

By Mrs. Holland of Longmeadow, petition of Iris K. Holland for legislation to authorize the denial of bail in certain cases. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-One.

AN ACT TO AUTHORIZE THE DENIAL OF BAIL IN CERTAIN CASES.

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

1 Chapter 276 of the General Laws as appearing in the 1988
2 Official Edition is hereby amended by inserting after section 58
3 the following new section: —

4 Section 58A. 1. Detention — If, after a hearing pursuant to the
5 provisions of subsection 2 of this section, the judicial officer finds
6 that no condition or combination of conditions will reasonably
7 assure the safety of any other person and the community, such
8 judicial officer shall order the detention of the person before trial.
9 In a case described in subsection 2 of this section, a rebuttable
10 presumption arises that no condition or combination of
11 conditions will reasonably assure the safety of any other person
12 and the community if such judicial officer finds that —

13 (A) The person has been convicted of an offense that is described
14 in subsection 2 of this section;

15 (B) A period of not more than five years has elapsed since the
16 date of conviction, or the release of the person from imprison-
17 ment, for the offense described in paragraph (A) of this subsection,
18 whichever is later.

19 2. Detention Hearing — The judicial officer shall hold a
20 hearing to determine whether any condition or combination of
21 conditions will reasonably assure the safety of any other person
22 and the community —

23 (1) Upon motion of the attorney general for the Common-
24 wealth, in a case that involves —

25 (A) A crime of violence;

26 (B) An offense for which the maximum sentence is life
27 imprisonment;

28 (C) An offense for which a mandatory minimum term of
29 imprisonment is three years as prescribed in sections 32E and 32F
30 of the controlled substances act of Chapter 94C of the General
31 Laws.

32 (D) Any felony if the person has been convicted of two or more
33 offenses described in paragraphs (A) and (B) of this paragraph.

34 (2) Upon motion of the attorney general for the Common-
35 wealth or upon the judicial officer's own motion, in a case that
36 involves a serious risk that the person will obstruct or attempt
37 to obstruct justice, or threaten, injure, or intimidate, or attempt
38 to threaten, injure or intimidate, a prospective witness or juror.

39 The hearing shall be held immediately upon the person's first
40 appearance before the judicial officer unless that person, or the
41 attorney for the Commonwealth seeks a continuance. Except for
42 good cause, a continuance on motion of the person may not
43 exceed five days, and a continuance on motion of the attorney
44 for the Commonwealth may not exceed three days. During a
45 continuance, the attorney for the Commonwealth or *sua sponte*,
46 may order that, while in custody, a person who appears to be a
47 narcotics addict receive a medical examination to determine
48 whether such a person is an addict. At the hearing, the person
49 has the right to be represented by counsel, and if financially unable
50 to obtain adequate representation, to have counsel appointed. The
51 person shall be afforded an opportunity to testify, to present
52 witnesses, to cross-examine witnesses who appear at the hearing,
53 and to present information by proffer or otherwise. The rules
54 concerning admissibility of evidence in criminal trials do not apply
55 to the presentation and consideration of information at the
56 hearing. The facts the judicial officer uses to support a finding
57 pursuant to subsection 1 that no condition or combination of
58 conditions will reasonably assure the safety of any other person
59 and the community shall be supported by clear and convincing
60 evidence. The person may be detained pending completion of the
61 hearing. The hearing may be reopened before or after a
62 determination by the judicial officer, at any time before trial if
63 the judicial officer finds that information exists that was not

64 known to the movant at the time of the hearing and that has a
65 material bearing on the issue whether there are conditions of
66 release that will reasonably assure the appearance of the person
67 as required and the safety of any other person and the community.

68 3. Factors to be considered. — The judicial officer shall, in
69 determining whether there are conditions of release that will
70 reasonably assure the appearance of the person as required and
71 the safety of any other person and the community, take into
72 account the available information concerning

73 (1) the nature and circumstances of the offense charged,
74 including whether the offense is a crime of violence;

75 (2) the weight of the evidence against the person;

76 (3) the history and characteristics of the person, including: —

77 (A) the person's character, physical and mental condition,
78 family ties, employment, financial resources, length of residence
79 in the community, community ties, past conduct, history relating
80 to drug or alcohol abuse, criminal history, and record concerning
81 appearance at court proceedings; and

82 (B) whether, at the time of the current offense or arrest, the
83 person was on probation, on parole, sentencing, appeal, or
84 completion of sentence for a criminal offense and

85 (4) the nature and seriousness of the danger to any person or
86 the community that would be posed by the person's release.

87 4. Contents of Detention Order. In a detention order, the
88 judicial officer shall:

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

91 (B) direct that the person be committed to the custody of the
92 proper authority for confinement in a corrections facility separate,
93 to the extent practicable, from persons awaiting or serving
94 sentences or being held in custody pending appeal;

95 (C) direct that the person be afforded reasonable opportunity
96 for private consultation with counsel; and

97 (D) direct that, on order of a court or on request of an attorney
98 for the Commonwealth, the person in charge of the corrections
99 facility in which the person is confined deliver the person to an
100 appearance in connection with a court proceeding. The judicial
101 officer may, by subsequent order, permit the temporary release
102 of the person, in the custody of an appropriate person, to the

103 extent that the judicial officer determines such release to be
104 necessary for preparation of the person's defense or for another
105 compelling reason.

106 5. Presumption of Innocence — Nothing in this section shall
107 be construed as modifying or limiting the presumption of
108 innocence.

109 6. Review and Appeal of Detention Order

110 (A) if a person is ordered detained, the person may file an
111 appeal for revocation or amendment with the proper appellate
112 court. The appeal shall be heard promptly.

113 (B) the person ordered detained may appeal the decision of the
114 proper appellate court to a single justice of the Supreme Judicial
115 Court of the Commonwealth. This appeal must be heard
116 promptly.

117 7. The administrative justice of the district courts and the
118 administrative justice of the municipal court of the city of Boston
119 shall prescribe forms for use in their respective courts, for the
120 purpose of notifying a defendant of his right to file a petition for
121 review in the superior court, forms for a petition for review and
122 forms for the implementation of any other procedural
123 requirements. The clerk of courts shall forthwith notify the district
124 court of all orders of judgments of the superior court on petitions
125 for review. Costs or expenses of services and transportation under
126 this section shall be ordered paid in the amount determined by
127 the superior court out of the state treasury.

128 8. If any provision of this act, or its application to any person
129 or any set of circumstances, is held to be invalid or unconstitu-
130 tional by any court of competent jurisdiction, such holding shall
131 not affect any other provision of this act or the application of the
132 provision in question to any other person, fact or circumstances.