

HOUSE No. 5004

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, July 23, 2008.

The committee on The Judiciary to whom was referred the message from His Excellency the Governor recommending legislation relative to reducing recidivism by increasing employment opportunities (House, No. 4476), reports recommending that the accompanying bill (House No. 5004) ought to pass [Senator Tarr dissenting].

For the committee,

EUGENE L. O'FLAHERTY.

The Commonwealth of Massachusetts

In the Year Two Thousand and Eight.

AN ACT IMPROVING CERTAIN CRIMINAL JUSTICE MATTERS.

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 168 of Chapter 6 of the General Laws, as
2 appearing in the 2006 Official Edition, is hereby amended by
3 striking out the first paragraph and inserting in place thereof the
4 following paragraph:—

5 There shall be a criminal history systems board, hereinafter
6 called the board, consisting of the following persons:— the secre-
7 tary of public safety and security, who shall serve as chairman, the
8 secretary of labor and workforce development, the attorney
9 general, the chairperson of the Massachusetts sentencing commis-
10 sion, the chief counsel for the committee for public counsel serv-
11 ices, the chairman of the parole board, the commissioner of the
12 department of correction, the commissioner of probation and com-
13 missioner of the department of youth services and the colonel of
14 state police, or their designees, all of whom shall serve ex officio,
15 and ten persons to be appointed by the governor for a term of
16 three years, one of whom shall represent the Massachusetts Dis-
17 trict Attorneys Association, one of whom shall represent the
18 Massachusetts Sheriffs Association, one of whom shall represent
19 the Massachusetts Chiefs of Police Association, one of whom
20 shall represent private users of criminal offender record informa-
21 tion, one of whom shall be a victim of crime, one of whom shall
22 be a provider of victim services, two of whom shall have experi-
23 ence in the areas of workforce development, ex-offender rehabili-
24 tation, or economic development, and two of whom shall be
25 persons who have experience in issues relating to personal pri-
26 vacy. Upon the expiration of the term of any appointive member,
27 his successor shall be appointed in a like manner for a term of
28 three years.

1 SECTION 2. Said Section 168 of said Chapter 6 is hereby fur-
2 ther amended by striking out, in line 50, the word “hundred” and
3 inserting in place thereof the word:— thousand

1 SECTION 3. Said Section 168 of said Chapter 6 is hereby fur-
2 ther amended by striking out, in line 50, the word “willful” and
3 inserting in place thereof the following word:— knowing

1 SECTION 4. Said Section 168 of said Chapter 6 is hereby fur-
2 ther amended by striking out the fourth and sixth paragraphs.

1 SECTION 5. Chapter 6 of the General Laws, as so appearing, is
2 hereby amended by inserting after Section 168 the following new
3 section:—

4 Section 168 ½. There shall be within the executive office of
5 public safety and security a criminal justice information services
6 department, hereinafter called the department. The department
7 shall provide for and exercise control over the installation, opera-
8 tion and maintenance of data processing and data communication
9 systems, hereinafter called the criminal justice information
10 system. Said system shall be designed to ensure the prompt col-
11 lection, exchange, dissemination and distribution of such criminal
12 offender record information as may be necessary for the efficient
13 administration and operation of criminal justice agencies, and to
14 connect such systems directly or indirectly with similar systems in
15 this or other states. The secretary of public safety and security
16 shall appoint an executive director who shall be classified in
17 accordance with Section 45 of Chapter 30 and the salary shall be
18 determined in accordance with Section 46C of said Chapter 30.
19 Such executive director shall not be subject to the provisions of
20 Chapter 31 or Section 9A of Chapter 30. Said director shall be
21 responsible for all data processing, for the management of the
22 automated criminal offender record information and telepro-
23 cessing system, for the supervision of all personnel associated
24 with said system and for the appointment of all such personnel.
25 The director may appoint such other employees, including experts
26 and consultants, as he deems necessary to carry out the depart-
27 ment’s responsibilities, none of whom shall be subject to the pro-
28 visions of Chapter 31 or of Section 9A of Chapter 30.

