

## List of Crimes- 3<sup>rd</sup> Conviction results in no parole eligibility

### Conference Committee Report Voted Favorably 5-1 July 17, 2012

#### *Highlighted Crimes Added by the House on July 17, 2012*

- 1) Murder (Section 1, Chapter 265 of the MGL, Crimes Against the Person)
- 2) Manslaughter (Section 13, Chapter 265)
- 3) Manslaughter while operating a motor vehicle (Section 13 ½ , Chapter 265)
- 4) Assault and Battery Causing Serious Bodily Injury, aka Aggravated Assault (subsection (b) (i) of Section 13A, Chapter 265)
- 5) Indecent Assault and Battery on Child Under Age 14 (Section 13B, Chapter 265)
- 6) Indecent Assault and Battery on Child under Age 14 During the Commission of Certain Offenses (subsection a of 13B ½ of Chapter 265)
- 7) Indecent Assault and Battery on Child under the age of 14, Second and Subsequent (Section 13B ¾ of Chapter 265)
- 8) Indecent Assault and Battery on a Person With An Intellectual Disability, or Assault and Battery on such person (Section 13F of Chapter 265)
- 9) Assault and Battery on a Child Under Age 14 Resulting in Bodily Injury or Serious Bodily Injury, aka Aggravated Assault (Paragraphs 1 & 2, subsection (b), Section 13J, Chapter 265) 2 Crimes?
- 10) Mayhem -maim, disfigure, cripple, or inflict serious or permanent physical injury (Section 14 of Chapter 265)
- 11) Assault with intent to murder or maim (Section 15, Chapter 265)
- 12) Assault and Battery with a Dangerous Weapon Resulting in Serious Bodily Injury (subsection (c) (i) of Section 15A, Chapter 265)
- 13) Attempt to Murder (Section 16 of Chapter 265)
- 14) Armed Robbery while armed with a firearm, shotgun, rifle, machine gun or assault weapon (Section 17 of Chapter 265)
- 15) Assault with Intent to Rob or Murder, while armed with a firearm, shotgun, rifle, machine gun, or assault Weapon (Section 18, Chapter 265)
- 16) Armed Assault in a Dwelling (Section 18A, Chapter 265)
- 17) Use of firearms while committing a felony (Section 18B of Chapter 265)
- 18) Home Invasion (Section 18C, Chapter 265)
- 19) Stealing by Confining or Putting in Fear (Section 21, Chapter 265)
- 20) Rape (Section 22, Chapter 265)
- 21) Rape of Child Under 16 by Force (Section 22A, Chapter 265)
- 22) Aggravated Rape of Child Under 16 by Force (section 22B, Chapter 265)
- 23) Rape of a Child Under 16 by Force, Previously Convicted (Section 22C, Chapter 265)
- 24) Aggravated Rape and Abuse of Child Under 16 (Aggravated by significant age differences or by a mandated reporter) (Section 23A, Chapter 265)
- 25) Rape and Abuse of a Child Under 16, Previously Convicted (Section 23B , Chapter 265)
- 26) Assault with Intent to Commit Rape (Section 24, Chapter 265)

- 27) Assault of a Child Under 16 with Intent to Commit Rape (Section 24B , Chapter 265)
- 28) Kidnapping (Section 26, Chapter 265)
- 29) Drugging Persons for Kidnapping (Section 26B, Chapter 265)
- 30) Enticement of a Child Under 16 (Section 26C, Chapter 265)
- 31) Poisoning (Section 28, Chapter 265)
- 32) Assault and Battery for the Purpose of Intimidation (subsection (b) of Section 39, Chapter 265)
- 33) Armed Burglary (Section 14, Chapter 266)
- 34) Biological, chemical, nuclear weapon possession or creation (Section 102C, Chapter 266)
- 35) Inducing Minor into Prostitution (Section 4A, Chapter 272)
- 36) Incest (Section 17, Chapter 272)
- 37) Posing or exhibiting a Child in a state of Sexual Conduct (subsection (b) Section 29A, Chapter 272)
- 38) Dissemination of Visual Material of Child in a State of Sexual Conduct (subsection (b) Section 29B, Chapter 272)
- 39) Possession of Child Pornography (Section 29C, Chapter 272)
- 40) Unnatural and Lascivious Actions with a child under 16 (Section 35A of Chapter 272)
- 41) Engaging a Child Under 14 for Prostitution (subsection (b) Section 53A, Chapter 272)

SECTION 1. Section 3 of chapter 22E of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting, after the first sentence, the following sentence:-

The trial court and probation department shall work in conjunction with the director to establish and implement a system for the electronic notification to the department whenever a person is convicted of an offense that requires the submission of a DNA sample under this section.

