

HOUSE No. 1423

The Commonwealth of Massachusetts

PRESENTED BY:
Bradford R. Hill

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 relative to the punishment of habitual offenders.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Bradford R. Hill	4th Essex
Bruce E. Tarr	
Bradley H. Jones, Jr.	20th Middlesex
Todd M. Smola	1st Hampden
Christopher G. Fallon	33rd Middlesex
Colleen M. Garry	36th Middlesex
Peter J. Koutoujian	10th Middlesex
Elizabeth Poirier	14th Bristol
Daniel K. Webster	6th Plymouth
Scott P. Brown	Norfolk, Bristol and Middlesex
James E. Timilty	Bristol and Norfolk
Viriato Manuel deMacedo	1st Plymouth

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 972 OF 2007-2008.]

The Commonwealth of Massachusetts

—————
In the Year Two Thousand and Nine
—————

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:

SECTION 1. Section 133B of chapter 27 of the General Laws is hereby repealed.

SECTION 2. Section 25 of chapter 279 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking section 25 in its entirety and inserting in place there of the following section:-

Section 25. (a) Whoever has been twice convicted of crime and sentenced and committed to prison in this or another state or by the Federal government, or once in this and once or more in another state or by the Federal government, for terms of not less than three years each, and does not show that he has been pardoned for either crime on the ground that he was innocent, shall, upon conviction of a felony, be considered an habitual criminal and be punished by imprisonment in the state prison for the maximum term provided by law as a penalty for the felony for which he is then to be sentenced.

(b) Whoever has been twice convicted in the Superior Court of a felony, and does not show that he has been pardoned for either crime on the ground that he was innocent, shall, upon conviction in the Superior Court of a felony, be considered an habitual criminal and be punished by imprisonment in the state prison for the maximum term provided by law as a penalty for the felony for which he is then to be sentenced

(c) Whoever has been twice convicted of a felony punishable by more than ten years in the state prison, and does not show that he has been pardoned for either crime on the ground that he was innocent, shall, upon conviction of any felony, either in the Boston Municipal Court, District Court, or Superior Court be considered an habitual criminal and be punished by imprisonment for the maximum term provided by law as a penalty for the felony for which he is then to be sentenced.

(d) A prosecution commenced under this section shall not be continued without a finding or placed on file and all offenders sentenced under this section shall be ineligible for probation, parole, work release or furlough or receive any deduction from his sentence for good conduct.

(e) In any prosecution commenced pursuant to this section, introduction into evidence of a prior conviction by either certified attested copies of original court papers, or certified attested copies of the defendant's biographical and informational data from records of the department of probation, any jail or house of correction or the department of correction showing that defendant served a sentence or probationary term for the offense in question, shall be prima facie evidence

that the defendant before the court has been convicted previously by a court of the commonwealth or any other jurisdiction. Such documentation shall be self-authenticating and admissible, after the commonwealth has established the defendant's guilt on the primary offense, as evidence in any court of the commonwealth to prove the defendant's commission of any prior conviction described therein. The commonwealth shall not be required to introduce any additional corroborating evidence or live witness testimony to establish the validity of such prior conviction.

SECTION 3. Section 1 of chapter 279 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting in the second paragraph after the first sentence the following new sentence:-

A probationer whose sentence has been suspended shall be revoked and committed on the suspended sentence where it is established by a preponderance of the evidence that the probationer committed a felony while on probation.

SECTION 4. Section 1A of chapter 279 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting, after the first paragraph, the following new paragraph:-

A probationer whose sentence has been suspended shall be revoked and committed on the suspended sentence where it is established by a preponderance of the evidence that the probationer committed a felony while on probation.

SECTION 5. Section 3 of chapter 279 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended in the first paragraph by striking the words "If such suspension is revoked, the sentence shall be in full force and effect." and inserting in place thereof the following:- If such suspension is revoked, the sentence shall be in full force and effect, and such suspension must be revoked where it is established by a preponderance of the evidence that the probationer committed a felony while on probation. The pendency of a criminal action on a charge which also constitutes an alleged violation of probation shall not be grounds for a continuance of the probation violation hearing and such probation violation hearing shall be conducted promptly.

SECTION 6. Chapter 279 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out section 8B in its entirety and inserting in place thereof the following section:-

Section 8B. If a defendant on release subject to the provisions of sections 42A, 58, 58A, or 87 of chapter 276 or any other statute that allows the court to set conditions of release during the pendency of a criminal case, commits a crime, the sentences ultimately imposed on the pending crime and the new crime shall run consecutively to each other, without regard to the order or sequence in which those cases are adjudicated.