

HOUSE No. 66

The Commonwealth of Massachusetts



CHARLES D. BAKER
GOVERNOR

OFFICE OF THE GOVERNOR
COMMONWEALTH OF MASSACHUSETTS
24 BEACON STREET · BOSTON, MA 02133

KARYN POLITO
LIEUTENANT GOVERNOR

January 15, 2019

To the Honorable House of Representatives,

It is a fundamental responsibility of government to keep our communities safe. Recent tragedies have demonstrated the tremendous damage that can result when our criminal justice system fails to identify and detain dangerous people charged with serious crimes. The alarming frequency of these events confirms that the Commonwealth needs to do a better job of holding until trial defendants who pose a continuing danger to others. Prosecutors are permitted to ask a judge to hold a defendant because of the danger the defendant poses to the community only in a limited number of cases, and under a set of procedures that do not provide the district attorneys or the courts with the information they need to make fully informed decisions. When courts release accused defendants on conditions designed to ensure their compliance with our laws, these conditions are too often violated with little consequence. Police are not authorized to arrest a person who they observe violating a condition of release, and judges’ authority to order someone held for violating release conditions is unreasonably circumscribed.

In order to meet our shared responsibility and provide the criminal justice system with the tools it needs to keep our Commonwealth safe, I am submitting for your consideration “An Act to Protect the Commonwealth from Dangerous Persons.” This legislation redrafts the statutes that govern pretrial release in Massachusetts with a focus on empowering the judicial system to make better decisions regarding the release of potentially dangerous individuals. The law will continue to require proof at a hearing before a judge that no conditions of release can ensure public safety before a person may be held as a danger to the community. This legislation

expands the list of offenses which can provide grounds for a dangerousness hearing, and it also follows the long-standing federal model in including a defendant's history of serious criminal convictions as grounds that may warrant a dangerousness hearing. Current law requires courts to focus on only the crime charged and ignore a defendant's criminal history when determining whether the defendant may be the subject of this sort of hearing.

This legislation also closes loopholes at the start and end of the criminal process that currently limit or prevent effective action to address legitimate safety concerns. It extends the requirement that police take the fingerprints of people arrested for felonies to all people arrested, regardless of the charge, to ensure that decisions about release can be made with knowledge of a person's true identity and full criminal history. It allows, for the first time, bail commissioners and bail magistrates to consider dangerousness in deciding whether to release an arrestee from a police station when court is out of session. It also ensures that a person who a court determines is a danger or who violates his or her conditions of release is held until the time of trial or other disposition of the case, rather than being released after a defined period. A person who is so dangerous that his or her release threatens the safety of a specific victim or of the community at large does not become safe to release merely because three or four months have passed since the time of arrest.

Most individuals arrested in Massachusetts are released pending trial, and that will continue to be the case. This legislation strengthens the ability of judges to enforce the conditions of pre-trial release. First, the legislation empowers police to detain people who they observe violating court-ordered release conditions. Current law does not allow this, and instead requires a court to first issue a warrant. But it is our police officers, not our judges and probation officers, who are on the streets of our cities and towns, and who are in position to see and to act when offenders are violating conditions of release. Second, the legislation empowers judges to revoke a person's release when the offender has violated a court-ordered condition, such as an order to stay away from a victim, or from a public playground. Current law requires an additional finding of dangerousness before release may be revoked.

Additional provisions of this legislation:

- Allow dangerousness hearings at any point during a criminal proceeding, rather than requiring a prosecutor to either seek a hearing immediately or forfeit that ability entirely, even if circumstances later arise indicating that the defendant poses a serious risk to the community.
- Require that the probation department, bail commissioners and bail magistrates notify authorities who can take remedial action when a person who is on pre-trial release commits a new offense anywhere in the Commonwealth or elsewhere.
- Improve the system for notifying victims of crimes of abuse and other dangerous crimes when a defendant is going to be released.

- Create a new felony offense for cutting off a court-ordered GPS device.
- Create a level playing field for appeals of district court release decisions to the superior court by allowing appeals by prosecutors, in addition to defendants, and giving more deference to determinations made in the first instance by our district court judges.
- Require that the courts develop a text message service to remind defendants of upcoming court dates.
- Create a task force to recommend adding information to criminal records so that prosecutors and judges can make more informed recommendations and decisions about conditions of release and possible detention on grounds of dangerousness.

Our criminal justice system is only as strong as the tools provided by statute. This legislation provides a range of new tools that will make Massachusetts safer. I urge your prompt enactment of this legislation.

Respectfully submitted

Charles D. Baker,
Governor

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act to protect the Commonwealth from dangerous persons.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to strengthen the statutes under which the judicial system decides questions relating to the pre-trial release of dangerous persons, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety and convenience.

