

HOUSE No. 1712

The Commonwealth of Massachusetts

PRESENTED BY:

Byron Rushing (BY REQUEST)

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 to enhance post release supervision and classification of prisoners.

PETITION OF:

NAME:

Lloyd Fillion

DISTRICT/ADDRESS:

563 Massachusetts Avenue, Boston, MA 02118

The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine
—

AN ACT TO ENHANCE POST RELEASE SUPERVISION AND CLASSIFICATION OF PRISONERS. .

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. The General Laws are hereby amended by inserting after chapter 127 of the General Laws, as appearing in the 2006 Official Edition, the following new chapter:-

CHAPTER 127A

MANDATORY POST-RELEASE SUPERVISION

Section 1. All sentences of incarceration in a house of correction or jail for more than one year and all sentences to state prison shall include a period of post-release supervision, excluding sentences for those prisoners for whom parole eligibility is determined by section 133A of chapter 127. Except as provided in this chapter, for individuals who complete the incarceration portion of their sentences without supervised release or are re-incarcerated for the remainder of the sentence for violating the terms of parole or probation, the period of mandatory post-release supervision shall be twenty-five per cent of the maximum term of incarceration imposed at sentencing up to a maximum period of supervision of five years; but in no case less than nine months. Where an individual is sentenced to incarceration on multiple offenses to be served concurrently, the greater of the maximum terms imposed at sentencing shall be used to calculate the mandatory post-release supervision period. Mandatory post-release supervision as established in this chapter shall not be imposed upon any individual who successfully completes a period of probation imposed by a court at sentencing, upon an individual who is granted a parole permit under chapter 127 and successfully completes a period of parole supervision, or upon an individual sentenced to

lifetime community parole under section 45 of chapter 265 and section 133D of chapter 127. An individual subject to this chapter may be supervised in another jurisdiction in accordance with sections 151A through 151N of chapter 127 and shall be considered on parole for the purposes of supervision.

Section 2. Upon release, an individual sentenced to a term of incarceration in a house of correction or jail for more than one year, or in a state prison for any length of time shall be subject to the supervision and jurisdiction of the parole board during the period of mandatory post-release supervision and shall be subject to the law, rules and regulations governing parole. The parole board shall establish uniform regulations for post-release supervision consistent with applicable provisions of chapters 127 and 276. Nothing in this section or in said regulations shall limit the authority of the superior, municipal, district or juvenile court to impose conditions of probation supervision to protect the public or promote the rehabilitation of any person.

Section 3. An individual subject to mandatory post-release supervision who has successfully completed nine months of supervision shall be eligible for early termination of that supervision. Early termination shall only occur in accordance with procedures to be adopted in the regulations of the parole board. In all proceedings under this section, the criteria for early termination of mandatory post-release supervision established by the parole board shall include, but not be limited to, the amount of time the individual has successfully spent under post-release supervision, success in finding permanent employment, success in establishing adequate housing, completing all counseling or substance abuse treatment programs and success in passing all mandated post-release testing programs.

Section 4. An individual who violates a condition of mandatory post-release supervision shall be subject to this section and to modification or revocation proceedings initiated by the parole board. The laws and regulations governing parole violation proceedings shall govern these modification or revocation proceedings. In all proceedings under this section, an individual who violates a condition of mandatory post-release supervision may be placed under increased supervision, subjected to other conditions and /or intermediate sanctions, or incarcerated for not more than the maximum remaining period of post-release supervision or the remaining un-served portion of the sentence, whichever is greater, if the violation does

not otherwise constitute a criminal offense. In all cases where the individual is not being incarcerated for a violation, the individual shall participate in an intermediate sanction through the office of community corrections established in chapter 211F, the level of which is to be determined by the parole board. In the case of any violation for use of controlled substances or an offense for operating under the influence of drugs or alcohol where the individual is not incarcerated for the violation, the period of mandatory post-release supervision shall be extended to accommodate an appropriate substance abuse program, but the total shall not exceed the maximum supervisory period permitted under section 1. For any violation of the conditions of mandatory post-release supervision, the period of supervision shall be stayed during a period of incarceration and it shall be resumed upon release. If the violation constitutes a criminal offense, the period of incarceration shall be served on and after any sentence received as a result of the new offense. Upon subsequent release, the greater of the maximum sentences of the original offense and subsequent offense shall be used to calculate the new mandatory post-release supervision period.

Section 5. All mandatory post-release supervision shall be considered completed, if any of the following conditions are met: (a) except as provided in section 4, the individual serves a post-release supervision period of twenty-five per cent of the maximum term of incarceration imposed at sentencing up to a maximum period of supervision of five years, but in no case less than nine months; (b) the individual is granted early termination under section 3; (c) upon completion of the sentence, the individual is immediately committed to the custody of any other state to serve a period of incarceration greater than or equal to the post-release supervision period required under this chapter; or (d) upon completion of the sentence, the individual is immediately committed to the custody of any federal or immigration authority. Mandatory post-release supervision shall be stayed for any period during which an individual is in custody under an order of custody under chapter 123A.

Section 6. On March 31, one year from the effective date of this act, and annually thereafter on March 31 of each year thereafter, the chairperson of the parole board shall file a cumulative report detailing the number of individuals incarcerated in a house of correction or jail or prison whose sentence includes a period of post-release supervision as mandated by this act during the each of preceding years.

