

SENATE No. 949

The Commonwealth of Massachusetts

PRESENTED BY:

James E. Timilty

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

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

An Act relative to bail review.

PETITION OF:

NAME:

James E. Timilty

DISTRICT/ADDRESS:

Bristol and Norfolk

SENATE No. 949

By Mr. Timilty, a petition (accompanied by bill, Senate, No. 949) of James E. Timilty for legislation relative to bail review. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act relative to bail review.

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

1 Subsection (7) of section 58A of chapter 276 of the General Laws, as appearing in the
2 2012 Official Edition, is hereby amended by striking out the second paragraph and inserting in
3 place thereof the following 6 paragraphs:-

4 If, after a hearing pursuant to subsection (4), the district court justice makes a
5 determination that, pending trial, the individual shall be released on personal recognizance with
6 or without surety, the person shall have the same right to review as set forth in section 58.

7 If, after a hearing pursuant to subsection (4), the district court justice makes a
8 determination by clear and convincing evidence that no conditions of release reasonably assure
9 the safety of any other person or the community and orders the detention of the person prior to
10 trial, a justice of the superior court shall consider a petition for review under the procedures
11 described in this section. The review shall be conducted as speedily as practicable and, in any
12 event, within 5 business days of the filing of the petition.

13 The justice of the superior court shall review the district court’s decision only to
14 determine whether the district court committed a clear error of fact or law that plainly affected
15 the district court’s disposition. In conducting this review, the justice of the superior court shall
16 consider the district court’s written findings of fact, the written statement of the reasons for
17 detention if the person has been ordered detained, the written statement of the reasons for
18 conditions of release if such conditions have been imposed and the record in the court below.
19 The record shall include, but not be limited to: (i) police reports; (ii) a copy of the complaint; (iii)
20 the person’s criminal offender record information; and (iv) any other documents submitted as
21 evidence during the hearing.

22 If the justice of the superior court finds that the district court committed a clear error of
23 fact or law and that the error plainly affected the district court’s disposition, the justice of the
24 superior court may revise the disposition by ordering that the person be released on bail on
25 personal recognizance with or without surety or may make any other order of bail or
26 recognizance. The superior court justice may also uphold the district court’s original disposition
27 on grounds other than those originally put forth by the district court.

28 If the superior court justice either modifies the disposition of the district court or makes a
29 new order of pretrial detention or release upon conditions, the justice shall issue written findings
30 describing: (i) the error that triggered the modification or issuance of a new order; and (ii) the
31 reasons for the modification or issuance of a new order.

32 If there is no clear error of law or fact that plainly affected the district court’s disposition,
33 the superior court justice shall remand the person in accordance with the terms on which the
34 person was ordered committed by the district court.