

HOUSE No. 972

By Mr. Hill of Ipswich, petition of Bradford Hill relative to the punishment of habitual offenders convicted in the courts of the Commonwealth. Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO THE PUNISHMENT OF HABITUAL OFFENDERS.

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 first paragraph of Section 133A of Chapter 127
2 of the General Laws, as appearing in the 2002 Official Edition, is
3 hereby amended by inserting in line 4 after the word “except” the
4 following words:— prisoners serving a life sentence pursuant to the
5 provisions of Section 25 of Chapter 279, and except.

1 SECTION 2. Chapter 279 of the General Laws is hereby amended
2 by striking out Section 25, as appearing in the 2002 Official Edition
3 and inserting in place thereof the following section:—

4 Section 25. For purposes of this section the following terms shall
5 have the following meanings:—

6 “Convicted”, (i) the entry of judgment of guilty in the courts of
7 the Commonwealth; (ii) the entry of a judgment of guilty of any
8 offense of any other jurisdiction, federal, state, or territorial, which
9 is the same as or necessarily includes the elements of any violent
10 felony or other offense enumerated in this section; or (iii) the entry
11 of a judgment or adjudication of delinquency in the courts of the
12 Commonwealth by reason of having committed any violent felony
13 or other offense enumerated in this section, or a judgment or adjudi-
14 cation of delinquency or its equivalent in any other jurisdiction, fed-
15 eral, state, or territorial, by reason of having committed an offense
16 which is the same as or necessarily includes the elements of any vio-
17 lent felony or other offense enumerated in this section.

18 “Substantial bodily injury”, bodily injury which creates a perma-
19 nent disfigurement, protracted loss or impairment of a function or a
20 body member, limb or organ, or substantial risk of death.

21 “Violent felony” and “prior violent felony”, a violation of Sec-
22 tions 1, 13, 13B, 13C, 13F, 13L, 14, 15, 15A, 15B, 16, 17, 18, 18A,
23 22, 22A, 24, 24B, 26, or 28 or Chapter 265, or of Section 1 or 14 of
24 Chapter 266, provided, however, that any combination of such
25 felonies which is based on the same criminal conduct or episode or
26 arises out of the same course of conduct shall be deemed to consti-
27 tute a single violent felony or prior violent felony; and provided, fur-
28 ther, that a violation of Section 15A or of Section 15B of said
29 Chapter 265 shall be deemed to be a violent felony or prior violent
30 felony only if such violation resulted in substantial bodily injury of
31 involved the use of a firearm or a dangerous weapon described in
32 Paragraph (b) of Section 10 of Chapter 269.

33 (a) Any person who is convicted of a violent felony, and at the
34 time of such conviction has been convicted of two prior violent
35 felonies, committed on occasions different from one another, shall,
36 upon conviction of such violent felony, be adjudicated to be a
37 habitual violent felon and be punished by imprisonment in the state
38 prison for life. No such person shall be eligible for parole under
39 Section 133A of Chapter 127 while he is serving such life sentence,
40 but if his sentence is commuted under the provisions of Section 152
41 of said Chapter 127, he shall thereafter be subject to the provisions
42 of law governing parole for persons sentenced for lesser offenses.

43 The applicability of this section shall be determined only after the
44 entry of a judgment of guilty based on the commission of a violent
45 felony. It shall not be necessary to plead in the indictment or prove
46 at trial the existence of the two previous convictions necessary for
47 applying the provisions of this Section.

48 Prior to accepting a plea of guilty to a violent felony which shall
49 result in a sentence of life imprisonment under the provisions of this
50 Section, the judge shall ascertain, and make an appropriate finding in
51 the court record, that the defendant fully understands the conse-
52 quences of his plea in accordance with the provisions of Rule 12 of
53 the Massachusetts Rules of Criminal Procedure of any other applic-
54 able law.

55 Prior to imposition of a sentence of life imprisonment under the
56 provisions of this section, the defendant shall be entitled to a hearing

57 at which the Commonwealth shall have the burden of proving,
58 beyond a reasonable doubt, the applicability of the provisions of this
59 section. At such hearing, a certified copy of a conviction of a prior
60 violent felony of the defendant shall create a rebuttable presumption
61 that the Commonwealth has met its burden of proof under this para-
62 graph with respect to such prior violent felony.

63 (b) Any person who is convicted of violating Section 1, 13, 15,
64 16, 17, 22, 22A, or 23 of Chapter 265, and at the time of committing
65 of such offense has previously been convicted of a violation of any
66 of the above offenses, shall be punished by imprisonment in the state
67 prison for life or for a term of not less than fifteen years.

68 (c) Any person who is convicted of a crime has been convicted
69 within the preceding ten years of three prior crimes that are punish-
70 able by imprisonment for six months or more and that do not arise
71 from the same course of conduct or episode, shall be considered an
72 habitual offender and shall be punished by imprisonment for the
73 maximum term of years provided by law for the crime for which he
74 is then to be sentenced.

1 SECTION 3. Section 2 of this act shall apply to any person con-
2 victed of a violent felony or crime for acts committed on or after the
3 effective date of this act, irrespective of the date of commission or
4 conviction of any prior violent felony or crime necessary for the
5 application of the provisions of said Section 2 of the act.