

### JOURNAL OF THE HOUSE.

Wednesday, May 26, 2010.

Met according to adjournment, at eleven o'clock A.M., with Mr. Donato of Medford in the Chair (having been appointed by the Speaker, under authority conferred by Rule 5, to perform the duties of the Chair).

Prayer was offered by the Reverend Robert F. Quinn, C.S.P., Chaplain of the House, as follows:

Prayer. Eternal God, amid the stress and pressures of everyday life and the demands which are made upon our time and energy, we pause at the beginning of today's formal legislative session to turn our attention and thoughts to You, Our Creator and to organizing our priorities for the day in a thoughtful manner. Teach us to be mindful of the needs of constituents, of our districts and of our own families. May we continue to build trust in You and in each other as we work together to make Massachusetts a friendly state in which to live, educate our children and to work. May we also appreciate the privileges and blessing which we enjoy in the Commonwealth and in the country. Let our future be as rich in blessings and opportunities as our past history. May our society and communities be peaceful, civil and ethical.

Grant Your blessings to the Speaker, the members and employees of this House and their families. Amen.

Pledge of allegiance. At the request of the Chair (Mr. Donato), the members, guests and employees joined with him in reciting the pledge of allegiance to the flag.

#### Statement Concerning Representative Kafka of Stoughton.

A statement of Mr. Galvin of Canton concerning Mr. Kafka of Stoughton was spread upon the records of the House, as follows:

Statement concerning Mr. Kafka of Stoughton. MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Mr. Kafka of Stoughton, is unable to be present in the House Chamber for today's sitting due to the pending birth of his grandchild in Israel. If he were able to be present for the taking of the yeas and nays on passing to be engrossed, in concurrence, the Senate Bill reforming the administrative procedures relative to criminal offender record information (Senate, No. 2220, amended), he would vote in the affirmative. Any roll calls that he may miss today will be due entirely to the reason stated.

#### Resolutions.

The following resolutions (filed with the Clerk) were referred, under Rule 85, to the committee on Rules:

Harold S. Kushner. Resolutions (filed by Representatives Linsky of Natick and Peisch of Wellesley) honoring Rabbi Harold S. Kushner for his fifty years of service to the Rabbinate;

Daniel H. Liben. Resolutions (filed by Representatives Linsky of Natick and Peisch of Wellesley) honoring Rabbi Daniel H. Liben for his twenty-five years of service to the Rabbinate;

Resolutions (filed by Ms. Peisch of Wellesley) honoring Michael L. Bullister on receiving the Eagle Award of the Boy Scouts of America; Resolutions (filed by Ms. Peisch of Wellesley) honoring Andrew S. H. Fixler on receiving the Eagle Award of the Boy Scouts of America; Resolutions (filed by Ms. Peisch of Wellesley) honoring Alexander J. Kaye on receiving the Eagle Award of the Boy Scouts of America; Resolutions (filed by Ms. Peisch of Wellesley) honoring Michael A. Wu on receiving the Eagle Award of the Boy Scouts of America; and Resolutions (filed by Representatives Richardson of Framingham and Sannicandro of Ashland) honoring John Costanza who bravely gave his life in the line of duty serving and protecting the residents of Framingham as a dedicated member of the fire department.

Michael L. Bullister.  
Andrew S. H. Fixler.  
Alexander J. Kaye.  
Michael A. Wu.  
John Costanza.

Mr. Binienda of Worcester, for the committee on Rules, reported, in each instance, that the resolutions ought to be adopted. Under suspension of the rules, in each instance, on motion of Mrs. Richardson, the resolutions (reported by the committee on Bills in the Third Reading to be correctly drawn) were considered forthwith; and they were adopted.

Resolutions (filed with the Clerk by Representatives Stanley of West Newbury and Costello of Newburyport) celebrating the three hundred and seventy-fifth anniversary of the First Parish Church of Newbury, were referred, under Rule 85, to the committee on Rules.

Newbury,—  
First Parish  
Church.

Mr. Binienda of Worcester, for the committee on Rules, reported that the resolutions ought to be adopted. Under suspension of the rules, on motion of Ms. Stanley, the resolutions (reported by the committee on Bills in the Third Reading to be correctly drawn) were considered forthwith; and they were adopted.

#### Annual and Special Reports.

Annual report of the Massachusetts Bay Transportation Authority (under the provisions of Section 5 of Chapter 161A of the General Laws) of its operations for 2009; and

MBTA,—  
finances.

Special report of the Massachusetts Bay Transportation Authority (under the provisions of Section 11 of Chapter 161A of the General Laws) relative to its efforts to maximize non-transportation revenue.

Id.

Severally were spread upon the records of the House; and placed on file.

