

Senate, No. 2220, printed as amended

[November 18, 2009 – Text of the Senate Bill reforming the administrative procedures relative to criminal offender record information and pre- and post-trial supervised release (being the text of S2205, printed as amended)]

**The Commonwealth of Massachusetts**

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**In the Year Two Thousand and Nine**

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**AN ACT REFORMING THE ADMINISTRATIVE PROCEDURES  
RELATIVE TO CRIMINAL OFFENDER RECORD INFORMATION  
AND PRE- AND POST-TRIAL SUPERVISED RELEASE.**

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Section 167 of chapter 6 of the General Laws, as appearing in the 2008  
2   Official Edition, is hereby amended by striking out, in line 2, the words “one hundred and sixty-  
3   eight to one hundred seventy-eight” and inserting in place thereof the following words:- 168 to  
4   178L, inclusive.

5           SECTION 2. Said section 167 of said chapter 6, as so appearing, is hereby amended by  
6   inserting before the definition of “criminal justice agencies” the following 3 definitions:-

7           “All available criminal offender record information”, adult and youthful offender  
8   convictions, non-convictions and pending criminal court appearances, but excluding criminal  
9   records sealed under section 34 of chapter 94C or sections 100A to 100C, inclusive, of chapter  
10   276 or the existence of such records.

11 “Board”, the criminal record review board established under section 168.

12 “Commissioner”, the commissioner of the Massachusetts department of criminal justice  
13 information services.

14 SECTION 3. Said section 167 of said chapter 6, as so appearing, is hereby further  
15 amended by inserting after the definition of “criminal offender record information” the following  
16 definition:-

17 “Department”, the Massachusetts department of criminal justice information services  
18 established under section 167A.

19 SECTION 4. Said section 167 of said chapter 6, as so appearing, is hereby further  
20 amended by inserting after the definition of “purge” the following 3 definitions:-

21 “Requestor”, an entity or individual, other than a criminal justice agency, submitting a  
22 request for criminal offender record information to the department.

23 “Self-audit”, an inquiry made by a subject or an advocate or agent designated by the  
24 subject to obtain a log of all queries to the department by any requestor for the subject’s criminal  
25 offender record information, but excluding any information relative to any query conducted by a  
26 criminal justice agency.

27 “Subject”, an individual for whom a request for criminal offender record information is  
28 submitted.

29 SECTION 5. Said chapter 6, as so appearing, is hereby amended by inserting after  
30 section 167 the following section:-

31           Section 167A. There shall be within the executive office of public safety and security a  
32   department of criminal justice information services. The department shall provide for and  
33   exercise control over the installation, operation and maintenance of data processing and data  
34   communication systems, hereinafter called the public safety information system including, but  
35   not limited to, the criminal justice information system. Said system shall be designed to ensure  
36   the prompt collection, exchange, dissemination and distribution of such public safety information  
37   as may be necessary for the efficient administration and operation of criminal justice agencies,  
38   and to connect such systems directly or indirectly with similar systems in this or other states. The  
39   secretary of public safety and security shall appoint a commissioner who shall be classified in  
40   accordance with section 45 of chapter 30 and the salary shall be determined in accordance with  
41   section 46C of said chapter 30. Such commissioner shall not be subject to the provisions of  
42   chapter 31 or section 9A of chapter 30. The commissioner shall be responsible for all data  
43   processing, management of the public safety information system, supervision of all personnel  
44   associated with said system and the appointment of all such personnel. The commissioner may  
45   appoint such other employees, including experts and consultants, as he deems necessary to carry  
46   out the department's responsibilities, none of whom shall be subject to the provisions of chapter  
47   31 or of section 9A of chapter 30.

48           The commissioner shall provide access to the public safety information system to  
49   criminal justice agencies as defined in section 167. The commissioner may promulgate rules and  
50   regulations for the control, installation, and operation of the public safety information system  
51   accessed and utilized by criminal justice agencies. The commissioner or his designee may hear  
52   and investigate complaints pertaining to misuse of the public safety information system and to  
53   issue sanctions and penalties for misuse. The commissioner may refer complaints for further

review to the criminal record review board or any state or federal agency or prosecuting authority.

The commissioner, upon the advice of the board, may promulgate regulations regarding the collection, storage, access, dissemination, content, organization and use of criminal offender record information by non-criminal justice agencies.

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.

References in any general or special law to the criminal history systems board or its executive director shall be deemed to refer to the Massachusetts department of criminal justice information services or its commissioner.

SECTION 5A. References in any general or special law to the criminal history systems board or the executive director thereof, except for the references in sections 171, 172, 172A, 172C, 172E, 172G, 172H, 172I, 172J, 173, 175, 176 and 178A of chapter 6 and in section 38R of chapter 71, shall be deemed to refer to the Massachusetts department of criminal justice information services or its commissioner.

SECTION 6. Section 168 of said chapter 6, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

76           There shall be a criminal history systems board, hereinafter called the board, consisting  
77 of the following persons: the secretary of public safety and security, who shall serve as chairman,  
78 the secretary of labor and workforce development, the attorney general, the chairperson of the  
79 Massachusetts sentencing commission, the chief counsel for the committee for public counsel  
80 services, the chairman of the parole board, the commissioner of the department of correction, the  
81 commissioner of probation and commissioner of the department of youth services and the  
82 colonel of state police, or their designees, all of whom shall serve ex officio, and 10 persons to  
83 be appointed by the governor for a term of 3 years, 1 of whom shall represent the Massachusetts  
84 District Attorneys Association, 1 of whom shall represent the Massachusetts Sheriffs  
85 Association, and 1 of whom shall represent the Massachusetts Chiefs of Police Association, 1 of  
86 whom shall represent private users of criminal offender record information, 1 of whom shall be a  
87 victim of crime, 1 of whom shall be a provider of victim services, 2 of whom shall have  
88 experience in the areas of workforce development, ex-offender rehabilitation, or economic  
89 development, and 2 of whom shall be persons who have experience in issues relating to personal  
90 privacy. Upon the expiration of the term of any appointive member, his successor shall be  
91 appointed in a like manner for a term of 3 years.

92           SECTION 7. Said section 168 of said chapter 6, as so appearing, is hereby further  
93 amended by striking out, in line 50, the word “hundred” and inserting in place thereof the  
94 following word:- thousand.

95           SECTION 8. Said section 168 of said chapter 6, as so appearing, is hereby further  
96 amended by striking out, in line 50, the word “willful” and inserting in place thereof the  
97 following word:- knowing.

SECTION 9. Said section 168 of said chapter 6, as so appearing, is hereby further amended by inserting after the word “law”, in line 51, the following words:- provided, however, that the board shall not issue any orders, sanctions or fines against a law enforcement officer who, in good faith, obtains or seeks to obtain or communicates or seeks to communicate criminal offender record information in the furtherance of his or her official duties.

SECTION 10. Said section 168 of said chapter 6, as so appearing, is hereby amended by striking out the fourth and sixth paragraphs.

SECTION 11. Said chapter 6, as so appearing, is hereby further amended by striking out section 168 and inserting in place thereof the following section:-

Section 168. There shall be a criminal record review board within the Massachusetts department of criminal justice information services, consisting of the following persons: the secretary of public safety and security, who shall serve as chairperson, the attorney general, the secretary of labor and workforce development, the chairperson of the Massachusetts sentencing commission, the chief counsel for the committee for public counsel services, the chairperson of the parole board, the commissioner of the department of correction, the commissioner of probation, the commissioner of the department of youth services, the colonel of state police and the presidents of the Massachusetts District Attorneys Association, the Massachusetts Sheriffs’ Association and the Massachusetts Chiefs of Police Association, or their designees, all of whom shall serve ex officio, and 5 persons to be appointed by the governor, 1 of whom shall represent private users of criminal offender record information, 1 of whom shall be a victim of crime, 1 of whom shall have experience in the areas of workforce development or ex-offender rehabilitation and 2 of whom shall be persons who have experience in issues relating to personal privacy. Each

appointed member shall serve for a term of 3 years or until a successor is appointed and qualified, whichever is longer.

The chairperson shall hold regular meetings, 1 of which shall be an annual meeting and shall notify all board members of the time and place of all meetings. Special meetings may be called at any time by a majority of the board members and shall be called by the chairman upon written application of 9 or more members. Members of the board shall receive no compensation, but shall receive their expenses actually and necessarily incurred in the discharge of their duties.

