

HOUSE No. 3811

Mr. Dempsey of Haverhill, for the committee on Ways and Means, on the Senate Bill relative to habitual offenders, sentencing and improving law enforcement tools (Senate, No. 2059), reports, in part, the accompanying bill (House, No. 3811). November 15, 2011.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to habitual offenders, sentencing and improving law enforcement tools.

Whereas, the deferred operation of this act would tend to defeat its purpose, which is forthwith to strengthen laws relative to habitual offenders, update sentencing laws and to provide additional law enforcement tools, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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 133B of chapter 127 of the General Laws, as appearing in the 2010
2 Official Edition, is hereby amended by striking out the first sentence and inserting in place
3 thereof the following 2 sentences:-

4 The parole board shall, within 60 days before the expiration of two-thirds of the maximum
5 sentence of a prisoner sentenced under section 25 of chapter 279, and thereafter at least once in
6 each ensuing 2-year period, consider carefully and thoroughly the merits of releasing such person
7 on parole except for a habitual offender sentenced under subsection (b) of section 25 of chapter

8 279 and a prisoner sentenced to a term of imprisonment as prescribed by the sentencing
9 guidelines established by the sentencing commission.

10 SECTION 2. Section 133B of said chapter 127, as so appearing, is hereby further amended by
11 adding the following paragraph:-

12 Habitual offenders sentenced under subsection (b) of said section 25 of said chapter 279 shall not
13 be eligible for parole, work release or furlough or receive any deduction from such person's
14 sentence for good conduct.

15 SECTION 3. Said chapter 279 is hereby further amended by striking out section 25, as so
16 appearing, and inserting in place thereof the following section:-

17 Section 25. (a) Whoever is convicted of a felony and has been previously twice convicted and
18 sentenced to prison for a term of not less than 3 years by the commonwealth, another state or the
19 United States, and who does not show that he has been pardoned for either crime on the ground
20 that he was innocent, shall be considered a habitual criminal and be punished by imprisonment in
21 the state prison for such felony for the maximum term provided by law.

22 (b) Whoever: (i) has been convicted 2 times previously of 1 or more of the following offenses:
23 section 131M of chapter 140; section 1, 13 or 13½, subsection (b) of section 13A, section 13B,
24 13B½, 13B¾, 13F, 13H, 13J, 13K, 14 or 15, subsection (a) or (c) of section 15A, subsection (b)
25 of section 15C, 15D, 16, 17, 18, 18A, 18B or 18C, section 21, 21A, 22, 22A, 22B, 22C, 23A,
26 23B, 24, 24B, 26, 26B, 26C or 28, subsection (b) of section 39 or subsection (b) or (c) of section
27 43 of chapter 265, section 1, 14, 17, 18, 102, 102A, 102B or 102C of chapter 266, section 10,
28 10E or subsection (e) of section 12F of chapter 269 or section 3, 4A, 13, 17, 29A, 29B, 29C, 35A
29 or subsection (b) of section 53A of chapter 272, or has been convicted 2 times previously of a
30 like violation of the laws of another state, the United States or a military, territorial or Indian

31 tribal authority, arising out of separate incidents or involving separate victims, where the second
32 offense occurred subsequent to the first conviction; (ii) has been sentenced to incarceration for at
33 least 1 day to be served for each of the prior 2 convictions; and (iii) does not show that he has
34 been pardoned for either prior offense on the ground that he was innocent shall, upon conviction
35 of 1 of the enumerated offenses in clause (i), where the offense occurred subsequent to the
36 second conviction, be considered a habitual criminal and punished by imprisonment in the state
37 prison for the maximum term provided by law. No sentence imposed under this section shall be
38 reduced or suspended nor shall such person so sentenced be eligible for probation, parole, work
39 release or furlough or receive any deduction from such person's sentence for good conduct. A
40 sentence imposed under this section shall run from and after any sentence the defendant is
41 serving at the time of sentencing

42 (c) No person shall be considered a habitual offender pursuant to subsection (b) based upon any
43 offense for which such person was adjudicated a delinquent child, or a like violation of the laws
44 of another state, the United States or a military, territorial or Indian tribal authority for which a
45 person was treated as a juvenile.

46 (d) No guilty plea shall be entered for any offense listed in subsection (b), unless a person is
47 informed by the court, prior to entering the plea, of the penalties for a violation of said
48 subsection: (1) imprisonment in the state prison for the maximum term provided by law; (2) that
49 no sentence may be reduced or suspended; and (3) that no person so sentenced shall be eligible
50 for probation, parole, work release or furlough or receive any deduction in sentence for good
51 conduct. No otherwise valid plea or conviction shall be vacated based upon the failure to give
52 such warnings.