

Senate, No. 2220, printed as amended

[November 18, 2009 – Text of the Senate Bill reforming the administrative procedures relative to criminal offender record information and pre- and post-trial supervised release (being the text of S2205, printed as amended)]

**The Commonwealth of Massachusetts**

**In the Year Two Thousand and Nine**

**AN ACT REFORMING THE ADMINISTRATIVE PROCEDURES  
RELATIVE TO CRIMINAL OFFENDER RECORD INFORMATION  
AND PRE- AND POST-TRIAL SUPERVISED RELEASE.**

*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 167 of chapter 6 of the General Laws, as appearing in the 2008  
2 Official Edition, is hereby amended by striking out, in line 2, the words “one hundred and sixty-  
3 eight to one hundred seventy-eight” and inserting in place thereof the following words:- 168 to  
4 178L, inclusive.

5           SECTION 2. Said section 167 of said chapter 6, as so appearing, is hereby amended by  
6 inserting before the definition of “criminal justice agencies” the following 3 definitions:-

7           “All available criminal offender record information”, adult and youthful offender  
8 convictions, non-convictions and pending criminal court appearances, but excluding criminal  
9 records sealed under section 34 of chapter 94C or sections 100A to 100C, inclusive, of chapter  
10 276 or the existence of such records.

11 “Board”, the criminal record review board established under section 168.

12 “Commissioner”, the commissioner of the Massachusetts department of criminal justice  
13 information services.

14 SECTION 3. Said section 167 of said chapter 6, as so appearing, is hereby further  
15 amended by inserting after the definition of “criminal offender record information” the following  
16 definition:-

17 “Department”, the Massachusetts department of criminal justice information services  
18 established under section 167A.

19 SECTION 4. Said section 167 of said chapter 6, as so appearing, is hereby further  
20 amended by inserting after the definition of “purge” the following 3 definitions:-

21 “Requestor”, an entity or individual, other than a criminal justice agency, submitting a  
22 request for criminal offender record information to the department.

23 “Self-audit”, an inquiry made by a subject or an advocate or agent designated by the  
24 subject to obtain a log of all queries to the department by any requestor for the subject’s criminal  
25 offender record information, but excluding any information relative to any query conducted by a  
26 criminal justice agency.

27 “Subject”, an individual for whom a request for criminal offender record information is  
28 submitted.

29 SECTION 5. Said chapter 6, as so appearing, is hereby amended by inserting after  
30 section 167 the following section:-

31           Section 167A. There shall be within the executive office of public safety and security a  
32 department of criminal justice information services. The department shall provide for and  
33 exercise control over the installation, operation and maintenance of data processing and data  
34 communication systems, hereinafter called the public safety information system including, but  
35 not limited to, the criminal justice information system. Said system shall be designed to ensure  
36 the prompt collection, exchange, dissemination and distribution of such public safety information  
37 as may be necessary for the efficient administration and operation of criminal justice agencies,  
38 and to connect such systems directly or indirectly with similar systems in this or other states. The  
39 secretary of public safety and security shall appoint a commissioner who shall be classified in  
40 accordance with section 45 of chapter 30 and the salary shall be determined in accordance with  
41 section 46C of said chapter 30. Such commissioner shall not be subject to the provisions of  
42 chapter 31 or section 9A of chapter 30. The commissioner shall be responsible for all data  
43 processing, management of the public safety information system, supervision of all personnel  
44 associated with said system and the appointment of all such personnel. The commissioner may  
45 appoint such other employees, including experts and consultants, as he deems necessary to carry  
46 out the department's responsibilities, none of whom shall be subject to the provisions of chapter  
47 31 or of section 9A of chapter 30.

48           The commissioner shall provide access to the public safety information system to  
49 criminal justice agencies as defined in section 167. The commissioner may promulgate rules and  
50 regulations for the control, installation, and operation of the public safety information system  
51 accessed and utilized by criminal justice agencies. The commissioner or his designee may hear  
52 and investigate complaints pertaining to misuse of the public safety information system and to  
53 issue sanctions and penalties for misuse. The commissioner may refer complaints for further

54 review to the criminal record review board or any state or federal agency or prosecuting  
55 authority.

56 The commissioner, upon the advice of the board, may promulgate regulations regarding  
57 the collection, storage, access, dissemination, content, organization and use of criminal offender  
58 record information by non-criminal justice agencies.

59 The department is authorized to enter into contracts and agreements with, and accept  
60 gifts, grants, contributions, and bequests of funds from, any department, agency, or subdivision  
61 of federal, state, county, or municipal government and any individual, foundation, corporation,  
62 association, or public authority for the purpose of providing or receiving services, facilities or  
63 staff assistance in connection with its work. Such funds shall be deposited with the state treasurer  
64 and may be expended by the department in accordance with the conditions of the gift, grant,  
65 contribution, or bequest, without specific appropriation.

66 References in any general or special law to the criminal history systems board or its  
67 executive director shall be deemed to refer to the Massachusetts department of criminal justice  
68 information services or its commissioner.

69 SECTION 5A. References in any general or special law to the criminal history systems  
70 board or the executive director thereof, except for the references in sections 171, 172, 172A,  
71 172C, 172E, 172G, 172H, 172I, 172J, 173, 175, 176 and 178A of chapter 6 and in section 38R of  
72 chapter 71, shall be deemed to refer to the Massachusetts department of criminal justice  
73 information services or its commissioner.

74 SECTION 6. Section 168 of said chapter 6, as so appearing, is hereby amended by  
75 striking out the first paragraph and inserting in place thereof the following paragraph:-

76           There shall be a criminal history systems board, hereinafter called the board, consisting  
77 of the following persons: the secretary of public safety and security, who shall serve as chairman,  
78 the secretary of labor and workforce development, the attorney general, the chairperson of the  
79 Massachusetts sentencing commission, the chief counsel for the committee for public counsel  
80 services, the chairman of the parole board, the commissioner of the department of correction, the  
81 commissioner of probation and commissioner of the department of youth services and the  
82 colonel of state police, or their designees, all of whom shall serve ex officio, and 10 persons to  
83 be appointed by the governor for a term of 3 years, 1 of whom shall represent the Massachusetts  
84 District Attorneys Association, 1 of whom shall represent the Massachusetts Sheriffs  
85 Association, and 1 of whom shall represent the Massachusetts Chiefs of Police Association, 1 of  
86 whom shall represent private users of criminal offender record information, 1 of whom shall be a  
87 victim of crime, 1 of whom shall be a provider of victim services, 2 of whom shall have  
88 experience in the areas of workforce development, ex-offender rehabilitation, or economic  
89 development, and 2 of whom shall be persons who have experience in issues relating to personal  
90 privacy. Upon the expiration of the term of any appointive member, his successor shall be  
91 appointed in a like manner for a term of 3 years.

92           SECTION 7. Said section 168 of said chapter 6, as so appearing, is hereby further  
93 amended by striking out, in line 50, the word “hundred” and inserting in place thereof the  
94 following word:- thousand.

95           SECTION 8. Said section 168 of said chapter 6, as so appearing, is hereby further  
96 amended by striking out, in line 50, the word “willful” and inserting in place thereof the  
97 following word:- knowing.

98 SECTION 9. Said section 168 of said chapter 6, as so appearing, is hereby further  
99 amended by inserting after the word “law”, in line 51, the following words:- provided, however,  
100 that the board shall not issue any orders, sanctions or fines against a law enforcement officer  
101 who, in good faith, obtains or seeks to obtain or communicates or seeks to communicate criminal  
102 offender record information in the furtherance of his or her official duties.

103 SECTION 10. Said section 168 of said chapter 6, as so appearing, is hereby amended by  
104 striking out the fourth and sixth paragraphs.

105 SECTION 11. Said chapter 6, as so appearing, is hereby further amended by striking out  
106 section 168 and inserting in place thereof the following section:-

107 Section 168. There shall be a criminal record review board within the Massachusetts  
108 department of criminal justice information services, consisting of the following persons: the  
109 secretary of public safety and security, who shall serve as chairperson, the attorney general, the  
110 secretary of labor and workforce development, the chairperson of the Massachusetts sentencing  
111 commission, the chief counsel for the committee for public counsel services, the chairperson of  
112 the parole board, the commissioner of the department of correction, the commissioner of  
113 probation, the commissioner of the department of youth services, the colonel of state police and  
114 the presidents of the Massachusetts District Attorneys Association, the Massachusetts Sheriffs’  
115 Association and the Massachusetts Chiefs of Police Association, or their designees, all of whom  
116 shall serve ex officio, and 5 persons to be appointed by the governor, 1 of whom shall represent  
117 private users of criminal offender record information, 1 of whom shall be a victim of crime, 1 of  
118 whom shall have experience in the areas of workforce development or ex-offender rehabilitation  
119 and 2 of whom shall be persons who have experience in issues relating to personal privacy. Each

120 appointed member shall serve for a term of 3 years or until a successor is appointed and  
121 qualified, whichever is longer.

122 The chairperson shall hold regular meetings, 1 of which shall be an annual meeting and  
123 shall notify all board members of the time and place of all meetings. Special meetings may be  
124 called at any time by a majority of the board members and shall be called by the chairman upon  
125 written application of 9 or more members. Members of the board shall receive no compensation,  
126 but shall receive their expenses actually and necessarily incurred in the discharge of their duties.

127 The board may hear complaints and investigate any incidents alleging that an individual  
128 or agency that has requested or received criminal offender record information has failed to  
129 provide the subject with the criminal offender record information in his possession prior to  
130 questioning the individual about his criminal history in connection with a decision regarding  
131 employment, volunteer opportunities, housing or professional licensing or in connection with an adverse  
132 decision on such an application on the basis of the criminal offender record information. The  
133 board shall also have the authority to hear complaints and investigate any incidents alleging any  
134 other violation of sections 168 through 178A of this chapter or board rules and regulations. The  
135 board may charge and collect a fee as a condition for filing a complaint, which fee may be  
136 waived upon a finding of indigency. Any complaint filed with the board shall be supported by a  
137 written declaration by the complainant that it is made under the penalties of perjury. Any answer  
138 filed by a responding party shall be signed under the penalties of perjury by an individual with  
139 personal knowledge of its contents. In conducting investigations or hearings the board or  
140 department staff designated by the board shall have the power to summons witnesses, compel  
141 their attendance and testimony, require the production of books, records and documents,  
142 administer oaths and have access to all criminal offender record information. The chairperson of

143 the board may appoint a member, panel of 3 board members or a hearing officer to conduct  
144 hearings, according to the standard rules of adjudicatory procedure or other rules which the  
145 department may promulgate, upon advice of the board. Following review of a complaint by a  
146 member, panel or hearing officer, the board, by a vote of two-thirds of the members present and  
147 voting, shall issue a ruling as to the findings of the board. In accordance with its findings the  
148 board may issue orders and sanctions enforcing its rules and regulations and the General Laws,  
149 including but not limited to a remand for additional fact finding, the imposition of civil fines  
150 payable to the commonwealth not to exceed \$5,000 for each violation, conditions on continued  
151 access to criminal offender record information or revocation of access; provided, however, that  
152 the board shall not issue any orders, sanctions or fines against a law enforcement officer who, in  
153 good faith, obtains or seeks to obtain, or communicates or seeks to communicate criminal  
154 offender record information in the furtherance of the officer's official duties. The board may at  
155 any time refer a complaint for criminal prosecution under section 178 of this chapter.