29 The department is authorized to enter into contracts and agree-
30 ments with, and accept gifts, grants, contributions, and bequests of
31 funds from, any department, agency, or subdivision of federal,
32 state, county, or municipal government and any individual, foun-
33 dation, corporation, association, or public authority for the pur-
34 pose of providing or receiving services, facilities or staff
35 assistance in connection with its work. Such funds shall be
36 deposited with the state treasurer and may be expended by the
37 department in accordance with the conditions of the gift, grant,
38 contribution, or bequest, without specific appropriation.

1 SECTION 6. Section 172 of Chapter 6 of the General Laws, as
2 so appearing, is hereby amended by inserting after the word “pri-
3 vacy”, in line 14 and in line 40, the words:— and the importance
4 and value of successful reintegration of ex-offenders

1 SECTION 7. Section 178 of Chapter 6 of the General Laws, as
2 so appearing, is hereby amended by striking out, in line 1, the
3 word “willfully” and inserting in place thereof the word:— know-
4 ingly

1 SECTION 8. Said Section 178 of said Chapter 6 is hereby fur-
2 ther amended by striking out, in line 3, the words “willfully com-
3 municates” and inserting in place thereof the words:— knowingly
4 requests, obtains or seeks to obtain, uses, sells, communicates

1 SECTION 9. Chapter 6A of the General Laws, as appearing in
2 the 2006 Official Edition, is hereby amended by striking out
3 Section 18 and inserting in place thereof the following section:—
4 Section 18. The following state agencies are hereby declared to
5 be within the executive office of public safety and security:— the
6 department of public safety; the department of fire services; the
7 office of grants and research and the highway safety division; the
8 municipal police training committee; the criminal justice informa-
9 tion services department; the statewide emergency telecommuni-
10 cations board; the merit rating board; the department of state
11 police; the office of the chief medical examiner; the Massachu-
12 setts emergency management agency; the military department; the
13 department of correction, including the parole board; the sex

14 offender registry board; and all other agencies and boards within
15 said departments, committees and boards.

1 SECTION 10. Section 5 of Chapter 27 of the General Laws, as
2 appearing in the 2006 Official Edition, is hereby amended by
3 inserting at the end thereof the following new sentence:— The
4 parole board shall administer and oversee mandatory post-release
5 supervision functions as set forth in Section 133D of Chapter 127
6 and in Chapter 127A.

1 SECTION 11. Section 32H of Chapter 94C of the General
2 Laws, as appearing in the 2006 Official Edition, is hereby
3 amended by striking out the second paragraph and inserting in
4 place thereof the following paragraph:—

5 A person convicted of violating any provisions of said sections
6 shall not, until he shall have served the mandatory minimum term
7 of imprisonment established, in said sections, be eligible for pro-
8 bation, parole, furlough, or receive any deduction from his sen-
9 tence for good conduct under Sections 129C and 129D of Chapter
10 127; provided, however, that the commissioner of correction may,
11 on the recommendation of the warden, superintendent, or other
12 person in charge of the correctional institution, grant to said
13 offender a temporary release in the custody of an officer of such
14 institution for the following purposes:— to attend the funeral of a
15 relative, to visit a critically ill relative, to obtain emergency med-
16 ical or psychiatric services unavailable at said institution; to par-
17 ticipate in education, training, or employment programs
18 established under section forty-eight of chapter one hundred
19 twenty-seven; to engage in employment pursuant to a work
20 release program in accordance with Sections 49 and 49A of
21 Chapter 127; or to participate in a program to provide services to
22 municipalities within a county pursuant to Section 49C of Chapter
23 127. The provisions of Section 31 of Chapter 279 shall not apply
24 to any person convicted of violating any provisions of said sec-
25 tions. The provisions of Section 87 of Chapter 276 shall not apply
26 to any person, 17 years of age or over, charged with a violation of
27 said sections, or to any child between age 14 and 17, so charged,
28 if the court is of the opinion that the interests of the public require

29 that he shall be tried for such offense instead of being dealt with
30 as a child.

