



# Conditions for Departure from Mandatory Minimum Sentencing

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The seven proposals examined within this chart provide for different conditions before the sentencing judge may depart from the requirements of mandatory minimum sentencing. There are differences regarding 1) the mitigating conditions required to be present at the commission of the crime, 2) the level of proof for those conditions, 3) whether the judge may depart below the sentencing grid cell once s/he has departed from mandatory minimum sentencing, and 4) whether these bills will apply to those already serving mandatory minimum sentences.

Conditions for bypassing drug minimums	Model <sup>1</sup>						
	SD. 897 <sup>2</sup>	HD. 857 <sup>3</sup>	HD. 856 <sup>4</sup>	HD. 3326 <sup>5</sup>	HD. 3324 <sup>6</sup>	HD. 3325 <sup>7</sup>	SD. 580 <sup>8</sup>
<i>1) Required Mitigating Conditions</i>							
Minor/moderate criminal history (Level A & B).	yes	yes	yes	yes	yes	yes	
No prior level seven or eight controlled substance convictions.	yes						
No prior drug distribution or trafficking convictions.		yes	yes	yes	yes	yes	
No use of violence, threats of violence, possession of gun or dangerous weapon (inducement of another participant to do so).		yes	yes	yes	yes	yes	
Offense did not cause death or serious bodily injury.		yes	yes	yes	yes	yes	
Defendant was minor participant in the criminal conduct.		yes	yes	yes	yes	yes	
Defendant not charged with offense involving minors.		yes	yes	yes	yes	yes	
Defendant provides prosecution all information and evidence s/he has about the offense.			yes				
<i>2) Level of Proof</i>							
Defendant proves conditions by clear and convincing evidence.		yes	yes				
Judge finds a) substantial reason to depart		yes	yes	yes			
... and b) compelling reason to depart.				yes			
Judge finds one or more mitigating circumstances (conditions) guided by non-exclusive list.	yes						
Judges required to find all of exclusive list of mitigating circumstances (conditions).		yes	yes	yes	yes	yes	
<i>3) Departure from sentencing grid</i>							
Judge prohibited from downward departure from grid cell after departure from Mand. Min.		yes		yes			
<i>4) Retroactivity</i>							
Applies retroactively						yes <sup>9</sup>	yes

Notes:

- <sup>1</sup> Sentencing Guidelines Bill recommended by Mass. Sentencing Commission in 1996.
- <sup>2</sup> This bill represents a refile of S. 219. The primary sponsor of this bill is Sen. Marian Walsh (Suffolk/Norfolk). (SD. = Senate Docket).
- <sup>3</sup> This bill represents a refile of the '03-'04 Sentencing Guidelines bill (H. 2750) proposed by legislators. The primary sponsor of this bill is Rep. A. Stephen Tobin (Quincy). (HD. = House Docket).
- <sup>4</sup> This bill represent a refile of H. 2749. The primary sponsor of this bill is Rep. A. Stephen Tobin (Quincy). (HD. = House Docket).
- <sup>5</sup> '05-'06 legislative task force bill introduced by Rep. Michael Festa (Melrose). (HD. = House Docket).
- <sup>6</sup> Differs from HD. 3324 in that it provides retroactive relief to those already serving sentences for drug offenses considered.
- <sup>7</sup> The primary sponsor of these bills is Rep. Michael Festa (Melrose). (HD. = House Docket).
- <sup>8</sup> The primary sponsor of this bill is Sen. Cynthia Creem (Newton). (SD. = Senate Docket).
- <sup>9</sup> Staff indicates that the language to the contrary will be eliminated in committee.