The board may hear complaints and investigate any incidents alleging that an individual or agency that has requested or received criminal offender record information has failed to provide the subject with the criminal offender record information in his possession prior to questioning the individual about his criminal history in connection with a decision regarding employment, volunteer opportunities, housing or professional licensing or in connection with an adverse decision on such an application on the basis of the criminal offender record information. The board shall also have the authority to hear complaints and investigate any incidents alleging any other violation of sections 168 through 178A of this chapter or board rules and regulations. The board may charge and collect a fee as a condition for filing a complaint, which fee may be waived upon a finding of indigency. Any complaint filed with the board shall be supported by a written declaration by the complainant that it is made under the penalties of perjury. Any answer filed by a responding party shall be signed under the penalties of perjury by an individual with personal knowledge of its contents. In conducting investigations or hearings the board or department staff designated by the board shall have the power to summons witnesses, compel their attendance and testimony, require the production of books, records and documents, administer oaths and have access to all criminal offender record information. The chairperson of

the board may appoint a member, panel of 3 board members or a hearing officer to conduct hearings, according to the standard rules of adjudicatory procedure or other rules which the department may promulgate, upon advice of the board. Following review of a complaint by a member, panel or hearing officer, the board, by a vote of two-thirds of the members present and voting, shall issue a ruling as to the findings of the board. In accordance with its findings the board may issue orders and sanctions enforcing its rules and regulations and the General Laws, including but not limited to a remand for additional fact finding, the imposition of civil fines payable to the commonwealth not to exceed \$5,000 for each violation, conditions on continued access to criminal offender record information or revocation of access; provided, however, that the board shall not issue any orders, sanctions or fines against a law enforcement officer who, in good faith, obtains or seeks to obtain, or communicates or seeks to communicate criminal offender record information in the furtherance of the officer's official duties. The board may at any time refer a complaint for criminal prosecution under section 178 of this chapter.

The board shall make an annual report of the volume and disposition of complaints without identifying data on any complainant or other information that would include criminal offender record information relative to any person reviewed by the board to the governor and file a copy thereof with the state secretary, the attorney general, the clerk of the house of representatives and the clerk of the senate. The annual report shall also be available to the public upon request.

SECTION 12. Section 171 of said chapter 6, as so appearing, is hereby amended by striking out, in lines 3 to 7, inclusive, the words "(b) assuring the prompt and complete purging of criminal offender record information, insofar as such purging is required by any statute or administrative regulation, by the order of any court of competent jurisdiction, or to correct any



errors shown to exist in such information; and (c) ” and inserting in place thereof the following:-  
“ ;and (b)”

SECTION 13. Said section 171 of said chapter 6, as so appearing, is hereby further amended by striking out, in lines 35-48, the words “Any individual aggrieved by an agency’s decision denying access to evaluative information may appeal the denial in writing within thirty days thereafter to the board or to a three member panel thereof, as the board may determine, and the board or such panel or any court under section one hundred and seventy-seven shall have access to any certificate. The adoption of such regulations by each criminal justice agency shall be subject to the approval of the board, and shall be promulgated within time limits set by the board. If any criminal justice agency holding evaluative information fails to promulgate such regulations, then the board shall promulgate such regulations with respect to that criminal justice agency. Evaluative information shall be subject to the provisions of section one hundred and seventy-two and section one hundred and seventy-eight, as if such information was criminal offender record information.”

SECTION 14. Said chapter 6, as so appearing, is hereby further amended by inserting after section 171 the following section:-

Section 171A. In connection with any decision regarding employment, volunteer opportunities, housing or professional licensing, a person in possession of an applicant’s criminal offender record information shall provide the applicant with the criminal history record in the person’s possession, whether obtained from the department or any other source prior to questioning the applicant about his criminal history. If the person makes a decision adverse to the applicant on the basis of his criminal history, the person shall also provide the applicant with the criminal history record in the person’s possession, whether obtained from the department or any other source; provided, however, that

189 if the person has provided the applicant with a copy of his criminal offender record information prior to  
190 questioning the person is not required to provide the information a second time in connection with an  
191 adverse decision based on this information. Failure to provide such criminal history information to  
192 the individual in accordance with this section may subject the offending person to investigation,  
193 hearing and sanctions by the board. Nothing in this section shall be construed to prohibit a  
194 person from making an adverse decision on the basis of an individual's criminal history or to  
195 provide or permit a claim of an unlawful practice under chapter 151B or an independent cause of  
196 action in a court of civil jurisdiction for a claim arising out of an adverse decision based on  
197 criminal history except as otherwise provided under chapter 151B.

198 A person who annually conducts 5 or more criminal background investigations, whether  
199 criminal offender record information is obtained from the department or any other source, shall  
200 maintain a written criminal offender record information policy providing that, in addition to any  
201 obligations required by the commissioner by regulation, it will: (i) notify the individual of the  
202 potential adverse decision based on the criminal offender record information; (ii) provide a copy  
203 of the criminal offender record information and the policy to the individual; and (iii) provide  
204 information concerning the process for correcting a criminal record.

205 SECTION 15. Section 172 of said chapter 6, as so appearing, is hereby amended by  
206 inserting after the word "privacy", in lines 14 and 40, the following words, in each instance:-  
207 and the importance and value of successful reintegration of ex-offenders.

208 SECTION 16. Said chapter 6, as so appearing, is hereby further amended by striking out  
209 section 172 and inserting in its place thereof the following section:-

Section 172. (a) The department shall maintain criminal offender record information in a database, which shall exist in an electronic format and be accessible via the world wide web.

Except as provided otherwise in this chapter, access to the database shall be limited as follows:

(1) Criminal justice agencies may obtain all criminal offender record information, including sealed records, for the actual performance of their criminal justice duties. Licensing authorities, as defined in section 121 of chapter 140, may obtain all criminal offender record information, including sealed records, for the purpose of firearms licensing in accordance with sections 121 to 131P, inclusive, of chapter 140. The criminal record review board may obtain all criminal offender record information, including sealed records, for the actual performance of its duties.

(2) Requestors authorized or required by statute, regulation or accreditation requirement to obtain criminal offender record information other than that available under subsection (a)(3) may obtain such information to the extent and for the purposes authorized by said statute, regulation or accreditation requirement.

(3) Requestors and their agents may obtain criminal offender record information for any of the following purposes: (a) to evaluate current and prospective employees including full-time, part-time, contract, internship employees or volunteers; (b) to evaluate applicants for rental or lease of housing; (c) to evaluate volunteers for services; and (d) to evaluate applicants for professional licensure issued by a state or municipal entity. Criminal offender record information made available under this section shall be limited to the following: (i) felony convictions for 10 years following their disposition, including termination of any period of incarceration or custody as defined in section 1 of chapter 125, (ii) misdemeanor convictions for 5 years following their disposition, including termination any period of incarceration or custody

as defined in section 1 of chapter 125, and (iii) pending criminal charges, which shall include cases that have been continued without a finding until such time as the case is dismissed pursuant to section 18 of chapter 278 ; provided, however, that prior misdemeanor and felony conviction records shall be available for the entire period that the subject's last available conviction record is available under this section 172; and provided further that a violation of section 7 of chapter 209A shall be treated as a felony for purposes of this section.

(4) Any member of the general public may upon written request to the department and in accordance with regulations established by the department obtain the following criminal offender record information: (i) convictions for any felony punishable by a term of imprisonment of 5 years or more; (ii) information concerning an individual who has been convicted of any crime and sentenced to any term of imprisonment, and at the time of the request: is serving a sentence of probation or incarceration, or is under the custody of the parole board; (iii) felony convictions for 2 years following their disposition, including any period of incarceration or custody as defined in section 1 of chapter 125; and (iv) misdemeanor convictions for 1 year following their disposition, including any period of incarceration or custody as defined in section 1 of chapter 125.

(5) Subjects who seek to obtain their own criminal offender record information, or an advocate or agent designated by the subject, may obtain all criminal offender record information pertaining to the subject under section 175 of this chapter.

(6) The commissioner may provide access to criminal offender record information to persons other than those entitled to obtain access under subsections (1) through (5) above if the commissioner finds that such dissemination to such requestor serves the public interest. Upon such a finding, the commissioner shall also determine the extent of access to criminal offender record information necessary to sustain the public interest. The commissioner shall make an

annual report to the governor and file a copy thereof with the state secretary, the attorney general, the clerk of the house of representatives and the clerk of the senate documenting access provided under this subsection. The annual report shall be available to the public upon request.

(7) The department shall configure the database to allow for the exchange, dissemination, distribution and direct connection of the criminal record information system to criminal record information systems in other states and relevant federal agencies including the Federal Bureau of Investigation and Immigration and Customs Enforcement that utilize fingerprint or iris scanning and similar databases.

(b) Notwithstanding the foregoing, convictions for murder, voluntary manslaughter, involuntary manslaughter, and sex offenses as defined in section 178C of chapter 6 that are punishable by a term of incarceration in state prison will remain in the database permanently and shall be available to all requestors listed in subsections (a)(1) through (a)(3) unless sealed under section 100A of chapter 276.

