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# UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



## JOURNAL OF THE SENATE.

*Wednesday, November 18, 2009.*

Met at sixteen minutes past eleven o'clock A.M. (Mr. Rosenberg in the Chair).

### *Distinguished Guests.*

There being no objection, the President introduced, in the rear of the Chamber, Candace Chang, the mother of Senator Sonia Chang-Diaz. She was accompanied by colleagues from Bay Cove Early Intervention in Dorchester. Ms. Chang and her colleagues are on the front line of delivering early intervention services to at-risk zero to three year olds in some of the most under-resourced neighborhoods in the Commonwealth. The Senate applauded their efforts and they withdrew from the Chamber.

There being no objection, the President handed the gavel to Mr. Joyce for the purpose of an introduction. Mr. Joyce then introduced three constituents from Braintree. Christopher P. Griffin, Joseph A. Zarrella and Kevin J. Edelson are all politically active and the next generation of great lawmakers. Recently, Mr. Griffin ran for At-Large Councilor in Braintree, and 19 year old Mr. Zarrella was elected to the Braintree School Committee. They were the guests of Senators Joyce and Morrissey. The Senate welcomed them with applause and they withdrew from the Chamber.

There being no objection, the President introduced, in the Senate Gallery, Lieutenant Governor Tim Murray. He was accompanied by thirteen Lieutenant Governors visiting from throughout the country. He addressed the Senate and they withdrew from the Gallery.

Mr. Rosenberg in the Chair, there being no objection, the Chair (Mr. Rosenberg) handed the gavel to Mr. Tolman for the purpose of an introduction. Mr. Tolman then introduced, in the rear of the Chamber, the U.S. Government and American Politics class from Bentley University. The class is here for hands-on learning and to witness democracy in action. They were accompanied by Representative Peter

Koutoujian who is also their professor.

**PAPER FROM THE HOUSE.**

A message from His Excellency the Governor (under Section 8 of Article LXXXIX of the Amendments to the Constitution) recommending legislation relative to authorizing the town of Plymouth to conduct a referendum election on January 19, 2010 (House, No. 4358),— **was referred, in concurrence, to the committee on Election Laws.**

*Recess.*

There being no objection, at seventeen minute past eleven o'clock A.M., the Chair (Mr. Rosenberg) declared a recess subject to the call of the Chair; and, at eighteen minutes past twelve o'clock noon, the Senate reassembled, the President in the Chair.

The President, members, guests and employees then recited the pledge of allegiance to the flag.

*Communications.*

The Clerk read the following communications:

COMMONWEALTH OF MASSACHUSETTS  
MASSACHUSETTS SENATE  
STATE HOUSE, BOSTON 02133-1053

*November 18, 2009.*

Mr. William F. Welch  
Clerk of the Senate  
State House, Room 335  
Boston, MA 02133

Dear Mr. Clerk,

On Wednesday, November 17, 2009, I was absent from the Chamber when one roll call vote was taken. Please note that had I been present, I would have voted affirmatively on engrossment of Senate No. 2208, An Act Financing Health Care Through Moral Obligation Bonds. I would appreciate if this could be printed in the Senate Journal. Thank you.

*Sincerely,*  
Jack Hart,  
*State Senator.*

On motion of Mr. Baddour, the above communication was ordered printed in the Journal of the Senate.

COMMONWEALTH OF MASSACHUSETTS  
MASSACHUSETTS SENATE  
STATE HOUSE, BOSTON 02133-1053

*November 18, 2009.*

Mr. William Welch,  
Clerk of the Senate  
State House, Room 335  
Boston, MA 02133

Dear Mr. Clerk:

Due to a prior commitment yesterday evening, I was unable to be present in the Chamber for one roll call on Senate bill 2212, relative to harassment prevention.

Had I been present, I would have voted in the affirmative on this matter.

I respectfully request that this communication be printed in the Journal of the Senate. Thank you for your consideration.

*Very truly yours,*  
Michael R. Knapik,  
*2nd Hampden and Hampshire District.*

On motion of Mr. Tisei, the above communication was ordered printed in the Journal of the Senate.

### **PAPERS FROM THE HOUSE.**

A petition (accompanied by bill, House, No. 4353) of Michael A. Costello for legislation to establish a sick leave bank for Anne Smith, an employee of the Department of Revenue,— **was referred, in concurrence, under suspension of Joint Rule 12, to the committee on Public Service.**

#### *Emergency Preambles Adopted.*

An engrossed Bill authorizing the Massachusetts Department of Transportation and the town of Kingston to exchange certain parcels of land (see Senate, No. 2147, amended), having been certified by the Senate Clerk to be rightly and truly prepared for final passage and containing an emergency preamble,— **was laid before the Senate; and, a separate vote being taken in accordance with the requirements of Article LXVII of the Amendments to the Constitution, the preamble was adopted in concurrence, by a vote of 10 to 0.**

**The bill was signed by the President and sent to the House for enactment.**

An engrossed Bill preserving publicly-assisted affordable housing (see Senate, No. 2190, amended), having been certified by the Senate Clerk to be rightly and truly prepared for final passage and containing an emergency preamble,— **was laid before the Senate; and, a separate vote being taken in accordance with the requirements of Article LXVII of the Amendments to the Constitution, the preamble was adopted in concurrence, by a vote of 7 to 0.**

**The bill was signed by the President and sent to the House for enactment.**

#### *Report of a Committee.*

By Mr. Panagiotakos, for the committee on Ways and Means, that the House Bill authorizing the Division of Capital Asset Management to convey, lease and grant easements with respect to certain land in the town of Uxbridge (House, No. 4300),— **ought to pass, with an amendment in section 3, by striking out, in line 33, the word “shall” and inserting in place thereof the following word: “may”.** **There being no objection, the rules were suspended, on motion of Mr. Richard T. Moore, and the bill was read a second time and was amended, as recommended by the committee on Ways and Means.**

**The bill, as amended, was then ordered to a third reading, read a third time and passed to be engrossed, in concurrence, with the amendment.  
Sent to the House for concurrence in the amendment.**

Matters Taken Out of the Orders of the Day.

There being no objection, the following matters were taken out of the Orders of the Day and considered as follows:

The House Bill authorizing the town of Harwich to convey certain recreational land (House, No. 4314),— **was read a third time and passed to be engrossed, in concurrence.**

The Senate Bill authorizing a land acquisition fund in the town of Middleborough (Senate, No. 2139),— was read a third time.

Mr. Pacheco offered an amendment striking out section 1 and inserting in place thereof the following section:—

“SECTION 1. Notwithstanding any general or special law to the contrary, there shall be established in the town of Middleborough a Land Acquisition Fund into which shall be deposited all roll-back taxes paid to the town pursuant to section 7 of chapter 61, section 13 of chapter 61A and section 8 of chapter 61B and all conveyance taxes paid to the town pursuant to section 6 of said chapter 61, section 12 of said chapter 61A and section 7 of said chapter 61B.”

**The amendment was adopted.**

**The bill (Senate, No. 2139, amended) was then passed to be engrossed.**

**Sent to the House for concurrence.**

*Report of a Committee.*

By Mr. Panagiotakos, for the committee on Ways and Means, that the Senate Bill regulating secondary metals dealing (Senate, No. 2191),— ought to pass, with an amendment, in section 2, line 36, by inserting after the word “commonwealth” the words: “, in accordance with accounting standards proscribed by the comptroller,”; and in section 3, in line 246, by inserting after the word “treasurer” the words: “, in accordance with accounting standards proscribed by the comptroller”.

**There being no objection, the rules were suspended, on motion of Mr. Baddour, and the bill was read a second time and was amended, as recommended by the committee on Ways and Means.**

**The bill, as amended, was then ordered to a third reading and read a third time.**

After remarks, the question on passing the bill to be engrossed was determined by a call of the yeas and nays, at twenty-four minutes before one o’clock P.M., on motion of Mr. Timilty, as follows, to wit (*yes 37 — nays 0*) [**Yeas and Nays No. 166**]:

YEAS.

Baddour, Steven A. McGee, Thomas M.  
Brewer, Stephen M. Menard, Joan M.  
Brown, Scott P. Montigny, Mark C.  
Buoniconti, Stephen J. Moore, Michael O.  
Candaras, Gale D. Moore, Richard T.  
Chandler, Harriette L. Morrissey, Michael W.  
Chang-Diaz, Sonia O’Leary, Robert A.  
Creem, Cynthia Stone Pacheco, Marc R.  
Donnelly, Kenneth J. Panagiotakos, Steven C.  
Downing, Benjamin B. Petruccelli, Anthony  
Eldridge, James B. Rosenberg, Stanley C.  
Flanagan, Jennifer L. Spilka, Karen E.  
Galluccio, Anthony D. Tarr, Bruce E.

Hart, John A., Jr. Timilty, James E.  
 Hedlund, Robert L. Tisei, Richard R.  
 Jehlen, Patricia D. Tolman, Steven A.  
 Joyce, Brian A. Tucker, Susan C.  
 Kennedy, Thomas P. Walsh, Marian— 37.  
 Knapik, Michael R.

NAYS — 0.

ABSENT OR NOT VOTING.

Berry, Frederick E. Fargo, Susan C. — 2.

The yeas and nays having been completed at nineteen minutes before one o'clock P.M., the bill was passed to be engrossed.

Sent to the House for concurrence.

Recess.

There being no objection, at eighteen minutes before one o'clock P.M., the President declared a recess subject to the call of the Chair; and, at twelve minutes past one o'clock P.M., the Senate reassembled, the President in the Chair.

Matter Taken Out of the Orders of the Day.

There being no objection, the following matter was taken out of the Orders of the Day and considered as follows:

The Senate Bill relative to drug mandatory minimum sentences (Senate, No. 1651) (the committee on Ways and Means having recommended that the bill be amended by substituting a new draft entitled "An Act relative to sentencing laws" (Senate, No. 2210),— was read a second time, the main question being on ordering it to a third reading, with the Ways and Means new draft pending.

Messrs. Morrissey and Donnelly and Ms. Flanagan moved to amend the proposed new draft by adding the following new section:

"SECTION 70. Whoever commits an offense set forth in section thirteen D of chapter two hundred and sixty-five of the Massachusetts General Laws where said offense includes the attempt to disarm a police officer in the performance of his duty, shall be punished by imprisonment in the state prison for not more than ten years, or by a fine of not more than one thousand dollars and imprisonment in a jail or house of correction for not more than two and one-half years."

Mr. Panagiotakos rose to a point of order, which, being stated, was that the amendment was beyond the scope of the legislation.

The President ruled that the amendment was beyond the scope of the limited subject matter of the legislation, and as such, the point of order was well-taken.

The amendment was laid aside.

Mr. Morrissey then moved that the further consideration of this matter be postponed until Wednesday, January 6, 2010.

After remarks, the question on postponement was determined by a call of the yeas and nays, at twenty-seven minutes past one o'clock P.M., on motion of Mr. Morrissey, as follows, to wit (yeas 8 — nays 30) [Yeas and Nays No. 167]:

YEAS.

Brown, Scott P. Morrissey, Michael W.  
 Hedlund, Robert L. Tarr, Bruce E.  
 Knapik, Michael R. Tisei, Richard R.  
 Moore, Richard T. Walsh, Marian — 8.

## NAYS.

Baddour, Steven A. Joyce, Brian A.  
 Berry, Frederick E. Kennedy, Thomas P.  
 Brewer, Stephen M. McGee, Thomas M.  
 Buoniconti, Stephen J. Menard, Joan M.  
 Candaras, Gale D. Montigny, Mark C.  
 Chandler, Harriette L. Moore, Michael O.  
 Chang-Diaz, Sonia O'Leary, Robert A.  
 Creem, Cynthia Stone Pacheco, Marc R.  
 Donnelly, Kenneth J. Panagiotakos, Steven C.  
 Downing, Benjamin B. Petruccelli, Anthony  
 Eldridge, James B. Rosenberg, Stanley C.  
 Flanagan, Jennifer L. Spilka, Karen E.  
 Galluccio, Anthony D. Timilty, James E.  
 Hart, John A., Jr. Tolman, Steven A.  
 Jehlen, Patricia D. Tucker, Susan C. — 30.

## ABSENT OR NOT VOTING.

Fargo, Susan C. — 1.

The yeas and nays having been completed at twenty-six minutes before two o'clock P.M., the motion to postpone was rejected.

Mr. Brown moved to amend the proposed new draft by inserting at the end thereof the following section:—

“SECTION XX. Section 178E of Chapter 6 of the General Laws, as so appearing in the 2008 Official Edition, is hereby amended by inserting after paragraph (q) the following new paragraph:—

(r) The board shall maintain accurate records of registered sex offenders born outside of the United States. Said records are to be submitted semi-annually on the first Wednesday in March and the first Wednesday in September to the Federal Bureau of Investigation and Immigration and Customs Enforcement for purposes of verifying immigration status. The board shall submit an annual letter of compliance containing the number of offenders submitted to federal agencies and the number of offenders in violation of immigration laws. Said letter shall be submitted by the board on the first Wednesday in October to the Governor, attorney general, state auditor, the joint committee on the judiciary, the joint committee on public safety and homeland security, and the department of public safety. Said records shall be subject to review at the discretion of the state auditor.”

The amendment was rejected.

Mr. Brown moved to amend the proposed new draft in lines 893-897 by striking out the words “for 10 years following their disposition, including termination of supervision, probation or any period of incarceration, or for so long as the offender is under a duty to register in the commonwealth or in any other state where the offender resides or would be under such a duty if residing in the commonwealth, whichever is longer”.

The amendment was rejected.

Mr. Brown moved to amend the proposed new draft by inserting at the end thereof the following sections:—

“SECTION XX. Paragraph (b) of subsection (2) of section 178K of chapter 6 of the General Laws, is hereby further amended by inserting after the first sentence the following:—

If an offender designated as a level 2 offender was convicted of a sex offense involving a child, such offender shall be given a level 2(a) designation and shall be subject to the level 3 community notification requirements. If an offender designated as a level 2 offender committed any offense other than a sex offense involving a child, such offender shall be given a level 2(b) designation and shall be

subject to the requirements of a level 2 offender.

SECTION XX. Said chapter 6 is hereby amended by adding the following section:—

Section 178R. (a) No sex offender designated as a level 2(a) or level 3 offender convicted of a sex offense involving a child shall knowingly establish a home address or intended home address or any other living accommodation within 1000 feet of the property on which any public or private school, licensed day care center, or any other child care facility is located. Nor shall any level 2(a) or level 3 sex offender knowingly establish a home address or intended home address or any other living accommodation within 1000 feet of the property on which the offender's former victim or victims, or said victim's immediate family members reside, nor shall such offender knowingly and willfully come within 100 feet of any of the offender's former victims. Violations of this paragraph shall be punished in accordance with a violation of the conditions of probation or parole.

(b) No sex offender designated as a level 2(a) or level 3 offender convicted of a sex offense involving a child shall knowingly accept employment within 1000 feet of the property on which any public or private school, licensed day care center or any other child care facility is located. No sex offender designated as a level 2(a) or level 3 sex offender shall knowingly accept employment within 1000 feet of the property on which the offender's former victim or victims, or the victim's immediate family members reside. Violations of the provisions of this paragraph shall be punished in accordance with a violation of the conditions of probation or parole.

(c) No sex offender designated as a level 2(a) or level 3 offender convicted of a sex offense involving a child shall establish living conditions within, be placed in, or be transferred to any state-owned, operated or funded housing or any facility contracted with the state within 1½ miles of the property on which any public or private school, licensed day care center, or any other child care facility is located, or any residence occupied by at least one minor.”

Mr. Panagiotakos rose to a point of order, which, being stated, was that the amendment was beyond the scope of the legislation.

The President ruled that the amendment was beyond the scope of the limited subject matter of the legislation, and as such, the point of order was well-taken.

The amendment was laid aside.

Mr. Tisei rose to a point of parliamentary inquiry requesting a list of amendments that the Chair would rule as being out of order.

Subsequently, the following amendments were severally considered as one and ruled beyond the scope of the legislation (with clerk numbers attached):

Amendment filed by Messrs. Baddour, Tarr and Morrissey relative to sentencing (8);

Amendment filed by Mr. Brown relative to the sexual abuse of minors (15);

Amendment filed by Messrs. Brewer and Tarr relative to common defense (19);

Amendment filed by Mr. Timilty relative to assault and battery by means of a bodily substance upon correctional facility employees (21);

Amendment filed by Mr. Timilty relative to murder committed by youthful offenders (25);

Amendment filed by Messrs. Tisei, Tarr, Knapik and Brown relative to the reinstatement of capital punishment (38);

Amendment filed by Mr. Tolman relative to school zones (54);

Amendment filed by Mr. Tolman relative to child endangerment (55);

Amendment filed by Mr. Tarr and Ms. Fargo relative to corporate manslaughter (57);

Amendment filed by Messrs. Brown, Tisei, Tarr, Knapik, Hedlund, Timilty, Montigny, Baddour, Michael O. Moore and Ms. Flanagan relative to Good Samaritan protection (58);

Amendment filed by Mr. Tarr relative to OUI drug stops (60); and

Amendment filed by Mr. Tarr relative to public funds (64).