156 The board shall make an annual report of the volume and disposition of complaints  
157 without identifying data on any complainant or other information that would include criminal  
158 offender record information relative to any person reviewed by the board to the governor and file  
159 a copy thereof with the state secretary, the attorney general, the clerk of the house of  
160 representatives and the clerk of the senate. The annual report shall also be available to the public  
161 upon request.

162 SECTION 12. Section 171 of said chapter 6, as so appearing, is hereby amended by  
163 striking out, in lines 3 to 7, inclusive, the words "(b) assuring the prompt and complete purging  
164 of criminal offender record information, insofar as such purging is required by any statute or  
165 administrative regulation, by the order of any court of competent jurisdiction, or to correct any



166 errors shown to exist in such information; and (c) ” and inserting in place thereof the following:-  
167 “ ;and (b)”

168 SECTION 13. Said section 171 of said chapter 6, as so appearing, is hereby further  
169 amended by striking out, in lines 35-48, the words “Any individual aggrieved by an agency’s  
170 decision denying access to evaluative information may appeal the denial in writing within thirty  
171 days thereafter to the board or to a three member panel thereof, as the board may determine, and  
172 the board or such panel or any court under section one hundred and seventy-seven shall have  
173 access to any certificate. The adoption of such regulations by each criminal justice agency shall  
174 be subject to the approval of the board, and shall be promulgated within time limits set by the  
175 board. If any criminal justice agency holding evaluative information fails to promulgate such  
176 regulations, then the board shall promulgate such regulations with respect to that criminal justice  
177 agency. Evaluative information shall be subject to the provisions of section one hundred and  
178 seventy-two and section one hundred and seventy-eight, as if such information was criminal  
179 offender record information.”

180 SECTION 14. Said chapter 6, as so appearing, is hereby further amended by inserting  
181 after section 171 the following section:-

182 Section 171A. In connection with any decision regarding employment, volunteer  
183 opportunities, housing or professional licensing, a person in possession of an applicant’s criminal  
184 offender record information shall provide the applicant with the criminal history record in the person’s  
185 possession, whether obtained from the department or any other source prior to questioning the applicant  
186 about his criminal history. If the person makes a decision adverse to the applicant on the basis of his  
187 criminal history, the person shall also provide the applicant with the criminal history record in the  
188 person’s possession, whether obtained from the department or any other source; provided, however, that

189 if the person has provided the applicant with a copy of his criminal offender record information prior to  
190 questioning the person is not required to provide the information a second time in connection with an  
191 adverse decision based on this information. Failure to provide such criminal history information to  
192 the individual in accordance with this section may subject the offending person to investigation,  
193 hearing and sanctions by the board. Nothing in this section shall be construed to prohibit a  
194 person from making an adverse decision on the basis of an individual's criminal history or to  
195 provide or permit a claim of an unlawful practice under chapter 151B or an independent cause of  
196 action in a court of civil jurisdiction for a claim arising out of an adverse decision based on  
197 criminal history except as otherwise provided under chapter 151B.

198 A person who annually conducts 5 or more criminal background investigations, whether  
199 criminal offender record information is obtained from the department or any other source, shall  
200 maintain a written criminal offender record information policy providing that, in addition to any  
201 obligations required by the commissioner by regulation, it will: (i) notify the individual of the  
202 potential adverse decision based on the criminal offender record information; (ii) provide a copy  
203 of the criminal offender record information and the policy to the individual; and (iii) provide  
204 information concerning the process for correcting a criminal record.

205 SECTION 15. Section 172 of said chapter 6, as so appearing, is hereby amended by  
206 inserting after the word "privacy", in lines 14 and 40, the following words, in each instance:-  
207 and the importance and value of successful reintegration of ex-offenders.

208 SECTION 16. Said chapter 6, as so appearing, is hereby further amended by striking out  
209 section 172 and inserting in its place thereof the following section:-

210 Section 172. (a) The department shall maintain criminal offender record information in a  
211 database, which shall exist in an electronic format and be accessible via the world wide web.

212 Except as provided otherwise in this chapter, access to the database shall be limited as follows:

213 (1) Criminal justice agencies may obtain all criminal offender record information,  
214 including sealed records, for the actual performance of their criminal justice duties. Licensing  
215 authorities, as defined in section 121 of chapter 140, may obtain all criminal offender record  
216 information, including sealed records, for the purpose of firearms licensing in accordance with  
217 sections 121 to 131P, inclusive, of chapter 140. The criminal record review board may obtain all  
218 criminal offender record information, including sealed records, for the actual performance of its  
219 duties.

220 (2) Requestors authorized or required by statute, regulation or accreditation requirement  
221 to obtain criminal offender record information other than that available under subsection (a)(3)  
222 may obtain such information to the extent and for the purposes authorized by said statute,  
223 regulation or accreditation requirement.

224 (3) Requestors and their agents may obtain criminal offender record information for any  
225 of the following purposes: (a) to evaluate current and prospective employees including full-time,  
226 part-time, contract, internship employees or volunteers; (b) to evaluate applicants for rental or  
227 lease of housing; (c) to evaluate volunteers for services; and (d) to evaluate applicants for  
228 professional licensure issued by a state or municipal entity. Criminal offender record  
229 information made available under this section shall be limited to the following: (i) felony  
230 convictions for 10 years following their disposition, including termination of any period of  
231 incarceration or custody as defined in section 1 of chapter 125, (ii) misdemeanor convictions for  
232 5 years following their disposition, including termination any period of incarceration or custody

233 as defined in section 1 of chapter 125, and (iii) pending criminal charges, which shall include  
234 cases that have been continued without a finding until such time as the case is dismissed pursuant  
235 to section 18 of chapter 278 ; provided, however, that prior misdemeanor and felony conviction  
236 records shall be available for the entire period that the subject's last available conviction record  
237 is available under this section 172; and provided further that a violation of section 7 of chapter  
238 209A shall be treated as a felony for purposes of this section.

239 (4) Any member of the general public may upon written request to the department and in  
240 accordance with regulations established by the department obtain the following criminal offender  
241 record information: (i) convictions for any felony punishable by a term of imprisonment of 5  
242 years or more; (ii) information concerning an individual who has been convicted of any crime and  
243 sentenced to any term of imprisonment, and at the time of the request: is serving a sentence of probation  
244 or incarceration, or is under the custody of the parole board; (iii) felony convictions for 2 years  
245 following their disposition, including any period of incarceration or custody as defined in section  
246 1 of chapter 125; and (iv) misdemeanor convictions for 1 year following their disposition,  
247 including any period of incarceration or custody as defined in section 1 of chapter 125.

248 (5) Subjects who seek to obtain their own criminal offender record information, or an  
249 advocate or agent designated by the subject, may obtain all criminal offender record information  
250 pertaining to the subject under section 175 of this chapter.

251 (6) The commissioner may provide access to criminal offender record information to  
252 persons other than those entitled to obtain access under subsections (1) through (5) above if the  
253 commissioner finds that such dissemination to such requestor serves the public interest. Upon  
254 such a finding, the commissioner shall also determine the extent of access to criminal offender  
255 record information necessary to sustain the public interest. The commissioner shall make an

256 annual report to the governor and file a copy thereof with the state secretary, the attorney  
257 general, the clerk of the house of representatives and the clerk of the senate documenting access  
258 provided under this subsection. The annual report shall be available to the public upon request.

259 (7) The department shall configure the database to allow for the exchange, dissemination,  
260 distribution and direct connection of the criminal record information system to criminal record  
261 information systems in other states and relevant federal agencies including the Federal Bureau of  
262 Investigation and Immigration and Customs Enforcement that utilize fingerprint or iris scanning and  
263 similar databases.

264 (b) Notwithstanding the foregoing, convictions for murder, voluntary manslaughter,  
265 involuntary manslaughter, and sex offenses as defined in section 178C of chapter 6 that are  
266 punishable by a term of incarceration in state prison will remain in the database permanently and  
267 shall be available to all requestors listed in subsections (a)(1) through (a)(3) unless sealed under  
268 section 100A of chapter 276.

269 (c) The department shall specify the information that requestors must provide to query  
270 the database, including, but not limited to, the subject's name, date of birth and the last four  
271 digits of the subject's social security number; provided, however, that a member of the public  
272 accessing information under subsection (a)(4) shall not be required to provide the last four digits  
273 of the subject's social security number. To obtain criminal offender record information  
274 concerning a subject under subsection (a)(2) or (a)(3), the requestor must certify under the  
275 penalties of perjury that the requestor is an authorized designee of a qualifying entity, that the  
276 request is for a purpose authorized under subsection (a)(2) or (a)(3), and that the subject has  
277 signed an acknowledgement form authorizing the requestor to obtain the subject's criminal  
278 offender record information. The requestor must also certify that he has verified the identity of

279 the subject by reviewing a form of government-issued identification. Each requestor shall  
280 maintain acknowledgement forms for a period of one year from the date the request is  
281 submitted. Such forms shall be subject to audit by the department. The department may establish  
282 rules or regulations imposing other requirements or affirmative obligations upon requestors as a  
283 condition of obtaining access to the database.

