

SENATE 728:

**ACT RELATIVE TO HABITUAL OFFENDERS,
SENTENCING AND IMPROVING LAW ENFORCEMENT
TOOLS**

(Summary reflects text as redrafted)

SPONSORS:

Sen. Creem

**LEGISLATIVE
HISTORY:**

01/20/11 Bill filed
01/24/11 Referred to Joint Committee on the Judiciary
01/24/11 House concurred
03/15/11 Hearing scheduled for 03/16/11
07/18/11 Bill reported favorably by committee and referred to
Senate Ways and Means

**EXISTING LAWS
AFFECTED:**

G.L. c. 22E, §§ 3, 4, 11; G.L. c. 27, § 5; G.L. c. 94C, §§ 32, 32A,
32B, 32E, 32J; G.L. c. 127, § 129D, 130, 133A, 133B, 136, G.L. c.
265, §§ 13M, 23, G.L. c. 266, § 37, G.L. c. 269, § 10; G.L. c. 272, §
99; G.L. c. 279, §§ 24, 25

**PROPOSED
LEGISLATION:**

- Changes the trigger for habitual offender status by allowing 2 crimes from the list of the most serious offenses to trigger status as a habitual offender where any committed time has been served. Habitual offenders who have committed 2 crimes from the list of the most serious offenses, would not be parole-eligible upon conviction of a third offense from the list of the most serious offenses.
- Closes a loophole in the law to allow sentences served for federal crimes to count towards habitual offender status.
- Habitual offenders would have to serve 2/3 of their sentence before becoming parole eligible. Currently, they must complete half of their sentence.
- Inmates serving multiple life sentences would be ineligible for parole.
- Parole for persons serving life sentences must be approved by 2/3 of the board, instead of a majority of the board.
- Judges must set a parole-eligibility date of between 15 to 25 years for persons serving life sentences. A judge can adjust the parole eligibility date based on the specific facts of each case.
- Modifies the parole eligibility standard to require the parole board to include a risk and needs assessment. Additionally, the board must consider the effect of conditions and community supervision on the individual's likelihood of successful parole. Further, the board must consider whether the inmate has participated in work

opportunities, education or treatment programs, and whether the inmate has demonstrated good behavior while incarcerated.

- Parole hearings, including hearings for persons serving life sentences, can be held as late as 30 days before their parole eligibility date.
- The parole board, to the extent practicable, shall post its decisions online. The board shall include a tally of the members voting for and against parole.
- Provides for mandatory post-release supervision for state prison inmates who would otherwise not require supervision after release. The duration of mandatory post-release supervision will be 25% of the maximum term of incarceration imposed, but not less than 9 months or more than 2 years. After 6 months, an individual may request early termination.
- Mandatory post-release supervision would only apply to felonies committed after the law's effective date.
- Reduces mandatory minimum sentences for certain drug crimes under the Controlled Substances Act. Further, provides for increases in drug weights for possession of cocaine and possession of heroin.
- Offenders currently serving mandatory minimum sentences in state prison for drug crimes would be parole eligible upon completion of the new mandatory minimum sentences contained in this bill.
- Reduces the area considered to be a school zone from 1,000 feet to 500 feet for purposes of enhanced sentences for selling drugs.
- Makes a technical change to the 2008 domestic violence law, ensuring a penalty for a first offense, and creating a stiffer penalty for second/subsequent offenses.
- Establishes the crimes of assault and battery by discharging a firearm, assault with a firearm, murder for hire and strangulation.
- Establishes a "felon in possession" law prohibiting persons convicted of crimes punishable by 2½ years or more in state prison from possessing firearms.
- Incorporates a recommendation from the Rogers Commission to treat larceny by check under \$250 as a civil offense.
- Increases the punishment for the second, third and fourth

convictions for illegal possession of guns.

- Provides for a limited expansion of the state wiretapping law to include homicide, illegal possession and distribution of drugs, and illegal possession of firearms.
- Updates state wiretapping laws to include text messages and other electronic communications.
- Requires the Trial Court and Probation Department to notify the State Lab when a defendant has been required to provide a DNA sample.
- Creates criminal liability for anyone who has been ordered to provide a DNA sample who has failed to do so. This provision would take effect January 1, 2013 to allow individuals currently out of compliance to offer the sample without a criminal penalty.
- Increases the amount of good credit that inmates can accrue per program per month; from 2.5 days to 5 days. Increases the total amount of good credit that inmates can accrue in a month; from 7.5 days to 10 days. Allows an additional 10 days of credit where an inmate successfully completes a 6-month program.
- Requires the Department of Correction (DOC), sheriffs and the Department of Mental Health to share medical and mental health information when transferring inmates.
- Allows for medical release of terminally ill inmates. Eligibility for release requires physician certification; and the DOC commissioner must petition the parole board to approve such release.

**AGENCY
COMMENTS:**

None.

ESTIMATED COST:

This legislation will have no cost in FY 2012.

Existing capacity within the parole system permits the parole board to undertake mandatory post-release supervision of state prison inmates with no additional cost to the Commonwealth.

The Commonwealth can expect savings of up to \$5,000,000 where drug offenders currently serving mandatory minimum sentences in state prison become parole eligible. The cost savings, where parole replaces incarceration, will be \$6,500 per person.

Decriminalization of larceny by check under \$250 will generate

savings between \$300,000 and \$400,000 annually. Medical release for terminally ill inmates will save between \$500,000 and \$700,000 annually. Further limits on parole for persons serving life or multiple life sentences, and habitual offenders, will cost, by 2023, \$200,000 to \$400,000 annually. When fully implemented, the costs incurred by this legislation will be offset by cost-saving measures contained in the legislation.

(SB)