

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia Stone 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 to establish sentencing guidelines.

PETITION OF:

NAME:

Cynthia Stone Creem

DISTRICT/ADDRESS:

First Middlesex and Norfolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S00909 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO ESTABLISH SENTENCING GUIDELINES.

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. The General Laws are hereby amended by inserting after chapter 211F the
2 following chapter:-

CHAPTER 211G

SENTENCING GUIDELINES

5 Section 1. Definitions. The following terms as used in this chapter shall have the
6 following meanings:-

7 “Adjudication of delinquency,” a determination or finding pursuant to G.L. c. 119 § 58
8 that a juvenile is a delinquent child.

9 “Conviction,” a finding or verdict of guilt for a criminal offense.

10 “Criminal history group,” the classification of an offender’s previous record of criminal
11 convictions or adjudications of delinquency as set forth on the horizontal axis of the sentencing
12 guidelines grid.

13 “Departure from the guidelines,” a sentence imposed outside the sentencing range
14 contained in the applicable grid cell for the particular offense.

15 “Governing offense,” the offense having the highest offense seriousness level among
16 multiple offenses arising out of the same criminal conduct.

17 “Grid cell,” the intersection on the sentencing guidelines grid between the offense
18 seriousness level and the criminal history group.

19 “Intermediate sanction,” a non-incarcerative sentence, or portion thereof, which includes
20 a level of restriction, such as standard probation, intensive supervision probation, community
21 service, home confinement, and day reporting, and which may be coupled with components,
22 such as residential programming, substance abuse treatment, restitution, continuing education,
23 vocational training, special education, and psychological counseling.

24 “Mandatory minimum sentence,” the provision of a criminal penalty for a particular
25 offense which specifies the minimum term of incarceration and prohibits suspension of any
26 sentence, placement on file, continuance without a finding, probation, and release on parole until
27 the minimum term of imprisonment has been served.

28 “Master crime list,” the list in which offenses in Massachusetts currently punishable by a
29 term of imprisonment are ranked for purposes of the sentencing guidelines.

30 “Offense seriousness levels,” the categories for ranking criminal offenses as set forth in
31 the master crime list and on the vertical axis of the sentencing guidelines grid.

32 “Same criminal conduct,” any two or more offenses committed during a single criminal
33 incident.

34 “Sentencing Commission,” the Massachusetts Sentencing Commission as defined in G.L.
35 c. 211E § 1.

36 “Sentencing event,” an appearance before a court of competent jurisdiction during which
37 sentence is imposed for one or more convictions or adjudications of delinquency.

38 “Sentencing guidelines,” all provisions set forth in this chapter which direct or guide
39 judges in sentencing.

40 “Sentencing guidelines grid,” the sentencing matrix, with offenses classified on a vertical
41 axis and criminal history groups classified on a horizontal axis , and which contains a sentencing
42 guidelines range within each grid cell.

43 “Sentencing guidelines range,” the range of any sentence, including the range of
44 intermediate sanctions, which may be imposed in each grid cell without constituting a departure
45 from the sentencing guidelines.

46 “Split sentence,” a sentence to a house of correction which is suspended in part and
47 includes a specified period of incarceration followed by a specified period of probation or
48 intermediate sanction or both.

Criminal History Group

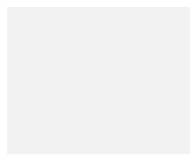
Offense	A	B	C	D	E
Seriousness	No/Minor	Moderate	Serious	Violent or	Serious
Level	Record	Record	Record	Repetitive	Violent
9	Life	Life	Life	Life	Life
8	96 - 144 Mos.	108 - 162 Mos.	120 - 180 Mos.	144 - 216 Mos.	204 - 306 Mos.
7	60 - 90 Mos.	68 - 102 Mos.	84 - 126 Mos.	108 - 162 Mos.	160 - 240 Mos.
6	40 - 60 Mos.	45 - 67 Mos.	50 - 75 Mos.	60 - 90 Mos.	80 - 120 Mos.
5	12 - 36 Mos. IS-IV IS-III IS-II	24 - 36 Mos. IS-IV IS-III IS-II	36 - 54 Mos.	48 - 72 Mos.	60 - 90 Mos.
4	0 - 24 Mos. IS-IV	3 - 30 Mos. IS-IV	6 - 30 Mos. IS-IV	20 - 30 Mos.	24 - 36 Mos.