284 In connection with any decision regarding employment, volunteer opportunities, housing or  
285 professional licensing, a person in possession of an applicant's criminal offender record information shall  
286 provide the applicant with the criminal history record in the person's possession, whether obtained from  
287 the department or any other source, (a) prior to questioning the applicant about his criminal history and  
288 (b) if the person makes a decision adverse to the applicant on the basis of his criminal history; provided,  
289 however, that if the person has provided the applicant with a copy of his criminal offender record  
290 information prior to questioning the person is not required to provide the information a second time in  
291 connection with an adverse decision based on this information. Failure to provide such criminal  
292 history information to the individual in accordance with this section may subject the offending  
293 person to investigation, hearing and sanctions by the board.

294 Except as authorized by this section, it shall be unlawful to request or require a person to  
295 provide a copy of his criminal offender record information. Violation of this subsection is  
296 punishable by the penalties set forth in section 178.

297 No employer or person relying on volunteers shall be liable for negligent hiring practices  
298 by reason of relying solely on criminal offender record information received from the  
299 department and not performing additional criminal history background checks, unless required to  
300 do so by law, provided that the employer made an employment decision within 90 days of  
301 obtaining the criminal offender record information and maintained and followed policies and

302 procedures for verification of the subject's identifying information consistent with the  
303 requirements set forth in this section and in the department's regulations.

304 No employer shall be liable for discriminatory employment practices for the failure to  
305 hire a person on the basis of criminal offender record information that contains erroneous  
306 information requested and received from the department, if the employer would not have been  
307 liable if the information had been accurate, provided that the employer made an employment  
308 decision within 90 days of obtaining the criminal offender record information and maintained  
309 and followed policies and procedures for verification of the individual's information consistent  
310 with the requirements set forth in this section and the department's regulations.

311 Neither the board nor the department shall be liable in any civil or criminal action by  
312 reason of any criminal offender record information or self-audit log that is disseminated by the  
313 board, including any information that is false, inaccurate or incorrect because it was erroneously  
314 entered by the court or the office of the commissioner of probation.

315 (d) Requestors shall not disseminate criminal offender record information except (1)  
316 upon request by a subject, a requestor shall provide criminal offender record information  
317 received from the department to the subject to whom it pertains; (2) requestors may share  
318 criminal offender record information with individuals within the requesting entity that have a  
319 need to know the contents of the criminal offender record information to serve the purpose for  
320 which the information was obtained; and (3) upon request, requestors shall share criminal  
321 offender record information with the government entities charged with overseeing, supervising,  
322 or regulating them. Requestors shall maintain a secondary dissemination log for a period of one  
323 year following the dissemination of a subject's criminal offender record information. The log  
324 shall include the following information: (i) name of subject; (ii) date of birth of the subject; (iii)

325 date of the dissemination; (iv) name of person to whom it was disseminated; and (v) the purpose  
326 for the dissemination. The secondary dissemination log shall be subject to audit by the  
327 department.

328 Unless otherwise provided by law or court order, no requestor shall maintain a copy,  
329 electronic or otherwise, of requested criminal offender record information obtained from the  
330 department for more than 7 years from the last date of employment, volunteer service or  
331 residency or from the date of the final decision of the requestor regarding the subject.

332 (e) The department shall maintain a log of all queries that shall indicate the name of the  
333 requestor, the name of the subject, the date of the query, and the certified purpose of the  
334 query. A self-audit may be requested for no fee once every 90 days. The commissioner may  
335 impose a fee in an amount as determined by the secretary of public safety and security, for self-  
336 audit requests made more than once every 90 days. Upon request, the commissioner may  
337 transmit the self-audit electronically. Further, if funding is available and technology reasonably  
338 allows, the department shall establish a mechanism that will notify a subject, or an advocate or  
339 agent designated by the subject, by electronic mail or other communication mechanism  
340 whenever a query is made regarding the subject. The self-audit log shall not be considered a  
341 public record.

342 (f) Notwithstanding the provisions of this section, the motor vehicle insurance merit  
343 rating board may disseminate information concerning convictions of automobile law violations  
344 as defined in section 1 of chapter 90C, or information concerning a charge of operating a motor  
345 vehicle while under the influence of intoxicating liquor that results in assignment to a driver  
346 alcohol program as described in section 24D of chapter 90, directly or indirectly, to an insurance  
347 company doing motor vehicle insurance business within the commonwealth, or to such insurance



348 company's agents, independent contractors or policyholders to be used exclusively for motor  
349 vehicle insurance purposes.

350 (g) Notwithstanding any other provisions of this section, information indicating custody  
351 status and placement within the correction system shall be available to any person upon request;  
352 provided, however that no information shall be disclosed that identifies family members, friends,  
353 medical or psychological history, or any other personal information unless such information is  
354 directly relevant to such release or custody placement decision, and no information shall be  
355 provided if its release would violate any other provisions of state or federal law.

356 (h) The parole board, subject to sections 130 and 154 of chapter 127, the department of  
357 correction, a county correctional authority or a probation officer with the approval of a justice of  
358 the appropriate division of the trial court may, in its discretion, make available a summary, which  
359 may include references to criminal offender record information or evaluative information,  
360 concerning a decision to release an individual on a permanent or temporary basis, to deny such  
361 release, or to change the individual's custody status.

362 (i) Notwithstanding any other provision of this section or any other general or special  
363 law to the contrary, members of the public who are in fear of an offender may obtain from the  
364 department advance notification of the temporary or permanent release of an offender from  
365 custody, including but not limited to expiration of a sentence, furlough, parole, work release or  
366 educational release. An individual seeking access to advance notification shall verify by a  
367 written declaration under the penalties of perjury that the individual is in fear of the offender and  
368 that advance notification is warranted for physical safety reasons.

369 (j) Any individual or agency, public or private, that receives or obtains criminal offender  
370 record information from any source in violation of sections 168 through 175 of this chapter,  
371 whether directly or through any intermediary, shall not collect, store, disseminate, or use such  
372 criminal offender record information in any manner or for any purpose.

373 (k) Notwithstanding this section or chapter 66A, the following shall be public records:

374 (1) police daily logs, arrest registers, or other similar records compiled chronologically; (2)  
375 chronologically maintained court records of public judicial proceedings; (3) published records of  
376 public court or administrative proceedings, and of public judicial administrative or legislative  
377 proceedings; and (4) decisions of the parole board as provided in section 130 of chapter 127.

378 (l) The commissioner, upon the advice of the board, may promulgate rules and  
379 regulations to carry out the provisions of this section.

380 SECTION 17. Said chapter 6, as so appearing, is hereby further amended by striking out  
381 section 172A and inserting in place thereof the following section:-

382 Section 172A. The commissioner shall assess a fee for each request for criminal offender  
383 record information or self-audit, according to a fee structure established by the secretary of  
384 public safety and security. No fee shall be assessed for a request made by a victim of crime or a  
385 witness or a family member of a homicide victim, all as defined in section 1 of chapter 258B, or  
386 for a request made by any local, state or federal government entity. The commissioner shall  
387 waive the fee or a portion of the fee from such other persons as provided in the department's  
388 rules and regulations. The department is authorized to enter into contracts and agreements for  
389 reduced or bulk fees for requestors who make extensive use of the database.

390           The department shall be authorized, subject to appropriation, to retain a portion of the  
391 revenues received by the commonwealth under this section for the following purposes: to assist  
392 ex-offenders in obtaining and maintaining employment, including but not limited to, workforce  
393 development training and other applicable training programs, training and auditing requestors described  
394 in subsection (a) of section 172, providing education and assistance regarding the correction of criminal  
395 records, including but not limited to, training judges, providing the necessary information to employers  
396 and other applicable person in possession of an applicant's criminal offender record information, and to  
397 operate and maintain the public safety information system and the criminal records review board.

398           SECTION 17A. Said chapter 6, as so appearing, is hereby further amended by inserting after  
399 section 172B the following section:-

400           Section 172B 1/2. Municipalities may, by local ordinance, require applicants for licenses in  
401 specified occupations to submit a full set of fingerprints for the purpose of conducting a state and national  
402 criminal history records check pursuant to sections 168 and 172 and 28 U.S.C. §534. Fingerprint  
403 submissions may be submitted by the licensing authority to the identification unit within the department  
404 of state police through the criminal history systems board for a state criminal records check and to the  
405 Federal Bureau of Investigation for a national criminal records check.

406           Municipalities may, by local ordinance, establish the appropriate fee charged to applicants for  
407 administering a fingerprinting system. For the purposes of section 2LLL of chapter 29, \$30 of the fee  
408 shall be deposited into the Firearms Fingerprint Identity Verification Trust Fund and the remainder of the  
409 fee may be retained by the licensing authority for costs associated with the administration of the system

410           SECTION 18. Said chapter 6 is hereby further amended by striking out section 172E, as  
411 so appearing, and inserting in place thereof the following section:-

412 Section 172E. Notwithstanding section 172 to the contrary, criminal offender record  
413 information shall be available to a long term care facility, as defined in section 72W of chapter  
414 111, an assisted living residence as defined in section 1 of chapter 19D, and to any continuing  
415 care facility as defined in section of chapter 40D, for the purpose of evaluating applicants under  
416 final consideration as, or an individual currently working as, an employee, a volunteer or a  
417 provider of care, treatment, education, training, transportation, delivery of meals, instruction,  
418 counseling, supervision, recreation or other services for an elderly or disabled person or for the  
419 purpose of evaluating applicants under final consideration for, or an individual currently working  
420 as, m who will have any direct or indirect contact with such elderly or disabled persons or access  
421 to such persons' personal information. Any such long-term care facility, assisted living  
422 residence or continuing care facility shall obtain all available criminal offender record  
423 information from the department on such applicant or current staff member. A long-term care  
424 facility, assisted living residence or continuing care facility which obtains information under this  
425 section shall prohibit the dissemination of such information of such information for any purpose  
426 other than to further the protection of the elderly or the disabled, including, but not limited to,  
427 dissemination among and between long term care facility, assisted living residence or continuing  
428 care facility.

429 A long-term care facility, assisted living residence or continuing care facility may employ  
430 an individual for a position that involves the provision of direct personal care or treatment to  
431 residents of such facility on a conditional basis prior to receiving the results of such individual's  
432 criminal offender record check from the criminal history systems board. No long-term care  
433 facility, assisted living residence or continuing care facility shall be liable for civil damages to  
434 any individual so conditionally employed and subsequently discharged by reason of information

435 received as a result of a criminal offender record information check completed pursuant to this  
436 section.

437 The criminal history systems board may waive or reduce the fee assessable pursuant to  
438 section 172A for criminal offender record information made available pursuant to this section.

