

**SENATE . . . . . No. 1153**

---

**The Commonwealth of Massachusetts**

PRESENTED BY:

*John C. Velis*

*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 safely reduce the use of cash bail.

PETITION OF:

NAME:

*John C. Velis*

DISTRICT/ADDRESS:

*Second Hampden and Hampshire*

**SENATE . . . . . No. 1153**

---

By Mr. Velis, a petition (accompanied by bill, Senate, No. 1153) of John C. Velis for legislation to safely reduce the use of cash bail. The Judiciary.

---

**The Commonwealth of Massachusetts**

\_\_\_\_\_  
**In the One Hundred and Ninety-Second General Court  
(2021-2022)**  
\_\_\_\_\_

An Act to safely reduce the use of cash bail.

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to which is to improve the effectiveness of the pretrial release system in order to protect the public and reduce the reliance on cash bail, 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 42A of chapter 276 of the General Laws is hereby amended by  
2 striking out the first six paragraphs and inserting in place thereof the following paragraph:-

3           As part of the disposition of any criminal complaint involving a crime of abuse, as  
4 defined in section 57, the court may establish such terms and conditions of probation to ensure  
5 the safety of the person who has suffered such abuse or threat and will prevent the recurrence of  
6 such abuse or threat.

7           SECTION 2. Said chapter 276 is hereby amended by striking out sections 57 through  
8 58B, inclusive, as appearing in the 2018 Official Edition, and inserting in place thereof the  
9 following 6 sections:-

10 Section 57. (a) As used in sections 57 through 59, the following words shall, unless the  
11 context clearly requires otherwise, have the following meanings:-

12 “Controlled substance”, a drug, substance, controlled substance analogue or immediate  
13 precursor in any schedule or class as referred to in section 1 of chapter 94C.

14 “Crime of abuse”, a crime that involves assault and battery, trespass, threat to commit a  
15 crime, or any other criminal conduct and that involves the infliction, or the imminent threat of  
16 infliction, of physical harm upon a person by such person’s family or household member as  
17 defined in section 1 of chapter 209A; any violation of an order issued pursuant to section 18 or  
18 34B of chapter 208, section 32 of chapter 209, section 3, 4 or 5 of chapter 209A or section 15 or  
19 20 of chapter 209C; or any act that would constitute abuse, as defined in section 1 of chapter  
20 209A; or a violation of section 13M or 15D of chapter 265.

21 “Dangerous crime”, any of the following:

22 (A) a felony that has as an element of the crime the use, attempted use or threatened use  
23 of physical force against the person of another;

24 (B) the crimes of burglary or arson;

25 (C) a violation of an order pursuant to section 18, 34B or 34C of chapter 208, section 32  
26 of chapter 209, section 3, 4 or 5 of chapter 209A or section 15 or 20 of chapter 209C;

27 (D) a misdemeanor or felony involving abuse as defined in section 1 of chapter 209A;

28 (E) a sex offense involving a child as defined in section 178C of chapter 6;

29 (F) a violation of section 13B of chapter 268;

30 (G) a violation of section 13, 13 ½, 13B, 13B ½, 13 B ¾, 13F, 18B, 22, 22A, 22B, 22C,  
31 23, 23A, 23B, 24, 25, 26B, 26C, 37, 43A, 50 or 51 of chapter 265 or a violation of section 13D  
32 of said chapter 265 in which the public employee is a police officer;

33 (H) a violation of section 4A, 4B, 16, 29A, 29B, 29C, 77 or 105 of chapter 272;

34 (I) a violation of section 24G of chapter 90 which occurs under the influence of alcohol  
35 or drugs, or a violation of section 8B of chapter 90B; or a third or subsequent violation of section  
36 24 of chapter 90 or section 8 of chapter 90B;

37 (J) a crime under chapter 94C for which the maximum term of imprisonment is more  
38 than 10 years;

39 (K) any violation of section 102, or a malicious violation of section 127 of chapter 266;

40 (L) a violation of section 131N of chapter 140 or subsection (a), (b), (c), (d), (h), (j), or  
41 (m) of section 10 or section 11C of chapter 269;

42 (M) a violation of section 10A, 10E, or 10G of chapter 269;

43 (N) threats to kill, rape, or cause serious bodily injury;

44 (O) conspiracy or solicitation to commit any of the above enumerated crimes.