	IS-III	IS-III	IS-III		
	IS-II	IS-II	IS-II		
3	0 - 12 Mos.	0 - 15 Mos.	0 - 18 Mos.	0 - 24 Mos.	6 - 24 Mos.
	IS-IV	IS-IV	IS-IV	IS-IV	IS-IV
	IS-III	IS-III	IS-III	IS-III	IS-III
	IS-II	IS-II	IS-II	IS-II	IS-II
	IS-I	IS-I	IS-I		
2		0 - 6 Mos.	0 - 6 Mos.	0 - 9 Mos.	0 - 12 Mos.
				IS-IV	IS-IV
	IS-III	IS-III	IS-III	IS-III	IS-III
	IS-II	IS-II	IS-II	IS-II	IS-II
	IS-I	IS-I	IS-I	IS-I	IS-I
1				0 - 3 Mos.	0 - 6 Mos.
				IS-IV	IS-IV
		IS-III	IS-III	IS-III	IS-III
	IS-II	IS-II	IS-II	IS-II	IS-II
	IS-I	IS-I	IS-I	IS-I	IS-I

Sentencing Guidelines Zones

Intermediate

Sanctions Levels

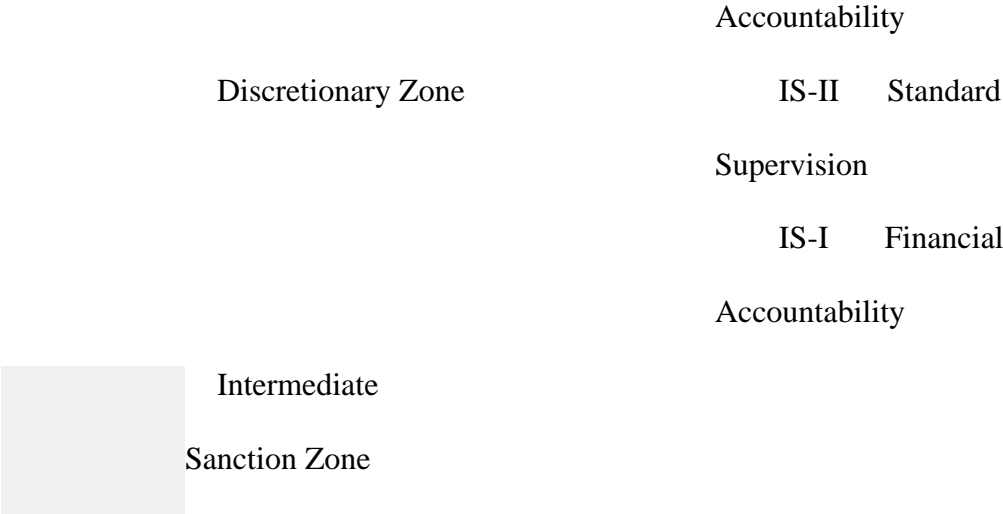


Incarceration Zone

IS-IV 24-Hour

Restriction

IS-III Daily



71 Section 3. Master Crime List. Offenses which permit incarceration are ranked according
 72 to offense seriousness level. Murder, as defined in G.L. c. 265 § 1, is placed at the highest level
 73 of the sentencing guidelines grid and for this offense the sentencing provisions of G.L. c. 265 § 2
 74 apply. The offense seriousness rankings are set forth in the following master crime list, which
 75 contains the following information:-

76 (a) “Grid.” A “YES” in this column denotes application of the sentencing guidelines
 77 grid. A “NO” in this column indicates the sentencing guideline grid is not applicable, and an
 78 alternate penalty provision as provided for in this chapter is applicable.

79 (b) “Offense seriousness level.” All offenses on the master crime list are ranked
 80 according to seriousness. For offenses to which the sentencing guidelines grid applies, the
 81 offense seriousness level of the governing offense determines the placement of the offender on
 82 the vertical axis.

83 For all offenses, the offense seriousness level also represents the level to which a prior
 84 conviction is to be assigned for purposes of determining the criminal history group.

85 (c) “Notes.” The following notes apply to certain offenses contained in the master crime
86 list:

87 (1) “Note A” refers to offenses where the sentencing guidelines range exceeds the
88 statutory maximum sentence in certain grid cells. In such circumstances, the sentencing
89 guidelines range applies, except that no sentence imposed may exceed the statutory maximum
90 sentence, as provided in § 9 of this chapter.

91 (2) “Note B” refers to offenses where the statutory minimum sentence exceeds the
92 sentencing guidelines range in certain grid cells. In such circumstances, it is not a departure
93 from the sentencing guidelines for a judge to impose a sentence within the sentencing guidelines
94 range, nor is it a departure from the sentencing guidelines for a judge to impose the statutory
95 minimum sentence, as provided in § 8 (e) of this chapter.

96 (3) “Note C” refers to offenses with mandatory minimum sentences in violation of G.L.
97 c. 94C. The sentencing guidelines for these offenses are set forth in § 8 (c) of this chapter.

98 (4) “Note D” refers to certain firearms offenses and certain offenses pertaining to
99 operating a motor vehicle or boat under the influence which may have mandatory minimum
100 sentences. The sentencing guidelines for these offenses are set forth in § 8 (a) and (b) of this
101 chapter.

102 (5) “Note E” refers to certain other offenses which have mandatory minimum sentences.
103 The sentencing guidelines for these offenses are set forth in § 8 (d) of this chapter.

