

AN ACT improving certain criminal justice matters

SECTION 1. Section 168 of chapter 6 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

There shall be a criminal history systems board, hereinafter called the board, consisting of the following persons: the secretary of public safety and security, who shall serve as chairman, the secretary of labor and workforce development, the attorney general, the chairperson of the Massachusetts sentencing commission, the chief counsel for the committee for public counsel services, the chairman of the parole board, the commissioner of the department of correction, the commissioner of probation and commissioner of the department of youth services and the colonel of state police, or their designees, all of whom shall serve ex officio, and ten persons to be appointed by the governor for a term of three years, one of whom shall represent the Massachusetts District Attorneys Association, one of whom shall represent the Massachusetts Sheriffs Association, one of whom shall

represent the Massachusetts Chiefs of Police Association, one of whom shall represent private users of criminal offender record information, one of whom shall be a victim of crime, one of whom shall be a provider of victim services, two of whom shall have experience in the areas of workforce development, ex-offender rehabilitation, or economic development, and two of whom shall be persons who have experience in issues relating to personal privacy. Upon the expiration of the term of any appointive member, his successor shall be appointed in a like manner for a term of three years.

SECTION 2. Said section 168 of said chapter 6 is hereby further amended by striking out, in line 50, the word "hundred" and inserting in place thereof the word:- thousand

SECTION 3. Said section 168 of said chapter 6 is hereby further amended by striking out, in line 50, the word "willful" and inserting in place thereof the following word: - knowing

SECTION 4. Said section 168 of said chapter 6 is hereby further amended by striking out the fourth and sixth paragraphs.

SECTION 5. Chapter 6 of the General Laws, as so appearing, is hereby amended by inserting after section 168 the following new section:-

Section 168 ½. There shall be within the executive office of public safety and security a criminal justice information services department, hereinafter called the department. The department shall provide for and exercise control over the installation, operation and maintenance of data processing and data communication systems, hereinafter called the criminal justice information system. Said system shall be designed to ensure the prompt collection, exchange, dissemination and distribution of such criminal offender record information as may be necessary for the efficient administration and operation of criminal justice agencies, and to connect such systems directly or indirectly with similar systems in this or other states. The secretary of public safety and security shall appoint an executive director who shall be classified in accordance with section 45 of chapter 30 and the salary shall be determined in accordance with section 46C of said chapter 30. Such executive director shall not be subject to the provisions of chapter 31 or section 9A of chapter 30. Said director shall be responsible for all data processing, for the management of the automated criminal offender record information and teleprocessing system, for the supervision of all personnel associated with said system and for the appointment of all such

personnel. The director may appoint such other employees, including experts and consultants, as he deems necessary to carry out the department's responsibilities, none of whom shall be subject to the provisions of chapter 31 or of section 9A of chapter 30.

The department is authorized to enter into contracts and agreements with, and accept gifts, grants, contributions, and bequests of funds from, any department, agency, or subdivision of federal, state, county, or municipal government and any individual, foundation, corporation, association, or public authority for the purpose of providing or receiving services, facilities or staff assistance in connection with its work. Such funds shall be deposited with the state treasurer and may be expended by the department in accordance with the conditions of the gift, grant, contribution, or bequest, without specific appropriation.

SECTION 6. Section 172 of chapter 6 of the General Laws, as so appearing, is hereby amended by inserting after the word "privacy", in line 14 and in line 40, the words:- and the importance and value of successful reintegration of ex-offenders

SECTION 7. Section 178 of chapter 6 of the General Laws, as so appearing, is hereby amended by striking out, in line 1, the word "willfully" and inserting in place thereof the word:- knowingly

SECTION 8. Said section 178 of said chapter 6 is hereby further amended by striking out, in line 3, the words "willfully communicates" and inserting in place thereof the words: - knowingly requests, obtains or seeks to obtain, uses, sells, communicates

SECTION 9. Chapter 6A of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out section 18 and inserting in place thereof the following section:-

Section 18. The following state agencies are hereby declared to be within the executive office of public safety and security: the department of public safety; the department of fire services; the office of grants and research and the highway safety division; the municipal police training committee; the criminal justice information services department; the statewide emergency telecommunications board; the merit rating board; the department of state police; the office of the chief medical examiner; the Massachusetts emergency management agency; the military department; the

department of correction, including the parole board; the sex offender registry board; and all other agencies and boards within said departments, committees and boards.