45 “Financial condition”, a secured or unsecured bond.

46 “Judicial officer”, a judge or a clerk or assistant clerk of the superior, district, Boston  
47 municipal, or juvenile court.

48 “Release order”, any order releasing a defendant on personal recognizance or on  
49 conditions, regardless of whether the defendant has satisfied any financial condition.

50 “Secured bond”, payment to the court of a specified amount of money that in the  
51 discretion of the judicial officer will reasonably assure the presence of a defendant, taking into  
52 consideration the defendant’s ability to pay.

53 “Unsecured bond”, a defendant’s promise to pay to the court a specified amount of  
54 money if the defendant does not appear before the court on a date certain or fails to abide by any  
55 conditions of release set under clause (B) of paragraph (1) of subsection (b) of section 58, such  
56 amount being an amount that in the discretion of the judicial officer will reasonably assure the  
57 presence of a defendant, taking into consideration the defendant’s ability to pay.

58 (b) Upon the appearance of a defendant charged with a crime, the judicial officer  
59 shall hold a hearing, at which the defendant and his counsel, if any, may participate and inquire  
60 into the case, to determine whether the defendant shall be released or detained pending trial of  
61 the case, as provided in this section and sections 58, 58A, and 58B. At said hearing, the judicial  
62 officer shall have immediate access to all pending and prior criminal offender record  
63 information, board of probation records, out of state criminal records, and police and incident  
64 reports related to the defendant, upon oral, telephonic, facsimile or electronic mail request, to the  
65 extent practicable.

66 At the conclusion of such hearing, the judicial officer shall issue an order that, pending  
67 trial, the defendant be:

68 (1) Released on personal recognizance under clause (A) of paragraph (1) of subsection  
69 (b) of section 58;

70 (2) Released on financial or other conditions under clauses (B) or (C) of paragraph (1) of  
71 subsection (b) of section 58;

72 (3) Detained under section 58A;

73 (4) Released on financial or other conditions under section 58A; or

74 (4) Temporarily detained to permit an opportunity for the attorney for the commonwealth  
75 to move for revocation of conditional release under section 58B.

76 (c) For a person who is arrested and not released under section 59, a hearing under  
77 section 58 shall take place no later than the next day that the superior, district, Boston municipal,  
78 or juvenile court in the place of jurisdiction is in session; provided, that in a case that involves a  
79 crime of abuse: (1) the commonwealth shall be the only party permitted to move for arraignment  
80 within 3 hours of a complaint being signed by a magistrate or a magistrate's designee; and (2) a  
81 defendant arrested, who has attained the age of 18 years, shall not be released sooner than 6  
82 hours after arrest, except by a judge in open court.

83 Any hearing under section 58A shall be held immediately upon the motion of the  
84 commonwealth unless the defendant, or the attorney for the commonwealth, seeks a continuance.  
85 Except for good cause, a continuance on motion of the defendant may not exceed 5 business  
86 days, and a continuance on motion of the attorney for the commonwealth may not exceed 3  
87 business days. During a continuance, the individual shall be detained. The commonwealth may  
88 move for an initial hearing under section 58A at any time before disposition of the case. Once a  
89 hearing under section 58A commences, the defendant shall be detained pending completion of  
90 the hearing.

91 In any pending case where the defendant has been first arraigned in the district, Boston  
92 municipal, or juvenile court and is subsequently arraigned in superior court for the same or  
93 related crimes arising out of the same incident, the superior court may conduct a new hearing  
94 under section 58 or, upon motion of the commonwealth, section 58A, provided that any order of  
95 the district, Boston municipal, or juvenile court concerning the defendant issued under section 58  
96 or 58A shall remain in effect until such time as the superior court issues a new order under  
97 section 58 or 58A. In any such new hearing in the superior court, the judicial officer shall  
98 consider the defendant's compliance with any previously ordered conditions of release.