104 (6) “Note F” refers to certain offenses for which a sentence to an intermediate sanction
105 constitutes a departure from the sentencing guidelines.

106 (7) “Note G” refers to staircased offenses. The staircase factors are described in § 4 (a)
107 of this chapter.

108 (8) “Note H” refers to offenses for which the criminal history group of the defendant is
109 enhanced as described in § 4 (b) of this chapter.

110 (9) “Note I” refers to offenses for which the level is contingent on the level assigned to
111 the underlying substantive offense and is the same as the level assigned to the underlying
112 substantive offense, except that no sentence may exceed the statutory maximum sentence, as
113 provided in § 9 of this chapter.

114 (10) “Note J” refers to offenses for which the level is contingent on the level assigned to
115 the underlying substantive offense and is one level lower than the level assigned to the
116 underlying substantive offense, except that no sentence may exceed the statutory maximum
117 sentence, as provided in § 9 of this chapter.

118 (d) “Offense Reference” - the Massachusetts General Law reference for a particular
119 offense.

120 (e) “Offense Penalty Reference” - the Massachusetts General Law reference for a
121 particular offense penalty provision when different from the offense reference.

122 (f) “Staircase Factor” - a specified factor, beyond the required elements of for an offense,
123 which determines the offense seriousness level.

124 (g) The master crime list also incorporates information existing elsewhere in the General
125 Laws. Any discrepancies between the following items of information reproduced in the master
126 crime list and as they appear in the General Laws are to be resolved in favor of those provisions
127 of the General Laws which set forth the penalties for the particular offense.

128 (1) "Offense" - an abbreviated offense description;

129 (2) "Penalty Type" - felony or misdemeanor;

130 (3) "Mandatory Time" - the mandatory minimum sentence, where applicable;

131 (4) "Min H/C" - the statutory minimum sentence to the house of correction, where
132 applicable;

133 (5) "Max H/C" - the statutory maximum sentence to the house of correction, where
134 applicable;

135 (6) "Min Prison" - the statutory minimum sentence to the state prison, where applicable;
136 and,

137 (7) "Max Prison" - the statutory maximum sentence to the state prison where applicable.

138 Where an offense is not found in the master crime list, the judge shall impose an appropriate
139 sentence, having due regard for the purposes of sentencing set forth in G.L. c. 211E § 2. The
140 master crime list follows:-

141 Section 4. (a) Staircasing certain offenses. Certain offenses, broadly defined to
142 encompass a wide range of behavior, are placed at more than one offense seriousness level in the

143 master crime list. These offenses are identified by a staircased notation on the master crime list
144 based on the following considerations:-

145 (1) Manslaughter in violation of G.L. c. 265 § 13 is a level eight offense where it is
146 voluntary manslaughter and a level six offense where it is involuntary manslaughter.

147 (2) Assault and battery by means of a dangerous weapon in violation of G.L. c. 265
148 § 15A is ranked according to the degree of injury to the victim as follows:-

149 Assault and battery by means of a dangerous weapon is a level six offense where there is
150 significant injury to the victim. Significant injury includes: injuries which are characterized by a
151 protracted period of total disability or long term impairment of function, loss of function of any
152 body members, organ, or mental faculty; injuries, not necessarily permanently disabling, which
153 require long term medical care or rehabilitative therapy; injuries which involve a gross
154 disfigurement; and, injuries which result in a permanent residual disability or loss of function to
155 a significant degree.

156 Assault and battery by means of a dangerous weapon is a level four offense where there
157 is moderate injury to the victim. Moderate injury includes: injuries which involve extreme
158 physical pain and some discernible disability or loss of function of some body member, organ, or
159 mental faculty, such as fractures, internal injuries or wounds which are serious but not life
160 threatening; and, psychological trauma that results in some temporary or partial disability.

161 Assault and battery by means of a dangerous weapon is a level three offense where there
162 is no injury or minor injury to the victim. Minor injury includes: injuries which require some
163 emergency treatment, such as lacerations, contusions, or abrasions, which have no residual

164 effect; concussions without lasting neurological impact; physical injuries that are painful and
165 obvious but not in any way disabling; and, minimal, psychological trauma without lasting effect.

166 (3) Armed robbery in violation of G.L. c. 265 § 17 is a level seven offense where there is
167 a display of a gun. Any other violation of G.L. c. 265 § 17 is a level six offense with the
168 exception of certain violations of G.L. c. 265 § 17 that are subject to the provisions of § 4 (b) of
169 this chapter.

170 (4) Breaking and entering in violation of G.L. c. 266 §§ 16 through 18 is a level four
171 offense where the breaking and entering involves a dwelling. Any other violation of G.L. c. 266
172 §§ 16 through 18 is a level three offense.

173 (5) Certain property offenses are ranked according to the value of property lost or
174 destroyed as follows:-

175 Where the value of the property lost or destroyed is \$50,000 or over, the offense is a level
176 five offense.

177 Where the value of the property lost or destroyed is between \$10,000 and \$50,000, the
178 offense is a level four offense.

