

IMPOSING SENTENCE

Clerk: [Name of defendant] , **hearken to the sentence of the Court.**

The Court, having duly considered your offense, on complaint number _____ sentences you:

INCARCERATION

House of correction. to be imprisoned in the house of correction in (our) (the) County of _____ for the term of _____ ,

Jail. to be imprisoned in the common jail in (our) (the) County of _____ , for the term of _____ ,

Weekend sentence in house of correction or jail. to be imprisoned in the (house of correction) (common jail) in (our) (the) County of _____ for the term of _____ days. The Court further orders that such sentence be served (in whole) (in part) (on weekends and legal holidays) (at periodic intervals, as follows: _____), in accordance with the “Special Sentencing Form” of the Court, which will be given to you by the probation officer.

If sentence suspended. and the Court further orders that the execution of this sentence be suspended and that you be placed on probation for a term of [time] . The Court further orders that you (pay a probation supervision fee of dollars) (engage in hours of community work service in lieu of a probation supervision fee) during each month of such probation. You must see the probation officer before you leave today.

If defendant committed. and you stand committed in pursuance of this sentence. The Court further orders that you be deemed to have served days of this sentence.

To impose consecutive ("from and after") sentences. The Court further orders that the sentence imposed on complaint number shall take effect from and after the expiration of the sentence imposed on complaint number .

To impose a consecutive sentence where defendant is already serving a sentence

The Court further orders that the sentence imposed on complaint number shall take effect from and after the expiration of all sentences previously imposed.

To impose concurrent sentences.

The Court further orders that the sentence imposed on complaint number _____ shall be served concurrently with the sentence imposed on complaint number _____.

To impose a concurrent sentence where defendant is already serving a sentence.

The Court further orders that the sentence imposed on complaint number _____ shall be served concurrently with the sentence you are now serving at _____ *[where]* _____.

PROBATION

Straight probation.

to be placed on probation for a term of _____ *[time]* _____, subject to the rules and regulations of the probation department. The Court further orders that you (pay a probation supervision fee of _____ dollars) (engage in _____ hours of community work service in lieu of a probation supervision fee) during each month of such probation. You must see the probation officer before you leave today.

MONEY PAYMENTS

Fine and surfine. to pay a fine of _____ dollars (plus a surfine of _____ dollars),

Victim/witness assessment. and the Court further orders that you pay a victim/witness assessment of _____ dollars,

O.U.I. or Negligent Operation head injury assessment. and the Court further orders that you pay an assessment of \$____ for the Head Injury Treatment Services Trust Fund,

O.U.I. victims assessment. and the Court further orders that you pay an assessment of \$____ for the Victims of Drunk Driving Trust Fund,

O.U.I. § 24D fee. and the Court further orders that you pay a fee of \$____ to support efforts to reduce drunk driving,

Batterers intervention program assessment. and the Court further orders that you pay an assessment of \$____ because of your referral to a certified batterers intervention program,

Drug analysis fee. and the Court further orders that you pay a fee of _____ dollars for the Drug Analysis Fund,

GPS fee. and the Court further orders that you pay a fee of _____

dollars monthly for the cost of monitoring your whereabouts with a global positioning system device,

Restitution. and the Court further orders that you pay restitution to
____ *[victim's name]* ____ in the amount of \$ _____ ,

If any required amount must be paid forthwith. and you stand committed
until such sum is paid.

If all required amounts are suspended. and the Court further orders
that payment of such sum be suspended until ____ *[date]* ____.

RIGHT OF APPEAL

After imposition of any sentence. You have a right of appeal to the Appeals
Court within thirty days.

DISPOSITIONS NOT INVOLVING A SENTENCE

Filing. The Court orders that complaint number _____ be filed upon
your consent. Do you consent?

Mental health commitment for examination to aid sentencing.

On complaint number

____, the Court orders that you be committed to (a facility of the Department of Mental Health) (the Bridgewater State Hospital) for a period not to exceed forty days for observation and examination to aid the Court in sentencing, pursuant to General Laws chapter 123, section 15(e).

Mental health commitment after verdict of not guilty by reason of lack of criminal responsibility.

On

complaint number _____, the Court orders that you be committed to (a facility of the Department of Mental Health) (the Bridgewater State Hospital) for a period not to exceed forty days for observation and examination as to your present mental condition, pursuant to General Laws chapter 123, section 16(a).

*These sentencing formularies are adapted from *Jury Trial Manual for Criminal Offenses Tried in the District Court*, Appendix VIII. Some of the language was originally drawn from T.S. Bakas, *Trial Clerk's Manual (Superior Court Criminal Sessions)* (1979).*

NOTES:

1. **Not incarcerating for crimes against the person requires a statement of reasons.** A jury session judge sentencing for one of the crimes against the person found in G.L. c. 265 who does not impose a sentence of incarceration “shall include in the record of the case specific reasons for not imposing a sentencing of imprisonment,” which shall be a public record. G.L. c. 265, § 41.

2. **Right of appeal.** Massachusetts R. Crim. P. 28(c) provides that after a judgment of guilty is entered, “the court shall advise the defendant of his right to appeal. In the District Court, upon the request of the defendant, the clerk of the court shall prepare and file forthwith a notice of appeal.”

