

**JOINT COMMITTEE ON THE JUDICIARY  
BILL SUMMARY**

**BILL NO.** H 4476 (redraft)  
**TITLE:** An act improving certain criminal justice matters.  
**SPONSOR:**

**SUMMARY:**

SECTION 1. This legislation adds the Secretary of Labor and Workforce Development to the criminal history systems board. It also provides that the Governor shall appoint 10 people. In addition to the first 5 people the Governor can appoint, the Governor can also appoint a provider of victim services, 2 people experienced in workforce development, ex offender rehabilitation, or economic development and 2 people with experience in personal privacy.

✓ SECTION 2. Changes the language in Chapter 6§ 168 so that the civil fine for a violation for unlawfully disseminating CORI, evaluative information or information pertaining to records of juvenile proceedings is increased from \$500 to \$5000.

✓ SECTION 3. Changes the language in Chapter 6§ 168 so that the civil fine for a violation for a unlawfully disseminating CORI, evaluative information or information pertaining to records of juvenile proceedings can be obtained for a "knowing violation". Currently the statute only provides for a willful violation.

SECTION 4: Strikes paragraphs 4 and 6 from Chapter 168. Paragraph 4 designated the criminal history system board to control and maintain the CORI system. Paragraph 6 provided the board with the authority to enter into contracts, and accept funds from any department, agency, subdivision of federal, state or local government, individual or public authority for providing services or staff in connection with its work.

SECTION 5. Adds a new section to Chapter 168. C. 168 § 168 ½ moves the management and operation of the CORI system from the criminal history systems board to the criminal justice information services department which shall be created within the Executive Office of Public Safety and Security. Chapter 168 ½ shall provide for a criminal justice information services department within the Executive Office of Public Safety and Security. This department shall control the installation, operation and maintenance of the CORI system. The system shall ensure prompt collection, exchange, dissemination and distribution of CORI information. The secretary of Public Safety and Security shall appoint an executive director.

SECTION 6. C. 6 § 172 governs the dissemination of CORI information to certain parties. In part it provides that the public's interest in disseminating the information should be weighed against the interest of security or privacy. It adds language so that the public's interest in disseminating the information should be weighed against the interest of security or privacy and the importance and value of successful reintegration of ex-offenders.

SECTION 7/8. C. 6 § 178 governs violations and penalties for any person who willfully requests or seeks to obtain CORI under false pretenses or who willfully communicates CORI to an agency. For each offense the person shall be fined not more than \$5000 or imprisoned in a jail or house of

correction for not more than 1 year. This legislation would make the penalty and punishment apply to a knowing violation instead of a willful violation.

SECTION 9. C. 6A §18 sets up which agencies are within the executive office of public safety and security. The agencies within the executive office of public safety are:

- the dept. of public safety
- the dept. of fire services
- the office of grants/research and the highway safety division
- the municipal police training committee
- the criminal justice info services department
- the statewide emergency telecommunications board
- the merit rating board
- the dept. of state police
- the office of chief medical examiner
- the MA emergency management agency
- the military dept.
- the department of correction and the parole board
- the SORB
- all agencies, boards, and committees within these

SECTION 10. Chapter 27 section 5 governs the jurisdiction of the parole board. This legislation would provide that the parole board would administer and oversee the mandatory post-release supervision of this particular category of offenders.

SECTION 11. This legislation replaces the current 2<sup>nd</sup> paragraph of Chapter 94C section 32H and provides that a person convicted of violating any provisions of these sections (certain drug offenses under Chapter 94C) shall not be eligible for probation, parole, furlough, or a sentence deduction until the mandatory minimum term of imprisonment has been served. The commissioner of correction may on the recommendation of the warden or person in charge grant a temporary release for the purposes of attending a relative's funeral, to visit a critically ill relative, to obtain emergency or psychiatric services not available at the institution or to participate in education training or employment programs or to engage in employment pursuant to work release programs. Chapter 276 § 87 provides that certain persons can be placed on probation before trial as long as they have not been previously convicted of rape of a child with force or with a weapon (C. 265 § 22A) or assault of a child with the intent to commit rape (C. 265 § 24B) or unnatural and lascivious acts with a child U16 (C. 272 § 35A) and was 17 years or older at the time of the offense or if the child is between 14 & 17 and it's the courts opinion that it's in the public interest to charge this person instead of dealing with it as if the person was a child.