1 SECTION 12. The General Laws are hereby amended by
2 inserting after Chapter 127 of the General Laws, as appearing in
3 the 2006 Official Edition, the following new chapter:—

4 **CHAPTER 127A.**
5 **MANDATORY POST-RELEASE SUPERVISION.**

6 Section 1. All sentences of incarceration in a house of correc-
7 tion or jail for more than one year and all sentences to state prison
8 shall include a period of post-release supervision, excluding sen-
9 tences for those prisoners for whom parole eligibility is deter-
10 mined by Section 133A of Chapter 127. Except as provided in this
11 chapter, for individuals who complete the incarceration portion of
12 their sentences without supervised release or are re-incarcerated
13 for the remainder of the sentence for violating the terms of parole
14 or probation, the period of mandatory post-release supervision
15 shall be twenty-five per cent of the maximum term of incarcera-
16 tion imposed at sentencing up to a maximum period of supervi-
17 sion of five years, but in no case less than nine months. Where an
18 individual is sentenced to incarceration on multiple offenses to be
19 served concurrently, the greater of the maximum terms imposed at
20 sentencing shall be used to calculate the mandatory post-release
21 supervision period. Mandatory post-release supervision as estab-
22 lished in this chapter shall not be imposed upon any individual
23 who successfully completes a period of probation imposed by a
24 court at sentencing, upon an individual who is granted a parole
25 permit under Chapter 127 and successfully completes a period of
26 parole supervision, or upon an individual sentenced to lifetime
27 community parole under Section 45 of Chapter 265 and Section
28 133D of Chapter 127. An individual subject to this chapter may be
29 supervised in another jurisdiction in accordance with Sections
30 151A through 151N of Chapter 127 and shall be considered on
31 parole for the purposes of supervision.

32 Section 2. Upon release, an individual sentenced to a term of
33 incarceration in a house of correction or jail for more than one
34 year, or in a state prison for any length of time shall be subject to

35 the supervision and jurisdiction of the parole board during the
36 period of mandatory post-release supervision and shall be subject
37 to the law, rules and regulations governing parole. The chairman
38 of the parole board shall establish uniform regulations for post-
39 release supervision consistent with applicable provisions of Chap-
40 ters 127 and 276. Nothing in this section or in said regulations
41 shall limit the authority of the superior, municipal, district or juve-
42 nile court to impose conditions of probation supervision to protect
43 the public or promote the rehabilitation of any person.

44 Section 3. An individual subject to mandatory post-release
45 supervision who has successfully completed nine months of
46 supervision shall be eligible for early termination of that supervi-
47 sion. Early termination shall only occur in accordance with proce-
48 dures to be adopted in the regulations of the parole board. In all
49 proceedings under this section, the criteria for early termination of
50 mandatory post-release supervision established by the chairman of
51 the parole board shall include, but not be limited to, the amount of
52 time the individual has successfully spent under post-release
53 supervision, success in finding permanent employment, success in
54 establishing adequate housing, completing all counseling or sub-
55 stance abuse treatment programs and success in passing all man-
56 dated post-release testing programs.

57 Section 4. An individual who violates a condition of mandatory
58 post-release supervision shall be subject to this section and to
59 modification or revocation proceedings initiated by the parole
60 board. The laws and regulations governing parole violation pro-
61 ceedings shall govern these modification or revocation proceed-
62 ings. In all proceedings under this section, an individual who
63 violates a condition of mandatory post-release supervision may be
64 placed under increased supervision, subjected to other conditions
65 and intermediate sanctions, or incarcerated for not more than the
66 maximum remaining period of post-release supervision or the
67 remaining unserved portion of the sentence, whichever is greater,
68 if the violation does not otherwise constitute a criminal offense. In
69 all cases where the individual is not being incarcerated for a viola-
70 tion, the individual shall participate in an intermediate sanction
71 through the office of community corrections established in
72 Chapter 211F, the level of which is to be determined by the
73 chairman of the parole board. In the case of any violation for use

74 of controlled substances or an offense for operating under the
75 influence of drugs or alcohol where the individual is not incarcer-
76 ated for the violation, the period of mandatory post-release super-
77 vision shall be extended to accommodate an appropriate substance
78 abuse program, but the total shall not exceed the maximum super-
79 visory period permitted under Section 1. For any violation of the
80 conditions of mandatory post-release supervision, the period of
81 supervision shall be stayed during a period of incarceration and it
82 shall be resumed upon release. If the violation constitutes a crim-
83 inal offense, the period of incarceration shall be served on and
84 after any sentence received as a result of the new offense. Upon
85 subsequent release, the greater of the maximum sentences of the
86 original offense and subsequent offense shall be used to calculate
87 the new mandatory post-release supervision period.