SECTION 2. Section 4 of said chapter 22E, as so appearing, is hereby amended by striking out, in line 3, the words "Only a" and inserting in place thereof the following word: - A.

SECTION 3. Said section 4 of said chapter 22E, as so appearing, is hereby further amended by striking out, in line 5, the word "licensed" and inserting in place thereof the following word: - approved.

SECTION 4. Said section 4 of said chapter 22E, as so appearing, is hereby further amended by inserting after the word "including", in lines 7 and 8, the following words:- buccal swabs and.

SECTION 5. Section 11 of said chapter 22E, as so appearing, is hereby amended by striking out, in line 2, the words "refuses to provide such DNA sample" and inserting in place thereof the following words:- , after receiving written notice, fails to provide such DNA sample within 1 year of conviction, adjudication or release from custody, as required by section 3, whichever occurs first,.

SECTION 6. The first paragraph of section 4 of chapter 27 of the General Laws, as so appearing, is hereby amended by adding the following sentence:- The governor may, with the advice and consent of the council, remove members from the board for cause, upon a written certification of such cause; provided, that such member shall have the right to notice and the opportunity for a public hearing before the council relative to such removal.

SECTION 7. Said section 4 of said chapter 27, as so appearing, is hereby further amended by striking out, in line 6, the word "five" and inserting in place thereof the following figure:- 9.

SECTION 8. Said section 4 of said chapter 27, as so appearing, is hereby further amended by inserting after the word "association," in line 8, the following words:- 1 person chosen from a list of 3 nominees submitted by the Massachusetts District Attorneys Association, 1 person chosen from a list of 3 nominees submitted by the committee for public counsel services, 1 person chosen from a list of 3 nominees submitted by the Prisoners' Legal Services and 1 member from local law enforcement.

SECTION 9. The second paragraph of said section 4 of said chapter 27, as so appearing, is hereby further amended by inserting after the third sentence the following sentence:- At

least 1 person on said list shall be a professional with not less than 5 years of experience and training in adolescent development and psychology, and shall be selected from a list of proposed nominees provided by the following organizations: the Massachusetts Chapter of the American Academy of Pediatrics, Inc.; the New England Council of Child and Adolescent Psychiatry, Inc.; the Massachusetts Psychological Association, Inc.; and the Massachusetts Psychiatric Society, Inc.

SECTION 10. Said section 4 of said chapter 27, as so appearing, is hereby further amended by inserting after the word "Association," in line 30, the following words:- a victim witness advocate; provided, that such victim representative is otherwise qualified as provided for above,.

SECTION 11. Section 19 of chapter 94C of the General Laws, as so appearing, is hereby amended by adding the following subsection:

(d) Naloxone or other opioid antagonist may lawfully be prescribed and dispensed to a person at risk of experiencing an opiate-related overdose or a family member, friend or other person in a position to assist a person at risk of experiencing an opiate-related overdose. For purposes of this chapter and chapter 112, any such prescription shall be regarded as being issued for a legitimate medical purpose in the usual course of professional practice.

SECTION 12. Section 32 of chapter 94C of the General Laws, as so appearing, is hereby amended by striking out, in lines 15, 17 and 20, the word "five" and inserting in place thereof, in each instance, the following figure:- 3½.

SECTION 13. Section 32A of said chapter 94C, as so appearing, is hereby amended by striking out, in lines 15 and 18, the word "three" and inserting in place thereof, in each instance, the following figure:- 2.

SECTION 14. Section 32A of said chapter 94C, as so appearing, is hereby further amended by striking out, in line 42, the word "five" and inserting in place thereof the following figure:- 3½.

SECTION 15. Section 32B of said chapter 94C, as so appearing, is hereby amended by striking out, in line 16, the word "two" and inserting in place thereof the following words:- 18 months.

SECTION 16. Section 32B of said chapter 94C, as so appearing, is hereby further amended by striking out, in line 19, the words "two years" and inserting in place thereof the following words:- 18 months.

SECTION 17. Section 32E of said chapter 94C, as so appearing, is hereby amended by striking out, in lines 19 and 21, the word “three” and inserting in place thereof, in each instance, the following figure:- 2.

SECTION 18. Said section 32E of said chapter 94C, as so appearing, is hereby further amended by striking out, in line 27 and in line 29, the first time it appears, the word “five” and inserting in place thereof, in each instance, the following figure:- 3½.

SECTION 19. Said section 32E of said chapter 94C, as so appearing, is hereby further amended by striking out, in lines 33 and 35, the word “ten” and inserting in place thereof, in each instance, the following figure:- 8.