#### Petitions.

By Representative Costello of Newburyport and Senator Baddour, a Joint petition (accompanied by bill, House, No. 4708) of Michael A. Costello and Steven A. Baddour (with the approval of the mayor and municipal council) that the city of Amesbury be authorized to issue an additional license for the sale of alcoholic beverages to be drunk on the premises. To the committee on Consumer Protection and Professional Licensure.

Amesbury,—  
liquor  
license.

By Mr. Pignatelli of Lenox, a petition (accompanied by bill, House, No. 4709) of William Smitty Pignatelli and Benjamin B. Downing (by vote of the town) that the town of Lee be authorized to grant certain retirement benefits to Stanley Daoust, an employee of the department of public works of said town. To the committee on Public Service.

Lee,—  
Stanley  
Daoust.

Severally sent to the Senate for concurrence.

School Bus Drivers' Day.

Mr. Scibak of South Hadley presented a petition (subject to Joint Rule 12) of John W. Scibak for the issuance of an annual proclamation by the Governor setting apart October twentieth as School Bus Drivers' Day; and the same was referred, under Rule 24, to the committee on Rules.

Mr. Binienda of Worcester, for the committee on Rules and the committees on Rules of the two branches, acting concurrently, then reported recommending that Joint Rule 12 be suspended. Under suspension of the rules, on motion of Mr. Mariano of Quincy, the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on State Administration and Regulatory Oversight. Sent to the Senate for concurrence.

Petitions severally were presented and referred as follows:

By Ms. Clark of Melrose (by request), a petition (subject to Joint Rule 12) of Lydia Marie XinZhen Brown relative to the curriculum taught at municipal police training schools.

By Mr. Dempsey of Haverhill, a petition (subject to Joint Rule 12) of Brian S. Dempsey for legislation to authorize the Massachusetts Rehabilitation Commission to establish a sick leave bank for Bethany M. Tsioropoulos, an employee of said commission.

Severally referred, under Rule 24, to the committee on Rules.

Reports of Committees.

By Mr. Murphy of Burlington, for the committee on Ways and Means, that the Senate Bill to clarify the requirements for licensing as a real estate broker or salesperson (Senate No. 121, amended) ought to pass with amendments in section 1 (as changed by the committee on Bills in the Third Reading) in line 4, by striking out the figures "2006" and inserting in place thereof the figures "2008"; and in section 2 (added by amendment by the Senate) by striking out the word "January" and inserting in place thereof the word "June". Referred, under Rule 7A, to the committee on Steering, Policy and Scheduling, with the amendments pending.

Mr. Kafka of Stoughton, for said committee, reported that the matter be scheduled for consideration by the House.

Under suspension of Rule 7A, on motion of Mr. Murphy of Lowell, the bill was read a second time forthwith. The amendments recommended by the committee on Ways and Means then were adopted; and the bill (Senate, No. 121, amended) was ordered to a third reading.

By Mr. Murphy of Burlington, for the committee on Ways and Means, that the Bill relative to David Sennott and the public employees retirement administration and commission (House, No. 2375) ought to pass with an amendment substituting therefore a bill with the same title (House, No. 4706). Referred, under Rule 7A, to the committee on Steering, Policy and Scheduling, with the amendment pending.

Mr. Kafka of Stoughton, for said committee, reported that the matter be scheduled for consideration by the House.

Under suspension of Rule 7A, on motion of Mr. Murphy of Burlington, the bill was read a second time forthwith. The amendment

Municipal police,—training.

Bethany M. Tsioropoulos,—sick leave.

Real estate broker requirements.

PERAC,—David Sennott.

recommended by the committee on Ways and Means then was adopted; and the substituted bill was ordered to a third reading.

By Mr. Murphy of Burlington, for the committee on Ways and Means, that the Bill authorizing an alternative mode of design and construction for the relocation and replacement of a water line under the Saugus River (House, No. 4432) ought to pass with an amendment in lines 10 to 13, inclusive, by striking out the words "given that a replacement line is made necessary by and must be coordinated with the removal of the existing line so as to allow for both continuity of water service and for construction of planned bridge and roadway facilities and improvements along state route 107 within said city now under design by the Massachusetts department of transportation,". Referred, under Rule 7A, to the committee on Steering, Policy and Scheduling, with the amendment pending.

Saugus River,—water line.

Mr. Kafka of Stoughton, for said committee, reported that the matter be scheduled for consideration by the House.

Under suspension of Rule 7A, on motion of Mr. Murphy of Burlington, the bill was read a second time forthwith. The amendment recommended by the committee on Ways and Means then was adopted; and the bill (House, No. 4432, amended) was ordered to a third reading.