SECTION 10. Section 5 of chapter 27 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting at the end thereof the following new sentence: - The parole board shall administer and oversee mandatory post-release supervision functions as set forth in section 133D of chapter 127 and in chapter 127A.

SECTION 11. Section 32H of Chapter 94C of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

A person convicted of violating any provisions of said sections shall not, until he shall have served the mandatory minimum term of imprisonment established, in said sections, be eligible for probation, parole, furlough, or receive any deduction from his sentence for good conduct under sections 129C and 129D of chapter 127; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of the correctional institution, grant

to said offender a temporary release in the custody of an officer of such institution for the following purposes: to attend the funeral of a relative, to visit a critically ill relative, to obtain emergency medical or psychiatric services unavailable at said institution; to participate in education, training, or employment programs established under section forty-eight of chapter one hundred twenty-seven; to engage in employment pursuant to a work release program in accordance with sections 49 and 49A of chapter 127; or to participate in a program to provide services to municipalities within a county pursuant to section 49C of chapter 127. The provisions of section 31 of chapter 279 shall not apply to any person convicted of violating any provisions of said sections. The provisions of section 87 of chapter 276 shall not apply to any person, 17 years of age or over, charged with a violation of said sections, or to any child between age 14 and 17, so charged, if the court is of the opinion that the interests of the public require that he shall be tried for such offense instead of being dealt with as a child.

SECTION 12. The General Laws are hereby amended by inserting after chapter 127 of the General Laws, as appearing in the 2006 Official Edition, the following new chapter:-

CHAPTER 127A
MANDATORY POST-RELEASE SUPERVISION

Section 1. All sentences of incarceration in a house of correction or jail for more than one year and all sentences to state prison shall include a period of post-release supervision, excluding sentences for those prisoners for whom parole eligibility is determined by section 133A of chapter 127. Except as provided in this chapter, for individuals who complete the incarceration portion of their sentences without supervised release or are re-incarcerated for the remainder of the sentence for violating the terms of parole or probation, the period of mandatory post-release supervision shall be twenty-five per cent of the maximum term of incarceration imposed at sentencing up to a maximum period of supervision of five years, but in no case less than nine months. Where an individual is sentenced to incarceration on multiple offenses to be served concurrently, the greater of the maximum terms imposed at sentencing shall be used to calculate the mandatory post-release supervision period. Mandatory post-release supervision as established in this chapter shall not be imposed upon any individual who successfully completes a period of probation imposed by a court at sentencing, upon an individual who is granted a parole permit under chapter 127 and successfully completes a period of parole supervision, or upon an individual sentenced to lifetime community parole under section 45 of chapter 265 and section 133D of chapter 127. An individual subject to

this chapter may be supervised in another jurisdiction in accordance with sections 151A through 151N of chapter 127 and shall be considered on parole for the purposes of supervision.

Section 2. Upon release, an individual sentenced to a term of incarceration in a house of correction or jail for more than one year, or in a state prison for any length of time shall be subject to the supervision and jurisdiction of the parole board during the period of mandatory post-release supervision and shall be subject to the law, rules and regulations governing parole. The chairman of the parole board shall establish uniform regulations for post-release supervision consistent with applicable provisions of chapters 127 and 276. Nothing in this section or in said regulations shall limit the authority of the superior, municipal, district or juvenile court to impose conditions of probation supervision to protect the public or promote the rehabilitation of any person.

Section 3. An individual subject to mandatory post-release supervision who has successfully completed nine months of supervision shall be eligible for early termination of that supervision. Early termination shall only occur in accordance with procedures to be adopted in the regulations of the parole board. In all proceedings under this section, the criteria for early termination of mandatory post-release supervision

established by the chairman of the parole board shall include, but not be limited to, the amount of time the individual has successfully spent under post-release supervision, success in finding permanent employment, success in establishing adequate housing, completing all counseling or substance abuse treatment programs and success in passing all mandated post-release testing programs.