Mr. Brown moved to amend the proposed new draft by inserting at the end thereof the following section:—

“SECTION XX. . Subsection (e) of section 178E of chapter 6 of the General Laws, shall be amended by striking out the subsection in its entirety.”

The amendment was rejected.

Messrs. Michael O. Moore and Tarr moved that the proposed new draft be amended in section 44, in line 699 by the addition of the following:— “Provided further that the Sheriff’s Office in the county where the court that committed the detainee is sitting may prescribe a program administrative fee to be paid by each sentenced inmate or pre-trial detainee participating in this program that shall be determined according to his or her ability to pay, finances, household income, number of dependents and medical status. The inability to pay all or a portion of the program fees shall not preclude participation in the program, and eligibility shall not be enhanced by reason of ability to pay. For those deemed unable to pay, the Sheriff’s Office will agree to cover the cost for those participants at a reduced and agreed upon rate with the electronic monitoring agency or entity.”

After remarks, the amendment was adopted.

Mr. Baddour moved to amend the proposed new draft by inserting after section 51 the following section:—

“SECTION 51A. Section 58A of chapter 276 of the General Laws, as so appearing, is hereby amended by striking out subsection (1) and inserting in place thereof the following subsection:—

(1) The commonwealth may move, based on dangerousness, for an order of pretrial detention or release on conditions for a felony offense that has as an element of the offense the use, attempted use, or threatened use of physical force against the person of another, or any other felony that by its nature involves a substantial risk that physical force against the person of another may result, including the crime of burglary and arson whether or not a person has been placed at risk thereof, or a violation of an order pursuant to section 18, 34B or 34C of chapter 208, section 32 of chapter 209, section 3, 4 or 5 of chapter 209A, or section 15 or 20 of chapter 209C, or arrested and charged with a misdemeanor or felony involving abuse as defined in section 1 of said chapter 209A or while an order of protection issued under said chapter 209A was in effect against said person, an offense for which a mandatory minimum term of 3 years or more is prescribed in chapter 94C, arrested and charged with a violation of section 13 of chapter 268 or a third or subsequent conviction for a violation of section 24 of chapter 90, or arrested and charged with a violation of paragraph (a) or (c) of section 10 of chapter 269, or arrested and charged with a violation of section 10G of chapter 269.”

Pending the question on adoption of the amendment, Messrs. Montigny, Baddour, Timilty, Panagiotakos and Ms. Menard moved to amend the amendment (Baddour) by striking out the amendment in its entirety and inserting the following section:

“SECTION 51A. Section 58A of chapter 276 of the General Laws, as so appearing, is hereby amended by striking out subsection (1) and inserting in place thereof the following subsection:—

(1) The commonwealth may move, based on dangerousness, for an order of pretrial detention or release on conditions for a felony offense that has as an element of the offense the use, attempted use or threatened use of physical force against the person of another, or any other felony that by its nature involves a substantial risk that physical force against the person of another may result, including the crimes of burglary and arson whether or not a person has been placed at risk thereof, or a violation of an order pursuant to section 18, 34B or 34C of chapter 208, section 32 of chapter 209, section 3, 4 or 5 of chapter 209A, or section 15 or 20 of chapter 209C, or arrested and charged with a misdemeanor or felony involving abuse as defined in section 1 of said chapter 209A or while an order of protection issued under said chapter 209A was in effect against said person, an offense for which a mandatory minimum term of 3 years or more is prescribed in chapter 94C, arrested and charged with a violation of section 13 of chapter 268 or a third or subsequent conviction for a violation of section 24 of chapter 90, or arrested and charged with a violation of paragraph (a), (c) or (m) of section 10 of chapter 269, or arrested and charged with a violation of section 10G of said chapter 269.”

After remarks, the question on adoption of the further amendment (Montigny, et al) was determined by a call of the yeas and nays, at two o’clock P.M, on motion of Mr. Montigny, as follows, to wit (yeas 39 — nays 0) [Yeas and Nays No. 168]:

YEAS.



Baddour, Steven A. McGee, Thomas M.  
 Berry, Frederick E. Menard, Joan M.  
 Brewer, Stephen M. Montigny, Mark C.  
 Brown, Scott P. Moore, Michael O.  
 Buoniconti, Stephen J. Moore, Richard T.  
 Candaras, Gale D. Morrissey, Michael W.  
 Chandler, Harriette L. Murray, Therese  
 Chang-Diaz, Sonia O'Leary, Robert A.  
 Creem, Cynthia Stone Pacheco, Marc R.  
 Donnelly, Kenneth J. Panagiotakos, Steven C.  
 Downing, Benjamin B. Petrucci, Anthony  
 Eldridge, James B. Rosenberg, Stanley C.  
 Flanagan, Jennifer L. Spilka, Karen E.  
 Galluccio, Anthony D. Tarr, Bruce E.  
 Hart, John A., Jr. Timilty, James E.  
 Hedlund, Robert L. Tisei, Richard R.  
 Jehlen, Patricia D. Tolman, Steven A.  
 Joyce, Brian A. Tucker, Susan C.  
 Kennedy, Thomas P. Walsh, Marian — 39.  
 Knapik, Michael R.

NAYS — 0.

#### ABSENT OR NOT VOTING.

Fargo, Susan C. — 1.

The yeas and nays having been completed at three minutes past two o'clock P.M., the further amendment (Montigny, et al) was adopted.

The pending amendment (Baddour), as amended (Montigny, et al), was then adopted.

Subsequently, Mr. Tisei moved that no action be taken on this amendment; and this motion prevailed.

Messrs. Montigny, Baddour, Timilty, Panagiotakos, Brewer, Tisei, Brown, Tarr, Michael O. Moore and Pacheco and Ms. Menard then moved that the proposed new draft be amended by inserting after section 51 the following section:—

“SECTION 51A. section 58A of chapter 276 of the General Laws, as so appearing, is hereby amended by striking out subsection (1) and inserting in place thereof the following subsection:—

(1) The commonwealth may move, based on dangerousness, for an order of pretrial detention or release on conditions for a felony offense that has as an element of the offense the use, attempted use or threatened use of physical force against the person of another or any other felony that, by its nature, involves a substantial risk that physical force against the person of another may result, including the crimes of burglary and arson whether or not a person has been placed at risk thereof, or a violation of an order pursuant to section 18, 34B or 34C of chapter 208, section 32 of chapter 209, section 3, 4 or 5 of chapter 209A or section 15 or 20 of chapter 209C, or arrested and charged with a misdemeanor or felony involving abuse as defined in section 1 of said chapter 209A or while an order of protection issued under said chapter 209A was in effect against such person, an offense for which a mandatory minimum term of 3 years or more is prescribed in chapter 94C, arrested and charged with a violation of section 13B of chapter 268 or a third or subsequent conviction for a violation of section 24 of chapter 90, or arrested and charged with a violation of paragraph (a), (c) or (m) of section 10 of chapter 269; provided, however, that the commonwealth may not move for an order of detention under this section based on possession of a large capacity feeding device without simultaneous possession of a large capacity weapon; or arrested and charged with a violation of section 10G of said chapter 269.”

After remarks, the amendment was adopted.

Messrs. Michael O. Moore and Morrissey and Ms. Flanagan moved that the proposed new draft be

amended by the addition of the following section:

“SECTION 70. Chapter 265 of the General Laws is hereby amended by striking out in section 13I, as appearing in the 2000 Official Edition, and inserting in place thereof the following section:—

Section 13I. Whoever commits an assault or assault and battery on an emergency medical technician, an ambulance operator, registered nurse, registered nurse psychologist, physical therapist, occupational therapist, or an ambulance attendant, while said technician, operator, registered nurse, registered nurse psychologist, physical therapist, occupational therapist or attendant is treating or transporting, in the line of duty, a person, shall be punished by imprisonment in the house of correction for not less than ninety days nor more than two and one half years, or by a fine of not less than five hundred nor more than five thousand dollars, or both.”

Pending the question on adoption of the amendment, Messrs. Petruccelli, Michael O. Moore and Morrissey moved that the pending amendment (Michael O. Moore, et al) be amended by striking the entirety and inserting in place thereof the following:

“Section X. Section 13I of chapter 265 of the General Laws, as appearing in the 2006 official edition, is hereby amended by striking out the language in the section and inserting in place thereof the following language:

Section 13I. Whoever commits an assault or assault and battery on an emergency medical technician, an ambulance operator, an ambulance attendant, or a health care provider as defined in section 1 of chapter 111, while said technician, operator, attendant, or provider is treating or transporting a person in the line of duty, shall be punished by imprisonment in the house of correction for not less than ninety days nor more than two and one-half years, or by a fine of not less than five hundred nor more than five thousand dollars, or both.”

The further amendment (Petruccelli, et al) was adopted.

The pending amendment (M.O. Moore, et al), as amended (Petruccelli, et al), was then adopted.

Mr. Michael O. Moore moved that the proposed new draft be amended by adding the following new section:

SECTION 70. Section 1. Section 178C of chapter 6 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the words “13B of Chapter 265;”, in lines 56, 87 and 106, the following words:— aggravated indecent assault and battery on a child under the age of 14 under section 13B½ of said chapter 265; a repeat offense under section 13B¾ of said chapter 265;.

Section 2. Said section 178C of said chapter 6 is hereby further amended by inserting after the words “22A of said chapter 265;”, in lines 60, 88 and 109, the following words:— aggravated rape of a child under 16 with force under section 22B of said chapter 265; a repeat offense under section 22C of said chapter 265;.

Section 3. Said section 178C of said chapter 6 is hereby further amended by inserting after the words “23 of said chapter 265;”, in lines 61 and 89, the following words:— aggravated rape and abuse of a child under section 23A of said chapter 265; a repeat offense under section 23B of said chapter 265;.

Section 4. Section 178H of said chapter 6 is hereby amended by inserting after the word “13B”, in line 12, the following words:— 13B½, 13B¾,.

Section 5. Said section 178H of said chapter 6 is hereby further amended by inserting after the word “22A,”, in line 12, the following words:— 22B, 22C,.

Section 6. Said section 178H of said chapter 6 is hereby further amended by inserting after the word “23,”, in line 12, the following words:— 23A, 23B,.

Section 7. Section 1 of chapter 9A of the General Laws, as so appearing, is hereby amended by inserting after the word “22A,”, in line 16, the following words:— 22B, 22C,.

Section 8. Said section 1 of said chapter 9A is hereby further amended by inserting after the word “23,”, in line 16, the following words:— 23A, 23B,.

Section 9. Said section 1 of said chapter 9A is hereby further amended by inserting after the word “13B,”, in line 18, the following words:— 13B½, 13B¾,.

Section 10. Section 37 of chapter 22C of the General Laws, as so appearing, is hereby amended by inserting after the word “thirteen B”, in line 6, the following words:— thirteen B½, thirteen B¾,.

Section 11. Section 72K of chapter 111 of the General Laws, as so appearing, is hereby amended by inserting after the word “13B,” in line 13, the following words:— 13B½, 13B¾,.

Section 12. Said section 72K of said chapter 111 is hereby further amended by inserting after the word “22A,” in line 13, the following words:— “22B, 22C, 23, 23A, 23B,”.

Section 13. Section 51B of chapter 119 of the General Laws, as amended by section 98 of chapter 176 of the acts of 2008, is hereby further amended by striking out the words “section 13B, 13H, 22, 22A, 23, 24 or 24B of chapter 265”, in subsection (k)(2), and inserting in place thereof the following words:— section 13B, 13B½, 13B¾, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24 or 24B of chapter 265.

Section 14. Section 55B of chapter 119 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after the word “13B,” in line 16, the following words:— 13B½, 13B¾,.

Section 15. Said section 55B of said chapter 119 is hereby further amended by inserting after the word “22A,” in line 16, the following words:— 22B, 22C,.

Section 16. Said section 55B of said chapter 119 is hereby further amended by inserting after the word “23,” in line 16, the following words:— 23A, 23B,.

Section 17. Section 58 of said chapter 119 is hereby amended by inserting after the word “13B,” in line 12, the following words:—13B½, 13B¾,.

Section 18. Said section 58 of said chapter 119 is hereby further amended by inserting after the word “22A”, in line 12, the following words:— “, 22B, 22C,”.

Section 19. Said section 58 of said chapter 119 is hereby further amended by striking out the words “or section 23”, in lines 12 and 13, and inserting in its place the following words:— 23, 23A, or 23B.

Section 20. Section 12 of chapter 120 of the General Laws, as so appearing, is hereby amended by inserting after the words “thirteen B of said chapter two hundred and sixty-five;”, in line 12, the following words:— or aggravated indecent assault and battery on a child under the age of fourteen, as defined by section thirteen B½ of said chapter two hundred and sixty-five; or a repeat offense, as defined by section thirteen B¾ of said chapter two hundred and sixty-five;.

Section 21. Said section 12 of said chapter 120 is hereby further amended by inserting after the words “twenty-two A of said chapter two hundred and sixty-five;”, in line 8, the following words:— or aggravated rape of a child under 16 with force, as defined by section twenty-two B of said chapter two hundred and sixty-five; or a repeat offense, as defined by section twenty-two C of said chapter two hundred and sixty-five;.

Section 22. Said section 12 of said chapter 120 is hereby further amended by inserting after the words “twenty-five of said chapter two hundred and sixty-five;”, in line 10, the following words:— or aggravated rape and abuse of a child, as defined in section twenty-three A of said chapter two hundred and sixty-five; or a repeat offense, as defined by section twenty-three B of said chapter two hundred and sixty-five;.

Section 23. Section 1 of chapter 123A of the General Laws, as so appearing, is hereby amended by inserting after the words “thirteen B of chapter two hundred and sixty-five;”, in line 39, the following words:— aggravated indecent assault and battery on a child under the age of fourteen under the provisions of section thirteen B½ of chapter two hundred and sixty-five; a repeat offense under the provisions of section thirteen B¾ of chapter two hundred and sixty-five;.

Section 24. Said section 1 of said chapter 123A is hereby further amended by inserting after the words “twenty-two A of chapter two hundred and sixty-five;”, in line 46, the following words:— aggravated rape of a child under sixteen with force under the provisions of section twenty-two B of chapter two hundred and sixty-five; a repeat offense under the provisions of section twenty-two C of chapter two hundred and sixty-five;.

Section 25. Said section 1 of said chapter 123A is hereby further amended by inserting after the words “twenty-three of chapter two hundred and sixty-five;”, in lines 47 and 48, the following words:— aggravated rape and abuse of a child under the provisions of section twenty-three A of chapter two hundred and sixty-five; a repeat offense under the provisions of section twenty-three B of chapter two hundred and sixty-five;.

Section 26. Said section 1 of said chapter 123A is hereby further amended by inserting after the word

“13B,” in line 52, the following words:— 13B $\frac{1}{2}$ , 13B $\frac{3}{4}$ .

Section 27. Said section 1 of said chapter 123A is hereby further amended by inserting after the word “22A,” in line 53, the following words:— 22B, 22C.

Section 28. Said section 1 of said chapter 123A is hereby further amended by inserting after the word “23,” in line 53, the following words:— 23A, 23B.

Section 29. Section 49B of chapter 127 of the General Laws, as so appearing, is hereby amended by inserting after the word “thirteen B,” in lines 24 and 25, the following words:— thirteen B $\frac{1}{2}$ , thirteen B $\frac{3}{4}$ .

Section 30. Said section 49B of said chapter 127 is hereby further amended by inserting after the word “twenty-two A,” in line 25, the following words:— twenty-two B, twenty-two C.

Section 31. Said section 49B of said chapter 127 is hereby further amended by inserting after the word “twenty-three,” in line 25, the following words:— twenty-three A, twenty-three B.

Section 32. Section 49C of said chapter 127 is hereby amended by inserting after the word “thirteen B,” in lines 21 and 22, the following words:— thirteen B $\frac{1}{2}$ , thirteen B $\frac{3}{4}$ .

Section 33. Said section 49C of said chapter 127 is hereby further amended by inserting after the word “twenty-two A,” in line 22, the following words:— twenty-two B, twenty-two C.

Section 34. Said section 49C of said chapter 127 is hereby amended by inserting after the word “twenty-three,” in line 22, the following words:— twenty-three A, twenty-three B.

Section 35. Section 83B of said chapter 127 is hereby amended by inserting after the word “twenty-two,” in line 7, the following words:— twenty-two A, twenty-two B, twenty-two C.

Section 36. Said section 83B of said chapter 127 is hereby further amended by inserting after the word “twenty-three,” in line 7, the following words:— twenty-three A, twenty-three B.

Section 37. Section 90A of said chapter 127 is hereby amended by inserting after the word “thirteen B,” in line 9, the following words:— thirteen B $\frac{1}{2}$ , thirteen B $\frac{3}{4}$ .

Section 38. Said section 90A of said chapter 127 is hereby further amended by inserting after the word “twenty-two A,” in lines 10 and 11, the following words:— twenty-two B, twenty-two C.

Section 39. Said section 90A of said chapter 127 is hereby further amended by inserting after the word “twenty-three,” in line 11, the following words:— twenty-three A, twenty-three B.