SECTION 20. Said chapter 94C, as so appearing, is hereby further amended by striking out, in lines 43 and 45, the word “fourteen” and inserting in place thereof, in each instance, the following figure:- 18.

SECTION 21. Subsection (b) of said section 32E of said chapter 94C, as so appearing, is hereby further amended by striking out clause (1) and clause (2) and inserting in place thereof the following 2 clauses:-

(1) Eighteen grams or more but less than 36 grams, be punished by a term of imprisonment in the state prison for not less than 2 nor more than 15 years. No sentence imposed under this clause shall be for less than a minimum term of imprisonment of 2 years, and a fine of not less \$2,500 nor more than \$25,000 may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(2) Thirty-six grams or more, but less than 100 grams, be punished by a term of imprisonment in the state prison for not less than 3½ nor more than 20 years. No sentence imposed under this clause shall be for less than a mandatory minimum term of imprisonment of 3½ years, and a fine of not less than \$5,000 nor more than \$50,000 may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

SECTION 22. Said section 32E of said chapter 94C, as so appearing, is hereby further amended by striking out, in line 65 and in line 67, the first time it appears, the word “ten” and inserting in place thereof, in each instance, the following figure:- 8.

SECTION 23. Said section 32E of said chapter 94C, as so appearing, is hereby further amended by striking out, in lines 71 and 73, the word “fifteen” and inserting in place thereof, in each instance, the following figure:- 12.

SECTION 24. Said section 32E of said chapter 94C, as so appearing, is hereby further amended by striking out, in lines 81 and 83, the word “fourteen” and inserting in place thereof, in each instance, the following figure:- 18.

SECTION 25. Subsection (c) of said section 32E of said chapter 94C, as so appearing, is hereby further amended by striking out clauses (1) and (2) and inserting in place thereof the following 2 clauses:-

(1) Eighteen grams or more but less than 36 grams, be punished by a term of imprisonment in the state prison for not less than 3½ nor more than 20 years. No sentence imposed under this clause shall be for less than a mandatory minimum term of imprisonment of 3½ years, and a fine of not less than \$5,000 nor more than \$50,000 may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(2) Thirty-six grams or more but less than 100 grams, be punished by a term of imprisonment in the state prison for not less than 5 nor more than 20 years. No sentence imposed under this clause shall be for less than a mandatory minimum term of imprisonment of 5 years, and a fine of not less than \$5,000 nor more than \$50,000 may be imposed, but not in lieu of the mandatory minimum term of imprisonment, as established herein.

SECTION 26. Said section 32E of said chapter 94C, as so appearing, is hereby further amended by striking out, in line 104 and in line 106, the first time it appears, the word “ten” and inserting in place thereof, in each instance, the following figure:- 8.

SECTION 27. Said section 32E of said chapter 94C, as so appearing, is hereby further amended by striking out, in lines 111 and 113, the word “fifteen” and inserting in place thereof, in each instance, the following figure:- 12.

SECTION 28. Section 32H of said chapter 94C, as so appearing, is hereby amended by striking out, in line 28, the word “or”.

SECTION 29. Said section 32H of said chapter 94C, as so appearing, is hereby further amended by inserting after the figure “127”, in line 29, the following words:- ; or (4) to engage in employment under a work release program under sections 49, 49A, 86F or 86G of chapter 127.

SECTION 30. Section 32J of said chapter 94C, as so appearing, is hereby amended by striking out, in lines 3 and 4, the words “one thousand feet” and inserting in place thereof the following words:- 300 feet.

SECTION 31. Said section 32J of said chapter 94C, as so appearing, is hereby further amended by striking out, in line 6, the word “whether” and inserting in place thereof the following words:- if the violation occurs between 5:00 a.m. and midnight, whether.

SECTION 32. Chapter 94C of the General Laws is hereby amended by inserting, after section 34, the following section:

Section 34A. (a) A person who, in good faith, seeks medical assistance for someone experiencing a drug-related overdose shall not be charged or prosecuted for possession of a controlled substance under sections 34 or 35 if the evidence for the charge of possession of a controlled substance was gained as a result of the seeking of medical assistance.

(b) A person who experiences a drug-related overdose and is in need of medical

assistance and, in good faith, seeks such medical assistance, or is the subject of such a good faith request for medical assistance, shall not be charged or prosecuted for possession of a controlled substance under said sections 34 or 35 if the evidence for the charge of possession of a controlled substance was gained as a result of the overdose and the need for medical assistance.