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 1A of chapter 263 of the General Laws, as inserted by section 125
2 of chapter 69 of the acts of 2018, is hereby amended by striking out the word “felony” and
3 inserting in place thereof the following word:- crime.

4 SECTION 2. Chapter 268 of the General Laws is hereby amended by inserting after
5 section 13D the following section:-

6 Section 13E. Whoever unlawfully removes, destroys, damages, or interferes with the
7 proper functioning of a geolocation monitoring device, breath-testing instrument, or other
8 mechanism intended to facilitate recognizance or compliance with conditions of pretrial release,
9 probation or parole, shall be punished by imprisonment in the state prison for not more than 10
10 years or imprisonment in a house of correction for not more than 2 and ½ years. In any
11 proceeding under section 58, 58A, 58B or 59 of chapter 276, the fact of a person’s prior

12 conviction pursuant to this section shall be prima facie evidence that there is no financial
13 condition or other condition of release that will reasonably assure the presence of the person so
14 convicted.

15 SECTION 3. Section 42A of chapter 276 of the General Laws is hereby amended by
16 striking out the first six paragraphs and inserting in place thereof the following paragraph:-

17 As part of the disposition of any criminal complaint involving a crime of abuse, as
18 defined in section 57, the court may establish such terms and conditions of probation as will
19 insure the safety of the person who has suffered such abuse or threat thereof, and will prevent the
20 recurrence of such abuse or threat thereof.

21 SECTION 4. Said chapter 276 is hereby amended by striking out sections 57 through
22 58B, inclusive, as appearing in the 2016 Official Edition, and inserting in place thereof the
23 following 6 sections:-

24 Section 57. (a) As used in sections 57 through 59, the following words shall, unless the
25 context clearly requires otherwise, have the following meanings:-

26 “Controlled substance”, the same meaning as in section 1 of chapter 94C.

27 “Crime of abuse”, a crime that involves assault and battery, trespass, threat to commit a
28 crime, or any other criminal conduct and that involves the infliction, or the imminent threat of
29 infliction, of physical harm upon a person by such person’s family or household member as
30 defined in section 1 of chapter 209A; any violation of an order issued pursuant to section 18 or
31 34B of chapter 208, section 32 of chapter 209, section 3, 4 or 5 of chapter 209A or section 15 or

32 20 of chapter 209C; or any act that would constitute abuse, as defined in section 1 of chapter
33 209A; or a violation of section 13M or 15D of chapter 265.

34 “Dangerous crime”, any of the following:

35 (A) a felony that has as an element of the crime the use, attempted use or threatened use
36 of physical force against the person of another;

37 (B) the crimes of burglary or arson;

38 (C) a violation of an order pursuant to section 18, 34B or 34C of chapter 208, section 32
39 of chapter 209, section 3, 4 or 5 of chapter 209A or section 15 or 20 of chapter 209C;

40 (D) a misdemeanor or felony involving abuse as defined in section 1 of chapter 209A;

41 (E) a sex offense involving a child as defined in section 178C of chapter 6;

42 (F) a violation of section 13B of chapter 268;

43 (G) a violation of section 13, 13 ½, 13B, 13B ½, 13 B ¾, 13F, 18B, 22, 22A, 22B, 22C,
44 23, 23A, 23B, 24, 25, 26B, 26C, 37, 43A, 50 or 51 of chapter 265 or a violation of section 13D
45 of said chapter 265 in which the public employee is a police officer;

46 (H) a violation of section 4A, 4B, 16, 29A, 29B, 29C, 77 or 105 of chapter 272;

47 (I) a violation of section 24G of chapter 90 which occurs under the influence of alcohol
48 or drugs, or a violation of section 8B of chapter 90B; or a third or subsequent violation of section
49 24 of chapter 90 or section 8 of chapter 90B;

50 (J) a crime under chapter 94C for which the maximum term of imprisonment is more
51 than 10 years;

52 (K) any violation of sections 102 or 102A, or a malicious violation of section 127 of
53 chapter 266;

54 (L) a violation of section 131N of chapter 140 or subsection (a), (b), (c), (d), (h), (j) or
55 (m) of section 10 or section 11C of chapter 269;

56 (M) a violation of section 10A, 10E, or 10G of chapter 269;

57 (N) threats to kill, rape, or cause serious bodily injury;

58 (O) conspiracy or solicitation to commit any of the above enumerated crimes.

59 “Financial condition”, a secured or unsecured bond.

60 “Judicial officer”, a judge or a clerk or assistant clerk of the superior, district, Boston
61 municipal, or juvenile court.

62 “Release order”, any order releasing a defendant on personal recognizance or on
63 conditions, regardless of whether the defendant has satisfied any financial condition.

64 “Secured bond”, payment to the court of a specified amount of money that in the
65 discretion of the judicial officer will reasonably assure the presence of a defendant, taking into
66 consideration the defendant’s ability to pay.