Section 40. Section 133E of said chapter 127 is hereby amended by inserting after the words “section 13B of chapter 265;” in line 11, the following words:— aggravated indecent assault and battery on a child under 14 under section 13B $\frac{1}{2}$  of said chapter 265; a repeat offense under section 13B $\frac{3}{4}$  of said chapter 265;

Section 41. Said section 133E of said chapter 127 is hereby further amended by inserting after the words “section 22A of said Chapter 265;” in line 15, the following words:— aggravated rape of a child under 16 with force under section 22B of said chapter 265; a repeat offense pursuant to section 22C of said chapter 265;

Section 42. Said section 133E of said chapter 127 is hereby further amended by inserting after the words “section 23 of chapter 265;” in line 16, the following words:— aggravated rape and abuse of a child under section 23A of said chapter 265; a repeat offense pursuant to section 23B of said chapter 265;

Section 43. Section 152 of said chapter 127 is hereby amended by inserting after the word “thirteen B,” in line 39, the following words:— thirteen B $\frac{1}{2}$ , thirteen B $\frac{3}{4}$ .

Section 44. Said section 152 of said chapter 127 is hereby further amended by inserting after the word “twenty-two A,” in lines 41 and 42, the following words:— twenty-two B, twenty-two C.

Section 45. Said section 152 of said chapter 127 is hereby further amended by inserting after the word “twenty-three,” in line 42, the following words:— twenty-three A, twenty-three B.

Section 46. Section 21B of chapter 233 of the General Laws, as so appearing, is hereby amended by inserting after the word “thirteen B,” in lines 3 and 4, the following words:— thirteen B $\frac{1}{2}$ , thirteen B $\frac{3}{4}$ .

Section 47. Said section 21B of said chapter 233 is hereby further amended by inserting after the word “twenty-two A,” in line 4, the following words:— twenty-two B, twenty-two C.

Section 48. Said section 21B of said chapter 233 is hereby further amended by inserting after the word

“twenty-three,” in line 4, the following words:— twenty-three A, twenty-three B,.

Section 49. Section 4C of chapter 260 of the General Laws, as so appearing, is hereby amended by inserting after the word “thirteen B,” in line 10, the following words:— thirteen B $\frac{1}{2}$ , thirteen B $\frac{3}{4}$ .

Section 50. Said section 4C of said chapter 260 is hereby further amended by inserting after the word “twenty-two A,” in line 11, the following words:— twenty-two B, twenty-two C,.

Section 51. Said section 4C of said chapter 260 is hereby further amended by inserting after the word “twenty-three,” in line 11, the following words:— twenty-three A, twenty-three B,.

Section 52. Section 13L of chapter 265 of the General Laws, as so appearing, is hereby amended by inserting after the words “section 13B of chapter 265;”, in line 8, the following words:— aggravated indecent assault and battery on a child under 14 under section 13B $\frac{1}{2}$  of said chapter 265; a repeat offense pursuant to section 13B $\frac{3}{4}$  of said chapter 265;.

Section 53. Said section 13L of said chapter 265 is hereby further amended by inserting after the words “section 22A of said chapter 265;”, in lines 10 and 11, the following words:— aggravated rape of a child under 16 with force under section 22B of said chapter 265; a repeat offense pursuant to section 22C of said chapter 265;.

Section 54. Said section 13L of said chapter 265 is hereby further amended by inserting after the words “section 23 of chapter 265;”, in lines 11 and 12, the following words:— aggravated rape and abuse of a child under section 23A of said chapter 265; a repeat offense pursuant to section 23B of said chapter 265;.

Section 55. Section 24A of said chapter 265 is hereby amended by inserting after the words “thirteen B,” in line 2, the following words:— thirteen B $\frac{1}{2}$ , thirteen B $\frac{3}{4}$ .

Section 56. Said section 24A of said chapter 265 is hereby further amended by inserting after the words “twenty-two A,” in line 3, the following words:— twenty-two B, twenty-two C,.

Section 57. Said section 24A of said chapter 265 is hereby further amended by inserting after the words “twenty-three,” in line 3, the following words:— twenty-three A, twenty-three B,.

Section 58. Section 24C of said chapter 265 is hereby amended by inserting after the word “thirteen B,” in line 4, the following words:— thirteen B $\frac{1}{2}$ , thirteen B $\frac{3}{4}$ .

Section 59. Said section 24C of said chapter 265 is hereby further amended by inserting after the word “twenty-two A,” in line 5, the following words:— twenty-two B, twenty-two C,.

Section 60. Said section 24C of said chapter 265 is hereby further amended by inserting after the word “twenty-three,” in line 5, the following words:— twenty-three A, twenty-three B,.

Section 61. Section 26 of said chapter 265 is hereby amended by striking out the words “13B, 13F, 13H, 22, 22A, 23, 24 or 24B”, in lines 33 and 34, and inserting in place thereof the following words:- 13B, 13B $\frac{1}{2}$ , 13B $\frac{3}{4}$ , 13F, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24 or 24B.

Section 62. Section 26C of said chapter 265 is hereby amended by inserting after the word “13B,” in line 6, the following words:— 13B $\frac{1}{2}$ , 13B $\frac{3}{4}$ .

Section 63. Said section 26C of said chapter 265 is hereby further amended by inserting after the word “22A,” in line 6, the following words:— 22B, 22C,.

Section 64. Said section 26C of said chapter 265 is hereby further amended by inserting after the word “23,” in line 6, the following words:— 23A, 23B,.

Section 65. Section 45 of said chapter 265 is hereby amended by striking out the words “13B, 13F, 13H, 22, 22A, 23, 24, 24B or 26”, in line 21, and inserting in place thereof the following words:— 13B, 13B $\frac{1}{2}$ , 13B $\frac{3}{4}$ , 13F, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24, 24B or 26.

Section 66. Section 87 of chapter 276 of the General Laws, as so appearing, is hereby amended by inserting after the word “twenty-two A”, in line 10, the following words:— , twenty-two B, twenty-two C.

Section 67. Section 63 of chapter 277 of the General Laws, as so appearing, is hereby amended by inserting after the word “13B,” in line 3, the following words:— 13B $\frac{1}{2}$ , 13B $\frac{3}{4}$ .

Section 68. Said section 63 of said chapter 277 is hereby further amended by inserting after the word “22A,” in line 3, the following words:— 22B, 22C,.

Section 69. Said section 63 of said chapter 277 is hereby further amended by inserting after the word

“23,” in line 3, the following words:— 23A, 23B,.

Section 70. Section 70C of said chapter 277 is hereby amended by inserting after the word “13B,” in line 9, the following words:— 13B½, 13B¾,.

Section 71. Said section 70C of said chapter 277 is hereby further amended by striking out word “23,” in line 10, and inserting in place thereof the following words:— 22A, 22B, 22C, 23, 23A, 23B,.

Section 72. Section 16D of chapter 278 of the General Laws, as so appearing, is hereby amended by inserting after the word “thirteen B,” in line 5, the following words:— thirteen B½, thirteen B¾,.

Section 73. Said section 16D of said chapter 278 is hereby further amended by inserting after the word “twenty-two A,” in lines 5 and 6, the following words:— twenty-two B, twenty-two C,.

Section 74. Said section 16D of said chapter 278 is hereby further amended by inserting after the word “twenty-three,” in line 6, the following words:— twenty-three A, twenty-three B,.

The amendment was rejected.

Mr. Brown moved to amend the proposed new draft in subsection (a) of section 16 by inserting after clause (6) the following:—

“(7) The department shall configure the database to allow for the exchange, dissemination, distribution, and direct connection of the criminal record information system to criminal record information systems in other states and relevant federal agencies including the Federal Bureau of Investigation (FBI) and Immigration and Customs Enforcement (ICE) that utilize fingerprint or iris scanning and similar databases.”

The amendment was adopted.

Mr. Brown moved to amend the proposed new draft in clause (3) of subsection (a) of section 16 by inserting at the end thereof the following:— “; provided further that no record shall be sealed, eliminated, or otherwise made inaccessible on the electronic database via the world wide web until the subject has petitioned the commissioner of probation in accordance with section 100A of chapter 276”.

The amendment was rejected.

Mr. Brown moved to amend the proposed new draft in line 893 by striking out “10” and inserting in place thereof:— “15”.

The amendment was adopted.

Mr. Brown moved to amend the proposed new draft by inserting at the end thereof the following section:—

“SECTION XX. Chapter 149 of the General Laws is hereby amended by inserting after section 52C the following section:—

Section 52D. (A) Unless otherwise provided by law, an employer, or an employer’s designee, who discloses information about a current or former employee to a prospective employer of the employee shall be absolutely immune from civil liability if the disclosed information includes any or all of the following: (1) date of employment; (2) pay level; (3) job description and duties; and (4) wage history. An employer who responds in writing to a written request concerning a former employee from a prospective employer of that employee shall be absolutely immune from civil liability if the disclosed information includes either or both of the following: (1) written employee evaluations which were conducted prior to the employee’s separation from the employer; and (2) whether the employee was voluntarily or involuntarily released from service and the reasons for the separation.

(B) This section shall apply to causes of action accruing on and after the effective date of this act.”

The amendment was rejected.

Mr. Timilty moved to amend the proposed new draft by inserting at the end thereof the following new section:—

“SECTION X. Section 1A of chapter 263 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended, by striking out the section in its entirety and inserting in place thereof the following section:—

Section 1A. Whoever is arrested by virtue of process, arraigned by virtue of an indictment or summons, or is taken into custody by an officer, and charged with the commission of any crime shall be fingerprinted, according to the system of the department of state police, and may be photographed. One

copy of such fingerprints and photographs shall be forwarded within a reasonable time to the colonel of state police by the person in charge of the police department taking such fingerprints and photographs.”

The amendment was rejected.

Mr. Timilty moved to amend the proposed new draft by inserting at the end thereof the following new section:—

“SECTION XX. Chapter 6 of the General Laws, as so appearing in the 2006 Official Edition, is hereby amended by inserting at the end of section 172B the following new section:—

Section 172B½. Municipalities in the Commonwealth may, by local ordinance, require applicants for licenses in specified occupations to submit a full set of fingerprints for the purpose of conducting a state and national criminal history records check pursuant to Sections 168 and 172 of Chapter 6 of the General Laws and 28 U.S.C. §534. Fingerprint submissions hereunder are authorized to be submitted by the licensing authority to the State Police Identification Unit through the Criminal History Systems Board for a state criminal records check and to the Federal Bureau of Investigation for a national criminal records check.

Municipalities may by local ordinance establish the appropriate fee charged to applicants for administering such a fingerprinting system. For purposes pursuant to Section 2LLL of Chapter 29 of the General Laws, \$30 of said fee shall be deposited into the Firearms Fingerprint Identity Verification Trust Fund; and the remainder of said fee may be retained by the licensing authority for costs associated with the administration of the system.”

The amendment was adopted.

Ms. Jehlen moved to amend the proposed new draft by adding at the end thereof the following new section:—

“SECTION XX. Section 35 of chapter 276 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by striking out, in line 8, the word ‘thirty’ and inserting in place thereof the following figure:— twenty.”

The amendment was rejected.

Ms. Jehlen moved to amend the proposed new draft by adding at the end thereof the following section:

“SECTION XX. Section 100C of Chapter 276, as so appearing, is hereby amended by striking out the first two paragraphs and inserting in place thereof the following paragraphs:—

As to any criminal charge wherein a no bill has been returned by the grand jury, the commissioner of probation shall seal said court appearance and disposition recorded in his files, and the files of the clerk and the probation officers of the courts in which the proceedings occurred or were initiated shall likewise seal the charge in the records of the proceedings in their files. The provisions of this section shall not apply if the defendant makes a written request to the commissioner not to seal the records of the proceedings.

As to any criminal charge which results in non-conviction, the record of such criminal charge shall be considered for sealing according to the following procedure:

1. On the first business day of each month the clerk of each court having criminal jurisdiction shall post in the courthouse for public access a list of non-conviction criminal charges from the previous month which may be considered for sealing.
2. On or before the tenth day of each month, the clerk shall provide notice by mail to any individual whose charges are listed. Such notice shall consist of the following: the date and title of each criminal charge; the date of final disposition of each charge; one copy for each charge of the form prescribed by the Commissioner of Probation for petitioning the court to seal the record of a criminal charge; and the date, time, and location of the hearing session where sealing shall be considered, which date shall be the first business day of the following month.
3. Any person may object to the sealing of a particular charge by filing with the clerk’s office at least two weeks before the scheduled hearing date a written objection stating the reason or reasons for the objection. The objection shall be available upon request to the person whose charges are posted for prospective sealing or to his or her attorney.

As used in this section, a ‘non-conviction criminal charge’ is one in which the defendant was found not

guilty by the court or a jury, or a finding of no probable cause was made by the court, or a nolle prosequi was entered, or a dismissal was entered by the court, whether or not said dismissal was preceded by a continuance without a finding. The term 'non-conviction criminal charge' shall not include any charge the dismissal of which was preceded by a term of active probation wherein the defendant was required to report to an assigned probation officer on a periodic basis.

At any court session at which criminal charges are considered for sealing, the court shall consider as to each charge: (a) the facts and arguments presented by the petitioner in favor of sealing; (b) the facts and arguments presented by any objector who timely filed an objection; and (c) the general public interest in access to governmental records, as protected by the First and Fourteenth Amendments to the United States Constitution.

If the court concludes that the petitioner has been unable to secure employment, housing, a license, or admission to an educational program, or has been otherwise excluded from the mainstream of secure living because of his criminal offender record information, the court may find that a compelling governmental interest exists to seal the charge or charges under consideration, which interest overcomes the public interest in access to governmental records. If the court so decides, the court shall direct the clerk to seal the relevant charge or charges in his files, and the probation department shall forthwith notify the office of the commissioner of probation and the probation officers of the courts in which the proceedings occurred or were initiated, who shall likewise seal the charges of the proceedings in their files."

The amendment was rejected.

Messrs. Tisei, Tarr, Knapik, Hedlund and Brown moved to amend the proposed new draft by inserting the following sections:—

"SECTION XX. Section 3 of chapter 22E of the General Laws, as appearing in the 2004 official edition, is hereby amended by striking the text thereof, and inserting in place thereof following:—

Any person who is arrested by virtue of process, or is taken into custody by an officer and charged with the commission of a felony, and who upon arrest has been arraigned pursuant to the applicable court rules under the Massachusetts Rules of Criminal Procedure, shall submit a DNA sample to the department. The sample shall be collected by a person authorized under section 4 of this chapter subsequent to arraignment, in accordance with regulations or procedures established by the director. The results of such sample shall be made part of the state DNA database.

Section XX. Section 12 of chapter 22E of the General Laws, as appearing in the 2004 official edition, is hereby amended in line 6 by striking out the words '\$1,000' and inserting in its place thereof the following words:— \$2,000. Said section is further amended in line 7 by striking out the words 'six months' and inserting in place thereof the following words:— one year.

Section 3. Section 13 of chapter 22E of the General Laws, as appearing in the 2004 official edition, is hereby amended by striking in line 4 the words '\$1,000' and inserting in its place thereof the following words:— \$2,000. Said section is further amended in line 5 by striking out the words 'six months' and inserting in place thereof the following words:— one year.

Section 4. Section 15 of chapter 22E of the General Laws, as appearing in the 2004 official edition, is hereby amended in line 3 by adding after the word 'expunged' the following:— if the original offense upon which the collection of DNA is based does not result in a conviction; or."

The amendment was rejected.

Messrs. Knapik, Tisei, Tarr and Brown moved to amend the proposed new draft by inserting at the end thereof the following section:—

"XX. Section 8A of chapter 90 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by striking out, in lines 23 to 24, 'has been convicted of the crime of rape, unnatural act, sodomy, or' and inserting in place thereof the following words:— is a sex offender, as defined in section 178C of Chapter 6, or who had been convicted of.

SECTION 2. Section 8A½ of said chapter 90, as so appearing, is hereby amended by striking out, in lines 20 to 21, 'has been convicted of the crime of rape, unnatural act, sodomy, or' and inserting in place thereof the following words:— is a sex offender, as defined in section 178C of chapter 6, or who had



been convicted of .

SECTION 3. Chapter 265 of the General Laws is hereby amended by adding the following section:—  
Section 45. A sex offender, as defined by section 178C of chapter 6, who engages in ice cream truck vending, as defined in section 25 of chapter 270, shall be punished by up to 2½ years in the house of correction or by a fine of \$1,000 or by both such fine and imprisonment. A police officer or officer authorized to serve criminal process may arrest without a warrant any person who he has probable cause to believe has violated this section.

SECTION 4. Chapter 270 of the General Laws is hereby amended by adding the following section:—  
Section 25. (a) For the purposes of this section, the following words shall have the following meanings:—

‘Ice cream’, any frozen dairy or water-based food product.

‘Ice cream truck’, any motor vehicle used for selling, displaying or offering to sell ice cream or any other frozen dairy or frozen water-based food product.

‘Ice cream truck vending’, the selling, displaying or offering to sell ice cream, water-based food product or any other prepackaged food product from an ice cream truck.