179 Where the value of the property lost or destroyed is \$10,000 or under, the offense is a
180 level three offense.

181 In determining the appropriate offense seriousness level for a staircased offense, the
182 judge may consider any evidence received during the proceedings; any victim impact statement;

183 any presentence report, when the judge requests one; and, any other information that the judge
184 deems credible.

185 (b) Second and subsequent convictions. When a statute provides for a more severe
186 penalty upon a second and subsequent conviction for an offense, the second or subsequent
187 offense is elevated one level on the offense seriousness scale on the master crime list. Where the
188 offense is at level eight, the offender shall be moved over one cell to the right to the next more
189 serious criminal history group in the grid. When a defendant is charged as a second or
190 subsequent offender under the relevant statute, the prior conviction or convictions that served as
191 the basis for the second or subsequent charge shall not be counted in determining criminal
192 history placement on the grid. Offenses that are subject to a more severe penalty for second and
193 subsequent conviction are so designated in the master crime list.

194 Section 5. Criminal History Groups. There are five criminal history groups on the
195 horizontal axis of the sentencing guidelines grid as follows:-

196 (a) Criminal History Group A, No/Minor Record, refers to a criminal record that
197 contains no prior convictions of any kind; or, one to five prior convictions in any combination
198 for offenses in levels one or two.

199 (b) Criminal History Group B, Moderate Record, refers to a criminal record that contains
200 six or more prior convictions in any combination for offenses in levels one or two; or, one or two
201 prior convictions in any combination for offenses in levels three or four.

202 (c) Criminal History Group C, Serious Record, refers to a criminal record that contains
203 three to five prior convictions in any combination for offenses in levels three or four; or, one
204 prior conviction for offenses in levels five or six.

205 (d) Criminal History Group D, Violent or Repetitive Record, refers to a criminal record
206 that contains six or more prior convictions in any combination for offenses in levels three, four,
207 five, or six; or, two or more prior convictions in any combination for offenses in levels five or
208 six; or, one prior conviction for offenses in levels seven through nine.

209 (e) Criminal History Group E, Serious Violent Record, refers to a criminal record that
210 contains two or more prior convictions in any combination for offenses in levels seven through
211 nine.

212 Section 6. Determining Criminal History. In determining placement in the appropriate
213 criminal history group on the sentencing guidelines grid, the following provisions shall apply:-

214 (a) Conviction-based criminal history. Only those prior offenses which resulted in a
215 conviction shall be counted for criminal history placement on the sentencing guidelines grid. All
216 convictions that occurred prior to the present sentencing event shall be counted for criminal
217 history placement on the sentencing guidelines grid. The offense seriousness level of each prior
218 conviction shall be determined by reference to the version of the master crime list in effect at the
219 time of the sentencing event for the present offense.

220 (b) Incident-based criminal history. Multiple prior convictions arising from the same
221 criminal conduct shall be counted as one prior conviction, based on the most serious offense.
222 There shall be a rebuttable presumption that multiple prior convictions that have the same

223 arraignment date shall be counted as one prior conviction, based on the most serious offense.
224 Multiple convictions with the same arraignment date may each be counted separately for
225 purposes of criminal history placement on the sentencing guidelines grid where each such
226 conviction is not part of the same criminal conduct. Multiple convictions with different
227 arraignment dates may be counted as a single conviction for purposes of criminal history
228 placement on the sentencing guidelines grid where each such conviction was part of the same
229 criminal conduct.

230 (c) Juvenile record. Adjudications of delinquency for offenses classified in offense
231 seriousness levels seven through nine on the master crime list shall be considered as convictions
232 of the offenses involved and counted for purposes of criminal history. Adjudications of
233 delinquency for offenses classified below level seven shall not be counted for purposes of
234 criminal history, but the existence of such adjudications may be considered as an aggravating
235 factor for departure from the sentencing guidelines range.

236 . Prior convictions in federal and other jurisdictions shall be counted for criminal history
237 purposes. The offense of prior conviction shall be assigned to the same offense seriousness level
238 as the Massachusetts offense in the master crime list with the same or substantially the same
239 elements.

240 (e) Prior convictions for staircased offenses. Where the prior conviction is a staircased
241 offense and the offense seriousness level of the staircased offense is not apparent from the
242 criminal record, there is a rebuttable presumption that the prior conviction is in the lowest
243 staircased level for that offense in the master crime list.

244 (f) Determination of criminal history. The judge shall decide any material contested
245 issues relating to criminal history.

