

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, 23B, 26D(d), 50(a), 50(b) 51(a), 51(b), 52(a), 52(b) and 53(b) of chapter 265 [Murder, Murder by Duel, Aggravated Indecent Assault and Battery, Indecent Assault and Battery After Certain Offenses, Aggravated Rape Child During Certain Offenses and Force, Aggravated Rape Child Subsequent Offense, Rape of Child No Force Subsequent Offense, Human Trafficking Under 18 Subsequent Offense, Human Trafficking for Sexual Servitude, Human Trafficking by Business Entities, Human Trafficking for Forced Servitude, Human Trafficking 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 written 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. Out-of-state prior convictions that are the substantial equivalent of Massachusetts criminal offenses shall be considered as if they were Massachusetts convictions;
- (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. Out-of-state prior convictions that are the substantial equivalent of Massachusetts criminal offenses shall be considered as if they were Massachusetts convictions;**

**This provision shall be applied retroactively. 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 if the prosecutor timely files a notice of appeal. The standard on appeal shall be whether the court's determination was reasonable. No right of interlocutory appeal is created by this section.**

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