‘Permitting authority’, the chief of police or the board or officer having control of the police in a city or town or person authorized by them.

(b) No person shall engage in ice cream truck vending unless issued a valid permit to do so by the permitting authority within the municipality wherein the permit applicant lives or intends to operate such ice cream truck. Such permit shall be conspicuously displayed and clearly visible on the windshield of such truck. Whoever violates this section shall be assessed a fine of \$500. Each day that such person is in operation in violation of this section may be considered a separate violation.

SECTION 5. The department of public safety shall adopt regulations relative to the annual permitting of ice cream truck vendors. Such regulations shall include, but not be limited to:

(1) a requirement that all applications for such permit or applications for a renewal of such a permit include a current photo of the applicant and the applicant’s fingerprints;

(2) adoption of a uniform permit application and permit form, to be used by all municipalities;

(3) requiring that all permitting authorities, as defined by section 25 of chapter 270, conduct an investigation into the criminal history of a permit applicant to determine eligibility for a permit;

(4) restricting any permitting authority, as defined by section 25 of chapter 270, from issuing an ice cream truck vending permit to any sex offender, as defined by section 178C of chapter 6 of the General Laws; and

(5) Establishing an appeal process for any persons denied such permit.

SECTION 6. The department of public safety shall adopt the regulations required under section 3 not later than 90 days from the effective date of this act.

SECTION 7. Section 2 shall take effect 180 days from the effective date of this act.”

After remarks, the amendment was adopted.

Mr. Tolman and Ms. Flanagan moved to amend the proposed new draft by striking out the following words in section 17, “The department shall be authorized, subject to appropriation, to retain a portion of the revenues received by the commonwealth under this section for the following purposes: to assist ex-offenders in obtaining and maintaining employment, training and auditing requestors described in subsection (a) of section 172, providing education and assistance regarding the correction of criminal records and to operate and maintain the public safety information system and the criminal records review board,” and inserting in place thereof the following:— “The department shall retain a portion of the revenues received by the commonwealth under this section for the following purposes: to assist ex-offenders in obtaining and maintaining employment, including but not limited to, workforce development training and other applicable training programs, training and auditing requestors described in subsection (a) of section 172, providing education and assistance regarding the correction of criminal records, including but not limited to training judges, providing the necessary information to employers and other applicable person in possession of an applicant’s criminal offender record information, and to operate and maintain the public safety information system and the criminal records review board.”.

The amendment was rejected.

Mr. Tolman and Ms. Flanagan moved that the proposed new draft be amended in section 48, by inserting after the words “shall reduce the period of time in which such individual is subject to post-release supervision,” the following new language:— “The regulations shall also include guidelines to establish a substance abuse treatment program that individuals may take part in as a mandatory requirement of their post-release supervision.”.

The amendment was rejected.

Ms. Chang-Díaz moved to amend the proposed new draft in section 14, by striking out lines 194 through 209, and inserting in place thereof the following text:—

“Section 171A. In connection with any decision regarding employment, volunteer opportunities, housing or professional licensing, a person in possession of an applicant’s criminal offender record information shall provide the applicant with the criminal history record in the person’s possession, whether obtained from the department or any other source, (a) prior to questioning the applicant about his criminal history and (b) prior to making any decision adverse to the applicant on the basis of his criminal history; provided, however, that if the person has provided the applicant with a copy of his criminal offender record information prior to questioning the person is not required to provide the information a second time prior to making an adverse decision based on this information. Prior to making any decision adverse to an applicant on the basis of his criminal history, the requestor shall provide the subject with the opportunity to dispute the accuracy and relevance of the criminal history record in the person’s possession, whether obtained from the department or any other source. Failure to provide criminal history information to the individual in accordance with this section or failure to provide an opportunity to dispute the accuracy and relevance of that information may subject the offending person to investigation, hearing and sanctions by the board. Nothing in this section shall be construed to prohibit a person from making an adverse decision on the basis of an individual’s criminal history except as otherwise provided under chapter 151B or to provide or permit a claim of an unlawful practice under chapter 151B or an independent cause of action in a court of civil jurisdiction for a claim arising out of an adverse decision based on criminal history except as otherwise provided under chapter 151B.”; and in section 16, by striking out lines 293 through 302, and inserting in place thereof the following text:— “In connection with any decision regarding employment, volunteer opportunities, housing or professional licensing, a person in possession of an applicant’s criminal offender record information shall provide the applicant with the criminal history record in the person’s possession, whether obtained from the department or any other source, (a) prior to questioning the applicant about his criminal history and (b) prior to making any decision adverse to the applicant on the basis of his criminal history; provided, however, that if the person has provided the applicant with a copy of his criminal offender record information prior to questioning the person is not required to provide the information a second time prior to making an adverse decision based on this information. Prior to making any decision adverse to an applicant on the basis of his criminal history, the requestor shall provide the subject with the opportunity to dispute the accuracy and relevance of the criminal history record in the person’s possession, whether obtained from the department or any other source. Failure to provide criminal history information to the individual in accordance with this section or failure to provide an opportunity to dispute the accuracy and relevance of that information may subject the offending person to investigation, hearing and sanctions by the board. Nothing in this section shall be construed to prohibit a person from making an adverse decision on the basis of an individual’s criminal history except as otherwise provided under chapter 151B or to provide or permit a claim of an unlawful practice under chapter 151B or an independent cause of action in a court of civil jurisdiction for a claim arising out of an adverse decision based on criminal history except as otherwise provided under chapter 151B.”

The amendment was rejected.

Mr. Tolman moved that the proposed new draft be amended by striking section 6 and inserting in place thereof the following section:—

“SECTION 6. Section 168 of said chapter 6, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:—

There shall be a criminal history systems board, hereinafter called the board, consisting of the following persons: the secretary of public safety and security, who shall serve as chairman, the secretary of labor and workforce development, the attorney general, the chairperson of the Massachusetts sentencing commission, the chief counsel for the committee for public counsel services, the chairman of the parole board, the commissioner of the department of correction, the commissioner of probation and commissioner of the department of youth services and the colonel of state police, or their designees, all of whom shall serve ex officio, and 10 persons to be appointed by the governor for a term of 3 years, 1 of whom shall represent the Massachusetts District Attorneys Association, 1 of whom shall represent the Massachusetts Sheriffs Association, and 1 of whom shall represent the Massachusetts Chiefs of Police Association, 1 of whom shall represent private users of criminal offender record information, 1 of whom shall be a victim of crime, 1 of whom shall be a provider of victim services, 2 of whom shall have experience in the areas of workforce development, ex-offender rehabilitation, or economic development, and 2 of whom shall be persons who have experience in issues relating to personal privacy. Upon the expiration of the term of any appointive member, his successor shall be appointed in a like manner for a term of 3 years.”

The amendment was rejected.

Ms. Creem moved that the proposed new draft be amended by adding the following two new sections: “SECTION 45A. Section 129D of said chapter 127, 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:— 3. SECTION 45B. Section 129D of 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.”

The amendment was rejected.

Mr. Tolman moved that the proposed new draft be amended by striking out section 29 and inserting in place thereof the following section:—

“SECTION 29. Chapter 6A of the General Laws, as so appearing, is hereby amended by striking out section 18 and inserting in place thereof the following section:—

Section 18. The following state agencies are hereby declared to be within the executive office of public safety and security: the department of public safety; the department of fire services; the office of grants and research and the highway safety division; the municipal police training committee; the Massachusetts department of criminal justice information services; the state 911 department; the department of state police; the office of the chief medical examiner; the Massachusetts emergency management agency; the military department; the department of correction, including the parole board; the sex offender registry board; and all other agencies and boards within said departments, committees, and boards.”

The amendment was rejected.

Mr. McGee moved to amend the proposed new draft by inserting at line 850 the following text:—

“SECTION 49½. Section 4 of chapter 151B of the General Laws, as so appearing, is hereby amended by inserting, after paragraph (9½), the following paragraph:—

(9¾) For an employer to request or obtain criminal offender record information, whether from the department or any other source, unless the applicant has been deemed otherwise qualified and has been conditionally offered the position subject to consideration of any criminal record.”

The amendment was rejected.

Mr. Knapik moved to amend the proposed new draft by inserting at the end thereof the following section:—

“Section XX. Paragraph (1) of section 178q of chapter 6 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by striking out, in lines 1 to 2, the figure ‘75’ and inserting in place thereof the following:— ‘100’.

Section 2. Paragraph (2) of section 178q of chapter 6 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by striking out the first two sentences and inserting in place thereof the following:— The sex offender registry board shall establish a payment plan for individuals who are unable to pay the fee due to a hardship on said person or his family due to limited income, employment

status, or any other relevant factor.”

The amendment was adopted.

Mr. Tarr moved to amend the proposed new draft by adding at the end the following additional sections:—

“SECTION XX. Section 34 of Chapter 138 of the General Laws is hereby amended by adding after the word ‘both’ in line 17 the following phrase:— A conviction or an admission of sufficient facts to a violation of this section shall be reported forthwith to the registrar of motor vehicles by the court. Upon receipt of such notice, the registrar shall thereupon suspend for not less than 60 days and not more than two years the violators license or right to operate a motor vehicle; provided further that any person whose license is terminated under this section may apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license for employment or education purposes, which license shall be valid for a period of not more than one year, and which shall be effective for not more than an identical twelve hour period every day on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with, and the registrar may, in his discretion, issue such license under such terms and conditions as he deems appropriate and necessary; and provided, further, that such person may, after the expiration of one year from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license on a limited basis on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such a license under such terms and conditions as he deems appropriate and necessary. Persons serving or distributing alcoholic beverages pursuant to sections 12 and 15 of chapter 138 of the General Laws shall not be subject to the provisions of this act. SECTION XX. Section 34D of chapter 138 of the General Laws is hereby amended by adding, after the word ‘alcohol’ in line 7, the following:— ‘and the penalties set forth in section 34 of this chapter for the sale, delivery or furnishing of alcoholic beverages to persons under the age of 21’.”

The amendment was rejected.

Ms. Fargo moved to amend the proposed new draft in section 49, by striking, in lines 844-847, the words “(9½) For an employer to request on a written application form criminal offender record information; provided, however, that if an applicant is applying for a position for which federal or state laws or regulations create mandatory or presumptive disqualification based on certain criminal offenses the employer may inquire about such offenses on the applicant’s application form.” and inserting in place thereof, the following text:—

“(9½) For an employer to request on a written application form criminal offender record information; provided, however, that if an applicant is applying for a position for which federal or state laws or regulations create mandatory or presumptive disqualification based on certain criminal offenses the employer may inquire about such offenses on the applicant’s application form notwithstanding any other contrary provision of law.

Nothing contained in this section shall preclude an employer from orally inquiring of a prospective applicant for employment, information of violations of law resulting in such applicant’s criminal conviction; however, subject to any applicable prohibitions under the provisions of paragraph 9 herein unless such applicant is applying for a position of employment for which federal or state laws or regulations create a mandatory or presumptive disqualification based on certain criminal offenses.”

The amendment was rejected.

Mr. Knapik moved to amend the proposed new draft by inserting at the end thereof the following section:—

“SECTION XX. Paragraph (a) of section 178d of chapter 6 of the general laws is hereby amended by inserting after the word social security number the following:— electronic messaging address, internet communication identifier.

Section 2. Section 178c of chapter 6 of the general laws is hereby amended by adding at the end thereof the following:—

‘Electronic messaging address’, any name that identifies an electronic post office box where electronic

messages can be created, transmitted, and received.

'Internet communication identifier', a name that identifies an individual who engages in a form of electronic communications that involves real-time correspondence between two or more users who are online simultaneously."

The amendment was rejected.

Mr. Tarr moved to amend the proposed new draft by adding at the end the following additional section:—

"SECTION XX. Section 32A of Chapter 94C of the General Laws is hereby amended by inserting at the end of the first paragraph the following: ; provided, that possession with intent to manufacture shall include possession of the constituent ingredients; provided further, that simple possession of the constituent ingredients shall constitute neither proof nor presumption of intent to manufacture."

The amendment was rejected.

Ms. Chang-Díaz moved to amend the proposed new draft, in section 14, by inserting after the word "history," in line 206, the following text:— "except as otherwise provided under chapter 151B"; and by inserting, after section 49, the following new section:—

"SECTION 49½. Section 4 of chapter 151B of the General Laws, as so appearing, is hereby amended by inserting, after paragraph (9½), the following paragraph:—

(9¾) For an employer to exclude, limit or otherwise discriminate against any person on account of the person's merely having a criminal record; provided, however, that it shall not be a violation of this subsection if the person has a criminal record containing one or more convictions which substantially relate to the circumstances of a particular employment or job training position or licensed activity, and the decision against the person was not unreasonable based on the totality of the circumstances."

After remarks, the amendment was rejected.

Ms. Chang-Díaz moved to amend the proposed new draft, in section 14, by inserting after the word "history," in line 206, the following text:— "except as otherwise provided under chapter 151B"; and by inserting, after section 49, the following new section:—

"SECTION 49½. Section 4 of chapter 151B of the General Laws, as so appearing, is hereby amended by inserting, after paragraph (9½), the following paragraph:—

(9¾) For an employer to exclude, limit or otherwise discriminate against any person on account of the person's merely having a criminal record; provided, however, that it shall not be a violation of this subsection if the person has a criminal record containing one or more convictions which substantially relate to the circumstances of a particular employment or job training position or licensed activity, and the decision against the person was not unreasonable based on the totality of the circumstances."

The amendment was rejected.

There being no objection, during consideration of the Orders of the Day, the following matter was considered as follows:

Resolutions.

The following resolutions (having been filed with the Clerk) were considered forthwith, as follows:— Resolutions (filed by Ms. Murray and Mr. Berry) "honoring the service of Assistant Chief Court Officer Michael Tierney."

After remarks by Senators Murray and Berry, the resolutions were adopted.

Assistant Chief Court Office Tierney was then called to the rostrum where he accepted the Senate Resolutions and made brief remarks. Officer Tierney then withdrew from the rostrum and resumed his official duties.

Recess.

There being no objection, at twenty-five minutes past two o'clock P.M., the President declared a recess subject to the call of the Chair; and, at a half past three o'clock P.M., the Senate reassembled, the President in the Chair.

The Senate Bill relative to drug mandatory minimum sentences (Senate, No. 1651) (the committee on Ways and Means having recommended that the bill be amended by substituting a new draft entitled “An Act relative to sentencing laws” (Senate, No. 2210),— was further considered.

Mr. Brown moved to amend the proposed new draft by inserting after section 59 the following section:—

“SECTION 59A. Section 100A of chapter 276 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the word ‘court’, in line 69, the following words:— a victim wishing to obtain information on a sex offense, as defined in section 178C of chapter 6, committed against them when said victim was a juvenile at the time of the offense committed by an offender who was an adult at such time.”

The amendment was rejected.

Messrs. Baddour and Morrissey moved to amend the proposed new draft by inserting the following new section:

“SECTION 1: Section 1 of Chapter 278 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out section 1 and inserting in place thereof the following section:  
Section 1. The district attorney in each district shall, in the exercise of his sole responsibility and discretion, determine what criminal cases are to be tried and prioritize the order of those trials, notwithstanding any other statute or rule of court. At the beginning of each monthly court session, the district attorney shall deposit with the clerk, for the inspection of parties, a list of all such cases to be tried at that session. The cases shall be tried in the order of such trial list, unless otherwise agreed by the parties or ordered by the court upon motion of a party and for cause shown. Cases may be added to such list by agreement of the parties or if ordered by the court upon motion of the district attorney or of the defendant.

No criminal case shall proceed to trial unless the district attorney so moves; the court shall have no authority to order a case to trial over the objection of the district attorney or upon his refusal to move for trial. No case may be dismissed because of the district attorney’s failure or refusal to move for trial. No case shall be dismissed on grounds of timeliness of prosecution except upon a judicial finding that the Commonwealth has violated the defendant’s right to a speedy trial under the Sixth Amendment to the United State Constitution, art. XI of the Declaration of Rights of the Massachusetts Constitution, or Rule 36(b) of the Massachusetts Rules of Criminal Procedure.”

The amendment was rejected.

Ms. Jehlen moved to amend the proposed new draft by inserting at the end thereof the following section:

“SECTION XX. Section 14 of chapter 123A of the General Laws, as it appears in the 2004 Official Edition, is hereby amended by inserting in line 55 after the word ‘center’ the following words ‘or to an intensive parole for sex offenders program’.”

The amendment was rejected.

Messrs. Tarr and Baddour moved to amend the proposed new draft in sections 34, 35, 36, 37, 38, 40 by adding after the phrase “house of correction” each time it appears the following words:— “; provided, that a condition of such parole may be enhanced supervision; provided further, that such enhanced supervision may include, but not be limited to, the wearing of a global position satellite tracking device, or any comparable device, administered by the board at all times for the length of the probation”.

Pending the question on adoption of the amendment, Ms Creem moved to amend the pending amendment (Tarr-Baddour) in sections 34, 35, 36, 37, 38, 40 by adding after the phrase “house of correction” each time it appears the following words:— “; provided, that a condition of such parole may be enhanced supervision; provided further, that such enhanced supervision may include, but not be limited to, the wearing of a global position satellite tracking device, or any comparable device, administered by the board at all times for the length of the parole”.