(c) The department shall specify the information that requestors must provide to query the database, including, but not limited to, the subject's name, date of birth and the last four digits of the subject's social security number; provided, however, that a member of the public accessing information under subsection (a)(4) shall not be required to provide the last four digits of the subject's social security number. To obtain criminal offender record information concerning a subject under subsection (a)(2) or (a)(3), the requestor must certify under the penalties of perjury that the requestor is an authorized designee of a qualifying entity, that the request is for a purpose authorized under subsection (a)(2) or (a)(3), and that the subject has signed an acknowledgement form authorizing the requestor to obtain the subject's criminal offender record information. The requestor must also certify that he has verified the identity of

the subject by reviewing a form of government-issued identification. Each requestor shall maintain acknowledgement forms for a period of one year from the date the request is submitted. Such forms shall be subject to audit by the department. The department may establish rules or regulations imposing other requirements or affirmative obligations upon requestors as a condition of obtaining access to the database.

In connection with any decision regarding employment, volunteer opportunities, housing or professional licensing, a person in possession of an applicant's criminal offender record information shall provide the applicant with the criminal history record in the person's possession, whether obtained from the department or any other source, (a) prior to questioning the applicant about his criminal history and (b) if the person makes a decision adverse to the applicant on the basis of his criminal history; provided, however, that if the person has provided the applicant with a copy of his criminal offender record information prior to questioning the person is not required to provide the information a second time in connection with an adverse decision based on this information. Failure to provide such criminal history information to the individual in accordance with this section may subject the offending person to investigation, hearing and sanctions by the board.

Except as authorized by this section, it shall be unlawful to request or require a person to provide a copy of his criminal offender record information. Violation of this subsection is punishable by the penalties set forth in section 178.

No employer or person relying on volunteers shall be liable for negligent hiring practices by reason of relying solely on criminal offender record information received from the department and not performing additional criminal history background checks, unless required to do so by law, provided that the employer made an employment decision within 90 days of obtaining the criminal offender record information and maintained and followed policies and

procedures for verification of the subject's identifying information consistent with the requirements set forth in this section and in the department's regulations.

No employer shall be liable for discriminatory employment practices for the failure to hire a person on the basis of criminal offender record information that contains erroneous information requested and received from the department, if the employer would not have been liable if the information had been accurate, provided that the employer made an employment decision within 90 days of obtaining the criminal offender record information and maintained and followed policies and procedures for verification of the individual's information consistent with the requirements set forth in this section and the department's regulations.

Neither the board nor the department shall be liable in any civil or criminal action by reason of any criminal offender record information or self-audit log that is disseminated by the board, including any information that is false, inaccurate or incorrect because it was erroneously entered by the court or the office of the commissioner of probation.

(d) Requestors shall not disseminate criminal offender record information except (1) upon request by a subject, a requestor shall provide criminal offender record information received from the department to the subject to whom it pertains; (2) requestors may share criminal offender record information with individuals within the requesting entity that have a need to know the contents of the criminal offender record information to serve the purpose for which the information was obtained; and (3) upon request, requestors shall share criminal offender record information with the government entities charged with overseeing, supervising, or regulating them. Requestors shall maintain a secondary dissemination log for a period of one year following the dissemination of a subject's criminal offender record information. The log shall include the following information: (i) name of subject; (ii) date of birth of the subject; (iii)

date of the dissemination; (iv) name of person to whom it was disseminated; and (v) the purpose for the dissemination. The secondary dissemination log shall be subject to audit by the department.

Unless otherwise provided by law or court order, no requestor shall maintain a copy, electronic or otherwise, of requested criminal offender record information obtained from the department for more than 7 years from the last date of employment, volunteer service or residency or from the date of the final decision of the requestor regarding the subject.

(e) The department shall maintain a log of all queries that shall indicate the name of the requestor, the name of the subject, the date of the query, and the certified purpose of the query. A self-audit may be requested for no fee once every 90 days. The commissioner may impose a fee in an amount as determined by the secretary of public safety and security, for self-audit requests made more than once every 90 days. Upon request, the commissioner may transmit the self-audit electronically. Further, if funding is available and technology reasonably allows, the department shall establish a mechanism that will notify a subject, or an advocate or agent designated by the subject, by electronic mail or other communication mechanism whenever a query is made regarding the subject. The self-audit log shall not be considered a public record.

(f) Notwithstanding the provisions of this section, the motor vehicle insurance merit rating board may disseminate information concerning convictions of automobile law violations as defined in section 1 of chapter 90C, or information concerning a charge of operating a motor vehicle while under the influence of intoxicating liquor that results in assignment to a driver alcohol program as described in section 24D of chapter 90, directly or indirectly, to an insurance company doing motor vehicle insurance business within the commonwealth, or to such insurance



company's agents, independent contractors or policyholders to be used exclusively for motor vehicle insurance purposes.

(g) Notwithstanding any other provisions of this section, information indicating custody status and placement within the correction system shall be available to any person upon request; provided, however that no information shall be disclosed that identifies family members, friends, medical or psychological history, or any other personal information unless such information is directly relevant to such release or custody placement decision, and no information shall be provided if its release would violate any other provisions of state or federal law.

(h) The parole board, subject to sections 130 and 154 of chapter 127, the department of correction, a county correctional authority or a probation officer with the approval of a justice of the appropriate division of the trial court may, in its discretion, make available a summary, which may include references to criminal offender record information or evaluative information, concerning a decision to release an individual on a permanent or temporary basis, to deny such release, or to change the individual's custody status.

(i) Notwithstanding any other provision of this section or any other general or special law to the contrary, members of the public who are in fear of an offender may obtain from the department advance notification of the temporary or permanent release of an offender from custody, including but not limited to expiration of a sentence, furlough, parole, work release or educational release. An individual seeking access to advance notification shall verify by a written declaration under the penalties of perjury that the individual is in fear of the offender and that advance notification is warranted for physical safety reasons.

(j) Any individual or agency, public or private, that receives or obtains criminal offender record information from any source in violation of sections 168 through 175 of this chapter, whether directly or through any intermediary, shall not collect, store, disseminate, or use such criminal offender record information in any manner or for any purpose.

(k) Notwithstanding this section or chapter 66A, the following shall be public records: (1) police daily logs, arrest registers, or other similar records compiled chronologically; (2) chronologically maintained court records of public judicial proceedings; (3) published records of public court or administrative proceedings, and of public judicial administrative or legislative proceedings; and (4) decisions of the parole board as provided in section 130 of chapter 127.

(l) The commissioner, upon the advice of the board, may promulgate rules and regulations to carry out the provisions of this section.

SECTION 17. Said chapter 6, as so appearing, is hereby further amended by striking out section 172A and inserting in place thereof the following section:-

Section 172A. The commissioner shall assess a fee for each request for criminal offender record information or self-audit, according to a fee structure established by the secretary of public safety and security. No fee shall be assessed for a request made by a victim of crime or a witness or a family member of a homicide victim, all as defined in section 1 of chapter 258B, or for a request made by any local, state or federal government entity. The commissioner shall waive the fee or a portion of the fee from such other persons as provided in the department's rules and regulations. The department is authorized to enter into contracts and agreements for reduced or bulk fees for requestors who make extensive use of the database.

390           The department shall be authorized, subject to appropriation, to retain a portion of the  
391 revenues received by the commonwealth under this section for the following purposes: to assist  
392 ex-offenders in obtaining and maintaining employment, including but not limited to, workforce  
393 development training and other applicable training programs, training and auditing requestors described  
394 in subsection (a) of section 172, providing education and assistance regarding the correction of criminal  
395 records, including but not limited to, training judges, providing the necessary information to employers  
396 and other applicable person in possession of an applicant's criminal offender record information, and to  
397 operate and maintain the public safety information system and the criminal records review board.

398           SECTION 17A. Said chapter 6, as so appearing, is hereby further amended by inserting after  
399 section 172B the following section:-

400           Section 172B 1/2. Municipalities may, by local ordinance, require applicants for licenses in  
401 specified occupations to submit a full set of fingerprints for the purpose of conducting a state and national  
402 criminal history records check pursuant to sections 168 and 172 and 28 U.S.C. §534. Fingerprint  
403 submissions may be submitted by the licensing authority to the identification unit within the department  
404 of state police through the criminal history systems board for a state criminal records check and to the  
405 Federal Bureau of Investigation for a national criminal records check.

406           Municipalities may, by local ordinance, establish the appropriate fee charged to applicants for  
407 administering a fingerprinting system. For the purposes of section 2LLL of chapter 29, \$30 of the fee  
408 shall be deposited into the Firearms Fingerprint Identity Verification Trust Fund and the remainder of the  
409 fee may be retained by the licensing authority for costs associated with the administration of the system

410           SECTION 18. Said chapter 6 is hereby further amended by striking out section 172E, as  
411 so appearing, and inserting in place thereof the following section:-

Section 172E. Notwithstanding section 172 to the contrary, criminal offender record information shall be available to a long term care facility, as defined in section 72W of chapter 111, an assisted living residence as defined in section 1 of chapter 19D, and to any continuing care facility as defined in section of chapter 40D, for the purpose of evaluating applicants under final consideration as, or an individual currently working as, an employee, a volunteer or a provider of care, treatment, education, training, transportation, delivery of meals, instruction, counseling, supervision, recreation or other services for an elderly or disabled person or for the purpose of evaluating applicants under final consideration for, or an individual currently working as, m who will have any direct or indirect contact with such elderly or disabled persons or access to such persons' personal information. Any such long-term care facility, assisted living residence or continuing care facility shall obtain all available criminal offender record information from the department on such applicant or current staff member. A long-term care facility, assisted living residence or continuing care facility which obtains information under this section shall prohibit the dissemination of such information of such information for any purpose other than to further the protection of the elderly or the disabled, including, but not limited to, dissemination among and between long term care facility, assisted living residence or continuing care facility.