67 “Unsecured bond”, a defendant’s promise to pay to the court a specified amount of
68 money if the defendant does not appear before the court on a date certain or fails to abide by any
69 conditions of release set under clause (B) of paragraph (1) of subsection (b) of section 58, such

70 amount being an amount that in the discretion of the judicial officer will reasonably assure the
71 presence of a defendant, taking into consideration the defendant's ability to pay.

72 (b) Upon the appearance of a defendant charged with a crime, the judicial officer
73 shall hold a hearing, at which the defendant and his counsel, if any, may participate and inquire
74 into the case, to determine whether the defendant shall be released or detained pending trial of
75 the case, as provided in this section and sections 58, 58A, and 58B. At the hearing, the judicial
76 officer shall have immediate access to all pending and prior criminal offender record
77 information, board of probation records, out of state criminal records, and police and incident
78 reports related to the defendant, upon oral, telephonic, facsimile or electronic mail request, to the
79 extent practicable.

80 At the conclusion of such hearing, the judicial officer shall issue an order that, pending
81 trial, the defendant be:

82 (1) Released on personal recognizance under clause (A) of paragraph (1) of subsection
83 (b) of section 58;

84 (2) Released on financial or other conditions under clauses (B) or (C) of paragraph (1) of
85 subsection (b) of section 58;

86 (3) Detained under section 58A;

87 (4) Released on financial or other conditions under section 58A; or

88 (4) Temporarily detained to permit an opportunity for the attorney for the commonwealth
89 to move for revocation of conditional release under section 58B.

90 (c) For a person who is arrested and not released under section 59, a hearing under
91 section 58 shall take place no later than the next day that the superior, district, Boston municipal,
92 or juvenile court in the place of jurisdiction is in session, provided that, in a case that involves a
93 crime of abuse, (1) the commonwealth shall be the only party permitted to move for arraignment
94 within 3 hours of a complaint being signed by a magistrate or a magistrate's designee; and (2) a
95 defendant arrested, who has attained the age of 18 years, shall not be released sooner than 6
96 hours after arrest, except by a judge in open court.

97 Any hearing under section 58A shall be held immediately upon the motion of the
98 commonwealth unless the defendant, or the attorney for the commonwealth, seeks a continuance.
99 Except for good cause, a continuance on motion of the defendant may not exceed 5 business
100 days, and a continuance on motion of the attorney for the commonwealth may not exceed 3
101 business days. During a continuance, the individual shall be detained. The commonwealth may
102 move for an initial hearing under section 58A at any time before disposition of the case. Once a
103 hearing under section 58A commences, the defendant shall be detained pending completion of
104 the hearing.

105 In any pending case where the defendant has been first arraigned in the district, Boston
106 municipal, or juvenile court and is subsequently arraigned in superior court for the same or
107 related crimes arising out of the same incident, the superior court may conduct a new hearing
108 under section 58 or, upon motion of the commonwealth, section 58A, provided that any order of
109 the district, Boston municipal, or juvenile court concerning the defendant issued under section 58
110 or 58A shall remain in effect until such time as the superior court issues a new order under
111 section 58 or 58A. In any such new hearing in the superior court, the judicial officer shall
112 consider the defendant's compliance with any previously ordered conditions of release.

113 Any hearing under section 58 may be reopened by the judicial officer, and any hearing
114 under section 58A may be reopened by the judge. Any hearing under either section may also be
115 reopened upon motion of the commonwealth or the defendant, provided that the judicial officer
116 or judge determines by a preponderance of the evidence that: (1) information exists that was not
117 known to the movant at the time of the hearing or there has been a material change in
118 circumstances; and (2) such information or change in circumstances has a substantial bearing on
119 the issue of whether the defendant's detention, defendant's release on conditions, or conditions
120 imposed on the defendant are necessary and sufficient to reasonably assure the appearance of the
121 defendant and the safety of any other person and the community. In any such reopened hearing,
122 the judicial officer shall consider the defendant's compliance with any previously ordered
123 conditions of release.

124 Section 58. (a) Unless the attorney for the commonwealth has moved for detention under
125 section 58A, the judicial officer shall order the pretrial release of a defendant on personal
126 recognizance, subject to the condition that the defendant not commit a new crime during the
127 period of release, unless the judicial officer determines, in the exercise of his or her discretion,
128 that the release will not reasonably assure the appearance of the defendant or will endanger the
129 safety of any other person or the community.