#### SECTION 12.

Creates Chapter 127A - Mandatory Post-Release Supervision

- Section 1. All sentences of incarceration in a house of correction or jail for more than 1 year and all sentences in a state prison shall include a period of post-release supervision. Those who complete the incarceration portion of their sentence without supervised release or who have been re-incarcerated for the remainder of their sentence for violating parole or probation, shall be subject to mandatory post-release supervision for 25% of the maximum term of incarceration. The maximum period of incarceration shall be 5 years but in no case shall it be less than 9 months.

An individual sentenced to incarceration for 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 shall not be imposed upon any individual who successfully completes a period of probation imposed at sentencing, any individual who is granted a parole permit under Chapter 127 and successfully completes it, or a person sentenced to lifetime community parole under Chapter 265, section 45 and Chapter 127, section 133D.

- Section 2. An individual sentenced to a term of incarceration for more than 1 year in a house of correction or jail shall be subject to the supervision and jurisdiction of the parole board during the period of post-release supervision.

The chairman of the parole board shall establish uniform regulations for post-release supervision and for early termination of such supervision consistent with Chapters 127 and 276.

A person subject to mandatory post-release supervision who has successfully completed 9 months of supervision shall be eligible for early termination of that supervision. If under the supervision of the commissioner of probation, an order of the court is necessary for early termination to occur. If under the supervision of the parole board, early termination shall occur in accordance with procedures to be adopted in the regulations of the parole board.

- Section 3. After serving 9 months of mandatory post-release supervision an individual shall be eligible for early termination of the supervision. This shall only occur in accordance with procedures established by the Parole Board. The criteria for early termination of mandatory post-release supervision shall include the amount of time the individual has successfully spent under post-release supervision, success in finding permanent employment, adequate housing, and completion of counseling or substance abuse treatment programs and success in passing all mandated testing programs.
  - Section 4. An individual who violates a condition of mandatory post-release supervision shall be subject to the Parole Board's modification or revocation proceedings. If the violation of mandatory post-release supervision does not constitute a criminal offense the individual
    1. may be placed under increased supervision;
    2. subjected to other conditions and intermediate sanctions; or
    3. incarcerated for not more than the maximum remaining period of post-release supervision or the remaining unserved sentence.
- In all cases where the individual is not being incarcerated there shall be participation in an intermediate sanction through the office of community corrections.
- Any violation for the use of controlled substances or operating under the influence of drugs or alcohol, the mandatory post-release supervision shall be extended to accommodate an appropriate substance abuse program but the total shall not exceed the maximum supervisory period.
- For any violation of mandatory post-release supervision, the supervision period shall be stayed upon incarceration and shall be resumed upon release.

➤ If the violation does constitute a criminal offense, the period of incarceration shall be served on and after any sentence for the new offense. Upon release, the new mandatory post-release supervision shall be calculated based on the greater of the two offenses.

- Section 5. All mandatory post-release supervision shall be considered complete if any of the following conditions are met:
  - (a) the individual has served a mandatory post-release supervision period of 25% of the maximum term of incarceration imposed at sentencing up to a maximum period of 5 years, but no less than 9 months.
  - (b) the individual is granted early termination.
  - (c) upon completion of the sentence, the individual is immediately committed to the custody of any other state to serve a sentence greater than or equal to the post-release supervision.
  - (d) upon completion of the sentence, the individual is immediately committed to the custody of a federal or immigration authority.
  
- Section 6. The chairman of the parole board shall submit and file a report by August 31, 2009 to the joint committee on the judiciary and the clerks of the house of representatives and senate. The report shall detail the following information:-
  - (a) the number of incarcerated individuals whose sentence includes a period of post release supervision
  - (b) the number of individuals who successfully complete the supervisions
  - (c) the number of individuals who become eligible for early termination of the supervision
  - (d) the criteria for early termination of post-release supervision including the amount of time the person has spent under post-release supervision, establishing housing, completing all counseling or substance abuse programs and in passing all mandated testing programs.
  - (e) the number of individuals who violate a condition of mandatory post-release supervision and become subject to modification or revocation proceedings.
  