246 Section 7. Sentencing Pursuant to the Sentencing Guidelines Grid. Sentencing pursuant
247 to the sentencing guidelines grid shall be based on the offense or offenses of conviction and the
248 criminal history of the defendant. The offense seriousness level for each offense of conviction
249 shall be determined from the master crime list. The appropriate level of staircased offenses shall
250 be determined by taking into account the relevant staircasing factors set forth herein. The
251 number and types of prior convictions shall be determined in accordance with § 5 of this chapter
252 to determine the appropriate criminal history group for the offender. The sentencing guidelines
253 range shall be determined by identifying that grid cell where the seriousness level of the
254 governing offense on the vertical axis intersects with the classification of the criminal history
255 group on the horizontal axis.

256 (a) Sentencing within the guideline range. The sentencing judge may impose a sentence
257 to incarceration within the sentencing guidelines range by imposing a maximum sentence from
258 within the guideline range of the appropriate grid cell. Unless otherwise noted herein, the
259 minimum sentence will always be two-thirds of the maximum sentence and will establish the
260 initial parole eligibility date. This applies to all sentences of incarceration of two months or
261 longer to houses of correction and all sentences to the state prison. Where the maximum
262 sentence of incarceration to a house of correction is less than two months, the minimum sentence
263 need not be two-thirds of the maximum sentence. Where the maximum sentence is selected from
264 the guideline range in the applicable grid cell, the sentence will be within the guidelines and no
265 written explanation is necessary.

266 (b) Departing from the guidelines range. The sentencing judge may impose a sentence
267 below or above the sentencing guidelines range by setting forth in writing reasons for departing
268 from that range on a sentencing statement, consistent with the provisions of G.L. c. 211E, § 3
269 (h). Any departure shall be based on a finding that one or more mitigating or aggravating
270 circumstances exist as provided in this chapter. In imposing a sentence of incarceration that
271 departs from the sentencing guidelines range, the minimum sentence shall be two-thirds of the
272 maximum sentence. A sentence that departs below the guidelines range may include a sentence
273 to any lesser term of incarceration or any intermediate sanction.

274 (1) Mitigating and aggravating circumstances. The following non-exclusive mitigating
275 and aggravating circumstances may guide departures from the sentencing guidelines range. The
276 presence of any such circumstance may warrant departure from the sentencing guidelines range
277 in the discretion of the sentencing judge. In determining mitigation or aggravation, the judge
278 may consider any evidence received during the proceedings; any victim impact statement; any
279 presentence report, when the judge requests one; and, any other information that the judge deems
280 credible.

281 (A) Mitigating circumstances. The non-exclusive list of mitigating circumstances
282 includes the following:-

- 283 1. The defendant was a minor participant in the criminal conduct.
- 284 2. The defendant was suffering from a mental or physical condition that significantly reduced
285 the culpability of the defendant for the offense.
- 286 3. The victim was an initiator, aggressor, or provoker of the offense.

- 287 4. The sentence was imposed in accordance with a jointly agreed recommendation.
- 288 5. The age of the defendant at the time of the offense.
- 289 6. The defendant verifies current involvement in, or successful completion of, a substance
290 abuse or other treatment program that began after the date of the offense.

291 (B) Aggravating circumstances. The non-exclusive list of aggravating circumstances
292 includes the following:-

- 293 1. The victim was especially vulnerable due to age or physical or mental disability.
- 294 2. The victim was treated with particular cruelty.
- 295 3. The defendant used position or status to facilitate commission of the offense, such as a
296 position of trust, confidence or fiduciary relationship.
- 297 4. The defendant was a leader in the commission of an offense involving two or more criminal
298 actors.
- 299 5. The defendant committed the offense while on probation, on parole, or during escape.
- 300 6. The defendant has committed repeated offenses against the same victim.

301 The sentencing judge shall not be required to conduct an evidentiary hearing in
302 determining aggravating or mitigating factors.

303 (c) Concurrent or consecutive sentencing. When a defendant is convicted of multiple
304 offenses arising out of the same criminal conduct, the judge may impose concurrent or

305 consecutive sentences, subject to the following provisions. The judge shall impose a consecutive
306 sentence when the imposition of a consecutive sentence is required by the terms of the statute
307 pertaining to a particular offense. The judge may impose concurrent or consecutive sentences of
308 incarceration in the house of correction for each offense where such incarceration is permitted by
309 law. The judge may impose concurrent or consecutive sentences of incarceration in the state
310 prison for each offense where such incarceration is permitted by law, subject to the following
311 limitation. The judge may impose consecutive sentences to the state prison by selecting a
312 sentence from the guidelines range in the applicable grid cell for each offense to be sentenced
313 consecutively. The total of such consecutive sentences may be combined up to twice the upper
314 limit of the sentencing guidelines range in the grid cell of the governing offense. Where the total
315 of the combined sentences exceeds twice that upper limit, it shall be considered a departure from
316 the guidelines and the judge is required to provide written reasons. The existence of multiple
317 victims is recognized as an aggravating circumstance which may justify such a departure.

318 Any sentence imposed as concurrent or consecutive to a governing offense may be for a
319 period of incarceration that is less than the lower limit of the sentencing guidelines range
320 contained in the applicable grid cell or for any level of intermediate sanction, without
321 constituting a departure from the sentencing guidelines.