439 Notwithstanding any general or special law to the contrary, the division of medical  
440 assistance shall, subject to appropriation, reimburse long-term care facilities, assisted living  
441 residences or continuing care facilities for the portion of the costs associated with obtaining  
442 criminal offender record information on employees pursuant to this section.

443 SECTION 19. The second paragraph of said section 172E of said chapter 6, as appearing in  
444 section 18, is hereby amended by striking out the words ‘for a position that involves the provision of  
445 direct personal care or treatment to residents of such facility’.

446 SECTION 20. Section 172H of said chapter 6, as so appearing, is hereby amended by  
447 striking out, in line 4, the words “that accepts volunteers,”.

448 SECTION 21. Said section 172H of said chapter 6, as so appearing, is hereby further  
449 amended by striking out, in line 6, the words “a volunteer” and inserting in place thereof the  
450 following words:- an employee, volunteer, vendor or contractor.

451 SECTION 22. Said chapter 6, as so appearing, is hereby amended by inserting after  
452 section 172J the following 2 sections:-

453 Section 172K. Notwithstanding section 172 or any other general or special law to the  
454 contrary, housing authorities operating pursuant to chapter 121B may obtain from the department  
455 conviction and pending criminal offender record information for the sole purpose of evaluating

456 applications for housing owned by such housing authority, in order to further the protection and  
457 well-being of tenants of such housing authorities.

458           Section 172L. Notwithstanding section 172 or any other general or special law to  
459 the contrary, the Massachusetts department of telecommunications and energy may obtain from  
460 the department all available criminal offender record information for the purpose of screening  
461 applicants for motor bus driver certificates and applicants who regularly transport school age  
462 children or students under chapter 766 in the course of their job duties. The Massachusetts  
463 department of telecommunications and energy shall not disseminate such information for any  
464 purpose other than to further the protection of children. SECTION 23. Section 173 of said  
465 chapter 6, as so appearing, is hereby amended by striking out, in line 1, the words “The board”,  
466 and inserting in place thereof the following words:- The commissioner may approve research  
467 programs to obtain criminal offender record information, provided that research programs shall  
468 not publish any information that either identifies or tends to identify the subject of the criminal  
469 offender record information, and the commissioner

470           SECTION 24. Said section 173 of said chapter 6, as so appearing, is hereby further  
471 amended by striking out, in lines 7, 9 and 10 the word “board”, and inserting in place thereof, in  
472 each instance, the following word:- commissioner.

473           SECTION 25. Said chapter 6, as so appearing, is hereby further amended by striking out  
474 section 175 and inserting in place thereof the following section:-

475           Section 175. A subject shall have the right to inspect, and if practicable, obtain a copy of  
476 all criminal offender record information that refers to the subject. The commissioner shall  
477 publish and furnish, upon request, guidelines for individuals on how to correct inaccurate or

478 incomplete information. Subject to appropriation, the department shall provide assistance to  
479 individuals that have requested assistance to correct inaccurate or incomplete criminal offender  
480 record information. Such assistance shall include but not be limited to cooperation with  
481 appropriate entities to correct, modify or appropriately supplement criminal offender record  
482 information that has been determined to be inaccurate or incomplete. If criminal offender record  
483 information is corrected by the office of the commissioner of probation or the courts, any  
484 corrections made by such commissioner or court shall be transmitted forthwith to the department  
485 and the department's database shall reflect the corrected criminal offender record information.

486 Requestors shall prescribe reasonable hours and places for subjects to inspect their  
487 criminal offender record information under subsection (d)(1) of section 172 and shall impose  
488 such additional restrictions as are reasonably necessary both to ensure the record's security and  
489 to verify the identities of those who seek to inspect them.

490 SECTION 26. Said chapter 6 is hereby further amended by striking out section 178, as  
491 so appearing, and inserting in place thereof the following 2 sections:-

492 Section 178. Any person who knowingly requests, obtains or attempts to obtain criminal  
493 offender record information or a self-audit from the department under false pretenses, knowingly  
494 communicates or attempts to communicate criminal offender record information to any person  
495 except in accordance with the provisions of sections 168 through 175, or knowingly falsifies  
496 criminal offender record information, or any records relating thereto, or who requests or requires  
497 a person to provide a copy of his or her criminal offender record information except as  
498 authorized under section 172, shall for each offense be imprisoned in a jail or house of correction  
499 for not more than one year or fined not more than \$5,000 or both, and in the case of a person that  
500 is not a natural person, the amount of the fine may be not more than \$50,000 for each violation.

501 Any person who knowingly requests, obtains or attempts to obtain juvenile delinquency  
502 records from the department under false pretenses, knowingly communicates or seeks to  
503 communicate juvenile criminal records to any person except in accordance with the provisions of  
504 sections 168 through 175, or knowingly falsifies juvenile criminal records, shall for each offense  
505 be imprisoned in a jail or house of correction for not more than 1 year or fined not more than  
506 \$7,500, or both, and in the case of a person that is not a natural person entity, the amount of the  
507 fine may be not more than \$75,000 for each violation.

508 This section shall not apply to, and no prosecution shall be brought against, a law  
509 enforcement officer who, in good faith, obtains or seeks to obtain or communicates or seeks to  
510 communicate criminal offender record information in the furtherance of his or her official duties.

511 Section 178 ½. Whoever uses criminal offender record information to commit a crime  
512 against the subject of the criminal offender record information or to engage in harassment of the  
513 subject, shall be punished by a fine of not more than \$5,000 or imprisoned in a jail or house of  
514 correction for not more than 1 year, or both. For purposes of this section, "harassment" shall  
515 mean willfully and maliciously engaging in conduct or acts directed at a specific person, which  
516 seriously alarms that person and would cause a reasonable person to suffer emotional distress.

517 SECTION 27. Said chapter 6 is hereby further amended by striking out section 178A, as  
518 so appearing, and inserting in place thereof the following section:-

519 Section 178A. A victim of crime, witness, or family member of a homicide victim, all as  
520 defined by section 1 of chapter 258B, may obtain all available criminal offender record  
521 information of the offender. Criminal justice agencies may also disclose to such persons such



522 additional information, including but not limited to evaluative information, as such agencies  
523 determine is reasonably necessary for the security and well being of such persons.

524 SECTION 27A. Section 178F of chapter 6, as so appearing, is hereby amended by striking out,  
525 in lines 14 to 15, the words “A sex offender who lists a homeless shelter as his residence shall verify  
526 registration data every 45 days” and inserting in place thereof the following words: - A homeless sex  
527 offender shall verify registration data every 30 days.

528 SECTION 27B. Section 178F<sup>1</sup>/<sub>2</sub> of chapter 6, as so appearing, is hereby amended by striking out,  
529 in lines 14 to 15, the words “Such sex offender who lists a homeless shelter as his residence shall appear  
530 in person at such local police department every 45 days” and inserting in place thereof the following  
531 words: - A homeless sex offender shall appear in person at such local police department every 30 days.

532 SECTION 27C. Chapter 6, as so appearing, is hereby amended by inserting, after section 178F<sup>1</sup>/<sub>2</sub>,  
533 the following section:-

534 Section 178F<sup>3</sup>/<sub>4</sub>. A homeless sex offender shall wear a global positioning system device, or any  
535 comparable device, administered by the commissioner of probation.

536 SECTION 28. Section 178K of said chapter 6, as so appearing, is hereby amended by  
537 striking out, in lines 1 to 2, the words “in the criminal history systems board, but not subject to its  
538 jurisdiction”, and inserting in place thereof the following words:- in the executive office of  
539 public safety and security.

540 SECTION 28A. Section 178Q of said chapter 6, as so appearing, is hereby amended by  
541 striking out, in line 2, the figure “75” and inserting in place thereof the following figure:- 100.

542 SECTION 28B. The second paragraph of said section 178Q, as so appearing, is hereby  
543 amended by striking out the first 2 sentences and inserting in place thereof the following sentence:-  
544 The sex offender registry board shall establish a payment plan for an offender who is unable to pay

545 the registration fee due to hardship on the offender or the family thereof due to limited income,  
546 employment status or any other relevant factor.

547 SECTION 29. Chapter 6A of the General Laws, as so appearing, is hereby amended by  
548 striking out section 18 and inserting in place thereof the following section:-

549 Section 18. The following state agencies are hereby declared to be within the executive  
550 office of public safety and security: the department of public safety; the department of fire  
551 services; the office of grants and research and the highway safety division; the municipal police  
552 training committee; the Massachusetts department of criminal justice information services; the  
553 state 911 department; the department of state police; the office of the chief medical examiner; the  
554 Massachusetts emergency management agency; the military department; the department of  
555 correction, including the parole board; the sex offender registry board; and all other agencies and  
556 boards within said departments, committees, and boards.

557 SECTION 30. Section 5 of chapter 27 of the General Laws, as so appearing, is hereby  
558 amended by adding the following sentence:- The parole board shall administer and oversee  
559 mandatory post-release supervision functions as set forth in section 133D(a) of chapter 127 and  
560 in chapter 127A.

561 SECTION 31. Chapter 30A of the General Laws, as so appearing, is hereby amended by  
562 inserting after section 1C the following section:- Section 1D. The criminal record review board  
563 shall be subject to sections 1 through 8, inclusive, and shall not otherwise be subject to this  
564 chapter.

565 SECTION 32. Section 52 of chapter 93 of the General Laws, as so appearing, is hereby  
566 amended by inserting after the word “more;”, in line 21, the following word:- or.

567 SECTION 33. Said section 52 of said chapter 93, as so appearing, is hereby further  
568 amended by striking out, in lines 24 to 27, inclusive, the words “; or (3) the employment of any  
569 individual at annual salary which equals or which may reasonably be expected to equal twenty  
570 thousand dollars or more”.

571 SECTION 34. Section 32 of chapter 94C of the General Laws, as so appearing, is  
572 hereby amended by adding the following subsection:-

573 (c) Any person serving a mandatory minimum sentence for violating any provision of this  
574 section shall be eligible for parole after serving two-thirds of the minimum term of the sentence  
575 if the sentence is to a state prison or after serving one-half of the maximum term of the sentence  
576 if the sentence is to a house of correction; provided, however, that a condition of such parole  
577 may be enhanced supervision; and provided further, that enhanced supervision may include, but  
578 not be limited to, the wearing of a global positioning satellite tracking device or any comparable  
579 device which shall be administered by the board at all times for the length of the parole.

