

**SENATE . . . . . No. 00743**

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The Commonwealth of Massachusetts

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PRESENTED BY:

*Cynthia S. Creem*

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act establishing sentencing guidelines

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\_\_\_\_\_  
PETITION OF:

NAME:

*Cynthia S. Creem*

DISTRICT/ADDRESS:

*First Middlesex and Norfolk*

# SENATE . . . . . No. 00743

By Ms. Creem, petition (accompanied by bill, Senate, No. 743) of Creem for legislation to establish sentencing guidelines [Joint Committee on the Judiciary].

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

## The Commonwealth of Massachusetts

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**In the Year Two Thousand Eleven**  
\_\_\_\_\_

An Act establishing sentencing guidelines

□.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 211F the  
2 following chapter:-

3 CHAPTER 211G

4 SENTENCING GUIDELINES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

69 Sentencing Guidelines Grid

70 Criminal History Group

71 Offense A B C D E

72 Seriousness Level No/Minor

73 Record Moderate

74 Record Serious

75 Record Violent or

76 Repetitive Serious

77 Violent

78

79 9 Life Life Life Life Life

80

81

82

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

84 204 - 306 Mos.

85

86

87

88 7 60 - 90 Mos. 68 - 102 Mos. 84 - 126 Mos. 108 - 162 Mos. 160 - 240

89 Mos.

90

91

92

93        6        40 - 60 Mos.   45 - 67 Mos.   50 - 75 Mos.   60 - 90 Mos.   80 - 120 Mos.

94

95

96        5        12 - 36 Mos.   24 - 36 Mos.   36 - 54 Mos.   48 - 72 Mos.   60 - 90 Mos.

97                    IS-IV   IS-IV

98                    IS-III   IS-III

99                    IS-II   IS-II

100        4        0 - 24 Mos.   3 - 30 Mos.   6 - 30 Mos.   20 - 30 Mos.   24 - 36 Mos.

101                    IS-IV   IS-IV   IS-IV

102                    IS-III   IS-III   IS-III

103                    IS-II   IS-II   IS-II

104        3        0 - 12 Mos.   0 - 15 Mos.   0 - 18 Mos.   0 - 24 Mos.   6 - 24 Mos.

105                    IS-IV   IS-IV   IS-IV   IS-IV   IS-IV

106                    IS-III   IS-III   IS-III   IS-III   IS-III

107                    IS-II   IS-II   IS-II   IS-II   IS-II

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



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Intermediate Sanction Zone

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

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

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of the sentencing guidelines grid and for this offense the sentencing provisions of G.L. c. 265 § 2

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apply. The offense seriousness rankings are set forth in the following master crime list, which

131

contains the following information:-

132

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

133

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

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

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

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

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

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the vertical axis.

139

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

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

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

142 list:

143

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

205 Assault and battery by means of a dangerous weapon is a level six offense where there is  
206 significant injury to the victim. Significant injury includes: injuries which are characterized by a  
207 protracted period of total disability or long term impairment of function, loss of function of any

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

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

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

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

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

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

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

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

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

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

241 (b) Second and subsequent convictions. When a statute provides for a more severe  
242 penalty upon a second and subsequent conviction for an offense, the second or subsequent  
243 offense is elevated one level on the offense seriousness scale on the master crime list. Where the  
244 offense is at level eight, the offender shall be moved over one cell to the right to the next more  
245 serious criminal history group in the grid. When a defendant is charged as a second or  
246 subsequent offender under the relevant statute, the prior conviction or convictions that served as  
247 the basis for the second or subsequent charge shall not be counted in determining criminal  
248 history placement on the grid. Offenses that are subject to a more severe penalty for second and  
249 subsequent conviction are so designated in the master crime list.

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

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

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

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

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

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

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

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

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

286 (c) Juvenile record. Adjudications of delinquency for offenses classified in offense  
287 seriousness levels seven through nine on the master crime list shall be considered as convictions  
288 of the offenses involved and counted for purposes of criminal history. Adjudications of  
289 delinquency for offenses classified below level seven shall not be counted for purposes of  
290 criminal history, but the existence of such adjudications may be considered as an aggravating  
291 factor for departure from the sentencing guidelines range.