322 When a defendant is convicted of multiple offenses which do not arise out of the same
323 criminal conduct or when a defendant at the time of sentencing is currently serving a sentence for
324 another criminal offense, the judge may impose either a concurrent or consecutive sentence from
325 within the sentencing guidelines range of the applicable grid cell without the limitation on
326 consecutive sentences to the state prison set forth in this section.

327 Section 8. Sentencing for Offenses with Mandatory Minimum Terms. Sentencing guidelines
328 for offenses with mandatory minimum terms are as follows:-

329 (a) Firearms offenses. No departures below the mandatory minimum sentences for
330 firearms offenses in violation of G.L. c. 269 §§ 10 (a), 10 (c), 10 (d), or 10E are permitted.
331 These enumerated mandatory firearms offenses are not integrated into the guidelines grid. The
332 sentencing guidelines for these mandatory firearms offenses are the mandatory sentencing
333 provisions of the existing statutes. The minimum term of incarceration shall be no less than the
334 mandatory minimum sentence provided in the statutes enumerated in this paragraph. The
335 sentencing judge is required to impose a minimum and a maximum sentence, but the minimum
336 sentence need not be two-thirds of the maximum. For purposes of determining the criminal
337 history group for a defendant with prior mandatory firearms convictions, the master crime list
338 provides the offense seriousness level corresponding to the sentencing guidelines grid for each
339 firearms offense with a mandatory minimum sentence.

340 (b) Operating under the influence offenses. (1) For purposes of this chapter, operating
341 under the influence offenses refer to offenses enumerated in the second paragraph of c. 90 § 23,
342 in c. 90 § 24 (1) (a) (1), and in c. 90B § 8 (a) (1) (A). With the exception of the departure
343 enumerated in sub-paragraph (b) (2) of this section, no departures below any mandatory
344 minimum sentences for operating under the influence offenses are permitted. These operating
345 under the influence offenses are not integrated into the guidelines grid. The sentencing
346 guidelines for these operating under the influence offenses are the mandatory sentencing
347 provisions of the existing statutes. The minimum term of incarceration shall be no less than any
348 mandatory minimum sentence provided in the statutes enumerated in this paragraph. The

349 sentencing judge is required to impose a minimum and a maximum sentence, but the minimum
350 sentence need not be two-thirds of the maximum.

351 (2) A judge may sentence a defendant, who has been previously convicted of a violation
352 of c. 90 § 24 (1) (a) (1) or c. 90B § 8 (a) (1) (A) or assigned to an alcohol or controlled substance
353 education, treatment, or rehabilitation program by a court of the commonwealth or any other
354 jurisdiction because of a like violation not more than two times within ten years preceding the
355 date of the commission of the operating under the influence offense for which he has been
356 convicted, to a long term residential substance abuse treatment program, approved by the office
357 of community corrections, as established in G.L. c. 211F § 2 (a), in lieu of imposing the
358 mandatory minimum sentence. No other departures below any mandatory minimum sentences
359 for operating under the influence offenses are permitted.

360 (3) For purposes of determining the criminal history group for a defendant with prior
361 convictions for operating under the influence offenses, the master crime list provides the offense
362 seriousness level for each operating under the influence offense.

363 (4) Nothing in this section shall be found to prohibit a sentence pursuant to c. 90 § 24 (1)
364 (a) (4) or c. 90B § 8 (a) (3) (A).

365 (c) Offenses in violation of the controlled substances act. Controlled substances offenses
366 with mandatory minimum terms are integrated into the sentencing guidelines grid. As set forth
367 in the master crime list, violations of G.L. c. 94C § 32E (b) (4) and § 32E (c) (4) are level eight
368 offenses; violations of G.L. c. 94C §§ 32E (a) (4), 32E (b) (3), 32E (c) (2), and 32E (c) (3) are
369 level seven offenses; violations of G.L. c. 94C §§ 32 (b), 32A (d), 32E (a) (3), 32E (b) (2), 32E

370 (c) (1), 32F (a), 32F (d), and 32K are level six offenses; violations of G.L. c. 94C §§ 32A (b),
371 32B (b), 32E (a) (2), 32E (b) (1), 32F (b), and 32F (c) are level five offenses; and, violations of
372 G.L. c. 94C §§ 32A (c), 32E (a) (1), and 32J are level four offenses.

373 For the offenses enumerated in the preceding paragraph, a judge shall provide written
374 reasons for sentencing below a mandatory minimum term even though the judge may be
375 imposing sentence that is within the guidelines range of the sentencing guidelines grid. The
376 standard for sentencing below the mandatory minimum term is more stringent than the standard
377 for departure below a sentencing guidelines range. A departure below a mandatory minimum
378 sentence for the controlled substances offenses enumerated above is not permitted unless the
379 defendant has no prior conviction for a controlled substance offense in level seven or eight and
380 the sentencing judge finds the existence of one or more mitigating circumstances.