By Mr. Murphy of Burlington, for the committee on Ways and Means, that the Bill to reorganize the board of the Commonwealth Zoological Corporation (House, No. 4563) ought to pass with an amendment substituting therefore a bill with the same title (House No. 4707). Referred, under Rule 7A, to the committee on Steering, Policy and Scheduling, with the amendment pending.

Zoological corporation,—board.

Mr. Kafka of Stoughton, for said committee, reported that the matter be scheduled for consideration by the House.

Under suspension of Rule 7A, on motion of Mr. Lewis of Winchester, the bill was read a second time forthwith. The amendment recommended by the committee on Ways and Means then was adopted; and the substituted bill was ordered to a third reading.

Orders of the Day.

House bills

Designating a certain section of highway Route 110 in the city of Haverhill as the Emilio Brothers Memorial Highway (House, No. 3197); and

Third reading bills.

Relative to the sewer service area for the town of Lunenburg (House, No. 4561).

Severally reported by the committee on Bills in the Third Reading to be correctly drawn, were read a third time; and they were passed to be engrossed.

Severally sent to the Senate for concurrence.

Senate bills

Amending police appointments in the town of Dudley (Senate, No. 1146); and

Second reading bills.

Relative to property taxes in the town of Carver (Senate, No. 2144); and

Second reading bills.

House bills

Relative to cellular telephone service (House, No. 272);  
Clarifying warehousing (House, No. 1425);  
Relative to trusts for the care of animals (House, No. 1467);  
Relative to manslaughter (House, No. 1614);  
Relative to the interstate compact warrant (House, No. 1629);  
Relative to certain members of the Cambridge retirement system (House, No. 4280); and  
To ensure the proper conversation of Muskeget Island (printed in House, No. 4613).

Severally were read a second time; and they were ordered to a third reading.

*Recess.*

At twenty-eight minutes before twelve o'clock noon, on motion of Mr. deMacedo of Plymouth (Mr. Donato of Medford being in the Chair), the House recessed until the hour of one o'clock P.M.; and at seven minutes after one o'clock the House was called to order with Mr. Petrolati of Ludlow in the Chair.

*Quorum.*

Mr. Peterson of Grafton thereupon asked for a count of the House to ascertain if a quorum was present. The Chair (Mr. Petrolati), having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the presence of a quorum.

Subsequently a roll call was taken for the purpose of ascertaining the presence of a quorum; and on the roll call 142 members were recorded as being in attendance.

**[See Yea and Nay No. 401 in Supplement.]**

Therefore a quorum was present.

*Guests of the House.*

Mrs. Richardson of Framingham then took the Chair and introduced members of the family of the late John Costanza of Ashland. Representative Richardson then read and presented to the family resolutions (filed by her and Mr. Sannicandro of Ashland, which were adopted by the House prior to the noon recess) honoring Firefighter Costanza who bravely gave his life in the line of duty serving and protecting the residents of Framingham as a dedicated member of the fire department.

*Emergency Measure.*

Mr. Donato of Medford being in the Chair,—

The engrossed Bill authorizing the Commissioner of Capital Asset Management and Maintenance to convey certain land to the Concord Housing Development Corporation for affordable housing and open space purposes, (see House, No. 4442), having been certified by the Clerk to be rightly and truly prepared for final passage, was considered, the question being on adopting the emergency preamble.

A separate vote was taken, as required by the provisions of Article XLVIII (as amended by Article LXVII) of the Amendments to the Constitution; and the preamble was adopted, by a vote of 3 to 0. Sent to the Senate for concurrence.

Concord,—land conveyance.

Subsequently (Mr. Petrolati of Ludlow being in the Chair) the Senate having concurred in adoption of the emergency preamble, the bill (which originated in the House) was put upon its final passage.

On the question on passing the bill to be enacted, the sense of the House was taken by yeas and nays (this being a bill providing for the taking of land or other easements used for conservation purposes, etc., as defined by Article XCVII of the Amendments to the Constitution); and on the roll call 152 members voted in the affirmative and 0 in the negative.

**[See Yea and Nay No. 402 in Supplement.]**

Therefore the bill was passed to be enacted; and it was signed by the acting Speaker and sent to the Senate.

Subsequently a statement of Ms. Ferrante of Gloucester was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact that, on the previous roll call, I was not present in the House Chamber due to the hospitalization of my mother. Had I been present, I would have voted in the affirmative.

Subsequently a statement of Mr. Rogers of Norwood was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact that, on the previous roll call, I was not present in the House Chamber due to official business in another part of the State House. Had I been present, I would have voted in the affirmative.

*Orders of the Day.*

The Senate Bill reforming the administrative procedures relative to criminal offender record information (Senate, No. 2220, amended) (reported by the committee on Bills in the Third Reading to be correctly drawn) was read a third time.