88 Section 5. All mandatory post-release supervision shall be con-
89 sidered completed, if any of the following conditions are met:—
90 (a) except as provided in Section 4, the individual serves a post-
91 release supervision period of twenty-five per cent of the maximum
92 term of incarceration imposed at sentencing up to a maximum
93 period of supervision of five years, but in no case less than nine
94 months; (b) the individual is granted early termination under
95 Section 3; (c) upon completion of the sentence, the individual is
96 immediately committed to the custody of any other state to serve a
97 period of incarceration greater than or equal to the post-release
98 supervision period required under this chapter; or (d) upon com-
99 pletion of the sentence, the individual is immediately committed
100 to the custody of any federal or immigration authority. Mandatory
101 post-release supervision shall be stayed for any period during
102 which an individual is in custody under an order of custody under
103 Chapter 123A.

104 Section 6. On or before August 31, 2009, the chairman of the
105 parole board shall file a report detailing the number of individuals
106 incarcerated in a house of correction or jail whose sentence
107 includes a period of post-release supervision during the preceding
108 year. This report shall detail the number of individuals who are
109 subject to mandatory post-release supervision, who successfully
110 complete the supervision, who become eligible for early termina-
111 tion of that supervision, and the report shall describe the criteria
112 for early termination of post-release supervision including the

113 amount of time the individual has successfully spent under post-
114 release supervision, success in finding permanent employment, in
115 establishing adequate housing, in completing all counseling or
116 substance abuse treatment programs and in passing all mandated
117 post-release testing programs. The report shall also include any
118 individual who violates a condition of mandatory post-release
119 supervision who becomes subject to modification or revocation
120 proceedings initiated by the board; and provided further that
121 copies of such reports shall be submitted to the chairs of the joint
122 committee on the judiciary and the clerks of the house of repre-
123 sentatives and the senate.

124 Section 7. This chapter shall apply to all felonies and misde-
125 meanors committed on or after the effective date of this act. All
126 offenses committed before the effective date of this act shall be
127 governed by the laws in effect at the time the offense was com-
128 mitted, including, but not limited to the laws on sentencing,
129 parole, and probation.

1 SECTION 13. Section 100A of said Chapter 276, as so
2 appearing, is amended by striking out, in line 8, the word “ten”
3 and inserting in place thereof the following:— five

1 SECTION 14. Said Section 100A of said Chapter 276 is hereby
2 further amended by striking out, in line 11, the word “fifteen” and
3 inserting in place thereof the word:— ten

1 SECTION 15. Said Section 100A of said Chapter 276 is hereby
2 further amended by striking out, in line 13, the words “ten years
3 preceding such request” and inserting in place thereof the
4 words:— in the case of a misdemeanor, five years preceding such
5 request, and in the case of a felony, ten years preceding such
6 request.

1 SECTION 16. Said Section 100A of said Chapter 276 is hereby
2 further amended by striking out, in line 19, the words “within the
3 preceding ten years” and inserting in place thereof the words:— in
4 the case of a misdemeanor, within the preceding five years, and in
5 the case of a felony, within the preceding ten years.

1 SECTION 17. Said Section 100A of said Chapter 276 is hereby
2 further amended by inserting, after line 40, the words:—
3 5. Sex offenses, as defined in Section 178C of Chapter 6, shall
4 not be eligible for sealing.

1 SECTION 18. Said Chapter 276, as so appearing, is hereby
2 amended by inserting after Section 100C the following new
3 section:—
4 Section 100D. Notwithstanding any provision of Section 100A,
5 100B, or 100C of this chapter, criminal justice agencies as defined
6 in Section 167 of Chapter 6 shall have immediate access to, and
7 be permitted to use as necessary for the performance of their crim-
8 inal justice duties, any sealed criminal offender record informa-
9 tion as defined in Section 167 of Chapter 6 and any sealed
10 information concerning criminal offenses or acts of delinquency
11 committed by any person before he attained the age of 17.