After remarks, the further amendment (Creem) was adopted.

The pending amendment (Tarr-Baddour), as amended (Creem), was then adopted.

Ms. Jehlen moved to amend the pending new draft by striking section 18 and inserting in place thereof the following section:

“SECTION 18. Section 172E of said chapter 6, as so appearing, is hereby amended by striking the section in its entirety and inserting in place thereof the following paragraphs:—

Notwithstanding section 172, criminal offender record information shall be available to any long term care facility, as defined in section 72W of chapter 111, assisted living residence as defined in section 1 of chapter 19D, and to any continuing care facility as defined in section of chapter 40D for the purpose of evaluating applicants under final consideration for, or an individual currently working as, an employee, volunteer or provider of care, treatment, education, training, transportation, delivery of meals, instruction, counseling, supervision, recreation or other services for an elderly or disabled person or who will have any direct or indirect contact with such elderly or disabled persons or access to such persons’ personal information. Any such long term care facility, assisted living residence, or continuing care facility shall obtain all available criminal offender record information from the department on such applicant or current staff member. A long term care facility, assisted living residence, or continuing care facility which obtains information under this section shall prohibit the dissemination of such information for any purpose other than to further the protection of the elderly or the disabled, including, but not limited to, dissemination among and between long term care facility, assisted living residence, or continuing care facility.

A long term care facility, assisted living residence, or continuing care facility may employ an individual for a position that involves the provision of direct personal care or treatment to residents of such facility on a conditional basis prior to receiving the results of such individual’s criminal offender record check from the criminal history systems board. No long term care facility, assisted living residence, or continuing care facility shall be liable for civil damages to any individual so conditionally employed and subsequently discharged by reason of information received as a result of a criminal offender record information check completed pursuant to this section.

The criminal history systems board may waive or reduce the fee assessable pursuant to section 172A for criminal offender record information made available pursuant to this section.

Notwithstanding the provisions of any general or special law to the contrary, the division of medical assistance shall, subject to appropriation, reimburse long term care facility, assisted living residence, or continuing care facility for the portion of the costs associated with obtaining criminal offender record information on employees pursuant to this section.”

The amendment was adopted.

Mr. Buoniconti moved that the proposed new draft be amended by striking out sections 34 through 48A inclusive in their entirety; and by striking out sections 51, 66, and 67 in their entirety.

The amendment was rejected.

Mr. Morrissey moved to amend the proposed new draft by adding the following new section:

“SECTION 70. Chapter 119 of the Massachusetts General Laws is hereby amended in the third paragraph of section 54 by adding after the words ‘Chapter two hundred and sixty-nine,’ in first sentence the following:— or the person has committed a violation of section thirteen B of chapter two hundred and sixty-eight.”

After remarks, the amendment was adopted.

Mr. Tisei moved to amend the proposed new draft by inserting at the end thereof the following sections: “SECTION XX. Legislative Findings.

The general court hereby finds that (1) forensic and scientific techniques are often used to analyze evidence or biological material obtained during the investigation of a crime, and, as these techniques become more accurate, their use can, in some cases, conclusively establish a person’s guilt or innocence, or otherwise provide significant probative evidence; (2) as these techniques have improved, they have allowed analyses of earlier obtained evidence or biological materials; (3) in some circumstances, modern techniques can be used to demonstrate that a conviction that predates the development of such techniques was based on incorrect factual findings, and these forensic and scientific techniques provide a more reliable basis for establishing a factually correct verdict than the evidence available at the time of the original conviction; (4) in recent years, there have been a significant number of exonerations based on the results of newly developed forensic and scientific techniques; (5) the purpose of this chapter is to

remedy the injustice of wrongful convictions of factually innocent persons by allowing access to analyses of biological material with newer forensic and scientific techniques.

SECTION XX. The General Laws are hereby amended by adding the following new chapter:—  
Chapter 278A. Post Conviction Access to Forensic and Scientific Analysis.

§ 1. Definitions.

As used in this chapter, the following words shall have the following meanings, unless the context clearly requires otherwise:—

‘Analysis’ shall mean the process by which a forensic or scientific technique is applied to evidence or biological material to identify the perpetrator of a crime.

‘Conviction’ shall mean any verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere, entered by the trial court.

‘Criminal offender databases’ shall include: the State DNA Database, G. L. c. 22E; the Sex Offender Registry, G. L. c. 6, §§ 178C-N; and the Criminal Offender Record Information System, G. L. c. 6, § 168-178A.

‘Factually innocent’ shall describe a person convicted of a criminal offense who did not commit that offense.

‘Governmental entity’ shall mean any official body of the commonwealth, or of any county, city, or town within the commonwealth.

‘Inventory’ shall mean a detailed listing, including a particularized description of each listed item.

‘Moving party’ shall mean a person who files a motion pursuant to this Chapter.

‘Post conviction’ shall indicate any time after which a conviction has been entered.

‘Prosecuting attorney’ shall mean the District Attorney for the district in which the moving party was convicted, or the Attorney General of the commonwealth.

‘Replicate analysis’ shall mean the duplication of an analysis performed on a particular item of evidence or biological material.

‘Underlying case’ shall mean the trial court proceedings that resulted in the conviction of the moving party.

‘Victim’ shall mean any natural person who suffered direct or threatened physical, emotional, or financial harm as the result of the commission or attempted commission of the crime that is the subject of the underlying case, and shall also include the parent, guardian, legal representative, or administrator or executor of the estate of such person if that person is a minor, incompetent, or deceased.

‘Victim and witness assistance board’ shall mean the entity established by G. L. c. 258B, § 4.

§ 2. Applicability.

Any person who has been convicted of a criminal offense in a court of the commonwealth, and is in custody or whose liberty is restrained as the result of that conviction, and asserts that he is factually innocent of that criminal offense, may file a motion pursuant to this Chapter.

§ 3. Requirements and procedures for filing.

(a) A person seeking relief pursuant to this Chapter shall file a motion in the court in which the conviction was entered, using the same caption and docket number as identified the underlying case.

(b) The motion shall include the following information, and when relevant, shall include specific references to the record in the underlying case, or to affidavits that are filed in support of the motion that are signed by a person with personal knowledge of the factual basis of the motion:

(1) The name and a description of the requested forensic or scientific analysis; and

(2) Information demonstrating that the requested analysis is admissible as evidence in courts of the commonwealth; and

(3) A description of the evidence or biological material on which the analysis may be conducted, including its location if known, and

(4) Information demonstrating that the evidence or biological material was obtained in relation to the underlying case; and

(5) Information demonstrating that the analysis has the potential to result in evidence that is material to the moving party’s identification as the perpetrator of the crime in the underlying case; and



(6) Information demonstrating that the evidence or biological material has not been subjected to the requested analysis because:

1. The requested analysis had not yet been developed at the time of the conviction; or
2. The results of the requested analysis were not admissible in courts of the commonwealth at the time of the conviction; or
3. The moving party and his attorney were not aware of and did not have reason to be aware of the existence of the evidence or biological material at the time of the underlying case and conviction; or
4. The moving party's attorney in the underlying case was aware at the time of the conviction of the existence of the evidence or biological material, the results of the requested analysis were admissible as evidence in courts of the commonwealth, and a reasonably effective attorney would have sought the analysis; or
5. The evidence or biological material was otherwise unavailable at the time of the conviction.

(c) The moving party shall file with the motion copies of all reports, documents, memoranda, and notes from forensic or scientific analysis that has been conducted on any evidence or biological material that was obtained in relation to the underlying case. The moving party shall include these reports with the motion regardless of whether the moving party has previously provided them to the prosecuting attorney, whether they were offered or admitted as evidence in the underlying case, or whether they would have been admissible as evidence in the underlying case.

(d) The moving party shall provide copies of those portions of the transcripts of the trial, if applicable, during which the results of forensic or scientific analysis was offered as evidence by either the moving party or prosecuting attorney.

(e) The moving party shall identify all court proceedings that are currently pending and that relate to the underlying case, including the name of the court, docket number, and status of each such proceeding. The moving party shall also certify that each party to those proceedings has received notice of the proceedings under this Chapter.

(f) If the moving party is unable to include for filing with the motion any of the items or information described in (b), (c), and (d), the moving party shall include a description of efforts made to obtain such items and information.

(e) A person who pleaded guilty or nolo contendere in the underlying case may file a motion under this Chapter. A judge shall not find that identity was not or could not have been a material issue in the underlying case because of the plea. A person who is alleged to have, or admits to having, made a statement that is or could be incriminating may file a motion under this Chapter. A judge shall not find that identity was not or should not have been a material issue in the underlying case because the moving party made, or is alleged to have made, an incriminating statement.

(f) The court may deny, without prejudice, any motion which fails to include all the information required by this Section.

§ 4. Service of process and response to motion.

(a) The moving party shall file the motion with the court which adjudicated the underlying case and shall serve a copy of the motion on the prosecuting attorney.

(b) The prosecuting attorney shall have 60 days to file a response with the court and shall simultaneously serve the response on the moving party. The prosecuting attorney may request one 30 day extension in which to file the response, which the court shall allow only for good cause shown.

(c) The prosecuting attorney's response shall include:

(1) An inventory of all evidence or biological material that was obtained in relation to the underlying case, regardless of whether it was introduced at trial or would be admissible;

(2) The current location of all evidence or biological material that was obtained in relation to the underlying case; and

(3) A detailed chain of custody for the evidence or biological material that is the subject of the motion.

(d) The response shall also include copies of all reports, documents, memoranda, and notes from forensic or scientific analysis that has been conducted on any evidence or biological material that was obtained in relation to the underlying case. The prosecuting attorney shall include these documents with

the response regardless of whether the prosecuting attorney has earlier provided them to the moving party or defense counsel, or whether such documents were offered or admitted as evidence in the underlying case, or whether such documents would have been admissible.

(e) The response shall also include any specific legal or factual objections that the prosecuting attorney has to the requested analysis.

(f) The response may include evidence or other information relating to the guilt of the moving party.

#### § 5. Appointment of counsel.

The judge in his discretion may assign or appoint counsel to represent a moving party in the preparation and presentation of motions filed under this Chapter.

#### § 6. Hearing.

(a) The court shall order a hearing on the motion if it conforms with the requirements of §3.

(b) The judge who conducted the trial or accepted the moving party's plea of guilty or nolo contendere in the underlying case shall conduct the hearing if possible.

(c) The moving party may file a motion requesting that he be present at the hearing on the motion. If the judge allows such a motion, the judge shall order the commonwealth to produce the moving party at the hearing.

#### § 7. Ruling on the Motion.

(a) The judge shall state findings of fact and conclusions of law on the record, or shall make written findings of fact and conclusions of law, that support the decision to allow or deny a motion brought under this Chapter.

(b) The judge shall allow the motion if each of the following has been demonstrated by a preponderance of the evidence:

(1) that the evidence or biological material exists;

(2) that the evidence or biological material has been subject to a chain of custody that is sufficient to establish that it has not been substituted, tampered with, replaced, or altered in any material respect;

(3) that the evidence or biological material has not been subjected to the requested analysis;

(4) that the requested analysis has the potential to result in evidence that is material to the moving party's identification as the perpetrator of the crime in the underlying case;

(5) that the purpose of the motion is not the obstruction of justice or delay;

(6) that the results of the particular type of analysis being requested have been found to be admissible in courts of the commonwealth; and

(7) that, if the results of the requested analysis are favorable to the moving party, justice may not have been done in the underlying case.

(c) The judge may order the production of information and materials in whatever form, from the commonwealth or any person or entity, by subpoena or other legal process.

#### § 8. Laboratory.

(a) In allowing a motion under this Chapter, a judge may impose reasonable conditions on the analysis designed to protect the interests of the commonwealth in the integrity of the evidence or biological material and the analysis.

(b) The prosecuting attorney and the moving party shall agree on a laboratory to conduct the analysis.

(c) If the prosecuting attorney and the moving party are unable to agree on a laboratory, the judge shall designate a laboratory that is accredited by the American Society of Crime Laboratory Directors Laboratory Accreditation Board and has the capability to perform the requested analysis.

(d) The laboratory shall be provided with a copy of all of the filings relating to the motion, including all of the judge's orders. The laboratory shall also be provided with a copy of this Chapter in its entirety.

(e) The laboratory shall only communicate with the prosecuting attorney and the moving party simultaneously and in writing.

(f) Neither the prosecuting attorney nor the moving party shall communicate with the laboratory without simultaneously communicating with the other party.

(g) The laboratory shall endeavor to retain and maintain the integrity of a sufficient portion of the evidence or biological material for replicate analysis. If, after initial examination of the evidence or

biological material, but before the actual analysis, the laboratory determines that there is insufficient material for replicate analysis, it shall simultaneously notify in writing the prosecuting attorney, the moving party, and the judge. In the event that there is insufficient material to perform replicate analysis, upon request of either party, the judge shall make such orders to ensure that representatives of the moving party and the prosecuting attorney have the opportunity to observe the analysis. Such analysis shall be subject to the rules and practices of the laboratory.

(h) The moving party shall cooperate with the laboratory. At the laboratory's request and upon court order, the moving party shall provide biological samples to the laboratory. If the moving party unreasonably fails to cooperate with the laboratory, the judge may deny the motion with prejudice.

#### § 9. Timeliness of analysis.

Upon allowance of a motion under this Chapter, analysis shall take place as soon as practicable.

#### § 10. Costs.

The costs of the analysis shall be borne:

(a) by the moving party if the moving party is not indigent and has sufficient means to make such payment; or (b) by the commonwealth; or (c) by both the moving party and the commonwealth, in shares as the court deems equitable.

#### § 11. Effect on other proceedings.

(a) A motion may be filed under this Chapter even if an appeal of the conviction or other post-conviction proceedings in the underlying case are pending.

(b) A judge shall consider a motion filed pursuant to this Chapter even if there is an appeal or other post conviction proceedings pending.

(c) If the judge allows a motion filed pursuant to this Chapter, the court in which the appeal or post conviction proceedings are pending shall be notified if different from the court in which the motion was filed. When a court receives notice under this section, it shall stay any appeal or post conviction proceedings pending the final outcome of proceedings pursuant to this Chapter.

(d) Proceedings pursuant to this chapter shall not stay or otherwise interfere with a term of incarceration, parole, probation, or other sentence imposed.

#### § 12. Disclosure of results of analysis.

(a) The results of the analysis shall be simultaneously disclosed to the moving party, the prosecuting attorney, and the judge.

(b) At the request of any party, or on its own initiative, the judge shall order production of the underlying laboratory data, documents, and notes.

#### § 13. Effect of analysis.

(a) If the analysis confirms that the factual findings for the verdict or judgment in the underlying case were correct, and that the moving party was properly convicted and sentenced, the court shall deny the motion with prejudice. The court may also order:

(1) The prosecuting attorney to provide copies of the report of the analysis to the Superintendent of the Department of Correction and the Chairperson of the Parole Board;

(2) The prosecuting attorney to provide copies of the report of the analysis to relevant criminal offender databases; or

(3) The moving party to assume the cost of the analysis.

(b) If the analysis neither confirms nor contradicts the factual findings for the verdict or judgment in the underlying case, the court shall:

(1) Order any additional analysis requested if the court concludes that the requirements of § are met, or

(2) If no additional analysis is requested that would meet the requirements of § deny the motion with prejudice if either:

A. No additional analysis is requested, or

B. Additional analysis is requested but the requirements of § are not met.

(c) If the analysis demonstrates that the factual findings for the verdict or judgment in the underlying case were incorrect, and that the moving party was not properly convicted or sentenced, notwithstanding any rule or law that would bar a new trial, the court shall:

- (1) On motion of the prosecuting attorney and good cause shown, order replicate analysis of the evidence or biological material and a stay of further proceedings pending the result of the replicate analysis, with the cost of such replicate testing to be borne by the prosecuting attorney;
- (2) Order the release of the moving party from custody;
- (3) On motion of the moving party, order a new trial; or
- (4) Order any other relief that serves the interest of justice.

§14. Notice to victims.

- (a) If a motion is filed under this Chapter, the prosecuting attorney may notify the victim of the crime in the underlying case pursuant to G. L. c. 258B, § .
- (b) The prosecuting attorney shall promptly notify the victim and the victim and witness assistance board if a judge allows the motion.
- (c) The prosecuting attorney shall promptly notify the victim and the victim and witness assistance board of the result of the analysis.

§ 15. Waiver of rights.

The right to file a motion pursuant to this Chapter shall not be waived. This prohibition of any waiver includes, but is not limited to, any stated or unstated waiver that is or is alleged to be part of any agreement or understanding related to any plea of guilty or of nolo contendere or to any sentencing or appellate proceeding or to any correctional placement or conditions.

§ 16. Preservation of evidence and biological material.