(c) The act of seeking medical assistance for someone who is experiencing a drug-related overdose may be used as a mitigating factor in a criminal prosecution under the Controlled Substance Act, 1970 P.L. 91-513, 21 U.S.C. section 801, et seq.

(d) Nothing contained in this section shall prevent anyone from being charged with trafficking, distribution or possession of a controlled substance with intent to distribute.

(e) A person acting in good faith may receive a naloxone prescription, possess

naloxone and administer naloxone to an individual appearing to experience an opiate-related overdose.

SECTION 33. Section 129D of chapter 127 of the General Laws, as so appearing, is hereby amended by striking out, in line 14, the words “two and one-half” and inserting in place thereof the following figure:- 5.

SECTION 34. Said section 129D of said chapter 127, as so appearing, is hereby further amended by striking out, in line 19, the words “seven and one-half” and inserting in place thereof the following figure:- 10.

SECTION 35. The first paragraph of said section 129D of said chapter 127, as so appearing, is hereby further amended by striking out the last sentence and inserting in

place thereof the following 3 sentences:- For a prisoner's successful completion of a program or activity requiring 6 months of satisfactory participation, as designated by the commissioner, the commissioner may grant an additional deduction of sentence of up to 10 days, to be deducted in the month during which successful completion of the designated program or activity is achieved. Such further deduction of sentence shall be added to any deduction to which the prisoner is entitled under said section 129C for reducing the term of imprisonment by deduction from the maximum term for which the prisoner may be held under the prisoner's sentence or sentences, and for reducing from the minimum term of the sentence or sentences the good conduct credits earned under this section for parole eligibility as provided under section 133. No prisoner shall be eligible for a reduced sentence under this section unless they have satisfied both the requirements of the program or activity and demonstrated competency in the material, as determined by the commissioner.

SECTION 36. Section 130 of said chapter 127, as so appearing, is hereby amended by striking out the first and second sentences and inserting in place thereof the following 5 sentences:- No prisoner shall be granted a parole permit merely as a reward for good conduct. Permits shall be granted only if the board is of the opinion, after consideration of a risk and needs assessment, that there is a reasonable probability that, if the prisoner is released with appropriate conditions and community supervision, the prisoner will live and remain at liberty without violating the law and that release is not incompatible with the welfare of society. In making this determination, the parole board shall consider whether, during the period of incarceration, the prisoner has participated in available work opportunities and education or treatment programs and demonstrated good behavior. The board shall also consider whether risk reduction programs, made available through collaboration with criminal justice agencies would minimize the probability of the prisoner re-offending once released. The record of the board's decision shall contain a summary statement of the case indicating the reasons for the decision, including written certification that each board member voting on the issue of granting a parole permit has reviewed the entire criminal record of the applicant, as well as the number of members voting in favor of granting a parole permit and the number of members voting against granting a parole permit.

SECTION 37. Section 133A of said chapter 127, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following 3 sentences:- Every prisoner who is serving a sentence for life in a correctional institution of the commonwealth, except prisoners confined to the hospital at the Massachusetts Correctional Institution, Bridgewater, except prisoners serving a life sentence for murder in the first degree and except prisoners serving more than 1 life sentence arising out of



separate and distinct incidents that occurred at different times, where the second offense occurred subsequent to the first conviction, shall be eligible for parole at the expiration of the minimum term fixed by the court under section 24 of chapter 279. The parole board shall, within 60 days before the expiration of such minimum term, conduct a public hearing before the full membership unless a member of the board is determined to be unavailable as provided in this section. Notwithstanding the previous sentence, the board may postpone a hearing until 30 days before the expiration of such minimum term, if the interests of justice so require and upon publishing written findings of the necessity for such postponement.

SECTION 38. Said section 133A of said chapter 127, as so appearing, is hereby further amended by inserting after the word "procedure", in line 28, the following words:-  
;provided, however, that no hearing shall take place until the parole board has certified in writing that it has complied with the notification requirements of this paragraph, a copy of which shall be included in the record of such proceeding; and provided further, that this paragraph shall also apply to any parole hearing for an applicant who was convicted of a crime listed in clause (i) of subsection (b) of section 25 of chapter 279 and sentenced and committed to prison for 5 or more years for such crime and does not show that a pardon has been issued for the crime.

SECTION 39. Said section 133A of said chapter 127, as so appearing, is hereby further amended by striking out, in lines 29 and 35, the words "a majority" and inserting in place thereof, in each instance, the following word:- two-thirds.

