

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

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

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 sections subsec-  
2 tions (c) of section 32A, paragraphs (2), (3) and (4) of subsection (a)  
3 of 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 manda-  
7 tory minimum sentences in a state prison or house of correction for  
8 violations of the above referenced sections as of the date of enact-  
9 ment of this act shall be eligible for parole after serving two-thirds  
10 or one-half of the maximum sentence imposed respectively, pro-  
11 vided however, that such defendant seek review of his sentence and  
12 the 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 history  
16 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 injury  
24 to any person;

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

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

28 A defendant who fails to meet said mitigating circumstances shall  
29 not be eligible for parole at two-thirds of the maximum sentence  
30 imposed for state prison sentence or at one-half of the maximum  
31 sentence imposed for a house of correction sentence, and shall serve  
32 the full sentence of imprisonment imposed and shall be subject to  
33 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:— No pris-  
4 oner shall be granted a parole permit merely as a reward for good  
5 conduct but only if the parole board is of the opinion that there is a  
6 reasonable probability that, if such prisoner is released, in light of  
7 appropriate conditions and community supervision, he will live and  
8 remain at liberty without violating the law and that his release is  
9 compatible with the welfare of society. In making this determination,  
10 the board shall consider whether, during the period of incarceration,  
11 the prisoner has participated in available work opportunities and  
12 education or treatment programs, and demonstrated good behavior.  
13 The board shall also consider whether risk reduction programs made  
14 available through collaboration with criminal justice agencies would  
15 minimize the probability of the prisoner re-offending once released.

1 SECTION 3. Section 136 of said chapter 127, as so appearing, is  
2 hereby amended by adding the following sentence:— The parole  
3 board shall have the option to (1) grant parole, subject to the condi-  
4 tions or limitations as deemed appropriate, (2) deny parole, subject  
5 to reconsideration at a specified date with recommendations for  
6 interim program participation or treatment, or (3) deny parole.

1 SECTION 4. The sentencing guidelines and other related provi-  
2 sions contained herein shall apply to all felonies and misdemeanors  
3 committed on or after said date. All offenses committed prior to the  
4 date of enactment of this act shall be governed by the laws,  
5 including, but not limited to, those on sentencing, parole, and proba-  
6 tion, in effect at the time the offense is committed.