

MEMORANDUM RE:
SENATE PROPOSAL TO THE CONFERENCE COMMITTEE ON 4/13/2012

Ø **MANDATORY MINIMUM SENTENCE REDUCTIONS FOR DRUG OFFENSES (Sections 6-20)**

The Senate Proposal tracks sections 6 through 20 of S.2080 to reduce mandatory minimum sentences for certain drug offenses and increase weight ranges for trafficking offenses.

Ø **SCHOOL ZONES (Section 21)**

The Senate Proposal reduces the school zone 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 **TRANSITION OUT OF PRISON (Section 21B)**

The Senate Proposal supplements section 21B of S.2080 to require that the Commissioner of Correction must promulgate regulations for “an intensive pre-release program to reduce recidivism and address the specific reentry needs of individual offenders who will be released from commitment without further supervision,” to begin when a prisoner has served not more than 2/3 of his or her sentence.

Ø **WIRETAPPING (Section 39-41)**

The Senate Proposal expands the existing wiretapping statute by adding designated offenses unrelated to organized crime, namely: murder, manslaughter, and crimes of juror or witness intimidation related thereto; and any crime that includes as an element the illegal sale, purchase, or transfer of a firearm. This is less broad than the expansion included in S.2080, which also included *any* violations of chapter 94C (controlled substances) and firearm licensing violations.

Ø **LIFE SENTENCES (Sections 29, 44, 45)**

The Senate Proposal tracks the S.2080 sections removing parole eligibility for individuals serving multiple 2nd degree life sentences and calling for sentencing judges to fix a minimum term of not less than 15 nor more than 25 years in cases where a life sentence is imposed, except in cases of 1st degree murder or multiple life sentences.

Ø **HABITUAL OFFENDER (Sections 31, 32, 43, 46)**

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 ***29*** 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 ***29*** 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 reduced from 59 to 29 crimes. However, the list of 29 is different from the House Proposal.¹ Out of those 29 crimes, 18 carry maximum sentences of life in prison.

Subsection (e): (New in Senate Proposal)

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 43 of the Senate 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**

- Sex offender registry requirements (Sections 1, 1A).
- Provisions related to DNA sample submission and criminal penalties for those who do not provide DNA samples (Sections 1B, 2-4). Section 4 of the Senate Proposal adds a requirement of written notice of obligations prior to prosecution.
- Certain provisions relating to Parole Board composition, procedures, and training (Sections 4A-4E, 27-28, 30-30A, 33, 48).
- Lawful prescription of opioid antagonist to persons at risk of overdose or to their loved ones (Section 5).
- Required transfer of prison medical and mental health records between facilities (Section 22).
- **Medical parole (Section 23).**
- **Earned good time limit increases (Sections 24-26).**
- Assault and battery on family member statute changes (Section 34). Some redaction by Senate Proposal.
- New crimes of strangulation and suffocation; solicitation to commit murder (Section 35).
- First-offense larceny by check under \$250 punishable by fine (Sections 36-37).
- Increased penalties for subsequent offenses of carrying dangerous weapons (Section 38).
- Parole, work release, and good time eligibility for those currently serving mandatory minimum drug sentences upon reaching new mandatory minimum sentences (Section 47).
- Restraining orders to protect animals (Section 49).

Ø **PROVISIONS OF NOTE REMOVED FROM S.2080**

- **Mandatory Post-Release Supervision.**
- Section providing that violations of municipal ordinances and misdemeanors could be treated as civil infractions.

Completed: April 23, 2012

ⁱ **Crimes removed by the House Proposal and “added back” by the 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.

Crimes in the House Proposal removed or limited by the Senate Proposal:

M.G.L. c.265, §15A(c)(i) – Assault and battery with dangerous weapon causing serious bodily injury (S.2080 and H.3818 included all of subsections (a) and (c), House Proposal included only (c)); M.G.L. c.265, §17 – Armed robbery if defendant armed with a firearm (not limited to firearms in S.2080, H.3818, or House Proposal); M.G.L. c.265, §18 – Armed assault with intent to rob or murder if defendant armed with a firearm (not limited to firearms in S.2080, H.3818, or House Proposal); M.G.L. c.265, §§49-52 – Human trafficking (added in House Proposal); M.G.L. c.272, §17 – Incest (included in S.2080, H.3818, and House Proposal).