SECTION 40. Section 133B of said chapter 127, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following 2 sentences:-

The parole board shall, within 60 days before the expiration of two-thirds of the maximum sentence of a prisoner sentenced under section 25 of chapter 279, and thereafter at least once in each ensuing 2-year period, consider carefully and thoroughly the merits of releasing such person on parole except for: (i) a habitual offender sentenced under subsection (b) of said section 25 of said chapter 279 or (ii) a prisoner sentenced to a term of imprisonment as prescribed by the sentencing guidelines established by the sentencing commission.

SECTION 41. Said section 133B of said chapter 127, as so appearing, is hereby further amended by adding the following paragraph:-

Habitual offenders sentenced under said subsection (b) of said section 25 of said chapter 279 shall not, except as provided under subsection (e) of said section 25 of said chapter 279, be eligible for parole, work release or furlough or receive any deduction from such person's sentence for good conduct.

SECTION 42. Section 136 of said chapter 127, as so appearing, is hereby amended by inserting after the second sentence the following sentence:- Notwithstanding the previous sentence, the board may postpone a hearing until 30 days before a prisoner first becomes eligible for parole, if the interests of justice so require and upon publishing written findings of the necessity for such postponement.

SECTION 43. Section 33E of chapter 278 of the General Laws, as so appearing, is hereby amended by striking out, in line 9, the word “mean” and inserting in place thereof the following words:- mean: (i).

SECTION 44. Said section 33E of said chapter 278, as so appearing, is hereby further amended by striking out, in line 11, the word “degree” and inserting in place thereof the following words:- degree; or (ii) the third conviction of a habitual offender under subsection (b) of section 25 of chapter 279

SECTION 46. Section 24 of chapter 279 of the General Laws, as so appearing , is hereby amended by striking out, in lines 1 and 2, the words “for life or”.

SECTION 46. Said section 24 of said chapter 279, as so appearing, is hereby further amended by adding the following sentence:- In the case of a sentence to life imprisonment, except in the case of a sentence for murder in the first degree, and in the case of multiple life sentences arising out of separate and distinct incidents that occurred at different times, where the second offense occurred subsequent to the first conviction, the court shall fix a minimum term which shall be not less than 15 years nor more than 25 years.

SECTION 47. Said chapter 279 is hereby further amended by striking out section 25, as so appearing, and inserting in place thereof the following section:-

Section 25. (a) Whoever is convicted of a felony and has been previously twice convicted and sentenced to state prison or state correctional facility or a federal corrections facility for a term not less than 3 years by the commonwealth, another state or the United States, and who does not show that the person has been pardoned for either crime on the ground that the person was innocent, shall be considered a habitual criminal and shall be punished by imprisonment in state prison or state correctional facility for such felony for the maximum term provided by law.

(b) Whoever: (i) has been convicted 2 times previously of 1 or more of the following offenses: section 1, section 13, section 13½, clause (i) of subsection (b) of section 13A, section 13B, subsection (a) of section 13B ½ , section 13B ¾ , section 13F, committing an assault and battery upon a child and by such assault and battery causing bodily injury or substantial bodily injury under subsection (b) of section 13J, section 14, section 15, clause

(i) of subsection (c) of section 15A, section 16, sections 17 and 18 if armed with a firearm, shotgun, rifle, machine gun, or assault weapon, section 18A, section 18B, section 18C, section 21, section 22, section 22A, section 22B, section 22C, section 23A, section 23B, section 24, section 24B, section 26, section 26B, section 26C, section 28, and subsection (b) of section 39 of chapter 265, section 14 or section 102C of chapter 266, section 4A, section 17, subsection (b) of section 29A, subsection (b) of section 29B, section 29C, section 35A and subsection (b) of section 53A of chapter 272, or has been convicted 2 times previously of a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority, arising out of charges separately brought and tried, and arising out of separate and distinct incidents that occurred at different times, where the second offense occurred subsequent to the first conviction; (ii) has been sentenced to incarceration at a state prison or state correctional facility or federal correction facility for at least 3 years to be served for each of the prior 2 convictions; and (iii) does not show that he has been pardoned for either prior offense on the ground that he was innocent shall, upon conviction of 1 of the enumerated offenses in clause (i), where the offense occurred subsequent to the second conviction, shall be considered a habitual offender and shall be imprisoned in the state prison or state correctional facility for the maximum term provided by law for the offense enumerated in clause (i). No sentence imposed under this section shall be reduced or suspended nor shall such person so sentenced be eligible for probation, parole, work release or furlough or receive any deduction from such person's sentence for good conduct. A sentence imposed on a habitual offender under this section, if such habitual offender is incarcerated at a state prison or state correctional facility, shall commence upon the conclusion of the sentence such habitual offender is serving at the time of sentencing.