A long-term care facility, assisted living residence or continuing care facility may employ an individual for a position that involves the provision of direct personal care or treatment to residents of such facility on a conditional basis prior to receiving the results of such individual's criminal offender record check from the criminal history systems board. No long-term care facility, assisted living residence or continuing care facility shall be liable for civil damages to any individual so conditionally employed and subsequently discharged by reason of information

received as a result of a criminal offender record information check completed pursuant to this section.

The criminal history systems board may waive or reduce the fee assessable pursuant to section 172A for criminal offender record information made available pursuant to this section.

Notwithstanding any general or special law to the contrary, the division of medical assistance shall, subject to appropriation, reimburse long-term care facilities, assisted living residences or continuing care facilities for the portion of the costs associated with obtaining criminal offender record information on employees pursuant to this section.

SECTION 19. The second paragraph of said section 172E of said chapter 6, as appearing in section 18, is hereby amended by striking out the words ‘for a position that involves the provision of direct personal care or treatment to residents of such facility’.

SECTION 20. Section 172H of said chapter 6, as so appearing, is hereby amended by striking out, in line 4, the words “that accepts volunteers,”.

SECTION 21. Said section 172H of said chapter 6, as so appearing, is hereby further amended by striking out, in line 6, the words “a volunteer” and inserting in place thereof the following words:- an employee, volunteer, vendor or contractor.

SECTION 22. Said chapter 6, as so appearing, is hereby amended by inserting after section 172J the following 2 sections:-

Section 172K. Notwithstanding section 172 or any other general or special law to the contrary, housing authorities operating pursuant to chapter 121B may obtain from the department conviction and pending criminal offender record information for the sole purpose of evaluating

456 applications for housing owned by such housing authority, in order to further the protection and  
457 well-being of tenants of such housing authorities.

458               Section 172L. Notwithstanding section 172 or any other general or special law to  
459 the contrary, the Massachusetts department of telecommunications and energy may obtain from  
460 the department all available criminal offender record information for the purpose of screening  
461 applicants for motor bus driver certificates and applicants who regularly transport school age  
462 children or students under chapter 766 in the course of their job duties. The Massachusetts  
463 department of telecommunications and energy shall not disseminate such information for any  
464 purpose other than to further the protection of children. SECTION 23. Section 173 of said  
465 chapter 6, as so appearing, is hereby amended by striking out, in line 1, the words “The board”,  
466 and inserting in place thereof the following words:- The commissioner may approve research  
467 programs to obtain criminal offender record information, provided that research programs shall  
468 not publish any information that either identifies or tends to identify the subject of the criminal  
469 offender record information, and the commissioner

470               SECTION 24. Said section 173 of said chapter 6, as so appearing, is hereby further  
471 amended by striking out, in lines 7, 9 and 10 the word “board”, and inserting in place thereof, in  
472 each instance, the following word:- commissioner.

473               SECTION 25. Said chapter 6, as so appearing, is hereby further amended by striking out  
474 section 175 and inserting in place thereof the following section:-

475               Section 175. A subject shall have the right to inspect, and if practicable, obtain a copy of  
476 all criminal offender record information that refers to the subject. The commissioner shall  
477 publish and furnish, upon request, guidelines for individuals on how to correct inaccurate or

incomplete information. Subject to appropriation, the department shall provide assistance to individuals that have requested assistance to correct inaccurate or incomplete criminal offender record information. Such assistance shall include but not be limited to cooperation with appropriate entities to correct, modify or appropriately supplement criminal offender record information that has been determined to be inaccurate or incomplete. If criminal offender record information is corrected by the office of the commissioner of probation or the courts, any corrections made by such commissioner or court shall be transmitted forthwith to the department and the department's database shall reflect the corrected criminal offender record information.

Requestors shall prescribe reasonable hours and places for subjects to inspect their criminal offender record information under subsection (d)(1) of section 172 and shall impose such additional restrictions as are reasonably necessary both to ensure the record's security and to verify the identities of those who seek to inspect them.

SECTION 26. Said chapter 6 is hereby further amended by striking out section 178, as so appearing, and inserting in place thereof the following 2 sections:-

Section 178. Any person who knowingly requests, obtains or attempts to obtain criminal offender record information or a self-audit from the department under false pretenses, knowingly communicates or attempts to communicate criminal offender record information to any person except in accordance with the provisions of sections 168 through 175, or knowingly falsifies criminal offender record information, or any records relating thereto, or who requests or requires a person to provide a copy of his or her criminal offender record information except as authorized under section 172, shall for each offense be imprisoned in a jail or house of correction for not more than one year or fined not more than \$5,000 or both, and in the case of a person that is not a natural person, the amount of the fine may be not more than \$50,000 for each violation.

Any person who knowingly requests, obtains or attempts to obtain juvenile delinquency records from the department under false pretenses, knowingly communicates or seeks to communicate juvenile criminal records to any person except in accordance with the provisions of sections 168 through 175, or knowingly falsifies juvenile criminal records, shall for each offense be imprisoned in a jail or house of correction for not more than 1 year or fined not more than \$7,500, or both, and in the case of a person that is not a natural person entity, the amount of the fine may be not more than \$75,000 for each violation.

This section shall not apply to, and no prosecution shall be brought against, a law enforcement officer who, in good faith, obtains or seeks to obtain or communicates or seeks to communicate criminal offender record information in the furtherance of his or her official duties.

Section 178 ½. Whoever uses criminal offender record information to commit a crime against the subject of the criminal offender record information or to engage in harassment of the subject, shall be punished by a fine of not more than \$5,000 or imprisoned in a jail or house of correction for not more than 1 year, or both. For purposes of this section, "harassment" shall mean willfully and maliciously engaging in conduct or acts directed at a specific person, which seriously alarms that person and would cause a reasonable person to suffer emotional distress.

SECTION 27. Said chapter 6 is hereby further amended by striking out section 178A, as so appearing, and inserting in place thereof the following section:-

Section 178A. A victim of crime, witness, or family member of a homicide victim, all as defined by section 1 of chapter 258B, may obtain all available criminal offender record information of the offender. Criminal justice agencies may also disclose to such persons such



522 additional information, including but not limited to evaluative information, as such agencies  
523 determine is reasonably necessary for the security and well being of such persons.

524 SECTION 27A. Section 178F of chapter 6, as so appearing, is hereby amended by striking out,  
525 in lines 14 to 15, the words “A sex offender who lists a homeless shelter as his residence shall verify  
526 registration data every 45 days” and inserting in place thereof the following words: - A homeless sex  
527 offender shall verify registration data every 30 days.

528 SECTION 27B. Section 178F½ of chapter 6, as so appearing, is hereby amended by striking out,  
529 in lines 14 to 15, the words “Such sex offender who lists a homeless shelter as his residence shall appear  
530 in person at such local police department every 45 days” and inserting in place thereof the following  
531 words: - A homeless sex offender shall appear in person at such local police department every 30 days.

532 SECTION 27C. Chapter 6, as so appearing, is hereby amended by inserting, after section 178F½,  
533 the following section:-

534 Section 178F¾. A homeless sex offender shall wear a global positioning system device, or any  
535 comparable device, administered by the commissioner of probation.

536 SECTION 28. Section 178K of said chapter 6, as so appearing, is hereby amended by  
537 striking out, in lines 1 to 2, the words “in the criminal history systems board, but not subject to its  
538 jurisdiction”, and inserting in place thereof the following words:- in the executive office of  
539 public safety and security.

540 SECTION 28A. Section 178Q of said chapter 6, as so appearing, is hereby amended by  
541 striking out, in line 2, the figure “75” and inserting in place thereof the following figure:- 100.

542 SECTION 28B. The second paragraph of said section 178Q, as so appearing, is hereby  
543 amended by striking out the first 2 sentences and inserting in place thereof the following sentence:-  
544 The sex offender registry board shall establish a payment plan for an offender who is unable to pay

the registration fee due to hardship on the offender or the family thereof due to limited income,  
employment status or any other relevant factor.

SECTION 29. Chapter 6A of the General Laws, as so appearing, 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 Massachusetts department of criminal justice information services; the  
state 911 department; 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 30. Section 5 of chapter 27 of the General Laws, as so appearing, is hereby  
amended by adding the following sentence:- The parole board shall administer and oversee  
mandatory post-release supervision functions as set forth in section 133D(a) of chapter 127 and  
in chapter 127A.