After remarks on the question on passing the bill, as amended, to be engrossed, in concurrence, Mr. Fennell of Lynn moved to amend it in section 21, in line 260, after the word "custody", by inserting the following " , provided, however, housing authorities operating pursuant to Chapter 121B shall be authorized to obtain criminal offender record information for felony convictions for 20 years following their disposition, including termination of any period of incarceration or custody". The amendment was rejected.

The same member then moved to amend the bill in section 21, in line 291, by striking out the word "may" and inserting in place thereof the word "shall". The amendment was rejected.

Mr. Jones of North Reading and other members of the House then moved to amend the bill by striking out section 10 and inserting in place thereof the following section:

"SECTION 10. Said section 168 of said chapter 6, as so appearing, is hereby further amended by striking out, in lines 50 and 51, the words "five hundred dollars for each willful violation thereof, after notice and hearing as provided by applicable law" and inserting in place thereof the following words:— \$1,000 for a knowing violation thereof, \$2,500 for a second knowing violation, and \$5,000 for a third or subsequent knowing violation, after notice and hearing as provided by applicable law; provided, however, that the board shall not issue any orders, sanctions or fines against a law enforcement officer who, in good faith,

Bill enacted (land taking),—yea and nay No. 402.

Statement of Ms. Ferrante of Gloucester.

Statement of Mr. Rogers of Norwood.

Criminal offender record information.

Criminal  
offender  
record  
information.

obtains or seeks to obtain or communicates or seeks to communicate criminal offender record information in the furtherance of the officer's official duties."

The amendment was adopted.

Mr. Driscoll of Braintree then moved to amend the bill by adding the following section:

"SECTION 129. Section 98A of Chapter 41 of the General Laws, as appearing in the 2006 Official Edition, is amended by replacing the entire section with the following:—

A police officer of a city or town may stop a person or vehicle in a city or town that borders the officer's city or town if the officer has reason to believe that the person or vehicle recently traveled through his or her city or town under circumstances where the officer would have had the authority to stop the person or vehicle for the purpose of making an arrest, placing an operator in protective custody, issuing a citation or taking any other enforcement action. Said officer may return any person so arrested or placed in protective custody to the jurisdiction wherein said offense was committed or other condition or violation was observed. No criminal case shall be dismissed, and no evidence in a criminal case shall be suppressed, based on the fact that a stop of a person or motor vehicle did not comport with this section. Nothing contained in this section shall be construed as limiting the powers of a police officer to make arrests and in so far as possible this section shall be deemed to be declaratory of the common law of the commonwealth."

The amendment was rejected.

The same member and Ms. Clark of Melrose then moved to amend the bill by adding the following section:

"SECTION 129. There is hereby created the silver alert community response system. The system shall be used in alerting designated Massachusetts communities in cases involving missing and endangered older adults.

(a). The silver alert community response system shall:

1. Be used when an adult with serious memory impairment such as Alzheimer's disease or other dementia is reported to any police department in Massachusetts as a missing person and the police department or other appropriate agency has determined that the missing person should appropriately be the subject of a silver alert.

2. Direct and focus law enforcement and other key response resources in a cost-effective way in a geographic area consistent with the missing person's 'Point Last Known' and in accordance with the best available research data related to activities of persons with dementia.

(b). The executive office of public safety, in conjunction with the municipal police training committee shall develop and implement the silver alert system. The Secretary shall promulgate rules and regulations, as necessary, to ensure proper implementation of the silver alert. He shall do so in consultation with representatives of the executive office of elder affairs, attorney general's office, Massachusetts emergency management agency, state police, chiefs of police association, county sheriff's departments and district attorney's offices, department of conservation and recreation (rangers), and Massachusetts/New Hampshire chapter of the national Alzheimer's association.

(c). All first responders, 911 operators and any other appropriate personnel shall be trained on the silver alert system application and protocols; re-training will be included in yearly in-service trainings for these personnel; training will include information about older drivers whose memory impairments may put them at high risk for crashes or becoming lost while driving.

(d). The executive office of public safety shall develop a plan to ensure that the Silver Alert system will include use of a localized reverse 911 emergency phone system.

(e). The executive office of public safety shall consider coordinating the silver alert system with the national MedicAlert®+Safe Return Program®, a nationwide patient identification and family support program, supported locally by the Massachusetts Alzheimer's Association."

The amendment was rejected.

