

Safety Valve Draft 5 September 2015

Notwithstanding any other provision of law, the court may impose a sentence below a mandatory minimum sentence or minimum sentence, including, but not necessarily including, by sentencing the defendant to a lower mandatory minimum or minimum sentence, for any offense except those set forth in sections 24(1)(a)(1) of Chapter 90 [OUI Alcohol Drugs] and 24V(a)(1)[Same while Endangering Child]; section 8(a)(1)(A) of chapter 90B [Same while Operating Vessel]; sections 1, 3, 13B ½, 13B ¾, 22B, 22C, 23A, 23B, 26D(d), 50(a), 50(b) 51(a), 51(b), 52(a), and 53(b) of chapter 265 [Murder; Murder by Duel; Indecent A&B On Child Under 14, Aggravated; Indecent A&B On Child Under 14, After Certain Offenses; Rape of Child With Force, Aggravated; Rape of Child With Force, After Certain Offenses; Rape of Child, Statutory, Aggravated; Rape of Child, Statutory, After Certain Offenses; Electronic Enticement Of Child For Prostitution, Human Trafficking Or Commercial Sexual Activity, Subsequent Offense; Trafficking Of Person For Sexual Servitude; Trafficking Of Person, Under 18 Years of Age, For Sexual Servitude; Trafficking Of Person For Forced Services; Trafficking Of Person, Under 18 Years of Age, For Forced Services; Trafficking Of Person For Sexual Servitude/Forced Services, Subsequent Offense; and Organ Trafficking Victim Under 18]; and sections 10(a),(b) and (c) of chapter 269 [Possession Firearm; Possession Machine Gun or Sawed-Off Shotgun; and Subsequent Offenses]; provided the court makes the following findings:

- (1) The defendant did not use force or threats of force or use or display a firearm, rifle, shotgun, machine gun or a weapon described in paragraph (b) of section 10 of chapter 269, or induce another participant to do so, during commission of the instant offense;
- (2) The defendant has no prior convictions pursuant to Section 10(a) of Chapter 269 for ten years from the date of release from correctional confinement (but not calculated from the date of release from community supervision) for the prior offense to the date of commission of the instant offense;

(3) The defendant has a “No/Minor Record”, “Moderate Record” or “Serious Record” as defined by the Massachusetts Sentencing Commission provided that if the defendant has a “Serious Record” the defendant does not have a conviction for a “Level 6” or above offense as defined by the Massachusetts Sentencing Commission within the previous 10 years as measured from the date of release from correctional confinement (and not community supervision) for the prior offense to the date of commission of the instant offense, further provided that the court may relax the requirements of this subsection if it finds that the seriousness of the defendant's record is significantly overrepresented by the Criminal History Scale as defined by the Massachusetts Sentencing Commission;

The judge shall make written or oral findings, in which event they shall be preserved by audio recording, court reporter or stenographer. Either party may appeal from determinations under this section. Appeals shall be heard as part of the defendant's direct appeal from the defendant's conviction to the Appeals Court, or by the prosecutor under the rules governing the defendant's direct appeal to the Appeals Court. The standard on appeal shall be whether the court's determination was reasonable. No right of interlocutory appeal is created by this section.

NOTE: So far, we have not located a minimum or minimum mandatory for Indecent Assault and Battery on a Child Under 14.