130 (b) If the judicial officer determines, in the exercise of his or her discretion, that the
131 release described in subsection (a) will not reasonably assure the appearance of the defendant or
132 will endanger the safety of any other person or the community:

133 (1) the judicial officer shall order the pretrial release of the defendant subject to:

134 (A) the condition that the defendant not commit a new crime during the period of release;
135 and

136 (B) the least restrictive further condition, or combination of conditions, that the judicial
137 officer determines will reasonably assure the appearance of the defendant, which may include the
138 condition or combination of conditions that the defendant during the period of release shall:

139 (i) abide by specified restrictions on place of abode or travel;

140 (ii) report on a regular basis to a designated law enforcement agency, pretrial services
141 agency, or other agency;

142 (iii) refrain from use of alcohol, marijuana, or other intoxicants, and from use of any
143 controlled substance, except as prescribed or certified by a licensed medical practitioner;

144 (iv) submit to random testing to monitor compliance with any conditions ordered under
145 subclause (iii);

146 (v) comply with a specified curfew or home confinement;

147 (vi) undergo medical, psychological, or psychiatric treatment, including treatment for
148 substance or alcohol use disorder, if available, and remain in a specified institution if required for
149 that purpose;

150 (vii) submit to electronic monitoring, provided that any condition of electronic
151 monitoring may include either specified inclusion or exclusion zones or a curfew;

152 (viii) participate in a community corrections program pursuant to chapter 211F;
153 provided, however, that the defendant shall consent to such participation;

154 (ix) participate in a notification program pursuant to subsection (c);

155 (x) provide an unsecured or secured bond to satisfy a financial condition that the judicial
156 officer may specify; provided that a financial condition shall be set in an amount no higher than
157 what would reasonably assure the appearance of the person before the court after taking into
158 account the person's financial resources; provided, however, that a higher than affordable
159 financial condition may be set if neither alternative nonfinancial conditions nor an amount which
160 the person could likely afford would adequately assure the person's appearance before the court;
161 and provided further that for crimes that do not carry a penalty of incarceration, no secured bond
162 may be ordered unless the defendant has previously failed to appear on that charge; and

163 (xi) satisfy any other condition that is reasonably necessary to assure the appearance of
164 the defendant; and

165 (C) the least restrictive further condition, or combination of conditions, that the judicial
166 officer determines will reasonably assure the safety of any other person and the community,
167 which may include the condition or combination of conditions that the defendant during the
168 period of release shall:

169 (i) refrain from abusing and harassing any alleged victim of the charged crime and any
170 potential witness who may testify concerning the charged crime;

171 (ii) stay away from and have no contact with an alleged victim of the charged crime and
172 with any potential witness who may testify concerning the charged crime;

173 (iii) refrain from possessing a firearm, rifle, shotgun, destructive device, or other
174 dangerous weapon;

175 (iv) comply with restrictions on personal associations, a curfew or home confinement;

176 (v) refrain from use of alcohol, marijuana, or other intoxicants, and from use of any
177 controlled substance except as prescribed or certified by a licensed medical practitioner;

178 (vi) undergo medical, psychological, or psychiatric treatment, including treatment for
179 substance or alcohol use disorder, if available, and remain in a specified institution if required for
180 that purpose;

181 (vii) submit to electronic monitoring, provided that any condition of electronic
182 monitoring may include either specified inclusion or exclusion zones or a curfew;

183 (viii) satisfy any other condition that is reasonably necessary to assure the safety of any
184 other person and the community.

185 (2) When setting any conditions under clause (B) of paragraph (1), the judicial officer
186 shall consider where relevant the following factors concerning the defendant:

187 (A) financial resources;

188 (B) family ties;

189 (C) any record of convictions under the laws of the commonwealth or the laws of
190 another state, the United States, or a military, territorial or Indian tribal authority;

191 (D) potential penalty the defendant faces;

192 (E) any illegal drug distribution or present drug dependency;

193 (F) any employment record;

- 194 (G) any history of mental illness;
- 195 (H) any flight to avoid prosecution or fraudulent use of an alias or false identification;
- 196 (I) any failure to appear at any court proceedings to answer to a charge;
- 197 (J) any prior violation of conditions of release, probation, or parole, or of a temporary or
198 permanent order issued under section 18 or 34B of chapter 208, section 32 of chapter 209,
199 section 3, 4 or 5 of chapter 209A or section 15 or 20 of chapter 209C;
- 200 (K) the nature and circumstances of the crimes charged;
- 201 (L) whether the defendant was, at the time of the crime charged, on release pending
202 adjudication, sentencing or appeal of a prior charge;
- 203 (M) whether the defendant was, at the time of the crime charged, under the supervision
204 of the commissioner of probation, the parole board or any other comparable authority of this or
205 another state or of the federal government.
- 206 (3) When setting any conditions under clause (C) of paragraph (1), the judicial officer
207 shall consider where relevant the following factors concerning the defendant:
- 208 (A) any factors listed in clauses (B) through (M) of paragraph (2);
- 209 (B) whether the acts alleged involve a crime of abuse;
- 210 (C) any history of orders issued against the defendant pursuant to section 18 or 34B of
211 chapter 208, section 32 of chapter 209, section 3, 4 or 5 of chapter 209A or section 15 or 20 of
212 chapter 209C; and

213 (D) any risk that the defendant will attempt to obstruct justice, or attempt to threaten,
214 injure, or intimidate a prospective witness or juror.