These reports shall detail the number of individuals who are subject to mandatory post-release supervision, the number who successfully complete the supervision, and the number who become eligible for early termination of that supervision. The reports shall describe the criteria for early termination of post-release supervision including the amount of time the individual has successfully spent under post-release supervision, success in finding permanent employment, in establishing adequate housing, in completing all counseling or substance abuse treatment programs and in passing all mandated post-release testing programs. The reports shall also include the number of individuals who violate a condition of mandatory post-release supervision who becomes subject to modification or revocation proceedings initiated by the board. The reports shall detail the rates of recidivism for all of the categories of individuals listed above as well as the rates of recidivism for all categories by offense. Copies of such reports shall be submitted to the chairs of the joint committee on the judiciary and the clerks of the house of representatives and the senate and be posted on the website of the parole board.

Section 7. This chapter shall apply to all felonies and misdemeanors committed on or after the effective date of this act. All offenses committed before the effective date of this act shall be governed by the laws in effect at the time the offense was committed, including, but not limited to the laws on sentencing, parole, and probation.

SECTION 2. The General Laws are hereby amended by repealing section 128 of chapter 127 and inserting in place thereof a new section 128 as follows:

Section 128. Subject to other provisions of law, parole permits, in this chapter also referred to as permits to be at liberty, may be granted by the parole board to prisoners in state and county correctional institutions, or serving sentences suspended in part pursuant to sections one or one A of chapter two hundred and seventy-nine, or a special sentence of imprisonment imposed pursuant to section six A of chapter two hundred and seventy-nine.

SECTION 3. The General Laws are hereby amended by repealing section 130 of chapter 127 and inserting in place thereof a new section 130 as follows:

Section 130. Any prisoner serving in a state prison who has served 1/6th of his maximum sentence shall be presumed to be entitled to be classified to a medium security prison. Any state prisoner who has served 1/3rd of his maximum sentence shall be presumed to be entitled to be classified to a minimum security prison. Any state or county prisoner who has served 1/2 of his maximum sentence shall be presumed to be eligible for parole, notwithstanding any other law to the contrary.

Any prisoner having received a life sentence with parole possibility a part thereof who has served 1/3 of his sentence prior to parole eligibility shall be presumed to be entitled to be classified to a medium security prison. Any such prisoner who has served 2/3rds of his sentence prior to parole eligibility shall be presumed to be entitled to be classified to a minimum security prison.

If a prisoner is found guilty of new crime committed while incarcerated; then the time period for the presumptions for classification and parole shall restart as of the date of the commission of the new offense with no credit for any time served prior to the commission of the new offense.

Any prisoner, who is so aged or physically or mentally disabled as to be of no threat to the safety of the public, shall be eligible for parole.

A prisoner to whom a parole permit is granted shall be allowed to go upon parole outside prison walls and inclosure upon such terms and conditions as the parole board shall prescribe, but shall remain, while thus on parole, subject to the jurisdiction of such board until the expiration of the term of imprisonment to which he has been sentenced or until the date which has been determined by deductions from the maximum term of his sentence or sentences for good conduct or until such earlier date as the board shall determine that it is in the public interest

for such prisoner to be granted a certificate of termination of sentence. The record of the decision of the board shall contain a summary statement of the case indicating the reasons for said decision. Said record of decision shall become a public record and shall be available to the public except for such portion thereof which contains information upon which said decision was made which said information the board determines is actually necessary to keep confidential to protect the security of a criminal or civil investigation, to protect anyone from physical harm or to protect the source of any information; provided, however, that it was obtained under a promise of confidentiality. All such confidential information shall be segregated from the record of decision and shall not be available to the public. Said confidential information may remain secret only as long as publication may defeat the lawful purposes of this section for confidentiality hereunder, but no longer. In every case, such terms and conditions shall include payment of any child support due under a support order, as defined in section 1A of chapter 119A, including payment toward any arrearage of support that accrues or has accrued or compliance with any payment plan between the prisoner and the IV-D agency as set forth in chapter 119A, provided, however, that the board shall not revise, alter, amend or revoke any term or condition related to payment of child support unless the parole permit itself is revoked.

SECTION 4. The General Laws are hereby amended by repealing section 133 of chapter 127 and inserting in place thereof a new section 133 as follows:

Section 133. Parole permits may be granted by the parole board to prisoners subject to its jurisdiction at such time as the board in each case may determine; provided, however, that no prisoner sentenced to the state prison shall be eligible for such permit until such prisoner shall have served one half of the maximum, as such maximum term of sentence may be reduced by deductions allowed under section one hundred and twenty-nine D. Where an inmate is serving

two or more consecutive or concurrent state prison sentences, a single parole eligibility shall be established for all such sentences. Prisoners who are granted parole permits shall remain subject to the jurisdiction of the board until the expiration of the maximum term of sentence or, if a prisoner has two or more sentences to be served otherwise than concurrently, until the aggregate maximum term of such sentence, unless earlier terminated by the board under the provisions of section one hundred thirty A. Sentences of imprisonment in the state prison shall not be suspended in whole or in part.