

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Ms. Creem

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to probation surrender and bail revocation.

PETITION OF:

NAME:

Ms. Creem

DISTRICT/ADDRESS:

First Middlesex and Norfolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S00889 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO PROBATION SURRENDER AND BAIL REVOCATION.

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. Chapter 279, as appearing in the 2004 Official Edition, is hereby amended
2 by inserting in section 3, after the first sentence of the first paragraph, the following sentence:—
3 A probationer charged with violating the terms of his probation shall be admitted to bail pending
4 a final surrender hearing in the same manner and under the same conditions as other prisoners,
5 pursuant to sections fifty-eight and fifty-eight A of chapter two hundred seventy-six.

6 SECTION 2. Chapter 276, as appearing in the 2004 Official Edition, is hereby amended by
7 striking out section 57 and inserting in place thereof the following section:—

8 Section 57. A justice of the supreme judicial court or superior court, a clerk of courts or the clerk
9 of the superior court for criminal business in the county of Suffolk, a standing or special
10 commissioner appointed by either of said courts, or in the county of Suffolk, by the sheriff of

11 said county with the approval of the superior court, a justice or clerk of a district court, a master
12 in chancery, upon application of a prisoner or witness or probationer held under arrest or
13 committed, either with or without a warrant, or held in the custody of an officer under a
14 mittimus, may inquire into the case and admit such prisoner or witness or probationer to bail if
15 he determines that such release will reasonably assure the appearance of the person before the
16 court and will not endanger the safety of any other person or the community; and may admit to
17 bail any person committed for not finding sureties to recognize for him. All persons authorized to
18 take bail under this section shall be governed by the rules established by the supreme judicial
19 court or superior court. No person offering himself as surety shall be deemed insufficient if he
20 deposits money of an amount equal to the amount of the bail required of him in such
21 recognizance, or a bank book of savings bank, credit union or of a savings account in a trust
22 company or national bank, or a passbook or paid-up shares of a cooperative bank doing business
23 in the commonwealth, properly assigned to the clerk with whom the same is or is to be
24 deposited, and his successors, and satisfactory to the person so authorized to take bail, or
25 deposits non-registered bonds of the United States or of the commonwealth or of any county, city
26 or town within the commonwealth equal at their face value to the amount of the bail required of
27 him in such recognizance. The sheriff of Suffolk county may, with the approval of the superior
28 court, appoint standing or special commissioners to take bail to a number not exceeding twenty
29 and may, with like approval, remove them.

30 Notwithstanding the foregoing, a person arrested and charged with a violation of an order or
31 judgment issued pursuant to section eighteen, thirty-four B or thirty-four C of chapter two
32 hundred and eight, section thirty-two of chapter two hundred and nine, section three, four or five
33 of chapter two hundred and nine A, or section fifteen or twenty of chapter two hundred and nine

34 C, or arrested and charged with a misdemeanor or felony involving abuse as defined in section
35 one of said chapter two hundred and nine A while an order of protection issued under said
36 chapter two hundred and nine A was in effect against said person, shall not be released out of
37 court by a clerk of courts, clerk of a district court, bail commissioner or master in chancery.

38 Before the amount of the bail of a prisoner charged with an offense punishable by imprisonment
39 for more than one year is fixed in court, the court shall obtain from its probation officer all
40 available information relative to prior criminal prosecutions, if any, of the prisoner or
41 probationer and the disposition of each of such prosecutions. If the offense with which such a
42 prisoner is charged is a violation of any provision of sections twenty-two to twenty-four,
43 inclusive, of chapter two hundred and seventy-two, and it appears from such information or
44 otherwise that he had been previously prosecuted for a violation of any such provision, the court
45 shall, before the amount of bail is fixed, obtain from the department of mental health a report
46 containing all information in its possession relative to the prisoner, particularly with respect to
47 any mental disease or defect with which he may have been afflicted; and said department shall
48 furnish any such report to the court promptly upon its request.

49 No person arrested for violating any provision of section thirty-three or thirty-five of chapter
50 fifty-six shall be admitted to bail unless there is deposited not less than five hundred dollars in
51 cash, or there is offered real estate of the fair market value of not less than one thousand dollars,
52 over and above all encumbrances, as security.

53 SECTION 3. Section 58 of Chapter 276, as appearing in the 2004 Official Edition, is hereby
54 amended by striking the first sentence in the first paragraph and inserting in place thereof the
55 following sentence:—

56 A justice or a clerk or assistant clerk of the district court, a bail commissioner or master in
57 chancery, in accordance with the applicable provisions of section fifty-seven, shall, when a
58 person is held under arrest or committed either with or without a warrant for an offense other
59 than an offense punishable by death, or, upon the motion of the commonwealth, for an offense
60 enumerated in section fifty-eight A or for any offense on which a warrant of arrest has been
61 issued by the superior court, or for violating the terms of his probation, hold a hearing in which
62 the defendant and his counsel, if any, may participate and inquire into the case and shall admit
63 such person to bail on his personal recognizance without surety unless said justice, clerk or
64 assistant clerk, bail commissioner or master in chancery determines, in the exercise of his
65 discretion, that such a release will not reasonably assure the appearance of the person before the
66 court.