Mr. Driscoll of Braintree then moved to amend the bill by adding the following section:

"SECTION 129. Section 60 of chapter 266 of the general laws, as so appearing, is hereby amended by striking out the entire section and inserting in place thereof the following new section:—

Whoever buys, receives or aids in the concealment of stolen or embezzled property, knowing it to have been stolen or embezzled, or whoever with intent to defraud buys, receives or aids in the concealment of property, knowing it to have been obtained from a person by a false pretense of carrying on business in the ordinary course of trade or whoever obtains or exerts control over property in the custody of any law enforcement agency, or any individual acting on behalf of a law enforcement agency, which is explicitly represented to him by any law enforcement officer or any individual acting on behalf of a law enforcement agency as being stolen and who intends to deprive its rightful owner permanently of the use and enjoyment of said property shall, if the value of such property does not exceed two hundred and fifty dollars, be punished for a first offense by imprisonment in a jail or house of correction for not more than two and one half years, or by a fine of not more than one thousand dollars; or if for a second or subsequent offense, or if the value of such property exceeds two hundred and fifty dollars, be punished by imprisonment in a state prison for not more than five years, or by a fine of five thousand dollars, or by both a fine and imprisonment. It shall not be a defense that the property was obtained by means other than through the commission of a theft offense if the property was explicitly represented to the accused as having been obtained through the commission of a theft offense.

Said Chapter 266 of the General Laws, as so appearing is hereby amended by inserting the following new section:—

Section 30F. Enhanced Theft — Receiving & Concealing

It is not a defense to a charge of receiving stolen property that the property was obtained by means other than through the commission of a theft offense if the property was explicitly represented to the accused person as being obtained through the commission of a theft offense.

Said Chapter 266 of the General Laws, as so appearing is hereby amended by inserting the following new section:—

Section 30B. Theft Using Emergency Exit to Avoid Apprehension or Detection

Criminal  
offender  
record  
information.

A person commits theft by emergency exit if that person intentionally takes possession of, carries away, transfer or causes to be transferred, any merchandise displayed, held, stored or offered by sale by any store or other retail mercantile establishment with the intent of depriving the merchant of the possession, use of benefit of such merchandise or converting the same to the use of such person without paying to the merchant the value thereof and the person leaves a store by use of a designated emergency exit.

A violation of this Act shall be punished for a first offense by a fine of not less than two hundred and fifty dollars and not more than five hundred dollars, and for a second offense by imprisonment in the house of correction for not more than two and one half years or a fine not to exceed two thousand dollars, or by both fine and imprisonment and for subsequent offenses by imprisonment in the state prison for not more than five years, or by a fine of not more than five thousand dollars or by both such fine and imprisonment.

Said Chapter 266 of the General Laws, as so appearing, is hereby amended by inserting the following new section:—

Section 30G. Fraudulent/Bogus Receipts & Universal Product Codes

A person who, with intent to cheat or defraud a retailer, possesses, uses, utters, transfers, makes, alters, counterfeits, or reproduces a retail sales or return receipt, price ticket or a Universal Product Code Label, shall be punished for a first offense by imprisonment in the house of correction for not more than two and one half years or by a fine of not more than five hundred dollars or by both such fine and imprisonment, and for a second offense shall be punished by imprisonment in a house of corrections for not more than two and one half years or by a fine of not more than two thousand dollars or by both fine and imprisonment and subsequent offenses shall be punished by imprisonment in the state prison for not more than five years, or by a fine of not more than ten thousand dollars or by both such fine and imprisonment.

A person who, with intent to cheat or defraud a retailer, possesses fifteen (15) or more fraudulent retail sales or return receipts, price tickets, Universal Product Code Labels or possesses the device which purpose is to manufacture fraudulent retail sales receipts or Universal Product Code Labels, shall be punished by imprisonment in the state prison for not more than five years, or by a fine of not more than ten thousand dollars or by both such fine and imprisonment.

Chapter 266 of the General Laws, as so appearing, is hereby amended by inserting the following new section:—

Section 30H. Organized Retail Crime

Organized retail crime shall be defined as the stealing, embezzlement, or obtaining by fraud, false pretenses, or other illegal means, of retail merchandise in quantities that would not normally be purchased for personal use or consumption for the purpose of reselling or otherwise reentering such retail merchandise in commerce; or the recruitment of persons to undertake, or the coordination, organization, or facilitation of, such stealing, embezzlement, or obtaining by fraud, false pretenses, or other illegal means.

An Organized Retail Crime Ring is defined as three or more persons who associate for the purpose of engaging in the conduct of orga-

nized retail crime. In this section, 'retail merchandise' means one or more items of tangible personal property displayed, held, stored, or offered for sale in a retail establishment or merchandise explicitly represented to the person as being stolen retail merchandise.

