HOUSE . . . . . No. 4781

By Mr. Flaherty of Boston, petition of Michael F. Flaherty relative to pretrial release and confinement. Criminal Justice.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Two.

AN ACT RELATIVE TO BAIL, PRETRIAL RELEASE AND CONFINEMENT.

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

SECTION 1. Section 58 of chapter 276 of the General Laws is hereby amended by striking out the first paragraph, as appearing in section 1 of chapter 473 of the acts of 1971, and inserting in place thereof the following paragraph: —

A justice or a clerk or assistant clerk of the district court, a bail commisssioner or master in chancery, in accordance with the applicable provisions of section fifty-seven shall, when a prisoner is held under arrest or committed either with or without a warrant for an offense other than an offense punishable by death, or for any offense on which a warrant of arrest has been issued by the superior court, hold a hearing in which the defendant and his counsel, if any, may participate and inquire into the case and shall admit such person to bail on his personal recognizance without surety unless said justice, clerk or assistant clerk, bail commissioner or master in chancery determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the prisoner before the court. In his determination, said justice, clerk or assistant clerk, bail commissioner or master in chancery shall, on the basis of any information which he can reasonably obtain, take into account the nature and circumstances of the offense charged, the potential penalty the prisoner faces, the prisoner's family ties, financial resources, employment record and history of mental illness, his reputation and the length of residence in the community, his record of convictions, if any, any illegal drug use or depen-

dency, any flight to avoid prosecution or fraudulent use of an alias or false identification, or any failure to appear at any court proceeding to answer to an offense, whether the prisoner is on bail pending adjudication of a prior charge, whether he is on probation, parole, or other release pending completion of sentence for any conviction, and whether he is on release pending sentence or appeal for any conviction. The person authorized to admit the prisoner to bail shall provide as an explicit condition of release for any prisoner admitted to bail pursuant to this section or section fifty-seven that should said prisoner be charged with a crime during the period of his release, his bail may be revoked in accordance with the third paragraph of this section.

SECTION 2. The third paragraph of said section 58 of said chapter 276, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following six sentences: —

A prisoner aforesaid charged with an offense and not released on his personal recognizance without surety by a clerk or assistant clerk of the district court, a bail commissioner or master in chancery shall forthwith be brought before the next session of the district court for a review of the order to recognize in accordance with the standards set forth in the first paragraph and this paragraph of this section. The court shall provide as an explicit condition of release for any prisoner admitted to bail pursuant to this section or section fifty-seven that should said prisoner be charged with a crime during the period of his release, his bail may be revoked in accordance with this paragraph. If a prisoner is on release pending the adjudication of a prior charge, and the court after a hearing, finds probable cause to believe that the prisoner has committed a crime during said period of release, the court shall then determine, in the exercise of its discretion, whether the release of said prisoner will seriously endanger any person or the community. In making said determination, the court shall consider the gravity, nature and circumstances of the offenses charged, the prisoner's record of convictions, if any, and whether said charges or convictions are for offenses involving the use or threat of physical force or violence against any person, whether the prisoner

is on probation, parole or other release pending completion of sentence for any conviction, whether he is on release pending sentence or appeal for any conviction, the prisoner's mental condition, and any illegal drug use or dependency. If the court determines that the release of said prisoner will seriously endanger any person or the community and that the detention of the prisoner is necessary to reasonably assure the safety of any person or the community, the court may revoke bail on the prior charge and may order said prisoner held without bail pending the adjudication of said prior charge, for a period not to exceed sixty days. Said order shall state in writing the reasons therefor. A prisoner so held shall be brought to trial as soon as reasonably possible.

SECTION 3. The fourth paragraph of said section 58 of said chapter 275 as so appearing, is hereby amended by striking out, in line 2, the word "paragraph" and inserting in place thereof the words: — and third paragraphs.

SECTION 4. The fifth paragraph of said section 58 of said chapter 276, as so appearing is hereby amended by adding the following sentence: — The court may also review such changed circumstances or other factors not previously known or considered in accordance with the third paragraph of this section.

SECTION 5. Chapter 279 of the General Laws is hereby amended by inserting after section 8A the following section: —

Section 8B. If the defendant was on release subject to the provisions of section fifty-eight of chapter two hundred and seventy-six when the crime was committed, the presumption shall be that the sentence shall run consecutively to the earlier sentence for the crime for which he was on release.