580 SECTION 35. Section 32A of said chapter 94C, as so appearing, is hereby amended by  
581 adding the following subsection:-

582 (e) Any person serving a mandatory minimum sentence for violating any provision of this section  
583 shall be eligible for parole after serving two-thirds of the minimum term of the sentence if the  
584 sentence is to a state prison or after serving one-half of the maximum term of the sentence if the  
585 sentence is to a house of correction; provided, however, that a condition of such parole may be  
586 enhanced supervision; and provided further, that enhanced supervision may include, but not be limited to,  
587 the wearing of a global positioning satellite tracking device or any comparable device which shall be  
588 administered by the board at all times for the length of the parole.

589 SECTION 36. Section 32B of said chapter 94C, as so appearing, is hereby amended by  
590 adding the following subsection:-

591 (c) Any person serving a mandatory minimum sentence for violating any provision of this  
592 section shall be eligible for parole after serving two-thirds of the minimum term of the sentence  
593 if the sentence is to a state prison or after serving one-half of the maximum term of the sentence  
594 if the sentence is to a house of correction; provided, however, that a condition of such parole  
595 may be enhanced supervision; and provided further, that enhanced supervision may include, but  
596 not be limited to, the wearing of a global positioning satellite tracking device or any comparable  
597 device which shall be administered by the board at all times for the length of the parole.

598 SECTION 37. Section 32E of said chapter 94C, as so appearing, is hereby amended by  
599 adding the following subsection:-

600 (d) Any person serving a mandatory minimum sentence for violating any provision of this section  
601 shall be eligible for parole after serving two-thirds of the minimum term of the sentence if the  
602 sentence is to a state prison or after serving one-half of the maximum term of the sentence if the  
603 sentence is to a house of correction; provided, however, that a condition of such parole may be  
604 enhanced supervision; and provided further, that enhanced supervision may include, but not be limited to,  
605 the wearing of a global positioning satellite tracking device or any comparable device which shall be  
606 administered by the board at all times for the length of the parole.

607 SECTION 38. Section 32F of said chapter 94C, as so appearing, is hereby amended by  
608 adding the following subsection:-

609 (e) Any person serving a mandatory minimum sentence for violating any provision of this section  
610 shall be eligible for parole after serving two-thirds of the minimum term of the sentence if the  
611 sentence is to a state prison or after serving one-half of the maximum term of the sentence if the  
612 sentence is to a house of correction; provided, however, that a condition of such parole may be  
613 enhanced supervision; and provided further, that enhanced supervision may include, but not be limited to,  
614 the wearing of a global positioning satellite tracking device or any comparable device which shall be  
615 administered by the board at all times for the length of the parole.

616 SECTION 39. Section 32H of said chapter 94C, as so appearing, is hereby amended by striking  
617 out the second paragraph and inserting in place thereof the following paragraph:-

618 A person convicted of violating any provisions of the sections shall not, until he shall have served  
619 the mandatory minimum term of imprisonment established in the sections, be eligible for probation,  
620 furlough or receive any deduction from his sentence for good conduct under sections 129C and 129D of  
621 chapter 127; provided, however, that the commissioner of correction, on the recommendation of the  
622 warden, superintendent or other person in charge of the correctional institution, or a sheriff, on the  
623 recommendation of the administrator of a county correctional institution, may grant to the offender a  
624 temporary release, subject to the rules and regulations of the institution and under the direction, control  
625 and supervision of the officers thereof, for the following purposes: (1) to attend the funeral of a relative,  
626 to visit a critically ill relative, to obtain emergency medical or psychiatric services unavailable at said  
627 institution; (2) to participate in education, training, or employment programs established under section 48  
628 of chapter 127; (3) to engage in employment pursuant to a work release program in accordance with the  
629 provisions of sections 49, 49A, 86F and 86G of chapter 127; or (4) to participate in a program to provide  
630 services under section 49B or 49C of chapter 127. Section 87 of chapter 276 shall not apply to any  
631 person, 17 years of age or over, charged with a violation of said sections, or to any child between age 14  
632 and 17, so charged by indictment under section 54 of chapter 119.

633 SECTION 40. Section 32J of said chapter 94C, as so appearing, is hereby amended by  
634 adding the following paragraph:-

635 Any person serving a mandatory minimum sentence for violating any provision of this section  
636 shall be eligible for parole after serving two-thirds of the minimum term of the sentence if the  
637 sentence is to a state prison or after serving one-half of the maximum term of the sentence if the  
638 sentence is to a house of correction; provided, however, that a condition of such parole may be  
639 enhanced supervision; and provided further, that enhanced supervision may include, but not be limited to,  
640 the wearing of a global positioning satellite tracking device or any comparable device which shall be  
641 administered by the board at all times for the length of the parole.

642 SECTION 40A. The third paragraph of section 54 of chapter 119 of the General Laws,  
643 as appearing in the 2008 Official Edition, is hereby amended by inserting after the words, “  
644 “chapter two hundred and sixty-nine,” the following:- or the person has committed a violation of  
645 section 13B of chapter 268.

646 SECTION 41. Section 14 of chapter 123A of the General Laws, as so appearing, is  
647 hereby amended by striking out the first sentence and inserting in place thereof the following two  
648 sentences:- The district attorney or the attorney general at the request of the district attorney may  
649 petition the court for a trial. In any trial held pursuant to this section, either the person named in  
650 the petition or the petitioning party may demand in writing that the case be tried to a jury, and  
651 upon such demand the case shall be tried to a jury.

652 SECTION 42. Section 1 of chapter 125 of the General Laws, as so appearing, is hereby  
653 amended by striking out subsections (g) to (p), inclusive, and inserting in place thereof the  
654 following subsections:-

655 (g) “custody”, physical or constructive control of an inmate in a state or county  
656 correctional facility;

657 (h) “department”, the department of correction;

658 (i) “gainful employment”, employment within or without any correctional facility  
659 including but not limited to labor for the operation and maintenance of any correctional facility;

660 (j) “inmate”, a committed offender or such other person as is placed in custody in a  
661 correctional facility in accordance with law;

662 (k) “institution”, facility;

663 (l) “penal institution”, correctional facility;

664 (m) “prison”, correctional facility;

665 (n) “prisoner”, a committed offender and such other person as is placed in custody in a  
666 correctional facility in accordance with law;

667 (o) “state correctional facility”, any correctional facility owned, operated, administered or  
668 subject to the control of the department of correction, including but not limited to: Massachusetts  
669 Correctional Institution, Cedar Junction; Massachusetts Correctional Institution, Norfolk;  
670 Massachusetts Correctional Institution, Concord; Massachusetts Correctional Institution,  
671 Framingham; Massachusetts Correctional Institution, Bridgewater; Massachusetts Correctional  
672 Institution, Plymouth; Massachusetts Correctional Institution, Warwick; Massachusetts  
673 Correctional Institution, Monroe;

674 (p) “state prison”, Massachusetts Correctional Institution, Cedar Junction;

675 (q) “superintendent”, the chief administrative officer of a state correctional facility.

676 SECTION 43. Section 16 of chapter 126 of the General Laws, as so appearing, is hereby  
677 amended by striking out the first sentence and inserting in place thereof the following sentence:-

678 The sheriff shall have custody and control of the jails in his county, and except in Suffolk  
679 county, of the houses of correction therein, and shall have custody and physical or constructive  
680 control of all prisoners committed thereto, and shall keep the same himself or by his deputy as  
681 jailer, superintendent or keeper, and shall be responsible for them.

682 SECTION 44. Chapter 127 of the General Laws, as so appearing, is hereby amended by  
683 inserting after section 20A the following 2 sections:-

684 Section 20B. The sheriff of any county may establish a day reporting program under  
685 which persons sentenced to the house of correction, except a sex offender as defined in section  
686 178C of chapter 6, may be classified to constructive confinement. Such program shall include  
687 electronic monitoring of prisoners classified to the day reporting program. Placement of an  
688 individual in a day reporting program shall require victim notification as required under section  
689 3(t) of Chapter 258B. Any inmate sentenced to such program shall agree in writing to conditions  
690 set by the sheriff, who shall retain the right to revoke or alter such classification at will.

691 No prisoner shall be classified to a day reporting program under this section until he has  
692 served the longest minimum mandatory sentence for any offense for which the prisoner is  
693 serving within the house of correction to which he is committed.

694 A prisoner classified to the day reporting program as set forth in this section and who  
695 abides by the conditions of said classification shall be credited time toward the serving of his  
696 sentence in the same manner as though he had served such time within the facility.

697 Section 20C. The sheriff of any county and in the case of women who are committed as  
698 pretrial detainees to the Massachusetts Correctional Institution at Framingham, the commissioner  
699 of correction, subject to rules and regulations established in accordance with the provisions of  
700 this section, may permit a detainee who is committed to a jail awaiting disposition of any



701 criminal matter, except those being held for offenses listed in this section, to be classified to a  
702 pretrial diversion program operated by the sheriff's office in the county where the court that  
703 committed the detainee is sitting; provided further, that the sheriff's office in the county where  
704 the court that committed the detainee is sitting may prescribe a program administrative fee to be  
705 paid by each sentenced inmate or pre-trial detainee participating in the program that shall be  
706 determined according to the person's ability to pay, finances, household income, number of  
707 dependents and medical status. The inability to pay all or a portion of the program fees shall not  
708 preclude participation in the program and eligibility shall not be enhanced by reason of ability to  
709 pay. For those deemed unable to pay, the sheriff's office shall agree to cover the cost for those  
710 participants at a reduced and agreed upon rate with the electronic monitoring agency or entity..

711         The sheriff may extend the limits of the place of confinement of a detainee for the  
712 purpose of participation in this program and shall establish a classification system to determine  
713 the suitability of detainees who may be potential participants in this program. A person permitted  
714 to be away from the jail due to participation in this program may be accompanied by an  
715 employee of the sheriff's office in the discretion of the sheriff or his designee.

716         For the duration of his participation in the program, the detainee shall be deemed to be in  
717 custody as a pretrial detainee for the purpose of receiving credit pursuant to section 129B of  
718 chapter 127 and section 33A of chapter 299 toward any sentence he may receive, and may be  
719 charged with escape pursuant to section 16 of chapter 268 should he leave the place to which he  
720 is classified to pursuant to his participation in the program without authorization or should they  
721 escape from custody while they are being transported pursuant to their participation in the  
722 program. Additionally for the duration of his participation in this program only, the detainee may  
723 receive additional deductions from any sentence that may be imposed in the case he was

724 committed on, for participation in work, education, or treatment programs designated by the  
725 sheriff pursuant to section 129D of chapter 127.