- (a) Any governmental entity that is in possession of evidence or biological material that is collected for its potential evidentiary value during the investigation of a crime, the prosecution of which results in a conviction, shall retain such evidence and biological material for the period of time that any person remains in the custody of the commonwealth in connection with that crime, without regard to whether the evidence or biological material was introduced at trial. Each governmental entity shall retain all such evidence and biological material in a manner that is reasonably designed to preserve the evidence and biological material and to prevent its destruction or deterioration.
- (b) The Attorney General and the Secretary of Public Safety shall promulgate regulations governing the retention and preservation of evidence and biological material by any governmental entity, which regulations shall include standards for maintaining the integrity of the materials over time, the designation of officials at each governmental entity with custodial responsibility, and requirements of contemporaneously recorded documentation of individuals having and obtaining custody of any evidence of biological material.

§ 17. Liability.

- (a) Governmental officials and employees acting in good faith shall not be liable in a civil or criminal proceeding for any act or pursuant to the provisions of this chapter.
- (b) If a governmental entity responsible for the preservation of evidence or biological material engages in willful or wanton misconduct or gross negligence which results in the deterioration or destruction of evidence or biological material so that a laboratory is unable to perform adequate or proper analysis, that entity shall be subject to proceedings for contempt.
- (c) Nothing in this chapter shall create any cause of action for damages against the commonwealth or any of its subdivisions or officers, employees, agents, or subdivisions, except as provided in this section.

§ 18. Appeal.

An order allowing a motion filed under this Chapter is not a final and appealable order. An order denying a motion filed under this Chapter is a final and appealable order. Any appeal from such an order shall be claimed by filing a notice of appeal within 30 days of the court's entry of the written order upon the docket."

The amendment was rejected.

Ms. Jehlen moved that the proposed new draft be amended by adding at the end thereof the following new section:—

"SECTION XX: Section 172C of Chapter 6 of the General Laws, as appearing in the 2006 official edition, is hereby deleted in its entirety, and replaced with the following new section:

Chapter 6. Section 172C. Dissemination of criminal offender record information to agencies, elderly persons, or individuals with a disability employing or referring individuals to provide services to said elderly or individuals with a disability.

Section 172C. For purposes of this section, the following words shall, unless the context requires otherwise, have the following meanings:—

‘Elderly person’, an individual who is sixty years of age or over.

‘Individual with a disability’, an individual who, because of his or her disability, needs physical assistance with activities of daily living, such as taking medications, bathing or grooming, dressing, walking, eating, toileting, and transferring.

‘Surrogate or agent’, a person or agency designated by an elderly person or an individual with a disability to act in his or her behalf with regards to home or community based services.

Notwithstanding the provisions of Section 172, criminal offender record information shall be made available to any of the following entities who employ, accept as a volunteer or refer for employment to a client any individual who will provide care, treatment, education, training, transportation, delivery of meals, instruction, counseling, supervision, recreation or other services in a home or in a community based setting for any elderly person or individual with a disability or who will have any direct, indirect, or unmonitored contact with such elderly person or individual with a disability or access to such persons’ files:

(1) any agency which provides homemaker, home health aide, companion or other community based services to elderly persons or individuals with a disability in home or community based settings, including, but not limited to home health agencies certified under Title XVIII of the Social Security Act;

(2) a home care corporation established pursuant to the provisions of chapter nineteen A;

(3) a municipality; or

(4) any agency or organization that employs or refers personal care attendants; or

(5) any other entity receiving federal, state or local funds.

Notwithstanding the provisions of Section 172, criminal offender record information may be made available, upon application to the Criminal History Systems Board, to any elderly person or individual with a disability that employs or refers personal care attendants.

Such entities, including any elderly person or individual with a disability that employs or refers personal care attendants, may obtain criminal offender record information, as made available by both the state and federal government, including the criminal offender record information collected under section 168 of this chapter, and information contained in the sex offender registry created by section 178D of this chapter, concerning any such individual. Other than such elderly person or individual with a disability, all other such entities shall obtain such criminal record information prior to employing such individual, accepting such individual as a volunteer or referring such individual for employment to an elderly person or individual with a disability. If any elderly person or individual with a disability employing a personal care attendant is unable to initiate the criminal background check called for under this section, said background check may be initiated by a surrogate or agent on behalf of the elderly person or individual with a disability.

Any elderly person or individual with a disability who is the recipient of services from any individual who provides care, treatment, education, training, transportation, delivery of meals, instruction, counseling, supervision, recreation or other services in a home, shall be given the option to commence said services while a criminal background check is being conducted. An elderly person or individual with a disability may employ an individual for a position that involves the provision of direct personal care or treatment on a conditional basis prior to receiving the results of such individual’s criminal offender check as provided for by this section. No elderly person or individual with a disability shall be liable for civil damages to any individual so conditionally employed and subsequently discharged by reason of information received as a result of a criminal offender record check completed pursuant to this section.

Any agency, elderly person, or individual with a disability obtaining information under this section shall

not disseminate such information for any purpose other than to further the protection of the elderly person or individual with a disability, provided that the results of a criminal background check may be shared by such agencies with the elderly person or individual with a disability who is the recipient of services as defined in this section, where the elderly person or individual with a disability is the employer of said person who was the subject of a criminal history background check.

Notwithstanding the provisions of this section, an elderly person or individual with a disability who employs a personal care attendant shall be informed of his or her option to have a criminal background check performed on any individual who is otherwise qualified and is in the final stages of consideration to become his or her personal care attendant. Said elderly person or individual with a disability shall be required to consent in writing to the provision of a criminal background check as provided for under this section, and shall be permitted to hire any individual of his or her choice.

The criminal history systems board shall waive the fee assessable pursuant to section 172A for criminal offender record information made available pursuant to this section. Notwithstanding the provisions of any general or special law to the contrary, the division of medical assistance shall, subject to appropriation, reimburse any agency, elderly person or individual with a disability obtaining information under this section for the portion of the costs associated with obtaining criminal offender record information on employees or potential employees providing services to individuals on MassHealth pursuant to this section.

A violation of this section shall constitute a violation of section 2 of chapter 93A.

The Criminal History Systems Board shall promulgate any regulations necessary to implement the provisions of this section.”

The amendment was rejected.

Messrs. Timilty, Morrissey and Hedlund moved that the proposed new draft be amended by inserting the following new sections:—

“SECTION XX. Section 178C of chapter 6 of the General Laws, as so appearing, is hereby amended in line 33 by inserting after the word ‘address’ the following words:— ‘, and specifically excluding homeless shelters’.

SECTION 2. Section 178F of Chapter 6, as so appearing, is hereby amended by inserting after the first sentence the following new sentence:— ‘It shall be unlawful for any sex offender who is required to register pursuant to sections 178C to 178P, inclusive, to list a homeless shelter as his residence, primary address, or secondary address.’ Said section is further amended by striking out the following:— ‘A sex offender who lists a homeless shelter as his residence shall verify registration data every 45 days with the board by mailing to the board on a form approved by the board and signed under the pains and penalties of perjury the sex offender’s name, date of birth, primary address, any secondary addresses and work address. A homeless shelter receiving state funding shall cooperate in providing information in the possession of or known to such shelter; provided, however, that such request for information shall be limited to that which is necessary to verify an offender’s registration data or a sex offender’s whereabouts. A shelter that violates the provisions of this paragraph shall be punished by a fine of \$100 a day for each day that such shelter continues to violate the provisions of this paragraph.’

SECTION 3. Section 178F1/2 of Chapter 6, as so appearing, is hereby amended by inserting after the first sentence the following new sentence:— ‘It shall be unlawful for any sex offender who is required to register pursuant to sections 178C to 178P, inclusive, to list a homeless shelter as his residence, primary address, or secondary address.’ Said section is further amended by striking out the following:— ‘Such sex offender who lists a homeless shelter as his residence shall appear in person at such local police department every 45 days to verify, under the pains and penalties of perjury, that the registration data on file remains true and accurate. A homeless shelter receiving state funding shall cooperate in providing information in the possession of or known to such shelter, when a request for information is made to such shelter by the board or such local police department, provided; however, that such request for information shall be limited to what is necessary to verify an offender’s registration data or a sex offender’s whereabouts. A shelter that violates the provisions of this paragraph shall be punished by a fine of \$100 a day for each day that such shelter continues to violate the provisions of this paragraph.’”

Pending the adoption of the amendment, Messrs. Petruccelli, Timilty, Morrissey and Hedlund moved to amend the pending amendment (Timilty, et al) by inserting after section 27 the following sections:—  
“SECTION 27A. Section 178F of Chapter 6, as so appearing, is hereby amended by striking out, in lines 14 to 15, the words ‘A sex offender who lists a homeless shelter as his residence shall verify registration data every 45 days’ and inserting in place thereof the following words:— A homeless sex offender shall verify registration data every 30 days.

SECTION 27B. Section 178F½ of Chapter 6, as so appearing, is hereby amended by striking out, in lines 14 to 15, the words ‘Such sex offender who lists a homeless shelter as his residence shall appear in person at such local police department every 45 days’ and inserting in place thereof the following words:— A homeless sex offender shall appear in person at such local police department every 30 days.

SECTION 28C. Chapter 6, as so appearing, is hereby amended by inserting, after section 178F½, the following section:—

Section 178F¾. A homeless sex offender shall wear a global positioning system device, or any comparable device, administered by the commissioner of probation.”; and by inserting after section 67 the following section:—

“SECTION 67A. Notwithstanding any general or special law to the contrary, section 178F¾ of chapter 6 of the General Laws shall apply to a conviction for a sex offense, as defined in section 178C of chapter 6, or an adjudication as a youthful offender or as delinquent juvenile by reason of a sex offense, as defined in section 178C of chapter 6, which occurs after the effective date of this act.”

After remarks, the further amendment (Petruccelli, et al) was adopted.

The pending amendment (Timilty, et al), as amended (Petruccelli, et al) was then adopted.

Mr. Morrissey moved to amend the proposed new draft at the end of section 17, by adding the following sentence:— “Any organizations or business entities required by federal to adhere to the standards set forth in the Fair Credit Reporting Act codified under 15 U.S.C. § 1681 et seq. shall be exempt from section 17.”

The amendment was rejected.

Mr. Tolman, Ms. Flanagan and Ms. Fargo moved to amend the proposed new draft by inserting at the end thereof the following new section:—

“SECTION XX. The executive office of public safety, in conjunction with the department of public health, the trial court, the department of probation, and the office of community correction, shall promulgate regulations establishing a resource guide for law enforcement personnel, sheriffs, and judges on substance abuse treatment programs and options, including but not limited to providing information on civil commitment programs, jail diversion, and public and private treatment options, including the Massachusetts Alcohol and Substance Abuse Center, the Men’s Addiction Treatment Center, and the Women’s Addiction Treatment Center. The Bureau of Substance Abuse Services shall provide technical assistance related to producing said resource guide.”

The amendment was adopted.

Ms. Creem moved to amend the proposed new draft by striking out sections 52, 53, 54, 55, 56 and 57 and inserting in place thereof the following new section:—

“SECTION 52. Section 100A of chapter 276 is hereby amended by striking the first paragraph and inserting in place thereof the following:—

Section 100A. Any person having a record of criminal court appearances and dispositions in the commonwealth on file with the office of the commissioner of probation may, on a form furnished by the commissioner and signed under the penalties of perjury, request that the commissioner seal such file.

The commissioner shall comply with such request provided (1) that said person’s court appearance and court disposition records, including any period of incarceration or custody as defined in section 1 of chapter 125 for any misdemeanor record to be sealed occurred not less than 5 years prior to said request; (2) that said person’s court appearance and court disposition records, including any period of incarceration or custody as defined in section 1 of chapter 125 for any felony record to be sealed occurred not less than 10 years prior to said request; (3) that said person had not been found guilty of any criminal offense within the commonwealth in the case of a misdemeanor, 5 years preceding such

request, and in the case of a felony, 10 years preceding such request, except motor vehicle offenses in which the penalty does not exceed a fine of fifty dollars; (4) said form includes a statement by the petitioner that he has not been convicted of any criminal offense in any other state, United States possession or in a court of federal jurisdiction, except such motor vehicle offenses, as aforesaid, and has not been imprisoned in any state or county in the case of a misdemeanor, within the preceding 5 years, and in the case of a felony, within the preceding 10 years; and (5) said person's record does not include convictions of offenses other than those to which this section applies. This section shall apply to court appearances and dispositions of all offenses provided, however, that this section shall not apply in case of convictions for violations of sections one hundred and twenty-one to one hundred and thirty-one H, inclusive, of chapter one hundred and forty or for violations of chapter two hundred and sixty-eight or chapter two hundred and sixty-eight A.”; in section 16 by striking in lines 252-257 the words “Any member of the general public may upon written request to the department obtain the following criminal offender record information: (i) convictions for any felony punishable by a term of imprisonment of 5 years or more; (ii) felony convictions for 2 years following their disposition, including any period of incarceration or custody as defined in section 1 of chapter 125; and (iii) misdemeanor convictions for 1 year following their disposition, including any period of incarceration or custody as defined in section 1 of chapter 125.” and inserting in place thereof the following:— “Any member of the general public may upon written request to the department and in accordance with regulations established by the department obtain the following criminal offender record information: (i) convictions for any felony punishable by a term of imprisonment of 5 years or more; (ii) information concerning an individual who has been convicted of any crime and sentenced to any term of imprisonment, and at the time of the request: is serving a sentence of probation or incarceration, or is under the custody of the parole board; (iii) felony convictions for 2 years following their disposition, including any period of incarceration or custody as defined in section 1 of chapter 125; and (iv) misdemeanor convictions for 1 year following their disposition, including any period of incarceration or custody as defined in section 1 of chapter 125.” by striking section 59 of the bill and inserting in place thereof the following:—

“SECTION 59. Said section 100A of said chapter 276, as so appearing, is hereby further amended by inserting after the word ‘proceedings’, in line 52, the following words:— , and except that in any proceedings under sections 1 to 39I, inclusive, of chapter 119, sections 2 to 5, inclusive, of chapter 201, chapters 208, 209, 209A, 209B, 209C, or sections 1 to 11A, inclusive, of chapter 210, a party having reasonable cause to believe that information in a sealed criminal record of another party may be relevant to 1) an issue of custody or visitation of a child, 2) abuse, as defined in section 1 of chapter 209A or 3) the safety of any person may upon motion seek to introduce the sealed record into evidence. The judge shall first review such records in camera and determine those records that are potentially relevant and admissible. The judge shall then conduct a closed hearing on the admissibility of those records determined to be potentially admissible, provided further, that such records shall not be discussed in open court and, if admitted, shall be impounded and made available only to the parties, their attorneys, and court personnel who have a demonstrated need to receive them.”; by striking out section 39 and inserting in place thereof the following:—

“SECTION 39. Section 32H of said chapter 94C, as so appearing, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph: A person convicted of violating any provisions of said sections shall not, until he shall have served the mandatory minimum term of imprisonment established in said sections, be eligible for probation, furlough, or receive any deduction from his sentence for good conduct under sections 129C and 129D of chapter 127; provided, however, that the commissioner of correction, on the recommendation of the warden, superintendent or other person in charge of the correctional institution, or a sheriff, on the recommendation of the administrator of a county correctional institution, may grant to said offender a temporary release, subject to the rules and regulations of the institution and under the direction, control and supervision of the officers thereof, for the following purposes: to attend the funeral of a relative, to visit a critically ill relative, to obtain emergency medical or psychiatric services unavailable at said institution; to participate in education, training, or employment programs established under section 48 of chapter 127; to engage in employment



pursuant to a work release program in accordance with the provisions of sections 49, 49A, 86F and 86G of chapter 127; or to participate in a program to provide services under section 49B or 49C of chapter 127. The provisions of section 87 of chapter 276 shall not apply to any person, 17 years of age or over, charged with a violation of said sections, or to any child between age 14 and 17, so charged by indictment under section 54 of chapter 119.”; in sections 34, 35, 36, 37, 38, 40, and 66, by striking the words “minimum term of the sentence if the sentence is to a house of correction” and inserting in place thereof the following words:— “maximum term of the sentence if the sentence is to a house of correction”; and in section 44, by striking in lines 696-697 the words “or may permit a person committed to the jail for contempt of court.”.

After remarks, the amendment was adopted.

Mr. Tarr moved to amend the proposed new draft by striking out sections 34 through 48, inclusive, and section 66 in their entirety.

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at six minutes before four o’clock P.M., on motion of Mr. Tarr, as follows, to wit (yeas 10 — nays 27) [Yeas and Nays No. 169]:

#### YEAS.

Baddour, Steven A. Knapik, Michael R.  
Brown, Scott P. Moore, Richard T.  
Buoniconti, Stephen J. Pacheco, Marc R.  
Downing, Benjamin B. Tarr, Bruce E.  
Hedlund, Robert L. Tisei, Richard R. — 10.

#### NAYS.

Berry, Frederick E. McGee, Thomas M.  
Brewer, Stephen M. Montigny, Mark C.  
Candaras, Gale D. Moore, Michael O.  
Chandler, Harriette L. Morrissey, Michael W. Chang-Diaz, Sonia. O’Leary, Robert A.  
Creem, Cynthia Stone Panagiotakos, Steven C.  
Donnelly, Kenneth J. Petrucci, Anthony  
Eldridge, James B. Rosenberg, Stanley C.  
Flanagan, Jennifer L. Spilka, Karen E.  
Galluccio, Anthony D. Timilty, James E.  
Hart, John A., Jr. Tolman, Steven A.  
Jehlen, Patricia D. Tucker, Susan C.  
Joyce, Brian A. Walsh, Marian — 27.  
Kennedy, Thomas P.