Section 4. An individual who violates a condition of mandatory post-release supervision shall be subject to this section and to modification or revocation proceedings initiated by the parole board. The laws and regulations governing parole violation proceedings shall govern these modification or revocation proceedings. In all proceedings under this section, an individual who violates a condition of mandatory post-release supervision may be placed under increased supervision, subjected to other conditions and intermediate sanctions, or incarcerated for not more than the maximum remaining period of post-release supervision or the remaining unserved portion of the sentence, whichever is greater, if the violation does not otherwise constitute a criminal offense. In all cases where the individual is not being incarcerated for a violation, the individual shall participate in an intermediate sanction through the office of community corrections established in chapter 211F, the level of which is to be determined by the

chairman of the parole board. In the case of any violation for use of controlled substances or an offense for operating under the influence of drugs or alcohol where the individual is not incarcerated for the violation, the period of mandatory post-release supervision shall be extended to accommodate an appropriate substance abuse program, but the total shall not exceed the maximum supervisory period permitted under section 1. For any violation of the conditions of mandatory post-release supervision, the period of supervision shall be stayed during a period of incarceration and it shall be resumed upon release. If the violation constitutes a criminal offense, the period of incarceration shall be served on and after any sentence received as a result of the new offense. Upon subsequent release, the greater of the maximum sentences of the original offense and subsequent offense shall be used to calculate the new mandatory post-release supervision period.

Section 5. All mandatory post-release supervision shall be considered completed, if any of the following conditions are met: (a) except as provided in section 4, the individual serves a post-release supervision period of twenty-five per cent of the maximum term of incarceration imposed at sentencing up to a maximum period of supervision of five years, but in no case less than nine months; (b) the individual is granted early termination under section 3; (c) upon completion of the sentence, the individual is

immediately committed to the custody of any other state to serve a period of incarceration greater than or equal to the post-release supervision period required under this chapter; or (d) upon completion of the sentence, the individual is immediately committed to the custody of any federal or immigration authority. Mandatory post-release supervision shall be stayed for any period during which an individual is in custody under an order of custody under chapter 123A.

Section 6. On or before August 31, 2009, the chairman of the parole board shall file a report detailing the number of individuals incarcerated in a house of correction or jail whose sentence includes a period of post-release supervision during the preceding year. This report shall detail the number of individuals who are subject to mandatory post-release supervision, who successfully complete the supervision, who become eligible for early termination of that supervision, and the report shall describe the criteria for early termination of post-release supervision including the amount of time the individual has successfully spent under post-release supervision, success in finding permanent employment, in establishing adequate housing, in completing all counseling or substance abuse treatment programs and in passing all mandated post-release testing programs. The report shall also include any individual who violates a condition of mandatory post-

release supervision who becomes subject to modification or revocation proceedings initiated by the board; and provided further that copies of such reports shall be submitted to the chairs of the joint committee on the judiciary and the clerks of the house of representatives and the senate.

Section 7. This chapter shall apply to all felonies and misdemeanors committed on or after the effective date of this act. All offenses committed before the effective date of this act shall be governed by the laws in effect at the time the offense was committed, including, but not limited to the laws on sentencing, parole, and probation.

SECTION 13. Section 100A of said chapter 276, as so appearing, is amended by striking out, in line 8, the word "ten" and inserting in place thereof the following:- five

SECTION 14. Said section 100A of said chapter 276 is hereby further amended by striking out, in line 11, the word "fifteen" and inserting in place thereof the word:- ten

SECTION 15. Said section 100A of said chapter 276 is hereby further amended by striking out, in line 13, the words "ten years preceding such

request" and inserting in place thereof the words:- in the case of a misdemeanor, five years preceding such request, and in the case of a felony, ten years preceding such request.

SECTION 16. Said section 100A of said chapter 276 is hereby further amended by striking out, in line 19, the words "within the preceding ten years" and inserting in place thereof the words:- in the case of a misdemeanor, within the preceding five years, and in the case of a felony, within the preceding ten years.