726 A detainee shall not be eligible to participate in this program if he is charged with:  
727 murder; any offense that carries the possibility of a life sentence; a violation of section 13, 14,  
728 15, 15A, 15B, 16, 17, 18, 18A, 19, 20, 21, 24B, 25, or 26 of chapter 265; section 17, 34 or 35 of  
729 chapter 272; or an attempt to commit any crime referred to in these sections; or if he is detained  
730 under subsection (3) of section 58A of chapter 276. No sex offender, or sexually dangerous person  
731 as defined in section 1 of chapter 123A or any person who is charged with committing a sexual  
732 offense as defined in said section 1 of said chapter 123A, or any person who who is charged with  
733 violating section 24B of chapter 265. Placement of an individual in such program shall require victim  
734 notification as required under subsection (t) of section 3 of chapter 258B.

735 SECTION 45. Section 21 of said chapter 127, as so appearing, is hereby amended by  
736 inserting after the word “correction” in line 3 the following words:- to physical or constructive  
737 confinement,.

738 SECTION 48. The General Laws, as appearing in the 2008 Official Edition, are hereby  
739 amended by inserting after chapter 127 the following chapter:-

#### 740 CHAPTER 127A

#### 741 MANDATORY POST-RELEASE SUPERVISION

742 Section 1. All sentences of incarceration to state prison shall include a period of post-  
743 release supervision, excluding sentences for those prisoners for whom parole eligibility is  
744 determined by section 133A of chapter 127. Except as provided in this chapter, for individuals  
745 who complete the incarceration portion of their sentences without supervised release or are re-

746 incarcerated for the remainder of the sentence for violating the terms of parole or probation, the  
747 period of mandatory post-release supervision shall be 25 per cent of the maximum term of  
748 incarceration imposed at sentencing up to a maximum period of supervision of 2 years, but in no  
749 case less than 9 months. Where an individual is sentenced to incarceration on multiple offenses  
750 to be served concurrently, the greater of the maximum terms imposed at sentencing shall be used  
751 to calculate the mandatory post-release supervision period. Mandatory post-release supervision  
752 as established in this chapter shall not be imposed upon any individual who successfully  
753 completes a period of probation imposed by a court at sentencing, upon an individual who is  
754 granted a parole permit under chapter 127 and successfully completes a period of parole  
755 supervision, or upon an individual sentenced to lifetime community parole under section 45 of  
756 chapter 265 or section 178H of chapter 6, being supervised under section 133D of chapter 127.  
757 An individual subject to this chapter may be supervised in another jurisdiction in accordance  
758 with sections 151A through 151N of chapter 127 and shall be considered on parole for the  
759 purposes of supervision.

760           Section 2. Upon release, an individual sentenced to a term of incarceration in a state  
761 prison for any length of time shall be subject to the supervision and jurisdiction of the parole  
762 board during the period of mandatory post-release supervision and shall be subject to the law,  
763 rules and regulations governing parole. The chairman of the parole board shall establish  
764 regulations for post-release supervision consistent with applicable provisions of chapters 27 and  
765 127. The regulations shall establish supervision levels based on risk-needs assessments, ranging  
766 from minimum parole supervision for low-risk parolees to maximum parole supervision of high-  
767 risk parolees, with a focus on reducing the risk posed by high-risk parolees. The regulations  
768 shall include the use of graduated and intermediate sanctions as appropriate in response to non-

769 criminal violations of parole conditions and, in the discretion of the board, for low-level criminal  
770 violations. The regulations shall also establish guidelines with specific benchmarks, which if  
771 achieved by an individual shall reduce the period of time in which such individual is subject to  
772 post-release supervision. Nothing in this section or in the regulations shall limit the authority of  
773 the superior, municipal, district or juvenile court to impose conditions of probation supervision  
774 to protect the public or promote the rehabilitation of any person.

775           Section 3. An individual subject to mandatory post-release supervision who has  
776 successfully completed 6 months of supervision shall be eligible for early termination of that  
777 supervision. Early termination shall only occur in accordance with procedures to be adopted in  
778 the regulations of the parole board. In proceedings for early termination of mandatory post-  
779 release supervision, the parole board's considerations shall include, but not be limited to, the  
780 amount of time the individual has successfully spent under post-release supervision, efforts and  
781 achievements in the areas of employment, housing, education, counseling, substance abuse  
782 treatment and required testing programs, and any other circumstances that are relevant to the  
783 individual case.

784           Section 4. An individual who violates a condition of mandatory post-release supervision  
785 shall be subject to this section and to modification or revocation proceedings initiated by the  
786 parole board. The laws and regulations governing parole violation proceedings shall govern these  
787 modification or revocation proceedings. In all proceedings under this section, an individual who  
788 violates a condition of mandatory post-release supervision and such violation does not otherwise  
789 constitute a criminal offense may be placed under increased supervision, subjected to other  
790 conditions and intermediate sanctions, or upon a determination that such alternative sanctions are  
791 not appropriate, incarcerated as follows: Upon a first violation, the individual may be

792 incarcerated for a period no greater than 2 months or the maximum remaining period of  
793 post-incarceration supervision, whichever is less. Upon a second violation, the prisoner may be  
794 incarcerated for a period no greater than 6 months or the maximum remaining period of  
795 post-incarceration supervision, whichever is less. Upon a third or subsequent violation the  
796 prisoner, may be incarcerated for a period no greater than 12 months or the maximum remaining  
797 period of post-incarceration supervision, whichever is less. In all cases where the individual is  
798 not being incarcerated for a violation, the individual shall be subject to the graduated sanctions  
799 policy of the parole board. In the case of any violation for use of controlled substances or an  
800 offense for operating under the influence of drugs or alcohol where the individual is not  
801 incarcerated for the violation, the period of mandatory post-release supervision may be extended  
802 to accommodate an appropriate substance abuse program, but the total shall not exceed the  
803 maximum supervisory period permitted under section 1. For any violation of the conditions of  
804 mandatory post-release supervision, the period of supervision shall be stayed during a period of  
805 incarceration and it shall be resumed upon release. If the violation constitutes a criminal offense,  
806 the period of incarceration shall be served on and after any sentence received as a result of the  
807 new offense. Upon subsequent release, the greater of the maximum sentences of the original  
808 offense and subsequent offense shall be used to calculate the new mandatory post-release  
809 supervision period.

810           Section 5. Mandatory post-release supervision shall be considered stayed under the  
811 following circumstances: (a) the individual is immediately committed to the custody of any other  
812 state or of the United States to serve a period of incarceration less than the post-release  
813 supervision period required under this chapter; (b) the individual is immediately committed to

814 the custody of the United States immigration authorities; or (c) the individual is committed  
815 pursuant to an order of custody under chapter 123A.

816           Section 6. Mandatory post-release supervision shall be considered completed under the  
817 following circumstances: (a) except as provided in sections 3 and 4, the individual serves a post-  
818 release supervision period of 25 per cent of the maximum term of incarceration imposed at  
819 sentencing up to a maximum period of supervision of 2 years, but in no case less than 9 months;  
820 (b) the individual is granted early termination under section 3; (c) upon completion of the  
821 sentence, the individual is immediately committed to the custody of any other state or of the  
822 United States to serve a period of incarceration greater than or equal to the post-release  
823 supervision period required under this chapter; or (d) upon completion of the sentence, the  
824 individual is physically removed from the United States by immigration authorities for the  
825 purpose of permanent deportation.

826           SECTION 48A. Section 130 of said chapter 127, as so appearing, is hereby amended by  
827 striking out the first sentence and inserting in place thereof the following 3 sentences:— No prisoner  
828 shall be granted a parole permit merely as a reward for good conduct but only if the parole board is  
829 of the opinion that there is a reasonable probability that, if such prisoner is released, in light of  
830 appropriate conditions and community supervision, he will live and remain at liberty without  
831 violating the law and that his release is not incompatible with the welfare of society. In making this  
832 determination, the board shall consider whether, during the period of incarceration, the prisoner has  
833 participated in available work opportunities and education or treatment programs, and demonstrated  
834 good behavior. The board shall also consider whether risk reduction programs made available  
835 through collaboration with criminal justice agencies would minimize the probability of the prisoner

836 re-offending once released. In making this determination, the board shall not consider the  
837 availability of post-release supervision as authorized under chapter 127A

838 SECTION 49. Section 4 of chapter 151B of the General Laws, as so appearing, is hereby  
839 amended by inserting, after paragraph (9), the following paragraph:-

840 (9 ½) For an employer to request on a written application form criminal offender record  
841 information; provided, however, that if an applicant is applying for a position for which federal or state  
842 laws or regulations create mandatory or presumptive disqualification based on certain criminal offenses  
843 the employer may inquire about such offenses on the applicant's application form.

844 SECTION 50. Section 21 of chapter 233 of the General Laws, as so appearing, is hereby  
845 amended by inserting, at the end, the following paragraph:-

846 Upon order of the court, a party may obtain a witness's criminal offender record  
847 information from the department of criminal justice information services.

848 SECTION 50A. Chapter 265 of the General Laws is hereby amended by striking out section 13I,  
849 as appearing in the 2008 Official Edition, and inserting in place thereof the following section:-

850 Section 13I. Whoever commits an assault or an assault and battery on an emergency medical  
851 technician, an ambulance operator, an ambulance attendant or a health care provider as defined in section  
852 1 of chapter 111, while the technician, operator, attendant or provider is treating or transporting a person  
853 in the line of duty, shall be punished by imprisonment in the house of correction for not less than 90 days  
854 nor more than 2 1/2 years or by a fine of not less than \$500 nor more than \$5,000, or both.

855 SECTION 50B. Chapter 265 of the General Laws is hereby amended by adding the following  
856 section:-

857 Section 48. A sex offender, as defined by section 178C of chapter 6, who engages in ice cream  
858 truck vending, as defined in section 25 of chapter 270, shall be punished by imprisonment in the house of

859 correction for not more than 2½ years or by a fine of \$1,000, or by both such fine and imprisonment. A  
860 police officer or officer authorized to serve criminal process may arrest, without a warrant, any person  
861 who he has probable cause to believe has violated this section.