A person who is guilty of organized retail crime shall be punished by imprisonment in a state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years, if the aggregated value of the property or services involved in all crimes committed by the individual or co-conspirators in an organized retail crime ring within the past one hundred and eighty days is at least \$2,500 but less than \$10,000; or (2) by imprisonment in a state prison of not less than 2 years and a maximum term of not more than 15 years, if the aggregated value of the property or services involved in all crimes committed by the individual or co-conspirators in an organized retail crime ring within the past one hundred and eighty days is at least \$10,000 or more.

For purposes of this section, a series of thefts committed by the same person from one or more mercantile establishments over a period of one hundred eighty days may be aggregated in one count and the sum of the value of all the property shall be the value considered in determining the degree of the organized retail theft involved.

Thefts committed by the same person in different counties that have been aggregated in one county may be prosecuted in any county in which one of the thefts occurred.

Leader of Organized Retail Crime Enterprise.

A person is a leader of an organized retail theft enterprise if he conspires with others as an organizer, supervisor, financier or manager, to engage for profit in a scheme or course of conduct to effectuate the transfer or sale of shoplifted merchandise. A leader of organized retail crime may be punished by a fine of not more than \$250,000 or five times the retail value of the merchandise seized at the time of the arrest, whichever is greater and/or imprisonment in state prison for not more than twenty years."

The amendment was rejected.

Mr. Driscoll of Braintree then moved to amend the bill by adding the following two sections:

"SECTION 129. Chapter 278 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after section 6A the following section:—

Section 6B. (a) A certificate of analysis prepared under sections 39 or 41 of chapter 22C, section 24(1)(e) of chapter 90, section 13 of chapter 111, section 36 of chapter 138 or section 121A of chapter 140 shall be admissible in a criminal, delinquency or youthful offender trial as *prima facie* evidence of the matters specified in those sections without requiring live testimony subject to the following procedures:

(1) The Commonwealth, through the attorney general or district attorney, shall file with the clerk of the court in which the case is pending a notice of intent to rely on a certificate of analysis without the testimony of the analyst. The notice, which may be included in the conference report required by Rule 11 of the Massachusetts Rules of Criminal Procedure, shall identify the type of certificate that will be offered at trial, shall be filed and served prior to the pretrial hearing

Criminal  
offender  
record  
information.

scheduled pursuant to said Rule 11, or at a later date by leave of the court for good cause shown, and shall include a statement that defendants who fail to comply with paragraph 2 of this section forfeit their right to demand that the Commonwealth call the analyst as a witness at trial. Where notice is not included in the conference report, a certificate of service shall be affixed to the notice.

(2) If a defendant objects to admission of the certificate without the opportunity to confront the analyst, the defendant shall file with the clerk of the court in which the case is pending and serve on the Commonwealth an objection and demand for an analyst's presence. The objection and demand shall be filed on or before the date of the pretrial hearing scheduled pursuant to Rule 11 of the Massachusetts Rules of Criminal Procedure, or at a later date by leave of the court for good cause shown, and, in all events, no later than the compliance hearing scheduled pursuant to said Rule 11. A certificate of service shall be affixed to the objection and demand.

(3) When a defendant timely files an objection and demand for an analyst's presence at trial in the manner specified in paragraph 2, the certificate of analysis shall not serve as *prima facie* evidence unless the analyst who signed the certificate testifies for the Commonwealth or the defendant waives his right to confront the analyst.

(4) A defendant who fails to timely file an objection and demand for an analyst's presence at trial in the manner specified in paragraph 2 shall forfeit the right to demand that the Commonwealth present an analyst's testimony at trial and the certificate of analysis shall be admissible as *prima facie* evidence, without requiring the Commonwealth to present live testimony from an analyst.

(b) Continuances or other delays in the case occasioned by the demand for an analyst's presence at trial shall be excluded in computing the time within which the trial of any offense must commence under Rule 36 of the Massachusetts Rules of Criminal Procedure, and, absent bad faith by the Commonwealth, shall not constitute grounds for dismissal for want of prosecution.

(c) Nothing contained in this section shall require the Commonwealth to introduce a certificate of analysis at trial or limit the Commonwealth's ability to prove matters that may be contained in a certificate of analysis by any other method of competent proof.

(d) The notice and demand requirements of this section shall not apply to pretrial or other hearings in criminal cases, or to proceedings other than criminal, delinquency or youthful offender trials. In proceedings other than criminal trials, certificates of analysis may be admitted into evidence as otherwise permitted by law.

SECTION 130. This act shall apply to all criminal cases pending on or commenced after the effective date. For cases pending on the effective date that have advanced beyond the pretrial hearing scheduled under Rule 11 of the Massachusetts Rules of Criminal Procedure, the Commonwealth may file and serve the notice specified in paragraph (a)(1) of section 6B of chapter 278 within 30 days of the effective date, or at a later date by leave of the court for good cause shown, the defendant may file and serve the objection and demand specified in paragraph (a)(2) within 30 days of the Commonwealth's service of such notice, or at a later date by leave of the court for good cause shown,

and the trial shall be held no earlier than 45 days after the defendant's service of such objection and demand."

