

By Ms. Creem, a petition (accompanied by bill, Senate, No. 946) of Cynthia Stone Creem and David P. Linsky for legislation relative to probation surrender and bail revocation. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT RELATIVE TO PROBATION SURRENDER AND BAIL REVOCATION.

*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. Chapter 279, as appearing in the 1998 Official  
2 Edition, is hereby amended by inserting in section 3, after the first  
3 sentence of the first paragraph, the following sentence:—

4 A probationer charged with violating the terms of his probation  
5 shall be admitted to bail pending a final surrender hearing in the  
6 same manner and under the same conditions as other prisoners,  
7 pursuant to sections fifty-eight and fifty-eight A of chapter two  
8 hundred seventy-six.

1 SECTION 2. Chapter 276, as appearing in the 1998 Official  
2 Edition, is hereby amended by striking out section 57 and  
3 inserting in place thereof the following section:—

4 Section 57. A justice of the supreme judicial court or superior  
5 court, a clerk of courts or the clerk of the superior court for crim-  
6 inal business in the county of Suffolk, a standing or special com-  
7 missioner appointed by either of said courts, or in the county of  
8 Suffolk, by the sheriff of said county with the approval of the  
9 superior court, a justice or clerk of a district court, a master in  
10 chancery, upon application of a prisoner or witness or probationer  
11 held under arrest or committed, either with or without a warrant,  
12 or held in the custody of an officer under a mittimus, may inquire  
13 into the case and admit such prisoner or witness or probationer to  
14 bail if he determines that such release will reasonably assure the

15 appearance of the person before the court and will not endanger  
16 the safety of any other person or the community; and may admit  
17 to bail any person committed for not finding sureties to recognize  
18 for him. All persons authorized to take bail under this section  
19 shall be governed by the rules established by the supreme judicial  
20 court or superior court. No person offering himself as surety shall  
21 be deemed insufficient if he deposits money of an amount equal to  
22 the amount of the bail required of him in such recognizance, or a  
23 bank book of savings bank, credit union or of a savings account in  
24 a trust company or national bank, or a passbook or paid-up shares  
25 of a cooperative bank doing business in the commonwealth, prop-  
26 erly assigned to the clerk with whom the same is or is to be  
27 deposited, and his successors, and satisfactory to the person so  
28 authorized to take bail, or deposits non-registered bonds of the  
29 United States or of the commonwealth or of any county, city or  
30 town within the commonwealth equal at their face value to the  
31 amount of the bail required of him in such recognizance. The  
32 sheriff of Suffolk county may, with the approval of the superior  
33 court, appoint standing or special commissioners to take bail to a  
34 number not exceeding twenty and may, with like approval,  
35 remove them.

36 Notwithstanding the foregoing, a person arrested and charged  
37 with a violation of an order or judgment issued pursuant to section  
38 eighteen, thirty-four B or thirty-four C of chapter C of chapter two  
39 hundred and eight, section thirty-two of chapter two hundred and  
40 nine, section three, four or five of chapter two hundred and nine  
41 A, or section fifteen or twenty of chapter two hundred and nine C,  
42 or arrested and charged with a misdemeanor or felony involving  
43 abuse as defined in section one of said chapter two hundred and  
44 nine A while an order of protection issued under said chapter two  
45 hundred and nine A was in effect against said person, shall not be  
46 released out of court by a clerk of courts, clerk of a district court,  
47 bail commissioner or master in chancery.

48 Before the amount of the bail of a prisoner charged with an  
49 offense punishable by imprisonment for more than one year is  
50 fixed in court, the court shall obtain from its probation officer all  
51 available information relative to prior criminal prosecutions, if  
52 any, of the prisoner or probationer and the disposition of each of  
53 such prosecutions. If the offense with which such a prisoner is

54 charged is a violation of any provision of sections twenty-two to  
55 twenty-four, inclusive, of chapter two hundred and seventy-two,  
56 and it appears from such information or otherwise that he had  
57 been previously prosecuted for a violation of any such provision,  
58 the court shall, before the amount of bail is fixed, obtain from the  
59 department of mental health a report containing all information in  
60 its possession relative to the prisoner, particularly with respect to  
61 any mental disease or defect with which he may have been  
62 afflicted; and said department shall furnish any such report to the  
63 court promptly upon its request.

64 No person arrested for violating any provision of section thirty-  
65 three or thirty-five of chapter fifty-six shall be admitted to bail  
66 unless there is deposited not less than five hundred dollars in cash,  
67 or there is offered real estate of the fair market value of not less  
68 than one thousand dollars, over and above all encumbrances, as  
69 security.

1 SECTION 3. Section 58 of Chapter 276, as appearing in the  
2 1998 Official Edition, is hereby amended by striking the first sen-  
3 tence in the first paragraph and inserting in place thereof the  
4 following sentence:—

5 A justice or a clerk or assistant clerk of the district court, a bail  
6 commissioner or master in chancery, in accordance the applicable  
7 provisions of section fifty-seven, shall, when a person is held  
8 under arrest or committed either with or without a warrant for an  
9 offense other than an offense punishable by death, or, upon the  
10 motion of the commonwealth, for an offense enumerated in  
11 section fifty-eight A or for any offense on which a warrant of  
12 arrest has been issued by the superior court, or for violating the  
13 terms of his probation, hold a hearing in which the defendant and  
14 his counsel, if any, may participate and inquire into the case and  
15 shall admit such person to bail on his personal recognizance  
16 without surety unless said justice, clerk or assistant clerk, bail  
17 commissioner or master in chancery determines, in the exercise of  
18 his discretion, that such a release will not reasonably assure the  
19 appearance of the person before the court.