99 Any hearing under section 58 may be reopened by the judicial officer, and any hearing  
100 under section 58A may be reopened by the judge. Any hearing under either section may also be  
101 reopened upon motion of the commonwealth or the defendant, provided that the judicial officer  
102 or judge determines by a preponderance of the evidence that: (1) information exists that was not  
103 known to the movant at the time of the hearing or there has been a material change in  
104 circumstances; and (2) such information or change in circumstances has a substantial bearing on  
105 the issue of whether the defendant's detention, defendant's release on conditions, or conditions  
106 imposed on the defendant are necessary and sufficient to reasonably assure the appearance of the  
107 defendant and the safety of any other person and the community. In any such reopened hearing,  
108 the judicial officer shall consider the defendant's compliance with any previously ordered  
109 conditions of release.

110 Section 58. (a) Unless the attorney for the commonwealth has moved for detention under  
111 section 58A, the judicial officer shall order the pretrial release of a defendant on personal  
112 recognizance, subject to the condition that the defendant not commit a new crime during the  
113 period of release, unless the judicial officer determines, in the exercise of his or her discretion,

114 that the release will not reasonably assure the appearance of the defendant or will endanger the  
115 safety of any other person or the community.

116 (b) If the judicial officer determines, in the exercise of his or her discretion, that the  
117 release described in subsection (a) will not reasonably assure the appearance of the defendant or  
118 will endanger the safety of any other person or the community:

119 (1) the judicial officer shall order the pretrial release of the defendant subject to:

120 (A) the condition that the defendant does not commit a new crime during the period of  
121 release; and

122 (B) the least restrictive further condition, or combination of conditions, that the judicial  
123 officer determines will reasonably assure the appearance of the defendant, which may include the  
124 condition or combination of conditions that the defendant during the period of release shall:

125 (i) abide by specified restrictions on place of abode or travel;

126 (ii) report on a regular basis to a designated law enforcement agency, pretrial services  
127 agency, or other agency;

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

130 (iv) submit to random testing to monitor compliance with any conditions ordered under  
131 subclause (iii);

132 (v) comply with a specified curfew or home confinement;



133 (vi) undergo medical, psychological, or psychiatric treatment, including treatment for  
134 substance or alcohol use disorder, if available, and remain in a specified institution if required for  
135 that purpose;

136 (vii) submit to electronic monitoring, provided that any condition of electronic  
137 monitoring may include either specified inclusion or exclusion zones or a curfew;

138 (viii) participate in a community corrections program pursuant to chapter 211F;  
139 provided, however, that the defendant shall consent to such participation;

140 (ix) participate in a notification program pursuant to subsection (c);

141 (x) provide an unsecured or secured bond to satisfy a financial condition that the judicial  
142 officer may specify; provided that a financial condition shall be set in an amount no higher than  
143 what would reasonably assure the appearance of the person before the court after taking into  
144 account the person's financial resources; provided, however, that a higher than affordable  
145 financial condition may be set if neither alternative nonfinancial conditions nor an amount which  
146 the person could likely afford would adequately assure the person's appearance before the court;  
147 and provided further that for crimes that do not carry a penalty of incarceration, no secured bond  
148 may be ordered unless the defendant has previously failed to appear on that charge; and

149 (xi) satisfy any other condition that is reasonably necessary to assure the appearance of  
150 the defendant; and

151 (C) the least restrictive further condition, or combination of conditions, that the judicial  
152 officer determines will reasonably assure the safety of any other person and the community,

153 which may include the condition or combination of conditions that the defendant during the  
154 period of release shall:

155 (i) refrain from abusing and harassing any alleged victim of the charged crime and any  
156 potential witness who may testify concerning the charged crime;

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

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

161 (iv) comply with restrictions on personal associations, a curfew or home confinement;

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

164 (vi) undergo medical, psychological, or psychiatric treatment, including treatment for  
165 substance or alcohol use disorder, if available, and remain in a specified institution if required for  
166 that purpose;

167 (vii) submit to electronic monitoring, provided that any condition of electronic  
168 monitoring may include either specified inclusion or exclusion zones or a curfew;

169 (viii) satisfy any other condition that is reasonably necessary to assure the safety of any  
170 other person and the community.

