

**Safety Valve Draft OPTION B 20160202**

**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 the last paragraph of this section 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 subsection 10(a), (c) and (m) of Chapter 269 for ten years calculated from the date of release from confinement from the sentence for the prior offense(s) or groups of offenses (but not calculated from the date of release from community supervision) which have been aggregated by the Department of Correction for purposes of determining date of release to the date of commission of the instant offense. Prior convictions for any offense of any jurisdiction, federal, state, or territorial which is the same as or necessarily includes the elements of Section 10(a) of Chapter 269 shall be considered in the same manner as such a Massachusetts conviction;**
- (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.**

**This provision may be applied retroactively on a sentence that is currently being served, ordered to be served, or part of a sentencing aggregate that is currently being served. In retroactive application of this provision the court may consider the defendant’s conduct after imposition of the mandatory minimum sentence.**

**No state prison sentence imposed pursuant to this section shall provide a maximum term**

less than one year from the minimum term.

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 provision.

The court may not impose a sentence below a mandatory minimum sentence or minimum sentence for a violation of the following:

- a) section 24(1)(a)(1) of Chapter 90 [**OUI Alcohol Drugs**];
- b) section 24G of Chapter 90 [**OUI MV Homicide**];
- c) section 24V(a)(1)[**OUI while Endangering Child**];
- d) section 8(a)(1)(A) of chapter 90B [**OUI while Operating Vessel**];
- e) sections 1, 3, 13 ½, 13B ½, 13B ¾, 22B, 22C, 23B, 26D(d), 43(b), 43(c), 50(a), 50(b) 51(a), 51(b), 52(a), 52(b) and 53(b) of chapter 265 [**Murder, Murder by Duel, MV Manslaughter, Aggravated Indecent Assault and Battery on a Child, Indecent Assault and Battery After Certain Offenses on a Child, Aggravated Rape Child During Certain Offenses and Force, Aggravated Rape Child Subsequent Offense, Rape of Child No Force Subsequent Offense, Stalking in Violation of a Restraining Order, Stalking 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
- f) subsections (a), (c) and (d) of section 10 of chapter 269 [**Possession Firearm, Possession Machine Gun or Sawed-Off Shotgun, and Subsequent Offenses**].