documentation shall be self-authenticating and admissible, after the commonwealth has established the defendant's guilt on the primary offense, as evidence in any court of the commonwealth to prove the defendant's commission of any prior conviction described therein. The commonwealth shall not be required to introduce any additional corroborating evidence or live witness testimony to establish the validity of such prior conviction.