(c) No person shall be considered a habitual offender under subsection (b) based upon any offense for which such person was adjudicated a youthful offender, a delinquent child, or a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority for which a person was treated as a juvenile.

(d) Upon sentencing a defendant to a qualifying term of incarceration, or prior to accepting a guilty plea for any qualifying offense listed in subsection (b), the court shall inform the defendant that a conviction or plea of guilty for such an offense implicates the habitual offender statute and that upon conviction or plea of guilty for the third or subsequent of said offenses: (1) the defendant may be imprisoned in the state prison for the maximum term provided by law for such third or subsequent offense; (2) no sentence may be reduced or suspended; and (3) the defendant may be ineligible for probation, parole, work release or furlough, or to receive any deduction in sentence for good conduct. No otherwise valid plea or conviction shall be vacated based upon the failure to give such warnings.

SECTION 48 Notwithstanding any general or special law to the contrary, any person incarcerated on the effective date of this act for an offense which, at the time such person was sentenced on such offense, requires serving a minimum term of incarceration before such person is eligible for probation, parole, work release or release shall be eligible for probation, parole, work release and deductions in sentence for good conduct under sections 12 to 29, inclusive.

SECTION 49. Notwithstanding any general or special law to the contrary, each member appointed to the parole board shall complete a comprehensive training course within 90 days of said appointment.

(1) The department of correction shall develop the comprehensive training course using training components consistent with those offered by the National Institute of Corrections or the American Probation and Parole Association.

(2) Each member of the parole board shall complete a minimum of 8 hours of training annually.

SECTION 50. Section 5 shall take effect July 1, 2013.

**Section-by-Section Summary of Sentencing  
Conference Committee Report  
July 17, 2012**

SECTION 1: Specifies that the trial court and probation department must work in conjunction with the director of the crime laboratory within the department of state police to implement an electronic notification system to be used by the state police to inform them when a person is convicted of an offense that requires DNA submission.

SECTION 2 and 3: Broadens the list of personnel able to collect DNA samples, extending it from those licensed by the director of the crime lab to those approved by the director of the crime lab.

SECTION 4: Currently, pursuant to G.L. c. 22E § 4, those authorized to collect DNA samples are not civilly liable for their role in taking the DNA sample. This section merely extends buccal swabs to the protection of techniques, such as drawing blood, already provided for the withdrawal of DNA.

SECTION 5: Ensures that those required to submit DNA samples timely do so. Currently the statute does not specify any time frame. This section requires one to provide the sample, after receiving written notice, within a year of conviction, adjudication or release from custody, whichever occurs first. Also amends the crime from “refusing to provide” a DNA sample to “failing to provide” a DNA sample.

SECTION 6: Allows the governor to remove a member of the parole board, for cause, after notice and a hearing.

SECTION 7: Currently, G.L. c. 24, §4, allows for the Governor to fill Parole Board vacancies by either appointing a panel of five persons or, by choosing a person without the guidance of the panel. This section increases the size of the discretionary parole appointment panel from five to nine members.

SECTION 8: Adds to the discretionary parole appointment panel a member chosen by the DA Association, CPCS, Prisoners' Legal Services, and a local law enforcement member.

SECTION 9 and 10: Requires that the list of candidates submitted by the parole appointment panel to fill a parole board position include a professional in the field of adolescent development and psychology, and a victim witness advocate.

SECTION 11: Allows for Naloxone (an inhalant administered for heroin and other opioid drug overdoses) to be lawfully prescribed and dispensed to those likely to overdose or to any person in a position to assist such a person. The drug is currently administered as part of a pilot program at eight different state locations.

SECTION 12: Currently G.L. c. 94C, § 32(b), punishes second or subsequent offenses of manufacturing, distributing, dispensing or possessing with intent to manufacture, distribute, or dispense a Class A substance (such as heroin) at not less than 5 years nor more than 15 years in state prison. The bill reduces the mandatory minimum sentence from 5 to 3½ years.

SECTION 13: Currently G.L. c. 94C, § 32A(b), punishes second or subsequent offenses of manufacturing, distributing, dispensing or possessing with intent to manufacture, distribute, or dispense a Class B substance (such as cocaine) at not less than 3 nor more than 10 years in state prison. The bill reduces the mandatory minimum sentence from 3 to 2 years.

SECTION 14: Currently G.L. c. 94C, § 32A(d), punishes for second or subsequent offenses of manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense phencyclidine (PCP) at not less than 5 nor more than 15 years in state prison. The bill reduces the mandatory minimum sentence from 5 to 3½ years.

