

By Mr. Flaherty of Boston, petition of Michael F. Flaherty and another for legislation to provide for appeals and for cross appeals by the Commonwealth in criminal cases. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Three.

AN ACT PROVIDING FOR APPEALS AND FOR CROSS APPEALS BY THE COMMONWEALTH IN CRIMINAL 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 SECTION 1. Section forty-seven A of chapter 277 of the
2 General Laws, as amended by St. 1979, c. 344, § 39, is hereby
3 amended by adding after the final sentence the following sen-
4 tence: —

5 “A motion to admit or to exclude any evidence which is capable
6 of determination without the trial of the general issue may be filed
7 by either party and determined by the court before trial in conform-
8 ance with the Massachusetts Rules of Criminal Procedure.”

1 SECTION 2. Chapter 278 of the General Laws is hereby
2 amended by adding after the first sentence of section 28, as
3 amended by St. 1979, c. 344, § 44, the following paragraphs: —

4 An application for an appeal from a decision, order or judgment
5 of the superior court determining a motion to suppress evidence
6 prior to trial may be filed in the supreme judicial court by a
7 defendant. If such application is denied, or if such application is
8 granted but the interlocutory appeal is heard by a single justice, the
9 determination of the motion is heard by a single justice, the deter-
10 mination of the motion to suppress evidence shall be open to
11 review by the full court after trial in the same manner and to the
12 same extent as determination of such motions not appealed under
13 the interlocutory procedure herein authorized.

14 Rules of practice and procedure with respect to appeals author-
15 ized by this section shall be the same as those applicable to criminal
16 appeals under the Massachusetts Rules of Appellate Procedure.

1 SECTION 3. Chapter 278 of the General Laws is hereby
2 amended by striking out section 28E as most recently amended by
3 St. 1979, c. 344, § 45, and inserting in its place the following
4 section: —

5 *Section 28E. Appeals By Commonwealth*

6 An appeal may be taken by and on behalf of the Commonwealth
7 by the attorney general or a district attorney from the district court
8 department or the superior court department to the appeals court
9 in all criminal cases from a decision, order or judgment of the court
10 (1) dismissing an indictment or complaint as to any one or more
11 counts, (2) allowing a motion for appropriate relief under the
12 Massachusetts Rules of Criminal Procedure, or (3) suppressing or
13 excluding evidence.

14 An appeal may be taken by and on behalf of the Commonwealth
15 by the attorney general or a district attorney in any criminal case
16 after trial and after a verdict of guilty by a jury or finding of guilty
17 by the court where the defendant has filed a notice of appeal to the
18 appeals court or to the supreme judicial court. Notice of the appeal
19 by the Commonwealth shall be filed within 30 days of its receipt of
20 the defendant's notice of appeal. On appeal, the Commonwealth
21 may argue that error harmful to it was committed in the trial or in a
22 pretrial proceeding resulting in the conviction from which the
23 defendant has appealed, and that the error should be corrected in
24 the event that the appellate court reverses the guilty verdict or
25 finding and remands the case to the trial court for a new trial. If the
26 case is so reversed and remanded, the appellate court shall rule
27 upon such errors that were harmful to the Commonwealth. If the
28 case is affirmed on appeal, the appellate court may rule upon such
29 errors the Commonwealth argued were harmful to it which either
30 present questions of first impression before the appellate court, or
31 which are likely to reoccur in subsequent trial within the Common-
32 wealth.

33 Rules of practice and procedure with respect to appeals author-

34 ized by this section shall be the same as those applicable to criminal
35 appeals under the Massachusetts Rules of Appellate Procedure.
36 The provisions of this section shall be liberally construed to
37 accomplish its purpose, or purposes, of insuring the Common-
38 wealth is able to proceed to trial with all the evidence it is legally
39 entitled to introduce, in view of the limited ability of the Com-
40 monwealth to have error reviewed.

1 SECTION 4. Chapter 278 of the General Laws is hereby
2 amended by adding after section 28E the following new section: —
3 *Section 28F.* If the defendant or the Commonwealth fails to
4 diligently prosecute an appeal by not complying with a section of
5 this chapter or a provision of the Massachusetts Rules of Appellate
6 Procedure or the Massachusetts Rules of Criminal Procedure, a
7 justice of the supreme judicial court shall order that the appeal be
8 dismissed and that the judgment appealed from be affirmed or make
9 such other orders as may be necessary to the furtherance of justice.
10 If for some other reason either party is unable to perfect an appeal,
11 the Court may make such orders as are necessary to cause the
12 record to be assembled or the appeal to be filed or docketed.

