

By Mr. Poirier of North Attleborough, of Kevin Poirier for legislation to regulate the granting of bail in certain judicial proceedings. Criminal Justice.

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**The Commonwealth of Massachusetts**

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In the Year One Thousand Nine Hundred and Ninety-Four.

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AN ACT RELATIVE TO DENYING BAIL.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 Chapter 276 of the General Laws as appearing in the 1988  
2 Official Edition is hereby amended by inserting after section 58  
3 the following new section: —

4 Section 58A. 1. Detention — If, after a hearing pursuant to the  
5 provisions of subsection 2 of this section, the judicial officer finds  
6 that no condition or combination of conditions will reasonably  
7 assure the safety of any other person and the community, such  
8 judicial officer shall order the detention of the person before trial.  
9 In a case described in subsection 2 of this section, a rebuttable  
10 presumption arises that no condition or combination of  
11 conditions will reasonably assure the safety of any other person  
12 and the community if such judicial officers finds that —

13 (A) The person has been convicted of an offense that is  
14 described in subsection 2 of this section;

15 (B) A period of not more than five years has elapsed since the  
16 date of conviction, or the release of the person from imprison-  
17 ment, for the offense described in paragraph (A) of this subsection  
18 whichever is later.

19 2. Detention Hearing — The judicial officer shall hold a hearing  
20 to determine whether any condition or combination of conditions  
21 will reasonably assure the safety of any other person and the  
22 community:

23 (1) Upon motion of the attorney general for the Common-  
24 wealth, in a case that involves:

25 (A) A crime of violence;

26 (B) An offense for which the maximum sentence is life  
27 imprisonment;

28 (C) An offense for which a mandatory minimum term of  
29 imprisonment is three years as prescribed in sections 32E and 32F  
30 of the controlled substances act of Chapter 94C of the General  
31 Laws;

32 (D) Any felony if the person has been convicted of two or more  
33 offenses described in paragraphs (A) and (B) of this paragraph.

34 (2) Upon motion of the attorney general for the Commonwealth  
35 or upon the judicial officer's own motion, in a case that involves  
36 a serious risk that the person will obstruct or attempt to obstruct  
37 justice, or threaten, injure, or intimidate, or attempt to threaten,  
38 injure or intimidate, a prospective witness or juror.

39 The hearing shall be held immediately upon the person's first  
40 appearance before the judicial officer unless that person, or the  
41 attorney for the Commonwealth seeks a continuance. Except for  
42 good cause, a continuance on motion of the person may not  
43 exceed five days, and a continuance on motion of the attorney  
44 for the Commonwealth may not exceed three days. During a  
45 continuance, the attorney for the Commonwealth or *sua sponte*,  
46 may order that, while in custody, a person who appears to be a  
47 narcotics addict receive a medical examination to determine  
48 whether such a person is an addict. At the hearing, the person  
49 has the right to be represented by counsel, and if financially unable  
50 to obtain adequate representation to have counsel appointed. The  
51 person shall be afforded an opportunity to testify, to present  
52 witnesses, to cross-examine witnesses who appear at the hearing,  
53 and to present information by proffer or otherwise. The rules  
54 concerning admissibility of evidence in criminal trials do not apply  
55 to the presentation and consideration of information at the  
56 hearing. The facts the judicial officer uses to support a finding  
57 pursuant to subsection 1 that no condition or combination of  
58 conditions will reasonably assure the safety of any other person  
59 and the community shall be supported by clear and convincing  
60 evidence. The person may be detained pending completion of the  
61 hearing. The hearing may be reopened before or after a  
62 determination by the judicial officer, at any time before trial if

63 the judicial officer finds that information exists that was not  
64 known to the movant at the time of the hearing and that has a  
65 material bearing on the issue whether there are conditions of  
66 release that will reasonably assure the appearance of the person  
67 as required and the safety of any other person and the community.

68 3. Factors to be considered — The judicial officer shall, in  
69 determining whether there are conditions of release that will  
70 reasonably assure the appearance of the person as required and  
71 the safety of any other person and the community, take into  
72 account the available information concerning:

73 (1) the nature and circumstances of the offense charged,  
74 including whether the offense is a crime of violence;

75 (2) the weight of the evidence against the person;

76 (3) the history and characteristics of the person, including:

77 (A) the person's character, physical and mental condition,  
78 family ties, employment, financial resources, length of residence  
79 in the community, community ties, past conduct, history relating  
80 to drug or alcohol abuse, criminal history, and record concerning  
81 appearance at court proceedings; and

82 (B) whether, at the time of the current offense or arrest, the  
83 person was on probation, on parole, sentencing, appeal, or  
84 completion of sentence for a criminal offense; and

85 (4) the nature and seriousness of the danger to any person or  
86 the community that would be posed by the person's release.

87 4. Contents of Detention Order. In a detention order, the  
88 judicial officer shall:

89 (A) include written findings of fact and a written statement of  
90 the reasons for the detention;

91 (B) direct that the person be committed to the custody of the  
92 proper authority for confinement in a corrections facility separate,  
93 to the extent practicable, from persons awaiting or serving  
94 sentences or being held in custody pending appeal;

95 (C) direct that the person be afforded reasonable opportunity  
96 for private consultation with counsel; and

97 (D) direct that, on order of a court or on request of an attorney  
98 for the Commonwealth, the person in charge of the corrections  
99 facility in which the person is confined deliver the person to an  
100 appearance in connection with a court proceeding. The judicial

101 officer may, by subsequent order, permit the temporary release  
102 of the person, in the custody of an appropriate person, to the  
103 extent that the judicial officer determines such release to be  
104 necessary for preparation of the person's defense or for another  
105 compelling reason.

106 5. Presumption of Innocence — Nothing in this section shall  
107 be construed as modifying or limiting the presumption of  
108 innocence.

109 6. Review and Appeal of Detention Order

110 (A) if a person is ordered detained, the person may file an appeal  
111 for revocation or amendment with the proper appellate court. The  
112 appeal shall be heard promptly.

113 (B) the person ordered detained may appeal the decision of the  
114 proper appellate court to a single justice of the Supreme Judicial  
115 Court of the Commonwealth. This appeal must be heard  
116 promptly.

117 7. The administrative justice of the district courts and the  
118 administrative justice of the municipal court of the city of Boston  
119 shall prescribe forms for use in their respective courts, for the  
120 purpose of notifying a defendant of his right to file a petition for  
121 review in the superior court, forms for a petition for review and  
122 forms for the implementation of any other procedural  
123 requirements. The clerk of courts shall forthwith notify the district  
124 court of all orders of judgments of the superior court on petitions  
125 for review. Costs or expenses of services and transportation under  
126 this section shall be ordered paid in the amount determined by  
127 the superior court out of the state treasury.

128 8. If any provision of this act, or its application to any person  
129 or any set of circumstances, is held to be invalid or unconstitu-  
130 tional by any court of competent jurisdiction, such holding shall  
131 not affect any other provision of this act or the application of the  
132 provision in question to any other person, fact or circumstances.