#### ABSENT OR NOT VOTING.

Fargo, Susan C. Menard, Joan M. — 2.

The yeas and nays having been completed at one minute before four o’clock P.M., the amendment was rejected.

Mr. Tolman and Ms. Flanagan moved to amend the proposed new draft by inserting at the end thereof the following new section:—

“SECTION XX. The executive office of public safety and the department of correction, in conjunction with the department of public health, will promulgate regulations to create a substance abuse education program in state prisons and houses of corrections. Such program shall focus on, but not be limited to, screening inmates for substance use disorders, preparing inmates with substance use disorders for reentry into the community, providing training on obtaining housing, employment, and the necessary

substance abuse treatment once an inmate is released.”

The amendment was adopted.

Mr. Tolman and Ms. Flanagan moved to amend the proposed new draft by adding the following three sections:—

“SECTION XX. The department of probation, in conjunction with the criminal history systems board shall conduct a study on rehabilitation. That study shall include an examination of:

- (a) enabling a person convicted of or adjudicated delinquent by reason of any felony or misdemeanor charges in the Commonwealth or a person who has been charged with a crime in the Commonwealth but which charges did not result in a conviction to petition the superior court of the trial court department in the county in which he then resides for a certificate of rehabilitation, or a certificate of recovery and rehabilitation if the charges were a consequence of substance abuse, for ascertainment and declaration of the fact of his rehabilitation or recovery and rehabilitation if certain conditions are met, for example if the person: (1) has not been sentenced to incarceration since being discharged from a felony or misdemeanor or since the termination of any ancillary proceedings related to such felony or misdemeanor including, but not limited to, any period of probation, parole or continuation; (2) is not the subject of a probationary or parole term for the commission of any other felony or misdemeanor; (3) presents satisfactory evidence of 2 years residence in the Commonwealth prior to the filing of the petition; (4) has demonstrated a period of rehabilitation, as provided in section 176C of the General Laws, and (5) in the case of a person seeking a certificate of recovery and rehabilitation, has completed a substance abuse treatment program approved by the bureau of substance abuse treatment services;
- (b) the standard the petitioner must demonstrate his rehabilitation or recovery;
- (c) the duration of rehabilitation required to be eligible for a certificate of rehabilitation or recovery;
- (d) any recommended provision of notice of the filing of a petition to the district attorney of the county in which a petition is filed, to the district attorney of the county in which the petitioner was convicted of an offense, to the attorney general and to the governor;
- (e) whether a petitioner for a certification of rehabilitation or recovery may be represented by counsel and whether the court shall appoint counsel for certain petitioners;
- (f) whether the court in which the petition is filed may require such testimony as it deems necessary, and who should be required to produce and pay for the cost of production of all records and reports relating to the petitioner and the offense for which he was charged;
- (g) which information the court may request upon the filing of the application for a certificate, from the district attorney in which the petition was filed including, but not limited to: the place of residence of the petitioner; the criminal record of the petitioner as shown by the records of the Department of Justice; any representation made to the court by the petitioner; the conduct of the petitioner during his period of rehabilitation; and any other information the court may deem necessary in making its determination;
- (h) under what conditions a court should deny a petition for a certificate of rehabilitation or recovery;
- (i) under what conditions a court should issue a certificate of rehabilitation or recovery and whether such a certificate should become a part of the petitioner’s criminal offender record information;
- (j) to whom the court should forward such a certificate and whether any recommendations should be included;
- (k) whether such a certificate should be provided to any person lawfully seeking information relative to the offense for which a petitioner has received a certificate;
- (l) whether any forms would be required to effectuate such a process and who should develop them;
- (m) any notice requirements that are recommended for defendants or individuals being released from custody, discharged from probation or parole, or concluding substance abuse treatment;
- (n) any other factors that may or may not be included within the determination of whether to issue a benefit granted by the awarding of such a certificate;
- (o) any rights that an individual who has been denied the benefits of attaining a certificate of rehabilitation or recovery should have, including the right to appeal such a decision;
- (p) what the appropriate forum should be for such an appeal; and
- (q) any punishments that should be levied against an individual who fraudulently uses such a certificate.

The department shall report its findings to the clerks of the house and senate by July 1, 2010 who shall forward that report to the chairmen of the house committee on ways and means, the senate committee on ways and means and the joint committee on mental health and substance abuse.

SECTION XX. The parole board shall conduct a study to determine the benefit and cost of establishing a substance abuse treatment program to be included as a requirement for individuals during a period of post-release supervision required by chapter 127A of the General Laws.

The board shall file the findings of its study by July 1, 2010 with the clerks of the house and the senate, who shall forward the report to the chairmen of the house committee on ways and means, the senate committee on ways and means, the joint committee on mental health and substance abuse and the joint committee on the judiciary.

SECTION XX. The department of corrections, in consultation with the department of public health shall conduct a study on the establishment of jail diversion programs for nonviolent low-level offenders with substance use disorders. The study shall include, but not be limited to, the establishment of jail diversion programs, innovative ways for the courts to divert substance abusers from the criminal justice system into specified substance abuse treatment options and the cost estimates for implementing such a program.

The department shall file the findings of its study by July 1, 2010 with the clerks of the house and the senate, who shall forward the report to the chairmen of the house committee on ways and means, the senate committee on ways and means and the joint committee on mental health and substance abuse.”

The amendment was adopted.

Messrs. Timilty, Morrissey and Michael O. Moore and Ms. Flanagan moved to amend the proposed new draft by adding the following section:—

“SECTION XX. The administrative office of the trial court shall conduct a study examining the bail review process, including, but not limited to, personal recognizance, challenges to the amount of bail for an accused and notice given to a petitioner concerning future court appearances. The administrative office shall report to the joint committee on the judiciary by July 1, 2010.”

The amendment was adopted.

There being no objection, during consideration of the Orders of the Day, the following matters were considered as follows:

#### PAPERS FROM THE HOUSE.

##### Engrossed Bills.

An engrossed Bill preserving publicly-assisted affordable housing (see Senate, No. 2190, amended) (which originated in the Senate), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, was passed to be enacted and signed by the President and laid before the Governor for his approbation.

An engrossed Bill authorizing the Massachusetts Department of Transportation and the town of Kingston to exchange certain parcels of land (see Senate, No. 2147, amended) (which originated in the Senate), having been certified by the Senate Clerk to be rightly and truly prepared for final passage,— was put upon its final passage. The question on passing it to be enacted was determined by a call of the yeas and nays, at fourteen minutes past four o’clock P.M., on motion of Mr. Richard T. Moore, as follows, to wit (yeas 37 — nays 0) [Yeas and Nays No. 170]:

##### YEAS.

Baddour, Steven A. Eldridge, James B.  
Berry, Frederick E. Flanagan, Jennifer L.  
Brewer, Stephen M. Galluccio, Anthony D.  
Brown, Scott P. Hart, John A., Jr.  
Buoniconti, Stephen J. Hedlund, Robert L.

Candaras, Gale D. Jehlen, Patricia D.  
 Chandler, Harriette L. Joyce, Brian A.  
 Chang-Diaz, Sonia Knapik, Michael R.  
 Creem, Cynthia Stone McGee, Thomas M.  
 Donnelly, Kenneth J. Montigny, Mark C.  
 Downing, Benjamin B. Moore, Michael O.  
 Moore, Richard T. Spilka, Karen E.  
 Morrissey, Michael W. Tarr, Bruce E.  
 Murray, Therese Timilty, James E.  
 O'Leary, Robert A. Tisei, Richard R.  
 Pacheco, Marc R. Tolman, Steven A.  
 Panagiotakos, Steven C. Tucker, Susan C.  
 Petruccelli, Anthony Walsh, Marian — 37.  
 Rosenberg, Stanley C.

NAYS — 0.

ABSENT OR NOT VOTING.

Fargo, Susan C. Menard, Joan M. — 3.  
 Kennedy, Thomas P.

The yeas and nays having been completed at twenty-four minutes past four o'clock P.M., the bill was passed to be enacted, and it was signed by the President and laid before the Governor for his approbation.

Suspension of Senate Rule 38A.

Mr. Pacheco moved that Senate Rule 38A be suspended to allow the Senate to continue in session beyond the hour of eight o'clock P.M.; and the same Senator requested unanimous consent that the rules be suspended without a call of the yeas and nays. There being no objection, the motion was considered forthwith, and it was adopted.

PAPER FROM THE HOUSE.

Engrossed Bill — Land Taking for Conservation Etc.

An engrossed Bill authorizing the town of Harwich to convey certain recreational land (see House, No. 4314) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage,— was put upon its final passage; and, this being a bill providing for the taking of land or other easements used for conservation purposes, etc., as defined by Article XCVII of the Amendments to the Constitution, the question on passing it to be enacted was determined by a call of the yeas and nays, at twenty-seven minutes past four o'clock P.M., as follows, to wit (yeas 37 — nays 0) [Yeas and Nays No. 171]:

YEAS.

Baddour, Steven A. Creem, Cynthia Stone  
 Berry, Frederick E. Donnelly, Kenneth J.  
 Brewer, Stephen M. Downing, Benjamin B.  
 Brown, Scott P. Eldridge, James B.  
 Buoniconti, Stephen J. Flanagan, Jennifer L.  
 Candaras, Gale D. Galluccio, Anthony D.  
 Chandler, Harriette L. Hart, John A., Jr.  
 Chang-Diaz, Sonia Hedlund, Robert L.  
 Jehlen, Patricia D. Panagiotakos, Steven C.  
 Joyce, Brian A. Petruccelli, Anthony

Kennedy, Thomas P. Rosenberg, Stanley C.  
Knapik, Michael R. Spilka, Karen E.  
McGee, Thomas M. Tarr, Bruce E.  
Montigny, Mark C. Timilty, James E.  
Moore, Michael O. Tisei, Richard R.  
Moore, Richard T. Tolman, Steven A.  
Morrissey, Michael W. Tucker, Susan C.  
O'Leary, Robert A. Walsh, Marian — 37.  
Pacheco, Marc R.

NAYS — 0.

ABSENT OR NOT VOTING.

Fargo, Susan C. Menard, Joan M. — 2.

The yeas and nays having been completed at a half past four o'clock P.M., the bill was passed to be enacted, two-thirds of the members present having agreed to pass the same, and it was signed by the President and laid before the Governor for his approbation.

The Senate Bill relative to drug mandatory minimum sentences (Senate, No. 1651) (the committee on Ways and Means having recommended that the bill be amended by substituting a new draft entitled "An Act relative to sentencing laws" (Senate, No. 2210),— was further considered.

Mr. Panagiotakos moved to amend the proposed new draft by striking sections 46 and 47;

By striking in line 743 the figure "133" and inserting in place thereof the following figure:— "133A";

By striking in section 17, in the second paragraph the following phrase:— "to assist ex-offenders in obtaining and maintaining employment, training and auditing requestors described in subsection (a) of section 172, providing education and assistance regarding the correction of criminal records and to operate and maintain the public safety information system and the criminal records review board." and inserting in place thereof the following:— "to assist ex-offenders in obtaining and maintaining employment, including but not limited to, workforce development training and other applicable training programs, training and auditing requestors described in subsection (a) of section 172, providing education and assistance regarding the correction of criminal records, including but not limited to training judges, providing the necessary information to employers and other applicable person in possession of an applicant's criminal offender record information, and to operate and maintain the public safety information system and the criminal records review board."

Said section 172E of said chapter 6 is hereby further amended in the second paragraph by striking out the words "for a position that involves the provision of direct personal care or treatment to residents of such facility."; and

That all sections pertaining to criminal offender record information shall take effect in 18 months.

The amendment was adopted.

Pending the question on adoption of the Ways and Means amendment, as amended, Mr. Tarr rose to a point of order, which, being stated, was that under Senate Rule 45, the bill should be able to be divided since the bill contains a question containing two or more propositions, capable of division, and as such, as the rule states, shall be divided whenever desired by any member.

The President ruled that the point of order was NOT well-taken. Senate Rule 45 pertains to amendments to the bill rather than the bill itself. During the course of debate, members had the opportunity to amend the bill by adding or taking out sections that they felt were not germane to the subject matter of the bill. In this instance, several amendments were so considered and rejected on an individual basis. The time for amendment has ceased. The vote now should come on the bill as a whole, and as such, the point of order is NOT well taken.

After further debate, the question on adoption of the Ways and Means amendment, as amended, was considered; and it was adopted.

The bill was then ordered to a third reading and read a third time, its title having been changed by the committee on Bills in the Third Reading, to read as follows: “An Act reforming the administrative procedures relative to criminal offender record information and pre- and post-trial supervised release”. Pending the question on passing the bill to be engrossed, at twenty-six minutes past five o’clock P.M., Mr. Tarr doubted the presence of a quorum; and at twenty-seven minutes past five o’clock P.M., a quorum was secured.

After further debate, the question on passing the bill to be engrossed was determined by a call of the yeas and nays, at seven minutes past six o’clock P.M., on motion of Ms. Creem, as follows, to wit (yeas 26 — nays 12) [Yeas and Nays No. 172]:

#### YEAS.

Berry, Frederick E. Kennedy, Thomas P.  
 Candaras, Gale D. McGee, Thomas M.  
 Chandler, Harriette L. Menard, Joan M.  
 Chang-Diaz, Sonia Montigny, Mark C.  
 Creem, Cynthia Stone Moore, Michael O.  
 Donnelly, Kenneth J. O’Leary, Robert A.  
 Downing, Benjamin B. Panagiotakos, Steven C.  
 Eldridge, James B. Petruccelli, Anthony  
 Flanagan, Jennifer L. Rosenberg, Stanley C.  
 Galluccio, Anthony D. Spilka, Karen E.  
 Hart, John A., Jr. Tolman, Steven A.  
 Jehlen, Patricia D. Tucker, Susan C.  
 Joyce, Brian A. Walsh, Marian — 26.

#### NAYS.

Baddour, Steven A. Moore, Richard T.  
 Brewer, Stephen M. Morrissey, Michael W.  
 Brown, Scott P. Pacheco, Marc R.  
 Buoniconti, Stephen J. Tarr, Bruce E.  
 Hedlund, Robert L. Timilty, James E.  
 Knapik, Michael R. Tisei, Richard R. — 12.

#### ABSENT OR NOT VOTING.

Fargo, Susan C. — 1.

The yeas and nays having been completed at eleven minutes past six o’clock P.M., the bill was passed to be engrossed [See Senate, No. 2210, printed as amended].

Sent to the House for concurrence.

#### Recess.

There being no objection, at twelve minutes past six o’clock P.M., the President declared a recess subject to the call of the Chair; and, at twenty-six minutes before eight o’clock P.M., the Senate reassembled, the President in the Chair.

#### PAPERS FROM THE HOUSE.

The House Bill extending simulcasting (House, No. 4323, amended),— came from the House with the endorsement that the House had concurred in the Senate amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2215, printed as amended with a further amendment striking out section 14 and inserting in place thereof the following section: “SECTION 14. Notwithstanding section 2 of chapter 128A of the General Laws and sections 1, 2 and

2A of chapter 128C of the General Laws or any other general or special law or rule or regulation to the contrary, the greyhound meeting licensee located in Bristol county and the greyhound meeting licensee located in Suffolk county licensed to conduct live racing pursuant to said chapter 128A and simulcast wagering pursuant to chapter 128C of the General Laws in calendar year 2009, shall remain licensed as greyhound racing meeting licensees until July 31, 2010; provided, however, that the days between January 1, 2010 and July 31, 2010, shall be dark days pursuant to said chapter 128C and said licensees shall continue to be precluded from conducting live racing during that period as provided in chapter 388 of the acts of 2008; provided further, that all simulcasts shall comply with the Interstate Horse Racing Act of 1978, 15 U.S.C. Sec. 3001 et seq., or other applicable federal laws; provided further, that all simulcasts from states which have racing associations that do not require approval in compliance with the Interstate Horse Racing Act of 1978, 15 U.S.C. Sec. 3004(a)(1)(A), except simulcasts during the month of August, shall require the approval of the New England Horsemen's Benevolent and Protective Association prior to being simulcast to a racing meeting licensee within the commonwealth; and provided further, that if the association agrees to approve the simulcast for 1 racing meeting licensee, it shall approve the simulcast for all otherwise eligible racing meeting licensees.”.

Senate Rule 36 was suspended, on motion of Mr. Panagiotakos, and the Senate concurred in the further House amendment.

Message from the Governor — Disapproval and Reductions in Supplemental Appropriations Bill.

A message from His Excellency the Governor, returning, with his disapproval of certain items and sections and parts of certain items, and reductions in certain items contained in the engrossed Bill making appropriations for the fiscal year 2009 to provide for supplementing certain existing appropriations and for certain other activities and projects (see House, No. 4288), which on Tuesday, October 20, 2009, had been laid before the Governor for his approbation,— came from the House, in part, several items and sections having been passed by the House notwithstanding the reduction or disapproval of the Governor.