171 (2) When setting any conditions under clause (B) of paragraph (1), the judicial officer  
172 shall consider where relevant the following factors concerning the defendant:

- 173 (A) financial resources;
- 174 (B) family ties;
- 175 (C) any record of convictions under the laws of the commonwealth or the laws of  
176 another state, the United States, or a military, territorial or Indian tribal authority in any other  
177 state;
- 178 (D) potential penalty the defendant faces;
- 179 (E) any illegal drug distribution or present drug dependency;
- 180 (F) any employment record;
- 181 (G) any history of mental illness;
- 182 (H) any flight to avoid prosecution or fraudulent use of an alias or false identification;
- 183 (I) any failure to appear at any court proceedings to answer to a charge;
- 184 (J) any prior violation of conditions of release, probation, or parole, or of a temporary or  
185 permanent order issued under section 18 or 34B of chapter 208, section 32 of chapter 209,  
186 section 3, 4 or 5 of chapter 209A or section 15 or 20 of chapter 209C;
- 187 (K) the nature and circumstances of the crimes charged;
- 188 (L) whether the defendant was, at the time of the crime charged, on release pending  
189 adjudication, sentencing or appeal of a prior charge;

190 (M) whether the defendant was, at the time of the crime charged, under the supervision  
191 of the commissioner of probation, the parole board or any other comparable authority of this or  
192 another state or of the federal government.

193 (3) When setting any conditions under clause (C) of paragraph (1), the judicial officer  
194 shall consider where relevant the following factors concerning the defendant:

195 (A) any factors listed in clauses (B) through (M) of paragraph (2);

196 (B) whether the acts alleged involve a crime of abuse;

197 (C) any history of orders issued against the defendant pursuant to section 18 or 34B of  
198 chapter 208, section 32 of chapter 209, section 3, 4 or 5 of chapter 209A or section 15 or 20 of  
199 chapter 209C; and

200 (D) any risk that the defendant will attempt to obstruct justice, or attempt to threaten,  
201 injure, or intimidate a prospective witness or juror.

202 (4) In establishing any financial condition under clause (B) of paragraph (1), any order  
203 must comply with the following requirements:

204 (A) A judicial officer may not impose a financial condition to assure the safety of any  
205 other person or the community, but may impose a financial condition when necessary to  
206 reasonably assure the defendant's appearance.

207 (B) Where it appears, based on credible evidence, that the defendant lacks sufficient  
208 financial resources to post any secured bond required by the judicial officer, such that requiring  
209 such secured bond will result in the long-term pretrial detention of the defendant, the judicial  
210 officer must provide findings of fact and a statement of reasons for the decision, either in writing

211 or orally on the record, confirming that the judicial officer considered the defendant's financial  
212 resources and explaining why the defendant's risk of non-appearance is so great that no  
213 alternative, less restrictive financial or nonfinancial conditions will suffice to assure the  
214 defendant's presence at future court proceedings and explaining how the amount was calculated  
215 after taking the person's financial resources into account and why the commonwealth's interest  
216 in a financial condition outweighs the potential adverse impact on the person, their immediate  
217 family or dependents resulting from pretrial detention.

218 (C) When reconsidering or reviewing a financial condition in a case where a defendant  
219 has been detained due to his inability to meet the financial condition, a judicial officer shall  
220 consider the length of the defendant's pretrial detention and the equities of the case.

221 (5) If the judicial officer imposes a financial condition, the clerk and assistant clerks of  
222 the court shall accept, without charging any fee, any money tendered in satisfaction of such  
223 financial condition during the regular business hours of that court.

224 (6) Before ordering the release of any defendant charged with a crime against the person  
225 or property of another, the judicial officer shall comply with the domestic abuse inquiry  
226 requirements of section 56A.

