

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

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT REGARDING 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. Section 32H of Chapter 94C, as appearing in the
2 2002 Official Edition, is hereby amended by striking out, in line 13,
3 the word “parole,” and is hereby further amended by inserting at the
4 end of said section the following paragraph:—

5 Notwithstanding any general or special law to the contrary, a
6 person convicted of violating subsections (c) of Section 32A, para-
7 graphs (2), (3) and (4) of subsection (a) of Section 32E, paragraphs
8 (1), (2), (3) and (4) of subsection (b) of Section 32E, paragraphs (1),
9 (2), (3) and (4) of subsection (c) of section 32E and 32J of Chapter
10 94C of the General Laws shall be eligible for parole after serving
11 two-thirds of the maximum term of imprisonment imposed to a state
12 prison or after serving one-half of the maximum term of imprison-
13 ment imposed to a house of correction if the court finds at sen-
14 tencing that all of the following mitigating circumstances apply. The
15 defendant shall also be eligible for earned good time, work release,
16 and other pre-release programs deemed appropriate by the correc-
17 tional authority with custodial responsibility, notwithstanding the
18 provisions of Section 32H of chapter 94C.

19 The following is the exclusive list of mitigating conditions:—

20 (1) the criminal history of the defendant falls in criminal history
21 group A or B in the sentencing guidelines grid as set forth in Chapter
22 211G;

23 (2) the defendant has no prior drug distribution and trafficking
24 convictions;

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

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

30 (5) the defendant is a minor participant in the manufacture, distri-
31 bution or sale of controlled substances;

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

33 A defendant who fails to meet said mitigating circumstances shall
34 not be eligible for parole at two-thirds of the maximum sentence
35 imposed for state prison sentence or at one-half of the maximum
36 sentence imposed for a house of correction sentence, and shall serve
37 the full sentence of imprisonment imposed and shall be subject to
38 post release supervision as set forth in Section 5 of Chapter 211E.

1 SECTION 2. Section 130 of Chapter 127 of the General Laws, as
2 so appearing is hereby amended by striking out the first sentence and
3 inserting in place thereof the following three sentences:—

4 No prisoner shall be granted a parole permit merely as a reward
5 for good conduct but only if the parole board is of the opinion that
6 there is a reasonable probability that, if such prisoner is released, in
7 light of appropriate conditions and community supervision, he will
8 live and remain at liberty without violating the law and that his
9 release is compatible with the welfare of society. In making this
10 determination, the board shall consider whether, during the period of
11 incarceration, the prisoner has participated in available work oppor-
12 tunities and education or treatment programs, and demonstrated
13 good behavior. The board shall also consider whether risk reduction
14 programs made available through collaboration with criminal justice
15 agencies would minimize the probability of the prisoner re-offending
16 once released.

1 SECTION 3. Section 136 of said Chapter 127, as so appearing, is
2 hereby amended by adding the following sentence:—

3 The parole board shall have the option to (1) grant parole, subject
4 to the conditions or limitations as deemed appropriate, (2) deny
5 parole, subject to reconsideration at a specified date with recommen-
6 dations for interim program participation or treatment, or (3) deny
7 parole.