- Section 7. This chapter shall apply to all felonies and misdemeanors committed on or after such date. All offenses committed before the passage of this shall be governed by the laws in effect at that time.

SECTION 13. C. 276 §100A governs the requests and applications for sealing records. Currently requests can be made to the Commissioner of Probation after 10 years for a misdemeanor. This would allow requests for sealing of records to be made to the Commissioner of Probation after 5 years for a misdemeanor.

SECTION 14. C. 276 §100A governs the requests and applications for sealing records. Currently requests can be made to the Commissioner of Probation after 15 years for a felony. This would allow requests for sealing of records to be made to the Commissioner of Probation after 10 years for a felony.

SECTION 15. C. 276 §100A governs the requests and applications for sealing records. Currently one of the prerequisites for a request to seal a record is that the person has not been found guilty of any criminal offense within MA in the 10 years prior to the request except for a motor vehicle offense with a penalty under \$50. This would allow requests for sealing of records to be made to the Commissioner of Probation if the person has not been found guilty of any

criminal offense within MA in the 5 years prior to the request for a misdemeanor and 10 years prior to the request for a felony.

SECTION 16. C. 276 §100A governs the requests and applications for sealing records. Currently one of the prerequisites for a request to seal a record is that the person has not been found guilty of any criminal offense within MA in the 10 years prior to the request except for a motor vehicle offense with a penalty under \$50. This would allow requests for sealing of records to be made to the Commissioner of Probation if the person has not been found guilty of any criminal offense within MA in the 5 years prior to the request for a misdemeanor and 10 years prior to the request for a felony.

SECTION 17. C. 276 §100A governs the requests and applications for sealing records. For purposes of this section any violation sex offenses defined under C. 6 §178C shall be treated as a felony and shall not be eligible for sealing.

SECTION 18. The following new section shall be added to C. 276. Section 100D shall provide that criminal justice agencies as defined by C. 6 §167 shall have immediate access and be permitted to use as necessary for the performance of their duties any sealed CORI and any sealed information.

SECTION 19. Within 6 months of the effective date of this act, the Secretary of Public Safety and Security shall promulgate guidelines for law enforcements response to incidents of sex crimes against adults.

SECTION 20. Chapter 151B governs certain unlawful practices. This legislation would add a new subsection, 9B which would provide that it would be unlawful for an employer, agent, housing provider, educational or training institution etc. to use an application form that asks an applicant to check a box, answer a yes or no question as to whether or not he has committed a felony or has been convicted of a crime regardless of the length of time passed since conviction.

SECTION 21. This legislation would strike the current language in Chapter 94C section 32J and insert new language that reduces the school zone from 1000 feet to 100 feet. Any person who violates certain drug offenses outlined in Chapter 94C within 100 feet of a school zone 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 \$5000 or both. The provisions of Chapter 94C subject to this new language are:-

- §32 unlawful manufacture, distribution, possession with intent to manufacture a Class A substance,
- §32A unlawful manufacture, distribution, possession with intent to manufacture a Class B substance,
- §32B unlawful manufacture, distribution, possession with intent to manufacture a Class C substance,
- §32C unlawful manufacture, distribution, possession with intent to manufacture a Class D substance,
- §32D unlawful manufacture, distribution, possession with intent to manufacture a Class E substance,
- §32E Trafficking in marihuana, cocaine, heroine etc.,
- §32F unlawful distribution of substances in Class A-C to a minor or
- §32I sale of drug paraphernalia.

An individual who has committed a 2<sup>nd</sup> violation of this section within 100 feet of a school zone shall be punished by imprisonment in state prison for not less than 2 ½ years and not more than 15 years or by imprisonment in jail or a house of correction for not less than 2 nor more than 2 ½ years. The mandatory minimum for a 2<sup>nd</sup> offense is 2 years or a fine of not less than \$1000.

Any prosecution commenced under this section, evidence of a prior conviction or a prior finding of facts by original copies or certified attested copies shall be prima facie evidence that the defendant has been previously convicted. These documents shall be self-authenticating and admissible.

Section 22/23. Section 12, Mandatory Post-Release Supervision is repealed and shall take effect on October 31, 2010.