

By Mr. Festa of Melrose, petition of Michael E. Festa and others relative to retroactive parole eligibility for certain drug offenders. The Judiciary.

The Commonwealth of Massachusetts

PETITION OF:

Michael E. Festa	Patricia D. Jehlen
David Paul Linsky	Gloria L. Fox
Byron Rushing	Anne M. Paulsen
Frank I. Smizik	

In the Year Two Thousand and Five.

AN ACT REGARDING RETROACTIVE PAROLE ELIGIBILITY FOR DRUG OFFENDERS.

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. Notwithstanding the provisions of subsection
2 (c) of section 32A, paragraphs (2), (3) and (4) of subsection (a) of
3 section 32E, paragraphs (1), (2), (3) and (4) of subsection (b) of
4 section 32E, paragraphs (1), (2), (3) and (4) of subsection (c) of
5 section 32E and 32J of chapter 94C of the General Laws, or any
6 other general or special law to the contrary, persons serving
7 mandatory minimum sentences in a state prison or house of cor-
8 rection for violations of the above referenced sections as of Jan-
9 uary 1, 2006 shall be eligible for parole after serving two-thirds or
10 one-half of the maximum sentence imposed respectively; provided
11 however, that such defendant seek review of his sentence and the
12 court finds that at the time the defendant was sentenced all of the
13 following mitigating circumstances applied.

14 The following is the exclusive list of mitigating conditions:—
15 (1) the criminal history of the defendant falls in criminal his-
16 tory group A or B in the sentencing guidelines grid as set forth in
17 Chapter 211G;

18 (2) the defendant has no prior drug distribution and trafficking
19 convictions;

20 (3) the defendant did not use violence or credible threats of vio-
21 lence or possess a firearm or other dangerous weapon, or induce
22 another participant to do so, in connection with the offense;

23 (4) the offense did not result in the death or serious bodily
24 injury to any person;

25 (5) the defendant is a minor participant in the manufacture, dis-
26 tribution or sale of controlled substances;

27 (6) the defendant is not charged with an offense involving
28 minors.

29 A defendant who fails to meet said mitigating circumstances
30 shall not be eligible for parole at two-thirds of the maximum sen-
31 tence imposed for state prison sentence or at one-half of the max-
32 imum sentence imposed for a house of correction sentence, and
33 shall serve the full sentence of imprisonment imposed and shall be
34 subject to post release supervision as set forth in section 5 of
35 chapter 211E.

1 SECTION 2. Section 130 of chapter 127 of the General Laws,
2 as so appearing; is hereby amended by striking out the first sen-
3 tence and inserting in place thereof the following three sen-
4 tences:— No prisoner shall be granted a parole permit merely as a
5 reward for good conduct but only if the parole board is of the
6 opinion that there is a reasonable probability that, if such prisoner
7 is released, in light of appropriate conditions and community
8 supervision, he will live and remain at liberty without violating
9 the law and that his release is compatible with the welfare of
10 society. In making this determination, the board shall consider
11 whether, during the period of incarceration, the prisoner has par-
12 ticipated in available work opportunities and education or treat-
13 ment programs, and demonstrated good behavior. The board shall
14 also consider whether risk reduction programs made available
15 through collaboration with criminal justice agencies would mini-
16 mize the probability of the prisoner re-offending once released.

1 SECTION 3. Section 136 of said chapter 127, as so appearing,
2 is hereby amended by adding the following sentence:— The
3 parole board shall have the option to (1) grant parole, subject to

4 the conditions or limitations as deemed appropriate, (2) deny
5 parole, subject to reconsideration at a specified date with recom-
6 mendations for interim program participation or treatment, or
7 (3) deny parole.

1 SECTION 4. The provisions of this act shall take effect on
2 January 1, 2006 and the sentencing guidelines and other related
3 provisions contained herein shall apply to all felonies and misde-
4 meanors committed on or after said date. All offenses committed
5 prior to January 1, 2006 shall be governed by the laws, including,
6 but not limited to, those on sentencing, parole, and probation, in
7 effect at the time the offense is committed.