215 (4) In establishing any financial condition under clause (B) of paragraph (1), any order
216 must comply with the following requirements:

217 (A) A judicial officer may not impose a financial condition to assure the safety of any
218 other person or the community, but may impose a financial condition when necessary to
219 reasonably assure the defendant's appearance.

220 (B) Where it appears, based on credible evidence, that the defendant lacks sufficient
221 financial resources to post any secured bond required by the judicial officer, such that requiring
222 such secured bond will result in the long-term pretrial detention of the defendant, the judicial
223 officer must provide findings of fact and a statement of reasons for the decision, either in writing
224 or orally on the record, confirming that the judicial officer considered the defendant's financial
225 resources and explaining why the defendant's risk of non-appearance is so great that no
226 alternative, less restrictive financial or nonfinancial conditions will suffice to assure the
227 defendant's presence at future court proceedings and explaining how the amount was calculated
228 after taking the person's financial resources into account and why the commonwealth's interest
229 in a financial condition outweighs the potential adverse impact on the person, their immediate
230 family or dependents resulting from pretrial detention.

231 (C) When reconsidering or reviewing a financial condition in a case where a defendant
232 has been detained due to his inability to meet the financial condition, a judicial officer shall
233 consider the length of the defendant's pretrial detention and the equities of the case.

234 (5) If the judicial officer imposes a financial condition, the clerk and assistant clerks of
235 the court shall accept, without charging any fee, any money tendered in satisfaction of such
236 financial condition during the regular business hours of that court.

237 (6) Before ordering the release of any defendant charged with a crime against the person
238 or property of another, the judicial officer shall comply with the domestic abuse inquiry
239 requirements of section 56A.

240 (7) In a release order issued under this section, the judicial officer shall:

241 (A) Include a written statement that sets forth all the conditions to which the release is
242 subject, in a manner sufficiently clear and specific to serve as a guide for the defendant's
243 conduct; and

244 (B) If the defendant is not released on personal recognizance or unsecured bond, include
245 a written summary of the reasons for denying such release and detailed reasons for imposing any
246 financial condition; and

247 (C) Advise the defendant of:

248 (i) The consequences of violating a condition of release, including immediate arrest or
249 issuance of a warrant for the defendant's arrest, revocation of release, and, if applicable, the
250 potential that the person may face criminal penalties, including penalties for violating section
251 13B of chapter 268; and

252 (ii) If the defendant is charged with a crime of abuse, informational resources related to
253 domestic violence, which shall include, but shall not be limited to, a list of certified intimate
254 partner abuse education programs located within or near the court's jurisdiction.

255 (c) A person who has been charged with a crime shall provide the court with his or
256 her cellular telephone number, if the defendant has such a device, unless the defendant opts out
257 of the service provided under this subsection; provided, however, that upon the order of a
258 judicial officer pursuant to subclause (ix) of clause (B) of paragraph (1) of subsection (b), a
259 defendant may not opt out of such service. The court shall provide a service using a system of
260 automated text messaging to remind criminal defendants of mandatory court appearance dates in
261 advance of the date of such appearance. The court shall keep all information provided by a
262 criminal defendant pursuant to this subsection confidential, and such information may not be
263 used in any proceeding; provided, however, that the fact that a defendant did or did not
264 participate in this system shall be marked on the docket and may be used in a proceeding if
265 otherwise admissible.

266 (d) There shall not exist in the case of a person charged with murder a right to release
267 pending trial; provided, however, that a judge may in his or her discretion, order a defendant so
268 charged released subject to any conditions enumerated in paragraph (1) of subsection (b).

269 Section 58A. (a) Upon motion of the attorney for the commonwealth, the judge shall
270 hold a hearing to determine whether any condition or combination of conditions set forth in
271 section 58 will reasonably assure the safety of any other person and the community, in a case:

272 (1) where the defendant is charged with a dangerous crime; or

273 (2) where the defendant is charged with a crime for which the potential penalty includes a
274 sentence to the house of correction or state prison and

275 (A) the defendant has been convicted of a dangerous crime, or has been convicted of a
276 like violation of the laws of another state, the United States or a military, territorial or Indian
277 tribal authority; or

278 (B) there are specific, articulable facts and circumstances demonstrating a serious risk
279 that the defendant may attempt to obstruct justice, or attempt to threaten, injure, or intimidate a
280 law enforcement officer, an officer of the court, or a prospective witness or juror in any criminal
281 investigation or judicial proceeding.