SECTION 31. Chapter 30A of the General Laws, as so appearing, is hereby amended by  
inserting after section 1C the following section:- Section 1D. The criminal record review board  
shall be subject to sections 1 through 8, inclusive, and shall not otherwise be subject to this  
chapter.

SECTION 32. Section 52 of chapter 93 of the General Laws, as so appearing, is hereby  
amended by inserting after the word “more;”, in line 21, the following word:- or.

SECTION 33. Said section 52 of said chapter 93, as so appearing, is hereby further amended by striking out, in lines 24 to 27, inclusive, the words “; or (3) the employment of any individual at annual salary which equals or which may reasonably be expected to equal twenty thousand dollars or more”.

SECTION 34. Section 32 of chapter 94C of the General Laws, as so appearing, is hereby amended by adding the following subsection:-

(c) Any person serving a mandatory minimum sentence for violating any provision of this section shall be eligible for parole after serving two-thirds of the minimum term of the sentence if the sentence is to a state prison or after serving one-half of the maximum term of the sentence if the sentence is to a house of correction; provided, however, that a condition of such parole may be enhanced supervision; and provided further, that enhanced supervision may include, but not be limited to, the wearing of a global positioning satellite tracking device or any comparable device which shall be administered by the board at all times for the length of the parole.

SECTION 35. Section 32A of said chapter 94C, as so appearing, is hereby amended by adding the following subsection:-

(e) Any person serving a mandatory minimum sentence for violating any provision of this section shall be eligible for parole after serving two-thirds of the minimum term of the sentence if the sentence is to a state prison or after serving one-half of the maximum term of the sentence if the sentence is to a house of correction; provided, however, that a condition of such parole may be enhanced supervision; and provided further, that enhanced supervision may include, but not be limited to, the wearing of a global positioning satellite tracking device or any comparable device which shall be administered by the board at all times for the length of the parole.

589           SECTION 36. Section 32B of said chapter 94C, as so appearing, is hereby amended by  
590 adding the following subsection:-

591           (c) Any person serving a mandatory minimum sentence for violating any provision of this  
592 section shall be eligible for parole after serving two-thirds of the minimum term of the sentence  
593 if the sentence is to a state prison or after serving one-half of the maximum term of the sentence  
594 if the sentence is to a house of correction; provided, however, that a condition of such parole  
595 may be enhanced supervision; and provided further, that enhanced supervision may include, but  
596 not be limited to, the wearing of a global positioning satellite tracking device or any comparable  
597 device which shall be administered by the board at all times for the length of the parole.

598           SECTION 37. Section 32E of said chapter 94C, as so appearing, is hereby amended by  
599 adding the following subsection:-

600           (d) Any person serving a mandatory minimum sentence for violating any provision of this section  
601 shall be eligible for parole after serving two-thirds of the minimum term of the sentence if the  
602 sentence is to a state prison or after serving one-half of the maximum term of the sentence if the  
603 sentence is to a house of correction; provided, however, that a condition of such parole may be  
604 enhanced supervision; and provided further, that enhanced supervision may include, but not be limited to,  
605 the wearing of a global positioning satellite tracking device or any comparable device which shall be  
606 administered by the board at all times for the length of the parole.

607           SECTION 38. Section 32F of said chapter 94C, as so appearing, is hereby amended by  
608 adding the following subsection:-

(e) Any person serving a mandatory minimum sentence for violating any provision of this section shall be eligible for parole after serving two-thirds of the minimum term of the sentence if the sentence is to a state prison or after serving one-half of the maximum term of the sentence if the sentence is to a house of correction; provided, however, that a condition of such parole may be enhanced supervision; and provided further, that enhanced supervision may include, but not be limited to, the wearing of a global positioning satellite tracking device or any comparable device which shall be administered by the board at all times for the length of the parole.

SECTION 39. Section 32H of said chapter 94C, as so appearing, 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 the sections shall not, until he shall have served the mandatory minimum term of imprisonment established in the sections, be eligible for probation, 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, on the recommendation of the warden, superintendent or other person in charge of the correctional institution, or a sheriff, on the recommendation of the administrator of a county correctional institution, may grant to the offender a temporary release, subject to the rules and regulations of the institution and under the direction, control and supervision of the officers thereof, for the following purposes: (1) to attend the funeral of a relative, to visit a critically ill relative, to obtain emergency medical or psychiatric services unavailable at said institution; (2) to participate in education, training, or employment programs established under section 48 of chapter 127; (3) to engage in employment pursuant to a work release program in accordance with the provisions of sections 49, 49A, 86F and 86G of chapter 127; or (4) to participate in a program to provide services under section 49B or 49C of chapter 127. 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 by indictment under section 54 of chapter 119.

SECTION 40. Section 32J of said chapter 94C, as so appearing, is hereby amended by adding the following paragraph:-

Any person serving a mandatory minimum sentence for violating any provision of this section shall be eligible for parole after serving two-thirds of the minimum term of the sentence if the sentence is to a state prison or after serving one-half of the maximum term of the sentence if the sentence is to a house of correction; provided, however, that a condition of such parole may be enhanced supervision; and provided further, that enhanced supervision may include, but not be limited to, the wearing of a global positioning satellite tracking device or any comparable device which shall be administered by the board at all times for the length of the parole.

SECTION 40A. The third paragraph of section 54 of chapter 119 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the words, “chapter two hundred and sixty-nine,” the following:- or the person has committed a violation of section 13B of chapter 268.

SECTION 41. Section 14 of chapter 123A of the General Laws, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following two sentences:- The district attorney or the attorney general at the request of the district attorney may petition the court for a trial. In any trial held pursuant to this section, either the person named in the petition or the petitioning party may demand in writing that the case be tried to a jury, and upon such demand the case shall be tried to a jury.

SECTION 42. Section 1 of chapter 125 of the General Laws, as so appearing, is hereby amended by striking out subsections (g) to (p), inclusive, and inserting in place thereof the following subsections:-

655 (g) “custody”, physical or constructive control of an inmate in a state or county  
656 correctional facility;

657 (h) “department”, the department of correction;

658 (i) “gainful employment”, employment within or without any correctional facility  
659 including but not limited to labor for the operation and maintenance of any correctional facility;

660 (j) “inmate”, a committed offender or such other person as is placed in custody in a  
661 correctional facility in accordance with law;

662 (k) “institution”, facility;

663 (l) “penal institution”, correctional facility;

664 (m) “prison”, correctional facility;

665 (n) “prisoner”, a committed offender and such other person as is placed in custody in a  
666 correctional facility in accordance with law;

667 (o) “state correctional facility”, any correctional facility owned, operated, administered or  
668 subject to the control of the department of correction, including but not limited to: Massachusetts  
669 Correctional Institution, Cedar Junction; Massachusetts Correctional Institution, Norfolk;  
670 Massachusetts Correctional Institution, Concord; Massachusetts Correctional Institution,  
671 Framingham; Massachusetts Correctional Institution, Bridgewater; Massachusetts Correctional  
672 Institution, Plymouth; Massachusetts Correctional Institution, Warwick; Massachusetts  
673 Correctional Institution, Monroe;

674 (p) “state prison”, Massachusetts Correctional Institution, Cedar Junction;

675 (q) “superintendent”, the chief administrative officer of a state correctional facility.

676 SECTION 43. Section 16 of chapter 126 of the General Laws, as so appearing, is hereby  
677 amended by striking out the first sentence and inserting in place thereof the following sentence:-

The sheriff shall have custody and control of the jails in his county, and except in Suffolk county, of the houses of correction therein, and shall have custody and physical or constructive control of all prisoners committed thereto, and shall keep the same himself or by his deputy as jailer, superintendent or keeper, and shall be responsible for them.

SECTION 44. Chapter 127 of the General Laws, as so appearing, is hereby amended by inserting after section 20A the following 2 sections:-

Section 20B. The sheriff of any county may establish a day reporting program under which persons sentenced to the house of correction, except a sex offender as defined in section 178C of chapter 6, may be classified to constructive confinement. Such program shall include electronic monitoring of prisoners classified to the day reporting program. Placement of an individual in a day reporting program shall require victim notification as required under section 3(t) of Chapter 258B. Any inmate sentenced to such program shall agree in writing to conditions set by the sheriff, who shall retain the right to revoke or alter such classification at will.

No prisoner shall be classified to a day reporting program under this section until he has served the longest minimum mandatory sentence for any offense for which the prisoner is serving within the house of correction to which he is committed.

A prisoner classified to the day reporting program as set forth in this section and who abides by the conditions of said classification shall be credited time toward the serving of his sentence in the same manner as though he had served such time within the facility.