SECTION 15 and 16: Currently G.L. c. 94C, § 32B(b), punishes second or subsequent offenses of manufacturing, distributing, dispensing or possessing with intent to manufacture, distribute, or dispense a Class C substance (such as meth-amphetamine, peyote, or mescaline) at not less

than 2½ nor more than 10 years in state prison, or not less than 2 nor more than 2½ years in a house of correction. The mandatory minimum sentence is 2 years. These sections keep the state prison sentence the same, but reduce the mandatory minimum sentence from 2 years to 18 months.

SECTION 17: Currently G.L. c. 94C, § 32E(a)(2), punishes for trafficking, manufacturing, distributing, dispensing, cultivating, or possessing with intent to manufacture, distribute, dispense, or cultivate (for short, “trafficking”) 100 to 2000 lbs. of marijuana at not less than 3 nor more than 15 years in state prison. The bill reduces the mandatory minimum sentence from 3 to 2 years.

SECTION 18: Currently G.L. c. 94C, § 32E(a)(3), punishes for trafficking 2000 to 10,000 lbs. of marijuana at not less than 5 nor more than 15 years in state prison. This bill reduces the mandatory minimum sentence from 5 to 3½ years.

SECTION 19: Currently G.L. c. 94C, § 32E(a)(4), punishes trafficking 10,000 or more lbs. of marijuana at not less than 10 nor more than 15 years in state prison. The bill reduces the mandatory minimum sentence from 10 to 8 years.

SECTIONS 20 and 21: Currently, G.L. c. 94C, § 32E(b)(1), punishes for trafficking 14 to 28 grams of a Class B (i.e., cocaine) at not less than 3 nor more than 15 years in state prison. This bill raises the weight range to 18 to 36 grams, and reduces the mandatory minimum sentence from 3 to 2 years. It also amends the state prison sentence from 3 to 15 years to 2 to 15 years.

SECTION 22: Currently G.L. c. 94C, § 32E(b)(2), punishes for trafficking 28 to 100 grams of a Class B substance at not less than 5 nor more than 20 years in state prison. The bill raises the weight range, with a corresponding mandatory minimum sentence of five years. This bill raises the weight range to 36 to 100 and reduces the mandatory minimum sentence from 5 to 3½ years. It also amends the state prison sentence from 5 to 20 years in state prison to 3 ½ to 20 years in state prison.

SECTION 23: Currently G.L. c. 94C, § 32E(b)(3), punishes for trafficking 100 to 200 grams of a Class B substance at not less than 10 nor more than

20 years in state prison. The bill reduces the mandatory minimum sentence from 10 to 8 years. It also amends the state prison sentence from 10 to 20 years in state prison to 8 to 20 years in state prison.

SECTION 24: Currently G.L. c. 94C, § 32E(b)(4), punishes trafficking 200 grams or more of a Class B substance at not less than 15 nor more than 20 years in state prison. This bill reduces the mandatory minimum sentence from 15 to 12 years. It also amends the state prison sentence from 15 to 20 years in state prison to 12 years to 20 years.

SECTIONS 25 and 26: Currently G.L. c. 94C, § 32E(c)(1) punishes for trafficking 14 to 28 grams of heroin, morphine, or opium at not less than 5 nor more than 20 years in state prison. The bill increases the weight range from 18 to 36 grams, and reduces the mandatory minimum sentence from 5 to 3½ years. It also amends the state prison sentence from 5 to 20 years to 3 ½ to 20 years.

G.L. c. 94C, § 32E(c)(2), punishes trafficking 28 to 100 grams of heroin, morphine, or opium at not less than 7 nor more than 20 years in state prison. The bill increases the weight range to 36 to 100 grams, and reduces the mandatory minimum sentence from 7 to 5 years. It also amends the state prison sentence from 7 to 20 years to 5 to 20 years.

SECTION 27: Currently G.L. c. 94C, § 32E(c)(3), punishes trafficking 100 to 200 grams of heroin, morphine, or opium at not less than 10 nor more than 20 years in state prison. The bill reduces the mandatory minimum sentence from 10 to 8 years. It also amends the state prison sentence from 10 to 20 years to 8 to 20 years.

SECTION 28: Currently G.L. c. 94C, § 32E(c)(4), punishes trafficking 200 grams or more of heroin, morphine, or opium at not less than 15 nor more than 20 years in state prison. This bill reduces the mandatory minimum sentence from 15 to 12 years. It also amends the state prison sentence from 15 to 20 years to 12 to 20 years.

SECTION 29 and 30: Allows those serving specifically enumerated mandatory minimum drug sentences to engage in work release programs.



SECTION 31: Reduces the school zone from 1,000 feet to 300 feet and prohibits charging a school zone offense between the hours of midnight and 5a.m.