The amendment was rejected.

Mr. McCarthy of East Bridgewater and other members of the House then moved to amend the bill by inserting after section 65 the following new section:

"SECTION 65A. Section 14 of chapter 123A of the General Laws, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following two sentences: The district attorney or the attorney general at the request of the district attorney may petition the court for a trial. In any trial held pursuant to this section, either the person named in the petition or the petitioning party may demand in writing that the case be tried to a jury, and upon such demand the case shall be tried to a jury."

The amendment was adopted.

Ms. Wolf of Cambridge then moved to amend the bill in section 8 by adding the following paragraph:

"(f) The Department shall assure that no backlog of criminal offender records requests develop that impede necessary information related to employment, housing and other essential activities and services from being produced. If a backlog begins to develop, the Commissioner shall report the nature of the backlog and its impact on services to the Secretary of Public Safety and shall take action to remediate the cause of the backlog."

The amendment was adopted.

Mr. Jones of North Reading and other members of the House then moved to amend the bill by, inserting after section 36 the following section:

"SECTION 36A. Chapter 6 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after section 178B the following new section:—

Section 178B½. Municipalities may, by local ordinance, require applicants for licenses in specified occupations to submit a full set of fingerprints for the purpose of conducting a state and national criminal history records check pursuant to sections 168 and 172 of this chapter and 28 U.S.C. §534. Fingerprint submissions may be submitted by the licensing authority to the identification unit within the department of state police through the criminal history systems board, or its successor, for a state criminal records check and to the Federal Bureau of Investigation for a national criminal records check.

Municipalities may by local ordinance establish the appropriate fee charged to applicants for administering a fingerprinting system. For purposes pursuant to section 2LLL of chapter 29, \$30 of said fee shall be deposited into the Firearms Fingerprint Identity Verification Trust Fund; and the remainder of the fee may be retained by the licensing authority for costs associated with the administration of the system."

The amendment was adopted.

Representatives Haddad of Somerset and Clark of Melrose then moved to amend the bill in section 21, in line 351, by inserting after the figures "1996." the following paragraph:

"(30) Special education school programs approved under chapter 71B may obtain from the department all criminal offender record

Criminal  
offender  
record  
information.

information provided for in paragraph (3) of subsection (a); provided, further, that the department, with the assistance of the state police, shall provide said approved special education school programs with criminal offender record information from other states made available to the department, and the federal government for the purposes of criminal background checks for employees and potential employees of chapter 71B approved special education school programs.”.

The amendment was adopted.

Mr. Murphy of Burlington then moved to amend the bill by striking out section 69 and inserting in place thereof the following section:

“SECTION 69. Chapter 127 of the General Laws, as so appearing, is hereby amended by inserting after section 20A the following section:—

Section 20B. The sheriff of any county and in the case of women who are committed as pretrial detainees to the Massachusetts Correctional Institution at Framingham, the commissioner of correction, subject to rules and regulations established in accordance with the provisions of this section, may permit a detainee who is committed to a jail awaiting disposition of any criminal matter, except those being held for offenses listed in this section, to be classified to a pretrial diversion program operated by the sheriff’s office in the county where the court that committed the detainee is sitting.

The sheriff may extend the limits of the place of confinement of a detainee for the purpose of participation in this program and shall establish a classification system to determine the suitability of detainees who may be potential participants in this program. A person permitted to be away from the jail due to participation in this program may be accompanied by an employee of the sheriff’s office in the discretion of the sheriff or his designee.

For the duration of a detainee’s participation in the program, the detainee shall be deemed to be in custody as a pretrial detainee for the purpose of receiving credit pursuant to section 129B of chapter 127 and section 33A of chapter 279 toward any sentence he may receive, and may be charged with escape pursuant to section 16 of chapter 268 should he leave the place to which he is classified pursuant to his participation in the program without authorization or should he escape from custody while he is being transported pursuant to his participation in the program. For the duration of his participation in this program only, the detainee may receive additional deductions from any sentence that may be imposed in the case for which he was committed, for participation in work, education, or treatment programs designated by the sheriff pursuant to section 129D of chapter 127.