381 A judge may impose a sentence below the sentencing guidelines range, provided that:-
382 (a) the criminal history of the defendant falls in criminal history group A or B in the sentencing
383 guidelines grid; and, (b) there is a substantial mitigating factor in addition to the mitigating
384 circumstance or circumstances that justified the departure below the mandatory minimum
385 sentence that should result in a sentence below the sentencing guidelines range.

386 Where the judge departs below the mandatory minimum sentence and imposes an
387 incarceration sentence within the guidelines range or below the guidelines range, the minimum
388 sentence shall be two-thirds of the maximum sentence; the defendant shall be eligible for parole
389 at the expiration of the minimum sentence; and, the defendant shall be eligible for earned good
390 time, work release, and other pre-release programs deemed appropriate by the correctional
391 authority with custody responsibility, notwithstanding the provisions of G.L. c. 94C § 32H.

392 Where the judge does not depart from the mandatory minimum sentence and imposes a
393 sentence pursuant to any mandatory sentencing provision, the minimum sentence need not be
394 two-thirds of the maximum sentence, and the defendant shall not be eligible for parole, earned
395 good time, work release, or other pre-release programs until he has served the mandatory
396 minimum sentence, as mandated by G.L. c. 94C, § 32H.

397 (d) Other offenses with mandatory minimum terms. No departures below any mandatory
398 minimum sentence provided for in these enumerated sections are permitted. As set forth in the
399 master crime list, violations of G.L. c. 90 § 24G (a), c. 90B § 8B (1), c. 272 § 4B, and c. 272 § 6
400 are level six offenses; violations of G.L. c. 265 § 43 (b), c. 265 § 43 (c), and c. 272 § 4A are
401 level five offenses; violations of G.L. c. 272 § 4A, c. 90 § 24L (1), c. 90B § 8A (1), c. 266 §
402 27A, . c. 266 § 28 (a), c. 268 § 39, and c. 272 § 7 are level four offenses.

403 For these offenses the minimum sentence shall be two-thirds of the maximum sentence
404 selected from within the applicable guidelines range, provided that all sentences require a
405 minimum term of incarceration equal to or greater in length than the mandatory minimum
406 sentence. It shall not constitute a departure for a judge to impose a sentence exceeding the
407 guidelines range of the applicable grid cell in order to comply with the requirement that the
408 minimum term of incarceration must be equal to or greater in length than the mandatory
409 minimum sentence and the requirement that the minimum sentence shall be two-thirds of the
410 maximum sentence.

411 The defendant shall be eligible for parole at the expiration of the minimum sentence. The
412 defendant shall not be eligible for earned good time, work release, and other pre-release

413 programs deemed appropriate by the correctional authority with custody responsibility, until the
414 defendant has served the mandatory minimum sentence.

415 (e) Offenses with statutory minimum sentences. For those offenses with a statutory
416 minimum sentence, it shall not be considered a departure for the judge to impose a sentence
417 within the sentencing guidelines range, even though the sentence may be below the statutory
418 minimum sentence. Where the statutory minimum sentence exceeds the sentencing guidelines
419 range, the imposition of the statutory minimum sentence shall not constitute a departure from the
420 sentencing guidelines.

421 Section 9. The Statutory Maximum Term. Notwithstanding G.L. c. 211E § 3 (c), a judge
422 may not impose any sentence which exceeds the statutory maximum term set forth in the statute
423 that establishes the penalty for the particular offense.

424 Section 10. District and Municipal Court Jurisdiction. When a district or municipal court
425 judge is imposing a sentence and the sentencing guidelines range in the applicable grid cell
426 exceeds the district and municipal court sentencing jurisdiction of two and one half years, the
427 sentencing guidelines range shall be an incarceration zone range of 20 to 30 months and it shall
428 not constitute a departure from the sentencing guidelines for a district or municipal court judge to
429 impose a sentence of incarceration from within the 20 to 30 month sentencing guidelines range.

430 Section 11. Sentencing to Intermediate Sanctions. Guidelines for sentencing to
431 intermediate sanctions, as defined in G.L. c. 211F § 1, are integrated into the sentencing
432 guidelines grid in the discretionary zone and the intermediate sanctions zone as described in § 2
433 of this chapter.

434 There are four levels of intermediate sanctions according to the severity of the restrictions
435 on personal liberty and the intensity of supervision. The four levels of intermediate sanctions are
436 integrated into the grid as follows:-

437 Level IV, 24-hour restriction, under which the offender is subject to 24-hour restriction and
438 accountability of his whereabouts. This represents the maximum level of restriction and
439 accountability short of incarceration.

440 Level III, daily accountability, under which the offender is subject to daily accountability of his
441 whereabouts. This represents the level of restriction and accountability that falls in between 24-
442 hour restriction and standard probation supervision.