1 SECTION 19. The secretary of public safety and security shall,
2 in consultation with representatives of law enforcement and prose-
3 cutorial organizations, victim service providers and the criminal
4 defense bar, establish policies and guidelines for law enforcement
5 response to incidents of sex crimes committed against adults. The
6 secretary may revise, terminate, or revoke such policies and
7 guidelines at his discretion. Such policies and guidelines shall be
8 promulgated no later than six months from the effective date of
9 this act.

1 SECTION 20. Chapter 151B of the General laws is hereby
2 amended by inserting in Section 4, after subsection 9A, the
3 following subsection:—
4 9B. For any employer, employer's agent, employment agency,
5 housing provider, educational or training institution or other entity
6 or program doing business in the commonwealth to perform the
7 unlawful practice of using an application form that asks the appli-
8 cant if he or she has committed a felony or has been convicted of
9 a crime regardless of the length of time passed since such convic-
10 tion, or otherwise has been arrested or has been accused in the
11 adult criminal, or the juvenile delinquency justice systems,
12 whether by a check box, yes or no question, or any other means.

1 SECTION 21. Chapter 94C of the General Laws is hereby
2 amended by striking out Section 32J and inserting in place thereof
3 the following section:—

4 Section 32J. Any person who violates the provisions of Section
5 32, 32A, 32B, 32C, 32D, 32E, 32F or 32I while in or on, or within
6 100 feet of the real property comprising a public or private
7 accredited preschool, accredited headstart facility, elementary,
8 vocational, or secondary school whether or not in session, or
9 within 100 feet of a public park or playground shall be imprisoned
10 in a jail or house of correction for not more than 2 years or by a
11 fine of not less than \$500 nor more than \$5,000, or both such fine
12 and imprisonment.

13 Any person who has been previously convicted of, or adjudi-
14 cated delinquent or as a youthful offender for a violation of
15 Section 32, 32A, 32B, 32C, 32D, 32E, 32F or 32I while in or on,
16 or within 100 feet of the real property comprising a public or pri-
17 vate accredited preschool, accredited headstart facility, elemen-
18 tary, vocational or secondary school whether or not in session, or
19 within 100 feet of a public park or playground shall be punished
20 by a term of imprisonment in the state prison for not less than 2 ½
21 nor more than 15 years or by imprisonment in a jail or house of
22 correction for not less than 2 nor more than 2 ½ years. No sen-
23 tence imposed under the provisions of this paragraph shall be for
24 less than a mandatory minimum term of imprisonment of 2 years.
25 A fine of not less than \$1,000 nor more than \$10,000 may be
26 imposed, but not in lieu of the mandatory minimum 2 year term of
27 imprisonment as established herein. In accordance with the provi-
28 sions of Section 8A of Chapter 279 such sentence shall begin from
29 and after the expiration of the sentence for violation of Section 32,
30 32A, 32B, 32C, 32D, 32E, 32F or 32I.

31 Lack of knowledge of school boundaries shall not be a defense
32 to any person who violates the provisions of this section.

33 In any prosecution commenced pursuant to this section, intro-
34 duction into evidence of a prior conviction or a prior finding of
35 sufficient facts by either certified attested copies of original court
36 papers, or certified attested copies of the defendant's biographical
37 and informational data from records of the department of proba-
38 tion, any jail or house of correction, or the department of correc-
39 tion shall be prima facie evidence that the defendant before the

40 court had been convicted previously by a court of the common-
41 wealth or any other jurisdiction. Such documentation shall be self-
42 authenticating and admissible, after the commonwealth has
43 established the defendant's guilt on the primary offense, as evi-
44 dence in any court of the commonwealth to prove the defendant's
45 commission of any prior convictions described therein. The com-
46 monwealth shall not be required to introduce any additional cor-
47 roborating evidence, nor live witness testimony to establish the
48 validity of such prior convictions.

1 SECTION 22. Section 12 of this act is repealed.

1 SECTION 23. Section 22 of this act shall take effect on
2 October 31, 2010.