227 (7) In a release order issued under this section, the judicial officer shall:

228 (A) Include a written statement that sets forth all the conditions to which the release is  
229 subject, in a manner sufficiently clear and specific to serve as a guide for the defendant's  
230 conduct; and

231 (B) If the defendant is not released on personal recognizance or unsecured bond, include  
232 a written summary of the reasons for denying such release and detailed reasons for imposing any  
233 financial condition; and

234 (C) Advise the defendant of:

235 (i) The consequences of violating a condition of release, including immediate arrest or  
236 issuance of a warrant for the defendant's arrest, revocation of release, and, if applicable, the  
237 potential that the person may face criminal penalties, including penalties for violating section  
238 13B of chapter 268; and

239 (ii) If the defendant is charged with a crime of abuse, informational resources related to  
240 domestic violence, which shall include, but shall not be limited to, a list of certified intimate  
241 partner abuse education programs located within or near the court's jurisdiction.

242 (c) A person who has been charged with a crime shall provide the court with his or  
243 her cellular telephone number, if the defendant has such a device, unless the defendant opts out  
244 of the service provided under this subsection; provided, however, that upon the order of a  
245 judicial officer pursuant to subclause (ix) of clause (B) of paragraph (1) of subsection (b), a  
246 defendant may not opt out of such service. The court shall provide a service using a system of  
247 automated text messaging to remind criminal defendants of mandatory court appearance dates in  
248 advance of the date of such appearance. The court shall keep all information provided by a  
249 criminal defendant pursuant to this subsection confidential, and such information may not be  
250 used in any proceeding; provided, however, that the fact that a defendant did or did not  
251 participate in this system shall be marked on the docket and may be used in a proceeding if  
252 otherwise admissible.

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

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

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

260 (2) where the defendant is charged with a crime for which the potential penalty includes a  
261 sentence to the state prison and there are specific, articulable facts and circumstances  
262 demonstrating a serious risk that the defendant may attempt to threaten, injure, or intimidate a  
263 law enforcement officer, an officer of the court, or a prospective witness or juror in any criminal  
264 investigation or judicial proceeding.

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

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

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

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

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

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

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

281 (A) any of the factors listed in paragraphs (2) and (3) of subsection (b) of section 58  
282 where relevant;

283 and

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

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

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

289 (4) the defendant shall be afforded an opportunity to present witnesses, to cross-examine  
290 witnesses who appear at the hearing, and to present information by proffer or otherwise;  
291 provided, however, that before issuing a summons to an alleged victim, or a member of the  
292 alleged victim's family, to appear as a witness at the hearing, the defendant shall demonstrate to



293 the court a good faith and reasonable basis for believing that the testimony from the witness will  
294 be material and relevant to support a conclusion that the defendant should not be detained; and

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

297 (d) When a defendant has been released pursuant to section 58 and the attorney for  
298 the commonwealth subsequently files a motion seeking to detain the defendant under this  
299 section, the attorney for the commonwealth may file such motion ex parte. Upon such ex parte  
300 filing, the court may, for good cause shown, issue a warrant for the defendant's arrest to secure  
301 his presence for such hearing. Any such hearing shall occur as otherwise set forth in this section.

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

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

306 Section 58B. (a) A defendant who has been released after a hearing pursuant to section  
307 58, 58A, 59 or 87 and who has violated a condition of his release, shall be subject to a revocation  
308 of release and an order of detention following a motion by the attorney for the commonwealth  
309 and a hearing as provided below. If there is probable cause to believe that, while on release, the  
310 defendant committed a felony or a dangerous crime a rebuttable presumption shall arise that no  
311 condition or combination of conditions will assure that the person will not pose a danger to the  
312 safety of any other person or the community.

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

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

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

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

325 (d) If, following a hearing under this section, the judge does not issue a revocation  
326 order, the judge may issue a release order that may include any condition or combination of  
327 conditions of release set forth in clauses (B) and (C) of paragraph (1) of subsection (b) of section  
328 58.

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

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

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

341 Section 58C. In a case involving a crime of abuse or a dangerous crime with an  
342 identified victim, no person shall be released pursuant to section 58, 58A, 58B or 59 before the  
343 alleged victim is notified of the defendant's imminent release; provided, however, that the  
344 defendant shall not be held more than 6 hours in order to permit prior notice to the alleged  
345 victim.