A notice of appeal must be filed in writing with the clerk within 30 days after the verdict or sentence. Mass. R. A. P. 3(a) & 4(b). The 30 days exclude the day of the verdict or sentence, but include intermediate Saturdays,

Sundays and legal holidays and the last day of the period, unless it is a Saturday, Sunday or legal holiday. Mass. R. A. P. 14(a). The running of the 30 days is stayed by the filing of a motion for new trial, but begins to run anew from the date such a motion is denied. Mass. R. A. P. 4(b). It is also stayed during the pendency of a timely-filed motion for reconsideration. *Commonwealth v. Powers*, 21 Mass. App. Ct. 570, 573-574, 488 N.E.2d 430, 432-433 (1986).

Upon a showing of excusable neglect, the trial judge may extend the time for filing by up to 30 days beyond the normal expiration date. Mass. R. A. P. 4(c). A single justice of an appellate court may extend the period for appeal for up to one year from the date of verdict or sentence. Mass. R. A. P. 14(b). Neither the trial judge nor an Appeals Court single justice has any authority to further extend the filing period for an appeal, although an S.J.C. single justice may have general superintendence power to do so under G.L. c. 211, § 3. *Commonwealth v. Lopes*, 21 Mass. App. Ct. 11, 16, 483 N.E.2d 479, 482-483 (1985).

3. **Batterers intervention program mandatory for violation of abuse prevention order.** Assignment to a certified batterer's intervention program is mandatory for any violation of an abuse prevention order "unless, upon good cause shown, the court issues specific written findings describing the reasons that batterer's intervention should not be ordered or unless the batterer's intervention program determines that the defendant is not suitable for intervention. The court shall not order substance abuse or anger management treatment or any other form of treatment as a substitute for certified batterer's intervention. If a defendant ordered to undergo treatment has received a suspended sentence, the original sentence shall be reimposed if the defendant fails to participate in said program as required by the terms of his probation." G.L. c. 209A, § 7.

4. **Required money assessments.** Various statutes require imposition of money assessments as part of the disposition of specified offenses. These are listed below and in the chart of "Potential Money Assessments in Criminal Cases" appended to this instruction.

- **209A additional fine** is mandatory upon conviction of violating a restraining order (G.L. c. 209A, § 7), in addition to any other fine or penalty. The statute is silent as to waiver for indigency.
- **Batterers intervention program assessment** is mandatory when a defendant is referred to a certified batterers intervention program as a condition of probation, in addition to the cost of the program. The assessment may be reduced or waived if the defendant is indigent or if payment would cause the defendant or the defendant's dependents financial hardship. G.L. c. 209A, § 10.
- **Drug analysis fee** is mandatory upon conviction or a finding of sufficient facts of distribution of a Class A drug (G.L. c. 90C, § 32), Class B drug (§ 32A), Class C drug (§ 32B), Class D drug (§ 32C), Class E drug (§ 32D) or counterfeit drug (§ 32G), subsequent-offense possession of heroin (§ 34), or being present where heroin is kept (§ 35). For multiple offenses in a single incident, the maximum fee is \$500. The fee may be reduced or waived if it would cause the defendant undue hardship. G.L. c. 280, § 6B.
- **GPS fee** is mandatory for any probationer who is required to wear a GPS device as a condition of probation for an offense that requires registration as a sex offender. The fee may be waived for indigency. G.L. c. 265, § 47.
- **Hate crimes surfine** is a mandatory addition to any fine imposed upon a conviction of any of the four hate crimes found in G.L. c. 265, § 39 (assault to intimidate, assault and battery to intimidate, assault and battery to intimidate with bodily injury, and property damage to intimidate). For multiple offenses, the surfine applies to each. The statute is silent as to waiver for indigency.
- **OUI § 24D fee** is mandatory when a defendant is placed in a driver alcohol or drug abuse education program as part of a G.L. c. 90, § 24D disposition for OUI. It may be reduced, paid over time or waived if it would cause "grave and serious hardship." G.L. c. 90, § 24D ¶¶ 9-10.
- **OUI victims assessment** is mandatory upon conviction, continuance without a finding, probation, admission to sufficient facts, or guilty plea to OUI/.08% (G.L. c. 90, § 24[1]), vehicular homicide involving

OUI (§ 24G), or OUI with serious injury (§ 24L). The assessment “shall not be subject to waiver by the court for any reason.” G.L. c. 90, § 24(1)(a)(1) ¶ 3.

- ***OUI or Negligent Operation head injury assessment*** is mandatory upon conviction, continuance without a finding, probation, admission to sufficient facts, or guilty plea to OUI/.08% (G.L. c. 90, § 24[1]) or operating negligently (§ 24[2]). The assessment may be reduced or waived only on a written finding of fact that it would cause severe financial hardship. G.L. c. 90, § 24(1)(a)(1) ¶ 2 or § 24(2)(a) ¶ 2.
- ***Probation fee*** (plus surcharge) is mandatory each month for a defendant placed on supervised or administrative supervised probation. The fee may be waived to the extent the probationer pays equivalent restitution. It may be waived or reduced only after hearing and upon a written finding of undue hardship, and the probationer must instead perform community work service for at least 1 day monthly for supervised probation or 4 hours monthly for administrative supervised probation. G.L. c. 276, § 87A.
- ***Surfine.*** A surfine (or “special cost assessment”) of 25% must be added to any fine, except for motor vehicle offenses not punishable by incarceration. G.L. c. 280, § 6A.
- ***Victim/witness assessment*** is required upon conviction or finding of sufficient facts for any crime. The assessment may be reduced or waived only on a written finding that it would cause severe financial hardship. G.L. c. 258B, § 8.