Section 20C. The sheriff of any county and in the case of women who are committed as pretrial detainees to the Massachusetts Correctional Institution at Framingham, the commissioner of correction, subject to rules and regulations established in accordance with the provisions of this section, may permit a detainee who is committed to a jail awaiting disposition of any



701 criminal matter, except those being held for offenses listed in this section, to be classified to a  
702 pretrial diversion program operated by the sheriff's office in the county where the court that  
703 committed the detainee is sitting; provided further, that the sheriff's office in the county where  
704 the court that committed the detainee is sitting may prescribe a program administrative fee to be  
705 paid by each sentenced inmate or pre-trial detainee participating in the program that shall be  
706 determined according to the person's ability to pay, finances, household income, number of  
707 dependents and medical status. The inability to pay all or a portion of the program fees shall not  
708 preclude participation in the program and eligibility shall not be enhanced by reason of ability to  
709 pay. For those deemed unable to pay, the sheriff's office shall agree to cover the cost for those  
710 participants at a reduced and agreed upon rate with the electronic monitoring agency or entity..

711         The sheriff may extend the limits of the place of confinement of a detainee for the  
712 purpose of participation in this program and shall establish a classification system to determine  
713 the suitability of detainees who may be potential participants in this program. A person permitted  
714 to be away from the jail due to participation in this program may be accompanied by an  
715 employee of the sheriff's office in the discretion of the sheriff or his designee.

716         For the duration of his participation in the program, the detainee shall be deemed to be in  
717 custody as a pretrial detainee for the purpose of receiving credit pursuant to section 129B of  
718 chapter 127 and section 33A of chapter 299 toward any sentence he may receive, and may be  
719 charged with escape pursuant to section 16 of chapter 268 should he leave the place to which he  
720 is classified to pursuant to his participation in the program without authorization or should they  
721 escape from custody while they are being transported pursuant to their participation in the  
722 program. Additionally for the duration of his participation in this program only, the detainee may  
723 receive additional deductions from any sentence that may be imposed in the case he was

committed on, for participation in work, education, or treatment programs designated by the sheriff pursuant to section 129D of chapter 127.

A detainee shall not be eligible to participate in this program if he is charged with: murder; any offense that carries the possibility of a life sentence; a violation of section 13, 14, 15, 15A, 15B, 16, 17, 18, 18A, 19, 20, 21, 24B, 25, or 26 of chapter 265; section 17, 34 or 35 of chapter 272; or an attempt to commit any crime referred to in these sections; or if he is detained under subsection (3) of section 58A of chapter 276. No sex offender, or sexually dangerous person as defined in section 1 of chapter 123A or any person who is charged with committing a sexual offense as defined in said section 1 of said chapter 123A, or any person who who is charged with violating section 24B of chapter 265. Placement of an individual in such program shall require victim notification as required under subsection (t) of section 3 of chapter 258B.

SECTION 45. Section 21 of said chapter 127, as so appearing, is hereby amended by inserting after the word “correction” in line 3 the following words:- to physical or constructive confinement,.

SECTION 48. The General Laws, as appearing in the 2008 Official Edition, are hereby amended by inserting after chapter 127 the following chapter:-

## CHAPTER 127A

### MANDATORY POST-RELEASE SUPERVISION

Section 1. All sentences of incarceration 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 25 per cent of the maximum term of incarceration imposed at sentencing up to a maximum period of supervision of 2 years, but in no case less than 9 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 or section 178H of chapter 6, being supervised under 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 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 regulations for post-release supervision consistent with applicable provisions of chapters 27 and 127. The regulations shall establish supervision levels based on risk-needs assessments, ranging from minimum parole supervision for low-risk parolees to maximum parole supervision of high-risk parolees, with a focus on reducing the risk posed by high-risk parolees. The regulations shall include the use of graduated and intermediate sanctions as appropriate in response to non-

criminal violations of parole conditions and, in the discretion of the board, for low-level criminal violations. The regulations shall also establish guidelines with specific benchmarks, which if achieved by an individual shall reduce the period of time in which such individual is subject to post-release supervision. Nothing in this section or in the 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 6 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 proceedings for early termination of mandatory post-release supervision, the parole board's considerations shall include, but not be limited to, the amount of time the individual has successfully spent under post-release supervision, efforts and achievements in the areas of employment, housing, education, counseling, substance abuse treatment and required testing programs, and any other circumstances that are relevant to the individual case.

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 and such violation does not otherwise constitute a criminal offense may be placed under increased supervision, subjected to other conditions and intermediate sanctions, or upon a determination that such alternative sanctions are not appropriate, incarcerated as follows: Upon a first violation, the individual may be

incarcerated for a period no greater than 2 months or the maximum remaining period of post-incarceration supervision, whichever is less. Upon a second violation, the prisoner may be incarcerated for a period no greater than 6 months or the maximum remaining period of post-incarceration supervision, whichever is less. Upon a third or subsequent violation the prisoner, may be incarcerated for a period no greater than 12 months or the maximum remaining period of post-incarceration supervision, whichever is less. In all cases where the individual is not being incarcerated for a violation, the individual shall be subject to the graduated sanctions policy 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 may 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. Mandatory post-release supervision shall be considered stayed under the following circumstances: (a) the individual is immediately committed to the custody of any other state or of the United States to serve a period of incarceration less than the post-release supervision period required under this chapter; (b) the individual is immediately committed to

the custody of the United States immigration authorities; or (c) the individual is committed pursuant to an order of custody under chapter 123A.

Section 6. Mandatory post-release supervision shall be considered completed under the following circumstances: (a) except as provided in sections 3 and 4, the individual serves a post-release supervision period of 25 per cent of the maximum term of incarceration imposed at sentencing up to a maximum period of supervision of 2 years, but in no case less than 9 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 or of the United States 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 physically removed from the United States by immigration authorities for the purpose of permanent deportation.

SECTION 48A. Section 130 of said chapter 127, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following 3 sentences:— No prisoner shall be granted a parole permit merely as a reward for good conduct but only if the parole board is of the opinion that there is a reasonable probability that, if such prisoner is released, in light of appropriate conditions and community supervision, he will live and remain at liberty without violating the law and that his release is not incompatible with the welfare of society. In making this determination, the board shall consider whether, during the period of incarceration, the prisoner has participated in available work opportunities and education or treatment programs, and demonstrated good behavior. The board shall also consider whether risk reduction programs made available through collaboration with criminal justice agencies would minimize the probability of the prisoner

re-offending once released. In making this determination, the board shall not consider the availability of post-release supervision as authorized under chapter 127A

SECTION 49. Section 4 of chapter 151B of the General Laws, as so appearing, is hereby amended by inserting, after paragraph (9), the following paragraph:-

(9 ½) For an employer to request on a written application form criminal offender record information; provided, however, that if an applicant is applying for a position for which federal or state laws or regulations create mandatory or presumptive disqualification based on certain criminal offenses the employer may inquire about such offenses on the applicant's application form.

SECTION 50. Section 21 of chapter 233 of the General Laws, as so appearing, is hereby amended by inserting, at the end, the following paragraph:-

Upon order of the court, a party may obtain a witness's criminal offender record information from the department of criminal justice information services.

SECTION 50A. Chapter 265 of the General Laws is hereby amended by striking out section 13I, as appearing in the 2008 Official Edition, and inserting in place thereof the following section:-

Section 13I. Whoever commits an assault or an assault and battery on an emergency medical technician, an ambulance operator, an ambulance attendant or a health care provider as defined in section 1 of chapter 111, while the technician, operator, attendant or provider is treating or transporting a person in the line of duty, shall be punished by imprisonment in the house of correction for not less than 90 days nor more than 2 1/2 years or by a fine of not less than \$500 nor more than \$5,000, or both.

SECTION 50B. Chapter 265 of the General Laws is hereby amended by adding the following section:-

Section 48. A sex offender, as defined by section 178C of chapter 6, who engages in ice cream truck vending, as defined in section 25 of chapter 270, shall be punished by imprisonment in the house of

correction for not more than 2½ years or by a fine of \$1,000, or by both such fine and imprisonment. A police officer or officer authorized to serve criminal process may arrest, without a warrant, any person who he has probable cause to believe has violated this section.

SECTION 51. Section 16 of chapter 268 of the General Laws, as so appearing, is hereby amended by inserting after the word “branch,” in line 10, the following words:-

“or who, on any other form of constructive confinement, knowingly disables or attempts to disable or defeat electronic monitoring of the prisoner,”.