A detainee shall not be eligible to participate in this program if he is charged with: murder; any offense that carries the possibility of a life sentence; a violation of section 32, 32A, 32B, 32C, 32D, 32E, 32F, 32G, 32I, 32J, 32K, 33, 34, 37, 38, 39, and 40 of chapter 94C; section 13, 14, 15, 15A, 15B, 16, 17, 18, 18A, 19, 20, 21, 22, 22A, 23, 24, 24B, 25, 26, 26A or 26B of chapter 265; section 17, 34 or 35 of chapter 272; or an attempt to commit any crime referred to in these sections; or if he is detained under subsection (3) of section 58A of chapter 276. A detainee shall not be eligible to participate in this program if he is a sex offender, a sexually dangerous person as defined in section 1 of chap-

ter 123A, charged with committing a sexual offense as defined in said section 1 of said chapter 123A or is charged with violating section 24B of chapter 265. Placement of an individual in such program shall require victim notification as required under subsection (t) of section 3 of chapter 258B.”.

The amendment was adopted.

Mr. Peterson of Grafton and other members of the House then moved to amend the bill by striking out section 113 and inserting in place thereof the following section:

“SECTION 113. Section 58A of chapter 276 of the General Laws, as so appearing, is hereby amended by striking out subsection (1) and inserting in place thereof the following subsection:—

(1) The commonwealth may move, based on dangerousness, for an order of pretrial detention or release on conditions for a felony offense that has an element of the offense the use, attempted use or threatened use of physical force against the person of another or any other felony that, by its nature, involves a substantial risk that physical force against the person of another may result, including the crimes of burglary and arson whether or not a person has been placed at risk thereof, or a violation of an order pursuant to section 18, 34B or 34C of chapter 208, section 32 of chapter 209, section 3, 4 or 5 of chapter 209A or section 15 or 20 of chapter 209C, or arrested and charged with a misdemeanor or felony involving abuse as defined in section 1 of said chapter 209A or while an order of protection issued under said chapter 209A was in effect against such person, an offense for which a mandatory minimum term of 3 years or more is prescribed in chapter 94C, arrested and charged with a violation of section 13B of chapter 268 or a third or subsequent conviction for a violation of section 24 of chapter 90. (2) The commonwealth may move, based on dangerousness, for an order of pretrial detention or release on conditions for any convicted felon, person out on bail, person on probation who is arrested and charged with a violation of paragraph (1), (c) or (m) of section 10 of chapter 269 or arrested and charged with a violation of section 10G of said chapter 269; provided, however, that the commonwealth may not move for an order of detention under this section based on possession of a large capacity feeding device without simultaneous possession of a large capacity weapon.”.

The amendment was adopted.

Mr. Evangelidis of Holden then moved to amend the bill by adding the following section:

“SECTION 129. Subparagraph e of Section 178D in Chapter 6 of the General Laws as appearing in the 2008 Edition is hereby amended by striking, in lines 31 and 32, the words:— or level 2.”.

The amendment was adopted.

Mr. Koutoujian of Waltham then moved to amend the bill by inserting after section 56 the following two sections:

“SECTION 56A. Chapter 71 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after section 2B the following section:—

Section 2C. All school districts in the Commonwealth shall implement a specific policy and discipline code to address teen dating violence in public schools. Such policies shall clearly state that dating

Criminal  
offender  
record  
information.

violence will not be tolerated and shall include guidelines for addressing alleged incidents of dating violence. Such policies may include a teen dating violence prevention task force comprised of staff, students and parents to provide awareness training and education for the school community. Such policies would include defining the issue of teen dating violence, recognizing warning signs, identifying issues of confidentiality, safety and appropriate legal school-based interventions.

SECTION 56B. Section 1 of chapter 71 of the General Laws, as appearing in the 2006 Official Edition, shall be amended by inserting in line 19 after the words, 'emotional development', the following words:— safe and healthy relationships with a focus on preventing sexual and domestic violence.”.

The amendment was adopted.

Bill passed to  
be engrossed,—  
yea and nay  
No. 403.

On the question on passing the bill, as amended, to be engrossed, in concurrence, the sense of the House was taken by yeas and nays at the request on Mr. O’Flaherty of Chelsea; and on the roll call (Mr. Donato of Medford being in the Chair) 139 members voted in the affirmative and 17 in the negative.

**[See Yea and Nay No. 403 in Supplement.]**

Therefore the bill was passed to be engrossed, in concurrence (for text and title of bill as amended by the House, see House, No. 4712, published as amended). The bill (Senate, No. 2220, amended) then was sent to the Senate for concurrence in the amendments.

*Order.*

Next  
sitting.

On motion of Mr. DeLeo of Winthrop,—  
*Ordered*, That when the House adjourns today, it adjourn to meet tomorrow at eleven o’clock A.M.

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Accordingly, without further consideration of the remaining matters in the Orders of the Day, at eight minutes before seven o’clock P.M., on motion of Mr. Peterson of Grafton (Mr. Donato of Medford being in the Chair), the House adjourned, to meet the following day at eleven o’clock A.M., in an Informal Session.