282 (b) (1) If, after a hearing, the judge finds by clear and convincing evidence that no
283 condition or combination of conditions will reasonably assure the safety of any other person and
284 the community, the judge shall order that the defendant be detained pending trial. Such order
285 shall:

286 (A) include written findings of fact and a written statement of the reasons for the
287 detention;

288 (B) direct that the defendant be committed to a corrections facility separate, to the extent
289 practicable, from persons serving sentences; and

290 (C) direct that the defendant be afforded reasonable opportunity for private consultation
291 with counsel.

292 (2) If, after a hearing, the judge does not issue an order under paragraph (1), the
293 defendant shall be released, pursuant to section 58, on personal recognizance or unsecured bond
294 or on such conditions as the judge determines to be necessary to reasonably assure the safety of
295 any other person and the community.

296 (c) In conducting a hearing under this section:

297 (1) the judge shall take into account available information concerning:

298 (A) any of the factors listed in paragraph (3) of subsection (b) of section 58 where
299 relevant; and

300 (B) the nature and seriousness of the danger to any person or the community that would
301 be posed by the defendant's release;

302 (2) the defendant shall have the right to be represented by counsel at a hearing under this
303 section and, if financially unable to obtain adequate representation, to have counsel appointed;

304 (3) the defendant shall be afforded an opportunity to testify;

305 (4) the defendant shall be afforded an opportunity to present witnesses, to cross-examine
306 witnesses who appear at the hearing, and to present information by proffer or otherwise;
307 provided, however, that before issuing a summons to an alleged victim, or a member of the
308 alleged victim's family, to appear as a witness at the hearing, the defendant shall demonstrate to
309 the court a good faith and reasonable basis for believing that the testimony from the witness will
310 be material and relevant to support a conclusion that the defendant should not be detained; and

311 (5) the law concerning admissibility of evidence in criminal trials shall not apply to the
312 presentation and consideration of information at a hearing under this section.

313 (d) When a defendant has been released pursuant to section 58 and the attorney for
314 the commonwealth subsequently files a motion seeking to detain the defendant under this
315 section, the attorney for the commonwealth may file such motion ex parte. Upon such ex parte

316 filing, the court may, for good cause shown, issue a warrant for the defendant's arrest to secure
317 his presence for such hearing. Any such hearing shall occur as otherwise set forth in this section.

318 (e) A defendant detained under this section shall be detained until the disposition of
319 the case and shall be brought to trial as soon as reasonably possible.

320 (f) Nothing in this section shall be construed as modifying or limiting the
321 presumption of innocence.

322 Section 58B. (a) A defendant who has been released after a hearing pursuant to section
323 58, 58A, 59 or 87 and who has violated a condition of his release, shall be subject to a revocation
324 of release and an order of detention following a motion by the attorney for the commonwealth
325 and a hearing as provided below. If there is probable cause to believe that, while on release, the
326 defendant committed a felony or a dangerous crime a rebuttable presumption shall arise that no
327 condition or combination of conditions will assure that the person will not pose a danger to the
328 safety of any other person or the community.

329 (b) The judge shall enter an order of revocation and detention if after a hearing the
330 judge finds:

331 (1) that there is probable cause to believe that the defendant has committed a felony or
332 dangerous crime while on release; and

333 (2) by a preponderance of the evidence, that there are no conditions of release that will
334 reasonably assure the defendant will not pose a danger to the safety of any other person or the
335 community, or the defendant is unlikely to abide by any condition or combination of conditions
336 of release.

337 (c) The judge may enter an order of revocation and detention if after a hearing the
338 judge finds that there is probable cause to believe that the defendant has committed any crime
339 while on release or clear and convincing evidence that the defendant has violated any other
340 condition of release.

341 (d) If, following a hearing under this section, the judge does not issue a revocation
342 order, the judge may issue a release order that may include any condition or combination of
343 conditions of release set forth in clauses (B) and (C) of paragraph (1) of subsection (b) of section
344 58.

345 (e) Upon the defendant's first appearance before the judge in the court which that
346 conduct proceedings for revocation of a release order under this section, the hearing concerning
347 revocation shall be held immediately unless the defendant or the attorney for the commonwealth
348 seeks a continuance. During a continuance the defendant shall be detained. Except for good
349 cause, a continuance on motion of the defendant shall not exceed 5 business days, a continuance
350 on motion of the attorney for the commonwealth or probation shall not exceed 3 business days.

351 (f) A defendant detained under an order of revocation and detention shall be detained
352 until the disposition of the case and shall be brought to trial as soon as reasonably possible.

353 (g) Where a person who is released under section 58, 58A, this section or 59 is the
354 subject of a new criminal charge, the probation officer of the court issuing the new criminal
355 charge shall notify the probation officer and the attorney for the commonwealth for the court or
356 courts that have ordered the defendant's release on any earlier criminal charges

357 Section 58C. In a case involving a crime of abuse or a dangerous crime with an
358 identified victim, no person shall be released pursuant to section 58, 58A, 58B or 59 before the

359 alleged victim is notified of the defendant's imminent release; provided, however, that the
360 defendant shall not be held more than 6 hours in order to permit prior notice to the alleged
361 victim.