SECTION 32: Adds a new section to M.G.L. ch. 94C, which precludes prosecution for drug possession charges for individuals experiencing or seeking medical treatment for someone experiencing a drug overdose. It does not preclude prosecution for drug distribution or trafficking.

SECTION 33-35: Increase inmates' eligibility for earned good conduct credit (for participating in educational, vocational, and treatment programs) from 2.5 to 5 days per month per program, from 7.5 to 10 days per month total, and with the possibility of 10 days for long-term programs.

SECTION 36: Changes the criteria for the Parole Board to make release decisions requiring a risk/needs assessment and consideration of the effects of appropriate conditions of community supervision upon release. The board shall also consider the prisoners' participation of programs while incarcerated. It requires that each board member voting certifies they have reviewed the criminal record of the applicant. Records of decisions must indicate the number of members voting for and against release, but not the identity of the members.

SECTION 37: Provides parole eligibility for those serving certain life sentences after serving the minimum term fixed by the court (which per sections 45 and 46 of this bill shall range from 15 to 25 years). Those serving life sentences for first degree murder or multiple life sentences arising out of separate incidents are not eligible for parole. Also allows Board to postpone hearings until 30 days, rather than 60 days, before the expiration of the minimum term.

SECTION 38: Requires a 2/3 vote of the Parole Board, rather than the current majority vote, to grant parole to someone serving an eligible life sentence.

SECTION 39: Requires the Parole Board to provide written certification that it has given notice to the attorney general, appropriate district attorney, local police chief, and the victims, prior to a hearing for someone serving a

life sentence, convicted of a crime listed in the new habitual offender violent felony statute if the term of imprisonment is over five years.

SECTION 40: Postpones parole eligibility for those convicted of being a habitual offender for reason of having a third felony conviction after two prior felony convictions and serving at least a 3 year sentence for each conviction under M.G.L. ch. 279, §25(a). Currently, these offenders are eligible after serving one-half of the maximum sentence. The bill amends that to eligibility after serving two-thirds of the maximum sentence. Excludes habitual offenders convicted under M.G.L. ch. 279, §25(b) (see Section 47), from this clause.

SECTION 41: Habitual offenders who are convicted under M.G.L. ch. 279, §25(b) (see Section 47) are not eligible for parole until the expiration of the maximum punishment for the third crime. If the third crime carries a possibility of a life sentence, the offender will never be parole eligible. (Please note, this section makes reference to c.279, § 25(e), which, in previous drafts, was the judicial relief section; however, that 25(e) is not included in this report.)

SECTION 42: Allows the Parole Board to postpone habitual offenders' parole hearings until 30 days, rather than 60 days, before the expiration of the minimum term.

SECTIONS 43 and 44: Allows habitual offender convictions under the proposed amendments to M.G.L. ch. 279 §25(b) (see Section 47) to be reviewed by the Supreme Judicial Court. M.G.L. ch. 278 §33E, which currently provides the SJC with exclusive jurisdiction to review first degree murder convictions, would be amended to allow such review for habitual offender convictions as well. This would allow the SJC the discretion to order a new trial or to reduce the verdict. If the SJC, in its discretion, reduces the verdict of the third conviction of the habitual offender, it takes it out of the habitual offender statute.

SECTIONS 45 and 46: Requires judges to impose a minimum term between 15 and 25 years for any life sentence, except as provided for by the habitual offender statute, the prohibition against parole for those serving a life sentence for murder in the first degree and those serving multiple life sentences.

SECTION 47: Maintains current law of habitual offenders who are convicted of a third felony after two prior convictions that resulted in a sentence of 3 years or more.

Creates new section of habitual offenders who are convicted of a third conviction of any of the 41 listed crimes, or similar crimes under federal or other states' laws after two prior convictions of crimes from the list, each which resulted in a sentence of 3 years or more, and each which arose from a separate incident. Any new sentence under this section runs consecutively, not concurrently, to any sentence then being served.

New section does not apply to offenses for which a person was adjudicated a youthful offender, or delinquent child, and prior to any guilty plea a defendant must be informed that his crime implicates the habitual offender statute.

SECTION 48: Provides that inmates currently serving minimum mandatory sentences for some specific drug distribution and trafficking offenses (pursuant to Sections 12-30 of this bill) would be eligible for probation, parole, work release, or good conduct after serving 2/3 of their sentences.

SECTION 49: Requires Parole Board members to complete training within 90 days of appointment. Requires DOC to establish a training course. Requires Parole Board members to complete 8 hours of training annually.

SECTION 50: Effective date is set at 90 days.

