

**MEMORANDUM RE:
SENATE PROPOSAL TO THE CONFERENCE COMMITTEE ON 6/28/2012**

Ø **MANDATORY MINIMUM SENTENCE REDUCTIONS FOR DRUG OFFENSES (Sections 12-28)**

The 6/28/2012 Proposal tracks the reductions to mandatory minimum sentences for certain drug offenses and increases in weight ranges for trafficking offenses from S.2080.

Ø **SCHOOL ZONES (Section 31)**

Like the original Senate Proposal, the 6/28/2012 Proposal calls for the school zone to be reduced to a 300 feet radius and includes a proviso that school zone sentencing shall not apply to violations occurring between the hours of 12:00am and 5:00am.

Ø **LIFE SENTENCES (Sections 38, 47, 48)**

The 6/28/2012 Proposal tracks the S.2080 sections that remove parole eligibility for individuals serving multiple 2nd degree life sentences and require judges to set a minimum term between 15 and 25 years in cases where a life sentence is imposed, except in cases of 1st degree murder or multiple life sentences. However, the 6/28/2012 Proposal adds language indicating that parole eligibility is only removed for 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.*”

Ø **HABITUAL OFFENDER (Sections 41, 42, 46, 49)**

Subsection (a): (Tracks S.2080 language)

- § A person who has previously been *twice* convicted of any of the existing 688 felonies and sentenced to *3 years or more state prison* and is convicted of a *third* felony.
- § Upon the third conviction, the person must be sentenced to state prison for the *maximum* term allowed for the third felony.
- § He or she is *eligible for parole after serving 2/3 of the maximum* sentence for the third felony.

Subsection (b):

- § A person who has previously been *twice* convicted of any of the specified *33* offenses;
- § For both of those prior convictions has served *3 years or more in state prison*; and
- § Is convicted for a third time of one of the specified *33* offenses.
- § Upon the third conviction, the person must be sentenced to state prison for the *maximum* term of incarceration permitted by law for that third offense; and
- § He or she is *not eligible for parole, work release or any deduction from his or her sentence for good conduct* while serving the maximum term of incarceration for the third offense.
 - The number of crimes listed in Subsection (b) has been increased since the original Senate Proposal from 29 to 33 crimes.¹ *Out of those 33 crimes, 20 carry maximum sentences of life in prison.*

Subsection (e): (Tracks original Senate Proposal language)

Permits a sentencing judge to allow parole at 2/3 of the maximum sentence for a defendant convicted under Subsection (b) “in the interest of justice and upon a finding on the record of substantial and compelling reasons.”

Appellate Review: (Tracks H.3818 language)

Section 46 of the 6/28/2012 Proposal calls for appellate review by the Supreme Judicial Court of Subsection (b) habitual offender convictions, in the same manner as 1st degree murder convictions.

Ø **OTHER PROVISIONS RETAINED FROM S.2080**

- **Earned good time limit increases (Sections 34-36).**
- Parole, work release, and good time eligibility for those currently serving mandatory minimum drug sentences once they have served the new mandatory minimum sentence (Section 50).
- Required transfer of prison medical and mental health records between facilities (Section 33).
- Provisions related to DNA sample submission and criminal penalties for those who do not provide DNA samples following written notice (Sections 1, 2-5).
- Certain provisions relating to Parole Board composition, procedures, and training (Sections 6-10, 37, 39-40, 43, 51).
- Lawful prescription of opioid antagonist to persons at risk of overdose or their loved ones (Section 11).
- New crimes of strangulation and suffocation (Section 44).

Ø **PROVISIONS OF NOTE REMOVED FROM S.2080 AND THE ORIGINAL SENATE PROPOSAL**

- **Medical parole (formerly Section 23).**
- **Expansion of the wiretap statute (formerly Section 39-41).**
- **Regulations for intensive pre-release program to reduce recidivism and address specific reentry needs of individuals who will be released from commitment without further supervision to begin when the prisoner has served not more than 2/3 of his or her sentence (formerly Section 21B).**
- Requirement that Parole Board make decisions publicly available on the internet (formerly Section 28)
- First-offense larceny by check under \$250 punishable by fine (formerly Sections 36, 37).
- Sex offender registry requirements (formerly Sections 1, 1A).
- Restraining orders to protect animals (formerly Section 49).
- Assault and battery on family member statute changes (formerly Section 34).
- Increased penalties for subsequent offenses of carrying dangerous weapons (formerly Section 38).
- New crime of solicitation to commit murder (formerly a portion of Section 35).
- **Mandatory Post-Release Supervision** (*removed by the original Senate Proposal*).
- Section providing that violations of municipal ordinances and misdemeanors could be treated as civil infractions (*removed by the original Senate Proposal*).

Completed: July 2, 2012

ⁱ **Crimes “added back” by the 6/28/2012 Proposal:**

M.G.L c.265, §13B½(a) and §13B¾ – Indecent assault and battery on a child under 14 years of age by certain classes of people or during the commission of certain crimes; M.G.L c.265, §13J(b) – Assault and battery of a child causing bodily injury or substantial bodily injury; M.G.L c.266, §102C – biological, chemical or nuclear weapon or delivery system. These are in addition to the five crimes “added back” by the original Senate Proposal: M.G.L c.265, §13A(b)(i) – Assault and battery causing serious bodily injury (all of (b) was included in S.2080 and H.3818); M.G.L. c.265, §14 – Mayhem; M.G.L. c.265, §18C – Armed home invasion; M.G.L. c.265, §21 - Stealing by confining or putting in fear; M.G.L. c.265, §39(b) – Assault and battery for the purpose of intimidation.