SECTION 51A. Section 58A of chapter 276 of the General Laws, as so appearing, is hereby amended by striking out subsection (1) and inserting in place thereof the following subsection:-

(1) The commonwealth may move, based on dangerousness, for an order of pretrial detention or release on conditions for a felony offense that has as an element of the offense the use, attempted use or threatened use of physical force against the person of another or any other felony that, by its nature, involves a substantial risk that physical force against the person of another may result, including the crimes of burglary and arson whether or not a person has been placed at risk thereof, or a violation of an order pursuant to section 18, 34B or 34C of chapter 208, section 32 of chapter 209, section 3, 4 or 5 of chapter 209 A or section 15 or 20 of chapter 209C, or arrested and charged with a misdemeanor or felony involving abuse as defined in section 1 of said chapter 209A or while an order of protection issued under said chapter 209A was in effect against such person, an offense for which a mandatory minimum term of 3 years or more is prescribed in chapter 94C, arrested and charged with a violation of section 13B of chapter 268 or a third or subsequent conviction for a violation of section 24 of chapter 90, or arrested and charged with a violation of paragraph (a), (c) or (m) of section 10 of chapter 269;



provided, however, that the commonwealth may not move for an order of detention under this section based on possession of a large capacity feeding device without simultaneous possession of a large capacity weapon; or arrested and charged with a violation of section 10G of said chapter 269.’

SECTION 51B. Chapter 270 of the General Laws is hereby amended by adding the following section:-

Section 25. (a) For the purposes of this section, the following words shall have the following meanings:-

“Ice cream”, any frozen dairy or frozen water-based food product.

“Ice cream truck”, any motor vehicle used for selling, displaying or offering to sell ice cream.

“Ice cream truck vending”, the selling, displaying or offering to sell ice cream or any other prepackaged food product from an ice cream truck.

“Permitting authority”, the chief of police or the board or officer having control of the police in a city or town, or person authorized by them.

(b) No person shall engage in ice cream truck vending unless he shall have been issued a valid permit to do so by the permitting authority within the municipality wherein the permit applicant lives or intends to operate an ice cream truck. Such permit shall be conspicuously displayed and clearly visible on the windshield of any ice cream truck operated or from which ice cream or any other prepackaged food product is sold. Whoever violates this section shall be assessed a fine of \$500. Each day that such person is in operation in violation of this section may be considered a separate violation.

(c) The department of public safety shall adopt regulations relative to the annual permitting of ice cream truck vendors. Such regulations shall include, but not be limited to:

(i) a requirement that all applications for an ice cream truck vending permit or applications for renewal thereof shall include the applicant’s fingerprints and a current photo of the applicant;

(ii) adoption of a uniform permit application and permit form, to be used by all municipalities;

(iii) requiring that a permitting authority conduct an investigation into the criminal history of a permit applicant to determine eligibility therefore; and

(iv) restricting a permitting authority from issuing an ice cream truck vending permit to any sex offender, as defined by section 178C of chapter 6 of the General Laws.

SECTION 52. Section 100A of chapter 276 of the General Laws, as so appearing, is hereby amended by striking the first paragraph and inserting in place thereof the following paragraph:-

Any person having a record of criminal court appearances and dispositions in the commonwealth on file with the office of the commissioner of probation may, on a form furnished by the commissioner and signed under the penalties of perjury, request that the commissioner seal the file. The commissioner shall comply with the request provided that: (1) the person's court appearance and court disposition records, including any period of incarceration or custody as defined in section 1 of chapter 125 for any misdemeanor record to be sealed occurred not less than 5 years before the request; (2) the person's court appearance and court disposition records, including any period of incarceration or custody as defined in section 1 of chapter 125 for any felony record to be sealed occurred not less than 10 years before the request; (3) the person had not been found guilty of any criminal offense within the commonwealth in the case of a misdemeanor, 5 years before the request, and in the case of a felony, 10 years before request, except motor vehicle offenses in which the penalty does not exceed a fine of \$50 ; (4) the form includes a statement by the petitioner that he has not been convicted of any criminal offense in any other state, United States possession or in a court of federal jurisdiction, except such motor vehicle offenses, as aforesaid, and has not been imprisoned in any state or county in the case of a misdemeanor, within the preceding 5 years, and in the case of a felony, within the preceding 10 years; and (5) the person's record does not include convictions of offenses other than those to which this section applies. This section shall apply to court appearances and dispositions of all offenses; provided, however, that this section shall not

931 apply in case of convictions for violations of sections 121 to 131H, inclusive, of chapter 140 or for  
932 violations of chapter 268 or chapter 268A.

933 SECTION 58. Said section 100A of said chapter 276, as so appearing, is hereby further  
934 amended by inserting, after line 40, the following words:-

935 5. Any violation of section 7 of chapter 209A shall be treated as a felony.

936 6. Sex offenses, as defined in section 178C of chapter 6, shall not be eligible for sealing  
937 for 15 years following their disposition, including termination of supervision, probation or any  
938 period of incarceration, or for so long as the offender is under a duty to register in the  
939 commonwealth or in any other state where the offender resides or would be under such a duty if  
940 residing in the commonwealth, whichever is longer.

941 SECTION 59. Said section 100A of said chapter 276, as so appearing, is hereby further  
942 amended by inserting after the word “proceedings”, in line 52, the following words:- “, and  
943 except that in any proceedings under sections 1 to 39I, inclusive, of chapter 119, sections 2 to 5,  
944 inclusive, of chapter 201, chapters 208, 209, 209A, 209B, 209C, or sections 1 to 11A, inclusive,  
945 of chapter 210, a party having reasonable cause to believe that information in a sealed criminal record of  
946 another party may be relevant to (1) an issue of custody or visitation of a child, (2) abuse, as defined in  
947 section 1 of chapter 209A or (3) the safety of any person may upon motion seek to introduce the sealed  
948 record into evidence. The judge shall first review such records in camera and determine those records  
949 that are potentially relevant and admissible. The judge shall then conduct a closed hearing on the  
950 admissibility of those records determined to be potentially admissible; provided, however, that such  
951 records shall not be discussed in open court and, if admitted, shall be impounded and made  
952 available only to the parties, their attorneys and court personnel who have a demonstrated need  
953 to receive them.

SECTION 60. Section 100C of said chapter 276, as so appearing, is hereby amended by striking out, in lines 11-12, the words “except in cases in which an order of probation has been terminated,”.

SECTION 61. Said section 100C of said chapter 276, as so appearing, is hereby further amended by inserting after the word “commissioner”, in line 29, the following words:- or the clerk of courts in any district, superior, or the Boston municipal court.

SECTION 62. Chapter 276 of the General Laws, as so appearing, is hereby amended by inserting after section 100C the following 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 63. Section 34 of chapter 279 of the General Laws, as so appearing, is hereby amended by inserting after the word “accordingly”, in line 5, the following words,- for the duration of the sentence and within classification guidelines of the facility to which said convict is committed.

SECTION 64. Notwithstanding any general or special law to the contrary, this section shall facilitate the orderly transfer of the employees, proceedings, rules and regulations, property and legal obligations of the criminal history systems board, as the transferor agency, to the department of criminal justice information services, as the transferee agency, as follows:

(a) Subject to appropriation, the employees of the criminal history systems board, including those who immediately before the effective date of this act hold permanent appointment in positions classified under chapter 31 of the General Laws or have tenure in their positions as provided by section 9A of chapter 30 of the General Laws or do not hold such tenure, or hold confidential positions, are hereby transferred to the department of criminal justice information services, without interruption of service within the meaning of said section 9A of said chapter 31, without impairment of seniority, retirement or other rights of the employee, and without reduction in compensation or salary grade, notwithstanding any change in title or duties resulting from such reorganization, and without loss of accrued rights to holidays, sick leave, vacation and benefits, and without change in union representation or certified collective bargaining unit as certified by the state labor relations commission or in local union representation or affiliation. Any collective bargaining agreement in effect immediately before the transfer date shall continue in effect and the terms and conditions of employment therein shall continue as if the employees had not been so transferred. The reorganization shall not impair the civil service status of any such reassigned employee who immediately before the effective date of this act either holds a permanent appointment in a position classified under chapter 31 of the General Laws or has tenure in a position by reason of section 9A of chapter 30 of the General Laws.

Notwithstanding any general or special law to the contrary, all such employees shall continue to retain their right to collectively bargain pursuant to chapter 150E of the General Laws and shall be considered employees for the purposes of said chapter 150E.

Nothing in this section shall be construed to confer upon any employee any right not held immediately before the date of said transfer, or to prohibit any reduction of salary grade, transfer,

999 reassignment, suspension discharge layoff or abolition of position not prohibited before such  
1000 date.

1001 (b) All petitions, requests, investigations and other proceedings appropriately and duly  
1002 brought before or referred to the executive director of the criminal history systems board by the  
1003 transferor agency and pending before the executive director before the effective date of this act,  
1004 shall continue unabated and remain in force, but shall be assumed and completed by the  
1005 department of criminal justice information services.

1006 (c) All orders, rules and regulations duly made and all approvals duly granted by the  
1007 criminal history systems board, which are in force immediately before the effective date of this  
1008 act, shall continue in force and shall thereafter be enforced by the department of criminal justice  
1009 information systems, until superseded, revised, rescinded or canceled, in accordance with law.