443 Level II, standard probation supervision, under which the offender is subject to weekly
444 accountability of his whereabouts. This represents the level of restriction and accountability that
445 is typically associated with standard probation supervision.

446 Level I, financial accountability, which represents the level of restriction and accountability that
447 is typically associated with administrative probation. It is primarily designed to monitor the
448 timely payment of restitution, fines, victim/witness fees, and the like, by the offender.

449 A sentence to an intermediate sanction shall be imposed as a condition of probation,
450 consistent with the provisions of G.L. c. 211F § 3 (c). The length of the probation period that
451 may be imposed shall be consistent with the provisions of G.L. c. 276 § 87. The sentencing
452 judge shall specify the intermediate sanction level at which the offender will start serving the
453 term of probation and may also include a minimum period during which the offender is required
454 to be supervised at that level. The supervising probation officer has the discretion to move a

455 probationer down in level or levels in appropriate circumstances, without judicial consultation,
456 consistent with any special conditions or time restrictions specified by the judge. Such a
457 reduction in the intermediate sanction level by a probation officer shall not go below the
458 guideline levels set forth in the grid cell in which the offender was sentenced.

459 A judge has the exclusive authority to increase an intermediate sanction level or add
460 program components.

461 Section 12. Revocation of Probation. The sentencing guidelines do not apply to a
462 probation revocation hearing. In imposing a sentence at a probation revocation hearing, the
463 judge has the discretion to impose any sentence up to the statutory maximum. When imposing a
464 sentence of incarceration, the judge shall impose both a minimum sentence and a maximum
465 sentence and the minimum sentence must be two-thirds of the maximum sentence.

466 Section 13. Split Sentences. A sentence to the state prison shall not be suspended in
467 whole or in part. A sentence to a house of correction shall not be suspended in whole, but a
468 sentence to a house of correction may be suspended in part to permit the imposition of a split
469 sentence. In imposing a split sentence, a judge shall impose a minimum and a maximum term as
470 provided by § 6 (a) of this chapter and shall specify the period of incarceration to be served in the
471 house of correction. The judge shall also specify the term of probation to be served subsequent
472 to the period of incarceration.

473 Section 14. Financial Sanctions. When appropriate, a judge shall order fines or
474 restitution or both as part of any sentence. Restitution to the victim shall be a priority of the
475 judge at the time of sentencing, regardless of whether the offender is incarcerated.

476 Section 15. Imposing a Sentence. In sentencing a defendant after trial or after acceptance of
477 a guilty plea pursuant to either Rule 12 of the Rules of Criminal Procedure or Rule 4 (c) of the
478 District/Municipal Court Rules of Criminal Procedure, the court shall comply with the provisions
479 of Rule 28 of the Massachusetts Rules of Criminal Procedure. The judge shall allow both parties
480 to be heard at sentencing on all sentencing issues. In determining the sentence, the judge may
481 rely on any evidence received during the proceedings; any victim impact statement; any
482 presentence report, when the judge requests one; and, any other information the judge deems
483 credible. A sentencing statement shall be completed in accordance with G.L. c. 211E § 3 (h) for
484 each defendant being sentenced. The sentencing judge shall sign the completed sentencing
485 statement and a copy shall be submitted to the Sentencing Commission as provided in G.L. c.
486 211E § 3 (h).

487 Section 16. Right of Appeal. The defendant or the commonwealth may appeal a
488 sentence imposed pursuant to sentencing guidelines, to the extent an appeal is permitted in
489 accordance with the provisions of section 4 of chapter 211E of the General Laws. The
490 provisions of sections 28A and 28B of chapter 278 of the General Laws shall not apply to any
491 offense committed on or after the effective date of this chapter.

492 SECTION 2. Severability. Where any provision of this chapter or the application thereof to
493 any person or circumstance, shall, for any reason, be held invalid, the remainder of this chapter
494 or the application of such provision to persons or circumstances other than those as to which it is
495 held invalid shall not be affected thereby.

496 SECTION 3. Split Sentences. Section 3 (a) (2) of chapter 211E of the General Laws is
497 hereby amended by inserting after the phrase, "Said sentence shall not be suspended in whole or

498 in part,” the following: “except for the imposition of split sentences to the house of correction
499 pursuant to chapter 211G.”

500 SECTION 4. Section 3 (e) of chapter 211E of the General Laws is hereby amended by
501 inserting after the phrase “impose a sentence below any mandatory minimum term prescribed by
502 statute,” the following: “only to the extent provided by chapter 211G,”.

503 SECTION 5. Effective Date. The provisions of this chapter shall take effect on January
504 1, 2010, and the sentencing guidelines and other related provisions contained herein shall apply
505 to all felonies and misdemeanors committed on or after that date. All offenses committed prior
506 to January 1, 2010, shall be governed by the laws, including but not limited to those on
507 sentencing, parole, and probation, in effect at the time the offense is committed. Any
508 amendments to the sentencing guidelines shall apply to all offenses committed on or after the
509 effective date of the amendment.

510