862 SECTION 51. Section 16 of chapter 268 of the General Laws, as so appearing, is hereby  
863 amended by inserting after the word “branch,” in line 10, the following words:-

864 “or who, on any other form of constructive confinement, knowingly disables or attempts to  
865 disable or defeat electronic monitoring of the prisoner,”.

866 SECTION 51A. Section 58A of chapter 276 of the General Laws, as so appearing, is  
867 hereby amended by striking out subsection (1) and inserting in place thereof the following  
868 subsection:-

869 (1) The commonwealth may move, based on dangerousness, for an order of pretrial  
870 detention or release on conditions for a felony offense that has as an element of the offense the  
871 use, attempted use or threatened use of physical force against the person of another or any other  
872 felony that, by its nature, involves a substantial risk that physical force against the person of  
873 another may result, including the crimes of burglary and arson whether or not a person has been  
874 placed at risk thereof, or a violation of an order pursuant to section 18, 34B or 34C of chapter  
875 208, section 32 of chapter 209, section 3, 4 or 5 of chapter 209 A or section 15 or 20 of chapter  
876 209C, or arrested and charged with a misdemeanor or felony involving abuse as defined in  
877 section 1 of said chapter 209A or while an order of protection issued under said chapter 209A  
878 was in effect against such person, an offense for which a mandatory minimum term of 3 years or  
879 more is prescribed in chapter 94C, arrested and charged with a violation of section 13B of  
880 chapter 268 or a third or subsequent conviction for a violation of section 24 of chapter 90, or  
881 arrested and charged with a violation of paragraph (a), (c) or (m) of section 10 of chapter 269;



882 provided, however, that the commonwealth may not move for an order of detention under this  
883 section based on possession of a large capacity feeding device without simultaneous possession  
884 of a large capacity weapon; or arrested and charged with a violation of section 10G of said  
885 chapter 269.’

886 SECTION 51B. Chapter 270 of the General Laws is hereby amended by adding the following  
887 section:-

888 Section 25. (a) For the purposes of this section, the following words shall have the following  
889 meanings:-

890 “Ice cream”, any frozen dairy or frozen water-based food product.

891 “Ice cream truck”, any motor vehicle used for selling, displaying or offering to sell ice cream.

892 “Ice cream truck vending”, the selling, displaying or offering to sell ice cream or any other  
893 prepackaged food product from an ice cream truck.

894 “Permitting authority”, the chief of police or the board or officer having control of the police in a  
895 city or town, or person authorized by them.

896 (b) No person shall engage in ice cream truck vending unless he shall have been issued a valid  
897 permit to do so by the permitting authority within the municipality wherein the permit applicant lives or  
898 intends to operate an ice cream truck. Such permit shall be conspicuously displayed and clearly visible on  
899 the windshield of any ice cream truck operated or from which ice cream or any other prepackaged food  
900 product is sold. Whoever violates this section shall be assessed a fine of \$500. Each day that such  
901 person is in operation in violation of this section may be considered a separate violation.

902 (c) The department of public safety shall adopt regulations relative to the annual permitting of  
903 ice cream truck vendors. Such regulations shall include, but not be limited to:

904 (i) a requirement that all applications for an ice cream truck vending permit or applications for  
905 renewal thereof shall include the applicant’s fingerprints and a current photo of the applicant;

906 (ii) adoption of a uniform permit application and permit form, to be used by all municipalities;

907 (iii) requiring that a permitting authority conduct an investigation into the criminal history of a  
908 permit applicant to determine eligibility therefore; and

909 (iv) restricting a permitting authority from issuing an ice cream truck vending permit to any sex  
910 offender, as defined by section 178C of chapter 6 of the General Laws.

911 SECTION 52. Section 100A of chapter 276 of the General Laws, as so appearing, is  
912 hereby amended by striking the first paragraph and inserting in place thereof the following  
913 paragraph:-

914 Any person having a record of criminal court appearances and dispositions in the commonwealth  
915 on file with the office of the commissioner of probation may, on a form furnished by the commissioner  
916 and signed under the penalties of perjury, request that the commissioner seal the file. The commissioner  
917 shall comply with the request provided that: (1) the person's court appearance and court disposition  
918 records, including any period of incarceration or custody as defined in section 1 of chapter 125 for any  
919 misdemeanor record to be sealed occurred not less than 5 years before the request; (2) the person's court  
920 appearance and court disposition records, including any period of incarceration or custody as defined in  
921 section 1 of chapter 125 for any felony record to be sealed occurred not less than 10 years before the  
922 request; (3) the person had not been found guilty of any criminal offense within the commonwealth in the  
923 case of a misdemeanor, 5 years before the request, and in the case of a felony, 10 years before request,  
924 except motor vehicle offenses in which the penalty does not exceed a fine of \$50 ; (4) the form includes a  
925 statement by the petitioner that he has not been convicted of any criminal offense in any other state,  
926 United States possession or in a court of federal jurisdiction, except such motor vehicle offenses, as  
927 aforesaid, and has not been imprisoned in any state or county in the case of a misdemeanor, within the  
928 preceding 5 years, and in the case of a felony, within the preceding 10 years; and (5) the person's record  
929 does not include convictions of offenses other than those to which this section applies. This section shall  
930 apply to court appearances and dispositions of all offenses; provided, however, that this section shall not

931 apply in case of convictions for violations of sections 121 to 131H, inclusive, of chapter 140 or for  
932 violations of chapter 268 or chapter 268A.

933 SECTION 58. Said section 100A of said chapter 276, as so appearing, is hereby further  
934 amended by inserting, after line 40, the following words:-

935 5. Any violation of section 7 of chapter 209A shall be treated as a felony.

936 6. Sex offenses, as defined in section 178C of chapter 6, shall not be eligible for sealing  
937 for 15 years following their disposition, including termination of supervision, probation or any  
938 period of incarceration, or for so long as the offender is under a duty to register in the  
939 commonwealth or in any other state where the offender resides or would be under such a duty if  
940 residing in the commonwealth, whichever is longer.

941 SECTION 59. Said section 100A of said chapter 276, as so appearing, is hereby further  
942 amended by inserting after the word “proceedings”, in line 52, the following words:- “, and  
943 except that in any proceedings under sections 1 to 39I, inclusive, of chapter 119, sections 2 to 5,  
944 inclusive, of chapter 201, chapters 208, 209, 209A, 209B, 209C, or sections 1 to 11A, inclusive,  
945 of chapter 210, a party having reasonable cause to believe that information in a sealed criminal record of  
946 another party may be relevant to (1) an issue of custody or visitation of a child, (2) abuse, as defined in  
947 section 1 of chapter 209A or (3) the safety of any person may upon motion seek to introduce the sealed  
948 record into evidence. The judge shall first review such records in camera and determine those records  
949 that are potentially relevant and admissible. The judge shall then conduct a closed hearing on the  
950 admissibility of those records determined to be potentially admissible; provided, however, that such  
951 records shall not be discussed in open court and, if admitted, shall be impounded and made  
952 available only to the parties, their attorneys and court personnel who have a demonstrated need  
953 to receive them.

954 SECTION 60. Section 100C of said chapter 276, as so appearing, is hereby amended by  
955 striking out, in lines 11-12, the words “except in cases in which an order of probation has been  
956 terminated,”.

957 SECTION 61. Said section 100C of said chapter 276, as so appearing, is hereby further  
958 amended by inserting after the word “commissioner”, in line 29, the following words:- or the  
959 clerk of courts in any district, superior, or the Boston municipal court.

960 SECTION 62. Chapter 276 of the General Laws, as so appearing, is hereby amended by  
961 inserting after section 100C the following section:-

962 Section 100D. Notwithstanding any provision of section 100A, 100B, or 100C of this  
963 chapter, criminal justice agencies as defined in section 167 of chapter 6 shall have immediate  
964 access to, and be permitted to use as necessary for the performance of their criminal justice  
965 duties, any sealed criminal offender record information as defined in section 167 of chapter 6 and  
966 any sealed information concerning criminal offenses or acts of delinquency committed by any  
967 person before he attained the age of 17.

968 SECTION 63. Section 34 of chapter 279 of the General Laws, as so appearing, is hereby  
969 amended by inserting after the word “accordingly”, in line 5, the following words,- for the  
970 duration of the sentence and within classification guidelines of the facility to which said convict  
971 is committed.

972 SECTION 64. Notwithstanding any general or special law to the contrary, this section  
973 shall facilitate the orderly transfer of the employees, proceedings, rules and regulations, property  
974 and legal obligations of the criminal history systems board, as the transferor agency, to the  
975 department of criminal justice information services, as the transferee agency, as follows:

976 (a) Subject to appropriation, the employees of the criminal history systems board,  
977 including those who immediately before the effective date of this act hold permanent  
978 appointment in positions classified under chapter 31 of the General Laws or have tenure in their  
979 positions as provided by section 9A of chapter 30 of the General Laws or do not hold such  
980 tenure, or hold confidential positions, are hereby transferred to the department of criminal justice  
981 information services, without interruption of service within the meaning of said section 9A of  
982 said chapter 31, without impairment of seniority, retirement or other rights of the employee, and  
983 without reduction in compensation or salary grade, notwithstanding any change in title or duties  
984 resulting from such reorganization, and without loss of accrued rights to holidays, sick leave,  
985 vacation and benefits, and without change in union representation or certified collective  
986 bargaining unit as certified by the state labor relations commission or in local union  
987 representation or affiliation. Any collective bargaining agreement in effect immediately before  
988 the transfer date shall continue in effect and the terms and conditions of employment therein  
989 shall continue as if the employees had not been so transferred. The reorganization shall not  
990 impair the civil service status of any such reassigned employee who immediately before the  
991 effective date of this act either holds a permanent appointment in a position classified under  
992 chapter 31 of the General Laws or has tenure in a position by reason of section 9A of chapter 30  
993 of the General Laws.

994 Notwithstanding any general or special law to the contrary, all such employees shall  
995 continue to retain their right to collectively bargain pursuant to chapter 150E of the General  
996 Laws and shall be considered employees for the purposes of said chapter 150E.

997 Nothing in this section shall be construed to confer upon any employee any right not held  
998 immediately before the date of said transfer, or to prohibit any reduction of salary grade, transfer,

999 reassignment, suspension discharge layoff or abolition of position not prohibited before such  
1000 date.

1001 (b) All petitions, requests, investigations and other proceedings appropriately and duly  
1002 brought before or referred to the executive director of the criminal history systems board by the  
1003 transferor agency and pending before the executive director before the effective date of this act,  
1004 shall continue unabated and remain in force, but shall be assumed and completed by the  
1005 department of criminal justice information services.