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

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

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

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

312 (a) Sentencing within the guideline range. The sentencing judge may impose a sentence  
313 to incarceration within the sentencing guidelines range by imposing a maximum sentence from

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

322 (b) Departing from the guidelines range. The sentencing judge may impose a sentence  
323 below or above the sentencing guidelines range by setting forth in writing reasons for departing  
324 from that range on a sentencing statement, consistent with the provisions of G.L. c. 211E, § 3

325 (h). Any departure shall be based on a finding that one or more mitigating or aggravating  
326 circumstances exist as provided in this chapter. In imposing a sentence of incarceration that  
327 departs from the sentencing guidelines range, the minimum sentence shall be two-thirds of the  
328 maximum sentence. A sentence that departs below the guidelines range may include a sentence  
329 to any lesser term of incarceration or any intermediate sanction.

330 (1) Mitigating and aggravating circumstances. The following non-exclusive mitigating  
331 and aggravating circumstances may guide departures from the sentencing guidelines range. The  
332 presence of any such circumstance may warrant departure from the sentencing guidelines range  
333 in the discretion of the sentencing judge. In determining mitigation or aggravation, the judge  
334 may consider any evidence received during the proceedings; any victim impact statement; any  
335 presentence report, when the judge requests one; and, any other information that the judge deems  
336 credible.

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

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

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

- 349 1. The victim was especially vulnerable due to age or physical or mental disability.
- 350 2. The victim was treated with particular cruelty.
- 351 3. The defendant used position or status to facilitate commission of the offense, such as a  
352 position of trust, confidence or fiduciary relationship.
- 353 4. The defendant was a leader in the commission of an offense involving two or more  
354 criminal actors.
- 355 5. The defendant committed the offense while on probation, on parole, or during escape.

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

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

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

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

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

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

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

396           (b) Operating under the influence offenses. (1) For purposes of this chapter, operating  
397 under the influence offenses refer to offenses enumerated in the second paragraph of c. 90 § 23,  
398 in c. 90 § 24 (1) (a) (1), and in c. 90B § 8 (a) (1) (A). With the exception of the departure  
399 enumerated in sub-paragraph (b) (2) of this section, no departures below any mandatory

400 minimum sentences for operating under the influence offenses are permitted. These operating  
401 under the influence offenses are not integrated into the guidelines grid. The sentencing  
402 guidelines for these operating under the influence offenses are the mandatory sentencing  
403 provisions of the existing statutes. The minimum term of incarceration shall be no less than any  
404 mandatory minimum sentence provided in the statutes enumerated in this paragraph. The  
405 sentencing judge is required to impose a minimum and a maximum sentence, but the minimum  
406 sentence need not be two-thirds of the maximum.

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

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

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

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

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

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

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

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

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

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



464 minimum term of incarceration must be equal to or greater in length than the mandatory  
465 minimum sentence and the requirement that the minimum sentence shall be two-thirds of the  
466 maximum sentence.

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

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

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

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

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

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

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

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

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

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

505 A sentence to an intermediate sanction shall be imposed as a condition of probation,  
506 consistent with the provisions of G.L. c. 211F § 3 (c). The length of the probation period that

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

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

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

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

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

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

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

548           SECTION 2. Severability. Where any provision of this chapter or the application thereof to  
549 any person or circumstance, shall, for any reason, be held invalid, the remainder of this chapter

550 or the application of such provision to persons or circumstances other than those as to which it is  
551 held invalid shall not be affected thereby.

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

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

559           SECTION 5. Effective Date. The provisions of this chapter shall take effect on January  
560 1, 2010, and the sentencing guidelines and other related provisions contained herein shall apply  
561 to all felonies and misdemeanors committed on or after that date. All offenses committed prior  
562 to January 1, 2010, shall be governed by the laws, including but not limited to those on  
563 sentencing, parole, and probation, in effect at the time the offense is committed. Any  
564 amendments to the sentencing guidelines shall apply to all offenses committed on or after the  
565 effective date of the amendment.