SECTION 17. Said section 100A of said chapter 276 is hereby further amended by inserting, after line 40, the words:-

5. Sex offenses, as defined in section 178C of chapter 6, shall not be eligible for sealing.

SECTION 18. Said chapter 276, as so appearing, is hereby amended by inserting after section 100C the following new section:-

Section 100D. Notwithstanding any provision of section 100A, 100B, or 100C of this chapter, criminal justice agencies as defined in section 167 of chapter 6 shall have immediate access to, and be permitted to use as

necessary for the performance of their criminal justice duties, any sealed criminal offender record information as defined in section 167 of chapter 6 and any sealed information concerning criminal offenses or acts of delinquency committed by any person before he attained the age of 17.

SECTION 19. The secretary of public safety and security shall, in consultation with representatives of law enforcement and prosecutorial organizations, victim service providers and the criminal defense bar, establish policies and guidelines for law enforcement response to incidents of sex crimes committed against adults. The secretary may revise, terminate, or revoke such policies and guidelines at his discretion. Such policies and guidelines shall be promulgated no later than six months from the effective date of this act.

SECTION 20. Chapter 151B of the General laws is hereby amended by inserting in section 4, after subsection 9A, the following subsection:-

9B. For any employer, employer's agent, employment agency, housing provider, educational or training institution or other entity or program doing business in the commonwealth to perform the unlawful practice of using an application form that asks the applicant if he or she has committed a felony

or has been convicted of a crime regardless of the length of time passed since such conviction, or otherwise has been arrested or has been accused in the adult criminal, or the juvenile delinquency justice systems, whether by a check box, yes or no question, or any other means.

SECTION 21. Chapter 94C of the General Laws is hereby amended by striking out section 32J and inserting in place thereof the following section:-

Section 32J. Any person who violates the provisions of section 32, 32A, 32B, 32C, 32D, 32E, 32F or 32I while in or on, or within 100 feet of the real property comprising a public or private accredited preschool, accredited headstart facility, elementary, vocational, or secondary school whether or not in session, or within 100 feet of a public park or playground shall be imprisoned in a jail or house of correction for not more than 2 years or by a fine of not less than \$500 nor more than \$5,000, or both such fine and imprisonment.

Any person who has been previously convicted of, or adjudicated delinquent or as a youthful offender for a violation of section 32, 32A, 32B, 32C, 32D, 32E, 32F or 32I while in or on, or within 100 feet of the real property comprising a public or private accredited preschool, accredited

headstart facility, elementary, vocational or secondary school whether or not in session, or within 100 feet of a public park or playground shall be punished by a term of imprisonment in the state prison for not less than 2 ½ nor more than 15 years or by imprisonment in a jail or house of correction for not less than 2 nor more than 2 ½ years. No sentence imposed under the provisions of this section shall be for less than a mandatory minimum term of imprisonment of 2 years. A fine of not less than \$1,000 nor more than \$10,000 may be imposed, but not in lieu of the mandatory minimum 2 year term of imprisonment as established herein. In accordance with the provisions of section 8A of chapter 279 such sentence shall begin from and after the expiration of the sentence for violation of section 32, 32A, 32B, 32C, 32D, 32E, 32F or 32I.

Lack of knowledge of school boundaries shall not be a defense to any person who violates the provisions of this section.

In any prosecution commenced pursuant to this section, introduction into evidence of a prior conviction or a prior finding of sufficient facts by either certified attested copies of original court papers, or certified attested copies of the defendant's biographical and informational data from records of the department of probation, any jail or house of correction, or the

department of correction shall be prima facie evidence that the defendant before the court had been convicted previously by a court of the commonwealth or any other jurisdiction. Such documentation shall be self-authenticating and admissible, after the commonwealth has established the defendant's guilt on the primary offense, as evidence in any court of the commonwealth to prove the defendant's commission of any prior convictions described therein. The commonwealth shall not be required to introduce any additional corroborating evidence, nor live witness testimony to establish the validity of such prior convictions.

SECTION 22. Section 12 of this act is repealed.

SECTION 23. Section 22 of this act shall take effect on October 31, 2010.