362 When a defendant is to be released from the custody of a police department, such notice
363 shall be provided by the police department. When a defendant is to be released from a
364 courthouse, such notice shall be provided by the attorney for the commonwealth. When a
365 defendant is to be released from a jail or correctional facility, such notice shall be provided by
366 the superintendent. The person or agency responsible for providing notice shall undertake to
367 provide notice promptly.

368 Section 58D. Either the defendant or the attorney for the commonwealth, if aggrieved
369 by the entry of an order or granting or denial of a motion under section 58, 58A or 58B by the
370 district, Boston municipal or juvenile court, may petition the superior court for a review of such
371 decision. Upon entry of such order or ruling on such motion, the justice of the district, Boston
372 municipal or juvenile court shall immediately notify a defendant of his right to file a petition for
373 review in the superior court. The trial court shall establish rules for the filing of such petitions,
374 scheduling the hearing of such petitions and ensuring the transmission of necessary information
375 to the superior court and notice to the parties and the probation department. The superior court
376 shall in accordance with such rules, hear the petition for review as speedily as practicable and
377 except for unusual circumstances, on the same day the petition is filed; provided, however, that
378 the court may continue the hearing to the next business day if the required records and other
379 necessary information are not available. The superior court may, after a hearing on the petition
380 for review, grant the petition only upon a finding that the decision of the district, Boston
381 municipal or juvenile court was the result of an error of law or abuse of discretion.

382 Section 59. (a) As used in this section, the following words, unless the context clearly
383 requires otherwise, shall have the following meanings:-

384 “Bail commissioner”, a person other than a statutorily authorized magistrate or a superior
385 court assistant clerk appointed by the trial court to admit people to bail after court hours.

386 “Bail magistrate”, a clerk-magistrate or assistant clerk-magistrate of the district, Boston
387 municipal, or juvenile court departments, or a clerk of court of the superior court department or
388 an assistant clerk of the superior court who has been approved by the trial court to admit people
389 to bail after court hours.

390 (b) Except as provided in subsection (n), a bail commissioner or bail magistrate shall
391 order the pretrial release of a person arrested and charged with a crime on personal recognizance
392 subject to the condition that the person not commit a new crime during the period of release,
393 unless the bail commissioner or bail magistrate determines that release on personal recognizance
394 will not reasonably assure the appearance of the person or will endanger the safety of any other
395 person or the community. Prior to issuing a release order or any other order under this section,
396 the bail commissioner or bail magistrate shall have immediate access to all pending and prior
397 criminal offender record information, board of probation records, out of state criminal records,
398 and police and incident reports related to the person detained, upon oral, telephonic, facsimile or
399 electronic mail request, to the extent practicable.

400 (c) If the bail commissioner or bail magistrate determines that a release on personal
401 recognizance subject to the condition that the person not commit a new crime during the period
402 of release will not reasonably assure the appearance of the person or will endanger the safety of

403 any other person or the community, the bail commissioner or bail magistrate shall order the
404 pretrial release of the person subject to:

405 (1) the condition that the person not commit a new crime during the period of release; and

406 (2) the least restrictive further condition, or combination of conditions, that the bail
407 commissioner or bail magistrate determines will reasonably assure the appearance of the person
408 and the safety of any other person and the community, which may include the condition or
409 combination of conditions that the person during the period of release shall:

410 (A) abide by specified restrictions on place of abode or travel;

411 (B) refrain from use of alcohol, marijuana, or other intoxicants, and from use of any
412 controlled substance, except as prescribed or certified by a licensed medical practitioner;

413 (C) comply with restrictions on personal associations, a curfew or home confinement;

414 (D) refrain from abusing and harassing any alleged victim of the charged crime and any
415 potential witness who may testify concerning the charged crime;

416 (E) stay away from and have no contact with an alleged victim of the charged crime and
417 with any potential witness who may testify concerning the charged crime;

418 (F) refrain from possessing a firearm, rifle, shotgun, destructive device, or other
419 dangerous weapon;

420 (G) provide unsecured or secured bond to satisfy a financial condition that the bail
421 commissioner or bail magistrate may specify; or

422 (H) satisfy any other condition that is reasonably necessary to assure the appearance of
423 the person or the safety of any other person or the community.

424 When setting conditions under this subsection, the bail commissioner or bail magistrate
425 shall consider, where relevant, the factors set forth in paragraphs (2) and (3) of subsection (b) of
426 section 58.

