

# HOUSE . . . . . No. 3818

House bill No. 3811, as changed by the committee on Bills in the Third Reading and as amended and passed to be engrossed by the House. November 16, 2011.

## The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to sentencing and improving law enforcement tools.

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to strengthen forthwith the 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 or a prisoner sentenced to a term of imprisonment as prescribed by the sentencing guidelines  
9 established by the sentencing commission.

10 SECTION 2. Said section 133B of said chapter 127, as so appearing, is hereby further amended  
11 by 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 2A. Section 33E of chapter 278 of the General Laws, as so appearing, is hereby  
16 amended by striking out, in line 9, the word "mean" and inserting in place thereof the following  
17 words:- mean: (i).

18 SECTION 2B. Said section 33E of chapter 278 of the General Laws, as so appearing, is hereby  
19 further amended by striking out, in line 11, the word "degree" and inserting in place thereof the  
20 following words:- degree; or (ii) the third conviction of a habitual offender pursuant to  
21 subsection (b) of section 25 of chapter 279

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

24 Section 25. (a) Whoever is convicted of a felony and has been previously twice convicted and  
25 sentenced to state prison or state correctional facility by the commonwealth, another state or the  
26 United States, and who does not show that he has been pardoned for either crime on the ground  
27 that he was innocent, shall be considered a habitual criminal and shall be punished by  
28 imprisonment in state prison or state correctional facility for such felony for the maximum term  
29 provided by law.

30 (b) Whoever: (i) has been convicted 2 times previously of 1 or more of the following offenses:  
31 section 131M of chapter 140; section 1, 13 or 13½, subsection (b) of section 13A, section 13B,  
32 13B½, 13B¾, 13F, 13J, subsection (b) or (c) of section 13K, 14 or 15, subsection (a) or (c) of  
33 section 15A, subsection (b) of section 15C, 15D, 16, 17, 18, 18A, 18B or 18C, section 21, 21A,  
34 22, 22A, 22B, 22C, 23A, 23B, 24, 24B, 26, 26B, 26C or 28, subsection (b) of section 39 or  
35 subsection (b) or (c) of section 43 of chapter 265, section 1, 14, 102, 102A, 102B or 102C of  
36 chapter 266, section 10, 10E or chapter 269 or section 3, 4A, 13, 17, 29A, 29B, 29C, 35A or  
37 subsection (b) of section 53A of chapter 272, or has been convicted 2 times previously of a like  
38 violation of the laws of another state, the United States or a military, territorial or Indian tribal  
39 authority, arising out of charges separately brought and tried, and arising out of separate and  
40 distinct incidents that occurred at different times, where the second offense occurred subsequent  
41 to the first conviction; (ii) has been sentenced to incarceration at a state prison or state  
42 correctional facility for at least 1 day to be served for each of the prior 2 convictions; and (iii)  
43 does not show that he has been pardoned for either prior offense on the ground that he was  
44 innocent shall, upon conviction of 1 of the enumerated offenses in clause (i), where the offense  
45 occurred subsequent to the second conviction, shall be considered a habitual offender and shall  
46 be punished by incarceration at a state prison or state correctional facility for the maximum term  
47 provided by law for said offense enumerated in clause (i). No sentence imposed under this  
48 section shall be reduced or suspended nor shall such person so sentenced be eligible for  
49 probation, parole, work release or furlough or receive any deduction from such person's sentence  
50 for good conduct. A sentence imposed on a habitual offender under this section, if said habitual  
51 offender is incarcerated at a state prison or state correctional facility, shall commence upon the  
52 conclusion of the sentence, said habitual offender is serving at the time of sentencing..

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

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

64 SECTION 4. Section 133A of chapter 127, as appearing in the 2010 Official Edition, is hereby  
65 amended by striking out, in lines 29 and 35, the words “a majority”, and inserting in place  
66 thereof, in each instance, the following word:- two-thirds.

67 SECTION 5. Section 133A of chapter 127, as appearing in the 2010 official addition, is hereby  
68 amended by inserting after the word “procedure”, in line 28, the following words:- provided,  
69 however, that no hearing shall take place until the parole board has certified in writing that it has  
70 complied with the notification requirements of this paragraph, a copy of which shall be included  
71 in the record of such proceeding; and provided further, that this paragraph shall also apply to any  
72 parole hearing for an applicant who was convicted of a crime listed in clause (i) of subsection (b)  
73 of section 25 of chapter 279 and sentenced and committed to prison for 5 or more years for such  
74 crime and does not show that a pardon has been issued for the crime.

75 SECTION 6. Notwithstanding any general or special law to the contrary, the executive office of  
76 public safety and security will provide an analysis detailing the costs of collecting DNA evidence  
77 during felony arrests. The report shall be filed with the clerks of the senate and house of  
78 representatives no later than April 1, 2012.