1010 (d) All books, papers, records, documents, equipment, buildings, facilities, cash and  
1011 other property, both personal and real, including all such property held in trust, which  
1012 immediately before the effective date of this act are in the custody of the criminal history  
1013 systems board shall be transferred to the department of criminal justice information services.

1014 (e) All duly existing contracts, leases and obligations of the criminal history systems  
1015 board shall continue in effect but shall be assumed by the department of criminal justice  
1016 information services. No existing right or remedy of any character shall be lost, impaired or  
1017 affected by this act.

1018 SECTION 65. The department, in consultation with the information technology  
1019 division, shall regularly report on its progress in building the information technology system  
1020 necessary to fulfill the requirements established in subsection (a) of section 172 of chapter 6 of

the General Laws, as amended by section 16 of this act. The department shall file such reports with the chairpersons of the joint committee on the judiciary, the joint committee on public safety and homeland security, the chairpersons of the house and senate committees on bonding, capital expenditures and state assets and the chairpersons of the house and senate committees on ways and means and shall post such reports on the department's publicly-accessible website. The department shall file such reports 6, 12, 15 and 18 months after this act is approved by the governor, and at 3-month intervals thereafter, if necessary, until the project is complete. Each report shall include a description of the progress made in the planning, design and construction of the system since the preceding report, and shall include a comparison of actual expenditures to budgeted expenditures and of budgeted timelines to actual timelines. Such report shall also include a certification whether the department expects the complete information technology system to be fully operational 18 months after this act is approved by the governor, as required in this act.

SECTION 65A. The executive office of public safety, in conjunction with the department of public health, the trial court, the department of probation and the office of community correction, shall promulgate regulations establishing a resource guide for law enforcement personnel, sheriffs and judges on substance abuse treatment programs and options, including but not limited to, providing information on civil commitment programs, jail diversion and public and private treatment options, including the Massachusetts Alcohol and Substance Abuse Center, the Men's Addiction Treatment Center and the Women's Addiction Treatment Center. The Bureau of Substance Abuse Services shall provide technical assistance related to producing said resource guide.

SECTION 66. Notwithstanding the provisions of sections 32, 32A, 32B, 32E, 32F, and 32J of chapter 94C of the General Laws, or any other general or special law to the contrary, a

person serving a mandatory minimum sentence for violating any provision of the above referenced sections as of the effective date of this act, shall be eligible for parole after serving two-thirds of the minimum term of the sentence if the sentence is to a state prison, or after serving one-half of the maximum term of the sentence if the sentence is to a house of correction.

SECTION 66A. The executive office of public safety and security and the department of correction, in conjunction with the department of public health, shall adopt regulations to create a substance abuse education program in state prisons and houses of corrections. Such program shall focus on, but not be limited to, screening inmates for substance use disorders, preparing inmates with substance use disorders for reentry into the community, providing training relative to obtaining housing, employment and the necessary substance abuse treatment once an inmate is released.

SECTION 66B. The department of probation, in conjunction with the criminal history systems board shall conduct a study on rehabilitation. That study shall include an examination of:

(a) enabling a person convicted of or adjudicated delinquent by reason of any felony or misdemeanor charges in the Commonwealth or a person who has been charged with a crime in the Commonwealth but which charges did not result in a conviction to petition the superior court of the trial court department in the county in which he then resides for a certificate of rehabilitation, or a certificate of recovery and rehabilitation if the charges were a consequence of substance abuse, for ascertainment and declaration of the fact of his rehabilitation or recovery and rehabilitation if certain conditions are met, for example if the person: (1) has not been sentenced to incarceration since being discharged from a felony or misdemeanor or since the termination of any ancillary proceedings related to such felony or misdemeanor including, but not limited to, any period of probation, parole or continuation; (2) is not the subject of a probationary or parole term for the commission of any other felony or misdemeanor; (3) presents satisfactory evidence of 2 years residence in the commonwealth prior to the filing of the petition; (4) has demonstrated a period of rehabilitation, as provided in section 176C of the General Laws, and (5)



in the case of a person seeking a certificate of recovery and rehabilitation, has completed a substance abuse treatment program approved by the bureau of substance abuse treatment services;

(b) the standard the petitioner must demonstrate his rehabilitation or recovery;

(c) the duration of rehabilitation required to be eligible for a certificate of rehabilitation or recovery;

(d) any recommended provision of notice of the filing of a petition to the district attorney of the county in which a petition is filed, to the district attorney of the county in which the petitioner was convicted of an offense, to the attorney general and to the governor;

(e) whether a petitioner for a certification of rehabilitation or recovery may be represented by counsel and whether the court shall appoint counsel for certain petitioners;

(f) whether the court in which the petition is filed may require such testimony as it deems necessary, and who should be required to produce and pay for the cost of production of all records and reports relating to the petitioner and the offense for which he was charged; (g) which information the court may request upon the filing of the application for a certificate, from the district attorney in which the petition was filed including, but not limited to: the place of residence of the petitioner; the criminal record of the petitioner as shown by the records of the Department of Justice; any representation made to the court by the petitioner; the conduct of the petitioner during his period of rehabilitation; and any other information the court may deem necessary in making its determination; (h) under what conditions a court should deny a petition for a certificate of rehabilitation or recovery; (i) under what conditions a court should issue a certificate of rehabilitation or recovery and whether such a certificate should become a part of the petitioner's criminal offender record information;

(j) to whom the court should forward such a certificate and whether any recommendations should be included;

(k) whether such a certificate should be provided to any person lawfully seeking information relative to the offense for which a petitioner has received a certificate;

(l) whether any forms would be required to effectuate such a process and who should develop them;

(m) any notice requirements that are recommended for defendants or individuals being released from custody, discharged from probation or parole, or concluding substance abuse treatment;

(n) any other factors that may or may not be included within the determination of whether to issue a benefit granted by the awarding of such a certificate;

(o) any rights that an individual who has been denied the benefits of attaining a certificate of rehabilitation or recovery should have, including the right to appeal such a decision;

(p) what the appropriate forum should be for such an appeal; and

(q) any punishments that should be levied against an individual who fraudulently uses such a certificate.

The department shall report its findings to the clerks of the house and senate by July 1, 2010 who shall forward that report to the chairmen of the house committee on ways and means, the senate committee on ways and means and the joint committee on mental health and substance abuse.

SECTION 66C. The parole board shall conduct a study to determine the benefit and cost of establishing a substance abuse treatment program to be included as a requirement for individuals during a period of post-release supervision required by chapter 127A of the General Laws.

1110           The board shall file the findings of its study by July 1, 2010 with the clerks of the house and the  
1111 senate, who shall forward the report to the chairmen of the house committee on ways and means, the  
1112 senate committee on ways and means, the joint committee on mental health and substance abuse and the  
1113 joint committee on the judiciary.

1114           SECTION 66D. The department of corrections, in consultation with the department of public  
1115 health shall conduct a study on the establishment of jail diversion programs for nonviolent low-level  
1116 offenders with substance use disorders. The study shall include, but not be limited to, the establishment  
1117 of jail diversion programs, innovative ways for the courts to divert substance abusers from the criminal  
1118 justice system into specified substance abuse treatment options and the cost estimates for implementing  
1119 such a program.

1120           The department shall file the findings of its study by July 1, 2010 with the clerks of the house and  
1121 the senate, who shall forward the report to the chairmen of the house committee on ways and means, the  
1122 senate committee on ways and means and the joint committee on mental health and substance abuse.”

1123           SECTION 66E. The administrative office of the trial court shall conduct a study to examine the  
1124 bail review process including, but not limited to, personal recognizance, challenges to the amount of bail  
1125 for an accused and the provision of notice to a petitioner relative to future court appearances. The  
1126 administrative office shall report to the joint committee on the judiciary not later than July 1, 2010.

1127           SECTION 67. Notwithstanding any general or special law to the contrary, chapter 127A  
1128 of the General Laws shall apply to any felony, as defined in section 1 of chapter 274 of the  
1129 General Laws, committed on or after the effective date of this act.

1130           SECTION 67A. Notwithstanding any general or special law to the contrary, section 178F<sup>3</sup>/<sub>4</sub> of  
1131 chapter 6 of the General Laws shall apply to a conviction for a sex offense, as defined in section 178C of

chapter 6, or an adjudication as a youthful offender or as delinquent juvenile by reason of a sex offense,  
as defined in section 178C of chapter 6, which occurs after the effective date of this act.

SECTION 68. Section 5A of this act is hereby repealed.

SECTION 68A. The department of public safety shall adopt the regulations required under  
section 25 of chapter 270 of the General Laws, not later than 90 days from the effective date of this act.

SECTION 69. Sections 1 to 5, inclusive, 11 to 14, inclusive, 16, 17, 17A, 22-27, inclusive, 31 to  
33, inclusive, 50, 50B, 51B, 52, 58 to 62, inclusive, 64 and 68 shall take effect 18 months from the  
effective date of this act.

SECTION 69A. Section 68A shall take effect 180 days from the effective date of this act.