427 (d) In a case that meets the criteria set forth in subsection (a) of section 58A, the bail
428 commissioner or bail magistrate shall order the person held until the next day that court is in
429 session unless the bail commissioner or bail magistrate determines that some condition or
430 combination of conditions will reasonably assure the safety of any alleged victim, any witness to
431 the alleged crime and the community. In making this determination, the bail commissioner or
432 bail magistrate shall consider the factors set forth in subsection (c) of section 58A. The bail
433 commissioner or bail magistrate shall memorialize such determination in a written statement of
434 reasons.

435 (e) Bail commissioners and bail magistrates may not impose a financial condition to
436 assure the safety of any other person or the community, but may impose a financial condition
437 when necessary to reasonably assure the person's appearance.

438 (f) Before issuing any release order under this section for a person who has been
439 charged with a new crime while released pending adjudication of a prior charge or who is on
440 probation, the bail commissioner or bail magistrate shall contact the probation service electronic
441 monitoring center to inform the service of the person's arrest and charge.

442 (g) In a release order issued under this section, the bail commissioner or bail
443 magistrate shall advise the person of:

444 (1) The consequences of violating a condition of release, including immediate arrest or
445 issuance of a warrant for the person's arrest, revocation of release, and, if applicable, the
446 potential that the person may face criminal penalties, including penalties for violating section
447 13B of chapter 268; and

448 (2) if the person is charged with a crime of abuse, informational resources related to
449 domestic violence, which shall include, but are not limited to, a list of certified intimate partner
450 abuse education programs located within or near the court's jurisdiction.

451 (h) The terms and conditions of any order by the bail commissioner or bail magistrate
452 shall remain in effect until the person is brought before the court for arraignment.

453 (i) When a bail commissioner or bail magistrate releases a person on conditions
454 under subsection (c), the bail commissioner or bail magistrate shall record the conditions and
455 provide a copy of such conditions to the person and the detaining authority and shall transmit a
456 copy to the court.

457 (j) If a person released on conditions by a bail commissioner or bail magistrate
458 under subsection (b) or (c) violates any such condition, the person may be subject to an order of
459 revocation of release and detention pursuant to section 58B.

460 (k) All bail commissioners and bail magistrates authorized to release a person on
461 recognizance, release a person on conditions, or detain a person under this section shall be
462 governed by rules established by the chief justice of the trial court, subject to review by the
463 supreme judicial court.

464 (l) Nothing in this section shall authorize a bail commissioner or bail magistrate to
465 release a person arrested and charged with murder or a person arrested and charged with a crime
466 of abuse while an order of protection under chapter 209A was in effect against such person.

467 SECTION 5. Said chapter 276 is hereby amended by inserting after section 82A, as
468 appearing in the 2016 Official Edition, the following section:-

469 Section 82B. A person who is found violating any condition ordered under section 58 of
470 chapter 119, section 58, 58A, 58B, 59, or 87 of this chapter, or section 1 or 1A of chapter 279, or
471 any other condition of probation imposed by a court after conviction or admission to sufficient
472 facts, or any term or condition of parole imposed by the parole board, may be arrested by a
473 sheriff, deputy sheriff or police officer and kept in custody in a convenient place, not more than
474 24 hours, Sunday excepted, until notice of the violation can be given to the probation service,
475 and such person be taken before the court upon a warrant issued by the probation service; or, in
476 the case of a person under parole supervision, to the parole board.

477 SECTION 6. There shall be a task force on criminal history data enhancements. The
478 task force shall develop recommendations for enhancements to the criminal history information
479 available to bail commissioner, bail magistrates, judicial officers, prosecutors and defense
480 counsel that will allow actors in the criminal justice system to make more informed
481 recommendations and decisions regarding questions of pre-trial release and allow for access to
482 pre-trial release conditions by law enforcement. The task force shall consider the value, cost and
483 practicality of adding to a defendant's criminal history information regarding determinations of
484 dangerousness, custody status, release conditions, reasons for detention, incidents of non-
485 compliance with any conditions of pre-trial release and decisions regarding revocation of release.

486 The task force shall identify, with respect to each recommendation, whether it requires
487 legislation and, if so, prepare draft legislation.

488 The task force shall be comprised of the following persons or their designees: the
489 secretary of the executive office of public safety and security, who shall serve as chair; the
490 secretary of the executive office of technology services and security; the chief justice of the trial
491 court; the commissioner of probation; the president of the Massachusetts district attorneys
492 association; the chief counsel of the committee for public counsel services; and the president of
493 the Massachusetts chiefs of police association. The task force shall consult with other individuals
494 who have relevant expertise as needed.

495 The task force shall, within 180 days of the passage of this bill, submit its
496 recommendations to the governor and to the clerks of the senate and house of representatives and
497 the clerks shall forward the report to the senate and house chairs of the joint committee on the
498 judiciary

499 SECTION 7. Subsection (c) of section 58 of chapter 276 shall take effect on July 1,
500 2020.