346 When a defendant is to be released from the custody of a police department, such notice  
347 shall be provided by the police department. When a defendant is to be released from a  
348 courthouse, such notice shall be provided by the attorney for the commonwealth. When a  
349 defendant is to be released from a jail or correctional facility, such notice shall be provided by  
350 the superintendent. The person or agency responsible for providing notice shall undertake to  
351 provide notice promptly.

352 Section 58D. A defendant, if aggrieved by the entry of an order or granting or denial of  
353 a motion under section 58, 58A or 58B by the district, Boston municipal or juvenile court, may  
354 petition the superior court for a review of such decision. Upon entry of such order or ruling on  
355 such motion, the justice of the district, Boston municipal or juvenile court shall immediately  
356 notify a defendant of his right to file a petition for review in the superior court. The trial court

357 shall establish rules for the filing of such petitions, scheduling the hearing of such petitions and  
358 ensuring the transmission of necessary information to the superior court and notice to the parties  
359 and the probation department. The superior court shall in accordance with such rules, hear the  
360 petition for review as speedily as practicable and except for unusual circumstances, on the same  
361 day the petition is filed; provided, however, that the court may continue the hearing to the next  
362 business day if the required records and other necessary information are not available. The  
363 superior court may, after a hearing on the petition for review, grant the petition only upon a  
364 finding that the decision of the district, Boston municipal or juvenile court was the result of an  
365 error of law or abuse of discretion.

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

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

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

374 (b) Except as provided in subsection (n), a bail commissioner or bail magistrate shall  
375 order the pretrial release of a person arrested and charged with a crime on personal recognizance  
376 subject to the condition that the person not commit a new crime during the period of release,  
377 unless the bail commissioner or bail magistrate determines that release on personal recognizance  
378 will not reasonably assure the appearance of the person or will endanger the safety of any other

379 person or the community. Prior to issuing a release order or any other order under this section,  
380 the bail commissioner or bail magistrate shall have immediate access to all pending and prior  
381 criminal offender record information, board of probation records, out of state criminal records,  
382 and police and incident reports related to the person detained, upon oral, telephonic, facsimile or  
383 electronic mail request, to the extent practicable.

384 (c) If the bail commissioner or bail magistrate determines that a release on personal  
385 recognizance subject to the condition that the person not commit a new crime during the period  
386 of release will not reasonably assure the appearance of the person or will endanger the safety of  
387 any other person or the community, the bail commissioner or bail magistrate shall order the  
388 pretrial release of the person subject to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

428 (1) The consequences of violating a condition of release, including immediate arrest or  
429 issuance of a warrant for the person's arrest, revocation of release, and, if applicable, the  
430 potential that the person may face criminal penalties, including penalties for intimidation of a  
431 witness; and

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

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

437 (i) When a bail commissioner or bail magistrate releases a person on conditions  
438 under subsection (c), the bail commissioner or bail magistrate shall record the conditions and

439 provide a copy of such conditions to the person and the detaining authority and shall transmit a  
440 copy to the court.

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

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

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

451 SECTION 3. Said chapter 276 is hereby amended by inserting after section 82A, as  
452 appearing in the 2016 Official Edition, the following section:-

453 Section 82B. A person who is found in violation of any condition ordered under section  
454 58 of chapter 119, section 58, 58A, 58B, 59, or 87 of this chapter, or section 1 or 1A of chapter  
455 279, or any other condition of probation imposed by a court after conviction or admission to  
456 sufficient facts, or any term or condition of parole imposed by the parole board, may be arrested  
457 by a sheriff, deputy sheriff, or police officer and kept in custody in a convenient place, not more  
458 than 24 hours, Sunday excepted, until notice of the violation can be given to the probation  
459 service, and such person be taken before the court upon a warrant issued by the probation  
460 service; or, in the case of a person under parole supervision, to the parole board.



461 SECTION 4. Chapter 268 of the General Laws is hereby amended by inserting after  
462 section 13D the following section:-

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

472 SECTION 5. Subsection (c) of section 58 of chapter 276 shall take effect on July 1,  
473 2022.