1006 (c) All orders, rules and regulations duly made and all approvals duly granted by the  
1007 criminal history systems board, which are in force immediately before the effective date of this  
1008 act, shall continue in force and shall thereafter be enforced by the department of criminal justice  
1009 information systems, until superseded, revised, rescinded or canceled, in accordance with law.

1010 (d) All books, papers, records, documents, equipment, buildings, facilities, cash and  
1011 other property, both personal and real, including all such property held in trust, which  
1012 immediately before the effective date of this act are in the custody of the criminal history  
1013 systems board shall be transferred to the department of criminal justice information services.

1014 (e) All duly existing contracts, leases and obligations of the criminal history systems  
1015 board shall continue in effect but shall be assumed by the department of criminal justice  
1016 information services. No existing right or remedy of any character shall be lost, impaired or  
1017 affected by this act.

1018 SECTION 65. The department, in consultation with the information technology  
1019 division, shall regularly report on its progress in building the information technology system  
1020 necessary to fulfill the requirements established in subsection (a) of section 172 of chapter 6 of

1021 the General Laws, as amended by section 16 of this act. The department shall file such reports  
1022 with the chairpersons of the joint committee on the judiciary, the joint committee on public  
1023 safety and homeland security, the chairpersons of the house and senate committees on bonding,  
1024 capital expenditures and state assets and the chairpersons of the house and senate committees on  
1025 ways and means and shall post such reports on the department's publicly-accessible website. The  
1026 department shall file such reports 6, 12, 15 and 18 months after this act is approved by the  
1027 governor, and at 3-month intervals thereafter, if necessary, until the project is complete. Each  
1028 report shall include a description of the progress made in the planning, design and construction  
1029 of the system since the preceding report, and shall include a comparison of actual expenditures to  
1030 budgeted expenditures and of budgeted timelines to actual timelines. Such report shall also  
1031 include a certification whether the department expects the complete information technology  
1032 system to be fully operational 18 months after this act is approved by the governor, as required in  
1033 this act.

1034 SECTION 65A. The executive office of public safety, in conjunction with the department of  
1035 public health, the trial court, the department of probation and the office of community correction, shall  
1036 promulgate regulations establishing a resource guide for law enforcement personnel, sheriffs and judges  
1037 on substance abuse treatment programs and options, including but not limited to, providing information  
1038 on civil commitment programs, jail diversion and public and private treatment options, including the  
1039 Massachusetts Alcohol and Substance Abuse Center, the Men's Addiction Treatment Center and the  
1040 Women's Addiction Treatment Center. The Bureau of Substance Abuse Services shall provide technical  
1041 assistance related to producing said resource guide.

1042 SECTION 66. Notwithstanding the provisions of sections 32, 32A, 32B, 32E, 32F, and  
1043 32J of chapter 94C of the General Laws, or any other general or special law to the contrary, a

1044 person serving a mandatory minimum sentence for violating any provision of the above  
1045 referenced sections as of the effective date of this act, shall be eligible for parole after serving  
1046 two-thirds of the minimum term of the sentence if the sentence is to a state prison, or after  
1047 serving one-half of the maximum term of the sentence if the sentence is to a house of correction.

1048 SECTION 66A. The executive office of public safety and security and the department of  
1049 correction, in conjunction with the department of public health, shall adopt regulations to create a  
1050 substance abuse education program in state prisons and houses of corrections. Such program shall focus  
1051 on, but not be limited to, screening inmates for substance use disorders, preparing inmates with substance  
1052 use disorders for reentry into the community, providing training relative to obtaining housing,  
1053 employment and the necessary substance abuse treatment once an inmate is released.

1054 SECTION 66B. The department of probation, in conjunction with the criminal history systems  
1055 board shall conduct a study on rehabilitation. That study shall include an examination of:

1056 (a) enabling a person convicted of or adjudicated delinquent by reason of any felony or  
1057 misdemeanor charges in the Commonwealth or a person who has been charged with a crime in the  
1058 Commonwealth but which charges did not result in a conviction to petition the superior court of the trial  
1059 court department in the county in which he then resides for a certificate of rehabilitation, or a certificate  
1060 of recovery and rehabilitation if the charges were a consequence of substance abuse, for ascertainment  
1061 and declaration of the fact of his rehabilitation or recovery and rehabilitation if certain conditions are met,  
1062 for example if the person: (1) has not been sentenced to incarceration since being discharged from a  
1063 felony or misdemeanor or since the termination of any ancillary proceedings related to such felony or  
1064 misdemeanor including, but not limited to, any period of probation, parole or continuation; (2) is not the  
1065 subject of a probationary or parole term for the commission of any other felony or misdemeanor; (3)  
1066 presents satisfactory evidence of 2 years residence in the commonwealth prior to the filing of the petition;  
1067 (4) has demonstrated a period of rehabilitation, as provided in section 176C of the General Laws, and (5)



1068 in the case of a person seeking a certificate of recovery and rehabilitation, has completed a substance  
1069 abuse treatment program approved by the bureau of substance abuse treatment services;

1070 (b) the standard the petitioner must demonstrate his rehabilitation or recovery;

1071 (c) the duration of rehabilitation required to be eligible for a certificate of rehabilitation or  
1072 recovery;

1073 (d) any recommended provision of notice of the filing of a petition to the district attorney of the  
1074 county in which a petition is filed, to the district attorney of the county in which the petitioner was  
1075 convicted of an offense, to the attorney general and to the governor;

1076 (e) whether a petitioner for a certification of rehabilitation or recovery may be represented by  
1077 counsel and whether the court shall appoint counsel for certain petitioners;

1078 (f) whether the court in which the petition is filed may require such testimony as it deems  
1079 necessary, and who should be required to produce and pay for the cost of production of all records and  
1080 reports relating to the petitioner and the offense for which he was charged; (g) which information the  
1081 court may request upon the filing of the application for a certificate, from the district attorney in which  
1082 the petition was filed including, but not limited to: the place of residence of the petitioner; the criminal  
1083 record of the petitioner as shown by the records of the Department of Justice; any representation made to  
1084 the court by the petitioner; the conduct of the petitioner during his period of rehabilitation; and any other  
1085 information the court may deem necessary in making its determination; (h) under what conditions a court  
1086 should deny a petition for a certificate of rehabilitation or recovery; (i) under what conditions a court  
1087 should issue a certificate of rehabilitation or recovery and whether such a certificate should become a part  
1088 of the petitioner's criminal offender record information;

1089 (j) to whom the court should forward such a certificate and whether any recommendations should  
1090 be included;

1091 (k) whether such a certificate should be provided to any person lawfully seeking information  
1092 relative to the offense for which a petitioner has received a certificate;

1093 (l) whether any forms would be required to effectuate such a process and who should develop  
1094 them;

1095 (m) any notice requirements that are recommended for defendants or individuals being released  
1096 from custody, discharged from probation or parole, or concluding substance abuse treatment;

1097 (n) any other factors that may or may not be included within the determination of whether to issue  
1098 a benefit granted by the awarding of such a certificate;

1099 (o) any rights that an individual who has been denied the benefits of attaining a certificate of  
1100 rehabilitation or recovery should have, including the right to appeal such a decision;

1101 (p) what the appropriate forum should be for such an appeal; and

1102 (q) any punishments that should be levied against an individual who fraudulently uses such a  
1103 certificate.

1104 The department shall report its findings to the clerks of the house and senate by July 1, 2010 who  
1105 shall forward that report to the chairmen of the house committee on ways and means, the senate  
1106 committee on ways and means and the joint committee on mental health and substance abuse.

1107 SECTION 66C. The parole board shall conduct a study to determine the benefit and cost of  
1108 establishing a substance abuse treatment program to be included as a requirement for individuals during a  
1109 period of post-release supervision required by chapter 127A of the General Laws.

1110           The board shall file the findings of its study by July 1, 2010 with the clerks of the house and the  
1111 senate, who shall forward the report to the chairmen of the house committee on ways and means, the  
1112 senate committee on ways and means, the joint committee on mental health and substance abuse and the  
1113 joint committee on the judiciary.

1114           SECTION 66D. The department of corrections, in consultation with the department of public  
1115 health shall conduct a study on the establishment of jail diversion programs for nonviolent low-level  
1116 offenders with substance use disorders. The study shall include, but not be limited to, the establishment  
1117 of jail diversion programs, innovative ways for the courts to divert substance abusers from the criminal  
1118 justice system into specified substance abuse treatment options and the cost estimates for implementing  
1119 such a program.

1120           The department shall file the findings of its study by July 1, 2010 with the clerks of the house and  
1121 the senate, who shall forward the report to the chairmen of the house committee on ways and means, the  
1122 senate committee on ways and means and the joint committee on mental health and substance abuse.”

1123           SECTION 66E. The administrative office of the trial court shall conduct a study to examine the  
1124 bail review process including, but not limited to, personal recognizance, challenges to the amount of bail  
1125 for an accused and the provision of notice to a petitioner relative to future court appearances. The  
1126 administrative office shall report to the joint committee on the judiciary not later than July 1, 2010.

1127           SECTION 67. Notwithstanding any general or special law to the contrary, chapter 127A  
1128 of the General Laws shall apply to any felony, as defined in section 1 of chapter 274 of the  
1129 General Laws, committed on or after the effective date of this act.

1130           SECTION 67A. Notwithstanding any general or special law to the contrary, section 178F<sup>3</sup>/<sub>4</sub> of  
1131 chapter 6 of the General Laws shall apply to a conviction for a sex offense, as defined in section 178C of

1132 chapter 6, or an adjudication as a youthful offender or as delinquent juvenile by reason of a sex offense,  
1133 as defined in section 178C of chapter 6, which occurs after the effective date of this act.

1134 SECTION 68. Section 5A of this act is hereby repealed.

1135 SECTION 68A. The department of public safety shall adopt the regulations required under  
1136 section 25 of chapter 270 of the General Laws, not later than 90 days from the effective date of this act.

1137 SECTION 69. Sections 1 to 5, inclusive, 11to 14, inclusive, 16, 17, 17A, 22-27, inclusive, 31 to  
1138 33, inclusive, 50, 50B, 51B, 52, 58 to 62, inclusive, 64 and 68 shall take effect 18 months from the  
1139 effective date of this act.

1140 SECTION 69A. Section 68A shall take effect 180 days from the effective date of this act.