The message (House, No. 4302) was read; and the Senate proceeded to reconsider an item, which had been disapproved in accordance with the provisions of the Constitution.

Section 2C.I (Preamble) was considered as follows:

“Section 2C.I. For the purpose of making available in fiscal year 2010 balances of appropriations which otherwise would revert on June 30, 2009, the unexpended balances of the maintenance appropriations listed below, not to exceed the amount specified below for each item, and the unexpended balance of all appropriations in the Massachusetts management accounting and reporting system with a secretariat code of 01 are hereby re-appropriated for the purposes of and subject to the conditions stated for the corresponding item in section 2 of chapter 182 of the acts of 2008; provided, however, that for items which do not appear in section 2 of the general appropriation act, the amounts in this section are re-appropriated for the purposes of and subject to the conditions stated for the corresponding item in section 2 or 2A of this act or in prior appropriation acts. Amounts in this section are re-appropriated from the fund or funds designated for the corresponding item in section 2 of said chapter 182 of the acts of 2008; provided, however, that for items which do not appear in said section 2 of said chapter 182, the amounts in this section are re-appropriated from the fund or funds designated for the corresponding item in said section 2 or said section 2A of this act or in prior appropriation acts. The sums re-appropriated in this section shall be in addition to any amounts available for said purposes.”

[The Governor struck out the following wording: “, and the unexpended balance of all appropriations in the Massachusetts management accounting and reporting system with a secretariat code of 01”.]

The question on passing section 2C.I, in concurrence, the objections of His Excellency the Governor to the contrary notwithstanding, was determined by a call of the yeas and nays, as required by Chapter I, Section I, Article II, of the Constitution, at twenty minutes before eight o'clock P.M., as follows, to wit (yeas 31 — nays 6) [Yeas and Nays No. 173]:

YEAS.

Baddour, Steven A. McGee, Thomas M.  
 Berry, Frederick E. Menard, Joan M.  
 Brewer, Stephen M. Moore, Michael O. Buoniconti, Stephen J. Moore, Richard T.  
 Candaras, Gale D. Morrissey, Michael W.  
 Chandler, Harriette L. O'Leary, Robert A.  
 Chang-Diaz, Sonia Pacheco, Marc R.  
 Creem, Cynthia Stone Panagiotakos, Steven C.  
 Donnelly, Kenneth J. Petrucci, Anthony  
 Downing, Benjamin B. Rosenberg, Stanley C.  
 Eldridge, James B. Spilka, Karen E.  
 Flanagan, Jennifer L. Timilty, James E.  
 Galluccio, Anthony D. Tolman, Steven A.  
 Jehlen, Patricia D. Tucker, Susan C.  
 Joyce, Brian A. Walsh, Marian — 31.  
 Kennedy, Thomas P.

NAYS.

Brown, Scott P. Montigny, Mark C.  
 Hedlund, Robert L. Tarr, Bruce E.  
 Knapik, Michael R. Tisei, Richard R. — 6.

ABSENT OR NOT VOTING.

Fargo, Susan C. Hart, John A., Jr. — 2.

The yeas and nays having been completed at ten minutes before eight o'clock P.M., section 2C.I stands, in concurrence, notwithstanding the objections of His Excellency the Governor, two-thirds of the members present and voting having approved the same.

Message from the Governor — Disapproval and Reductions in Supplemental Appropriations Bill.  
 A message from His Excellency the Governor, returning, with his disapproval of certain items and sections and parts of certain items, and reductions in certain items contained in the engrossed Bill making appropriations for the fiscal year 2010 to provide for supplementing certain existing appropriations and for certain other activities and projects (see House, No. 4181), which on Wednesday, July 29, 2009, had been laid before the Governor for his approbation,— came from the House, in part, a section having been passed by the House notwithstanding the disapproval of the Governor.

The message (House, No. 4206) was read; and the Senate proceeded to reconsider one item, which had been disapproved in accordance with the provisions of the Constitution.

Section 32A (Massachusetts Alcohol and Substance Abuse Center) was considered as follows:

“SECTION 32A. The department of correction shall not suspend, terminate, reduce services or otherwise divert clients of the Massachusetts alcohol and substance abuse center until such time as the department files a displacement plan for the center's clients to the house and senate committees on ways and means, the joint committee on public safety and homeland security and the joint committee on mental health and substance abuse; provided, however, that if such a plan shall be filed, the plan shall not take effect sooner than 90 days from the date that such plan has been filed with said committees.”

[The Governor disapproved this section.]

After remarks, the question on passing section 32A, in concurrence, the disapproval of His Excellency the Governor to the contrary notwithstanding, was determined by a call of the yeas and nays, as required by Chapter I, Section I, Article II, of the Constitution, at seven minutes before eight o'clock P.M., as follows, to wit (yeas 38 — nays 0) [Yeas and Nays No. 174]:

YEAS.



Baddour, Steven A. Knapik, Michael R.  
 Berry, Frederick E. McGee, Thomas M.  
 Brewer, Stephen M. Menard, Joan M.  
 Brown, Scott P. Montigny, Mark C.  
 Buoniconti, Stephen J. Moore, Michael O.  
 Candaras, Gale D. Moore, Richard T.  
 Chandler, Harriette L. Morrissey, Michael W.  
 Chang-Diaz, Sonia O’Leary, Robert A.  
 Creem, Cynthia Stone Pacheco, Marc R.  
 Donnelly, Kenneth J. Panagiotakos, Steven C.  
 Downing, Benjamin B. Petrucci, Anthony  
 Eldridge, James B. Rosenberg, Stanley C.  
 Flanagan, Jennifer L. Spilka, Karen E.  
 Galluccio, Anthony D. Tarr, Bruce E.  
 Hart, John A., Jr. Timilty, James E.  
 Hedlund, Robert L. Tisei, Richard R.  
 Jehlen, Patricia D. Tolman, Steven A.  
 Joyce, Brian A. Tucker, Susan C.  
 Kennedy, Thomas P. Walsh, Marian — 38.

NAYS — 0.

ABSENT OR NOT VOTING.

Fargo, Susan C. — 1.

The yeas and nays having been completed at three minutes before eight o’clock P.M., section 32A stands, in concurrence, notwithstanding the disapproval of His Excellency the Governor, two-thirds of the members present and voting having approved the same.

Message from the Governor — Disapproval and Reductions in Supplemental Appropriations Bill.

A message from His Excellency the Governor, returning, with his disapproval of certain items and sections and parts of certain items, and reductions in certain items contained in the engrossed Bill making appropriations for the fiscal year 2009 to provide for supplementing certain existing appropriations and for certain other activities and projects (see House, No. 4288), which on Tuesday, October 20, 2009, had been laid before the Governor for his approbation,— came from the House, in part, several items and sections having been passed by the House notwithstanding the reduction or disapproval of the Governor.

The message (House, No. 4302) was read; and the Senate proceeded to reconsider an item, which had been disapproved in accordance with the provisions of the Constitution.

Item 0339-1001 (Commissioner of Probation) was considered as follows:

“0339-1001..... \$4,170,000”

[The Governor disapproved this item.]

After debate, the question on passing item 0339-1001, contained in section 2, in concurrence, the disapproval of His Excellency the Governor to the contrary notwithstanding, was determined by a call of the yeas and nays, as required by Chapter I, Section I, Article II, of the Constitution, at twenty-two minutes past eight o’clock P.M., as follows, to wit (yeas 29 — nays 5) [Yeas and Nays No. 175]:

YEAS.

Berry, Frederick E. Menard, Joan M.  
 Brewer, Stephen M. Montigny, Mark C.  
 Buoniconti, Stephen J. Moore, Michael O.  
 Candaras, Gale D. Moore, Richard T.  
 Chandler, Harriette L. Morrissey, Michael W.

Chang-Diaz, Sonia O’Leary, Robert A.  
 Creem, Cynthia Stone Pacheco, Marc R.  
 Donnelly, Kenneth J. Panagiotakos, Steven C.  
 Downing, Benjamin B. Petrucci, Anthony  
 Galluccio, Anthony D. Rosenberg, Stanley C.  
 Hart, John A., Jr. Spilka, Karen E.  
 Jehlen, Patricia D. Timilty, James E.  
 Joyce, Brian A. Tolman, Steven A.  
 Kennedy, Thomas P. Tucker, Susan C. — 29.  
 McGee, Thomas M.

NAYS.

Brown, Scott P. Tarr, Bruce E.  
 Eldridge, James B. Tisei, Richard R. — 5.  
 Knapik, Michael R.

ANSWERED “PRESENT”.

Baddour, Steven A. Hedlund, Robert L.  
 Flanagan, Jennifer L. Walsh, Marian — 4.

ABSENT OR NOT VOTING.

Fargo, Susan C. — 1.

The yeas and nays having been completed at twenty-six minutes past eight o’clock P.M., item 0339-1001, contained in section 2, stands, in concurrence, notwithstanding the disapproval of His Excellency the Governor, two-thirds of the members present and voting having approved the same.

Mr. Rosenberg in the Chair, a Bill authorizing the Rose Fitzgerald Kennedy Greenway Conservancy to lease certain property to the National Park Service (House, No. 4347, amended,— on House, No. 4312),—was read.

There being no objection, the rules were suspended, on motion of Mr. Tolman, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence, its title having been changed by the committee on Bills in the Third Reading to read as follows: “An Act authorizing the Rose Fitzgerald Kennedy Greenway Conservancy, Inc. to lease certain property to the National Park Service”.

A Bill relative to the leasing of the lifesaving station in the town of Westport to the Westport Fisherman’s Association (House, No. 4351,— on House, No. 623),— was read.

There being no objection, the rules were suspended, on motion of Ms. Menard, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence, its title having been changed by the committee on Bills in the Third Reading to read as follows: “An Act relative to the leasing of the Horseneck Point lifesaving station in the town of Westport to the Westport Fishermen’s Association”.

A Bill relative to the leasing of 3 parcels of land in the city of Boston (House, No. 4356,— on House, No. 3671),— was read.

There being no objection, the rules were suspended, on motion of Ms. Chang-Diaz, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.

Message from the Governor — Disapproval and Reductions in Supplemental Appropriations Bill.  
 A message from His Excellency the Governor, returning, with his disapproval of certain items and

sections and parts of certain items, and reductions in certain items contained in the engrossed Bill making appropriations for the fiscal year 2009 to provide for supplementing certain existing appropriations and for certain other activities and projects (see House, No. 4288), which on Tuesday, October 20, 2009, had been laid before the Governor for his approbation,— came from the House, in part, several items and sections having been passed by the House notwithstanding the reduction or disapproval of the Governor.

The message (House, No. 4302) was read; and the Senate proceeded to reconsider two items, which had been disapproved in accordance with the provisions of the Constitution.

Item 0339-1003 (Office of Community Corrections) was considered as follows:

“0339-1003..... \$300,000”

[The Governor disapproved this item.]

The question on passing item 0339-1003, contained in section 2, in concurrence, the disapproval of His Excellency the Governor to the contrary notwithstanding, was determined by a call of the yeas and nays, as required by Chapter I, Section I, Article II, of the Constitution, at twenty-six minutes before nine o'clock P.M., as follows, to wit (yeas 30 — nays 4) [Yeas and Nays No. 176]:

#### YEAS.

Berry, Frederick E. McGee, Thomas M.  
 Brewer, Stephen M. Menard, Joan M.  
 Buoniconti, Stephen J. Montigny, Mark C.  
 Candaras, Gale D. Moore, Michael O.  
 Chandler, Harriette L. Moore, Richard T.  
 Chang-Diaz, Sonia Morrissey, Michael W.  
 Creem, Cynthia Stone O'Leary, Robert A.  
 Donnelly, Kenneth J. Pacheco, Marc R.  
 Downing, Benjamin B. Panagiotakos, Steven C.  
 Eldridge, James B. Petruccelli, Anthony  
 Galluccio, Anthony D. Rosenberg, Stanley C.  
 Hart, John A., Jr. Spilka, Karen E.  
 Jehlen, Patricia D. Timilty, James E.  
 Joyce, Brian A. Tolman, Steven A.  
 Kennedy, Thomas P. Tucker, Susan C. — 30.

#### NAYS.

Brown, Scott P. Tarr, Bruce E.  
 Knapik, Michael R. Tisei, Richard R. — 4.

#### ANSWERED “PRESENT”.

Baddour, Steven A. Hedlund, Robert L.  
 Flanagan, Jennifer L. Walsh, Marian — 4.

#### ABSENT OR NOT VOTING.

Fargo, Susan C. — 1.

The yeas and nays having been completed at nineteen minutes before nine o'clock P.M., item 0339-1003, contained in section 2, stands, in concurrence, notwithstanding the disapproval of His Excellency the Governor, two-thirds of the members present and voting having approved the same.

Item 0330-3337 (Trial Court Additional Expenses) was considered as follows:

“0330-3337 ..... \$950,000”

[The Governor disapproved this item.]

After remarks, the question on passing item 0330-3337, contained in section 2, in concurrence, the

disapproval of His Excellency the Governor to the contrary notwithstanding, was determined by a call of the yeas and nays, as required by Chapter I, Section I, Article II, of the Constitution, at fourteen minutes before nine o'clock P.M., as follows, to wit (yeas 30 — nays 5) [Yeas and Nays No. 177]:

YEAS.

Baddour, Steven A. Joyce, Brian A.  
 Berry, Frederick E. Kennedy, Thomas P.  
 Brewer, Stephen M. McGee, Thomas M.  
 Buoniconti, Stephen J. Moore, Michael O.  
 Candaras, Gale D. Moore, Richard T.  
 Chandler, Harriette L. Morrissey, Michael W.  
 Chang-Diaz, Sonia O'Leary, Robert A.  
 Creem, Cynthia Stone Panagiotakos, Steven C.  
 Donnelly, Kenneth J. Petruccelli, Anthony  
 Downing, Benjamin B. Rosenberg, Stanley C.  
 Eldridge, James B. Spilka, Karen E.  
 Flanagan, Jennifer L. Timilty, James E.  
 Galluccio, Anthony D. Tolman, Steven A.  
 Hart, John A., Jr. Tucker, Susan C.  
 Jehlen, Patricia D. Walsh, Marian — 30.

NAYS.

Brown, Scott P. Tarr, Bruce E.  
 Hedlund, Robert L. Tisei, Richard R. —5.  
 Knapik, Michael R.

ANSWERED "PRESENT".

Menard, Joan M. Pacheco, Marc R. — 3.  
 Montigny, Mark C.

ABSENT OR NOT VOTING.

Fargo, Susan C. — 1.

The yeas and nays having been completed at nine minutes before nine o'clock P.M., item 0330-3337, contained in section 2, stands, in concurrence, notwithstanding the objections of His Excellency the Governor, two-thirds of the members present and voting having approved the same.

Emergency Preamble Adopted.

An engrossed Bill authorizing an exchange of certain parcels of land for Martha's Vineyard Hospital (see Senate, No. 2146, amended), having been certified by the Senate Clerk to be rightly and truly prepared for final passage and containing an emergency preamble,— was laid before the Senate; and, a separate vote being taken in accordance with the requirements of Article LXVII of the Amendments to the Constitution, the preamble was adopted in concurrence, by a vote of 6 to 0.

The bill was signed by the Acting President (Mr. Rosenberg) (having been appointed by the President, under authority conferred by Senate Rule 4, to perform the duties in the Chair) and sent to the House for enactment.

Reports of Committees.

By Mr. Panagiotakos, for the committee on Ways and Means, that the Senate Bill amending the enclosure for public and semipublic outdoor inground swimming pools (Senate, No. 916),— ought to pass.

There being no objection, the rules were suspended, on motion of Mr. Timilty, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed. Sent to the House for concurrence.

Mr. Berry, for the committee on Ethics and Rules, reported, that the following matter be placed in the Orders of the Day for the next session:

The Senate Bill designating a certain bridge in the city of Taunton as the Sgt. Shane Duffy Bridge (Senate, No. 2203).

There being no objection, the rules were suspended, on motion of Mr. Pacheco, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed. Sent to the House for concurrence.

Recess.

There being no objection, at three minutes before nine o'clock P.M., the Chair (Mr. Rosenberg) declared a recess subject to the call of the Chair; and, at a quarter before ten o'clock P.M., the Senate reassembled, Mr. Rosenberg in the Chair.

#### PAPERS FROM THE HOUSE.

A Bill relative to a conveyance of land in the town of East Longmeadow (House, No. 610,— on petition),— was read.

There being no objection, the rules were suspended, on motion of Ms. Candaras, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.

A Bill authorizing the conveyance of certain parcels of land in the town of Sharon (House, No. 4357,— on House, No. 3837),— was read.

There being no objection, the rules were suspended, on motion of Mr. Montigny, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.

Emergency Preambles Adopted.

An engrossed Bill authorizing the Division of Capital Asset Management and Maintenance to convey, lease and grant easements with respect to certain land in the town of Uxbridge (see House, No. 4300, amended), having been certified by the Senate Clerk to be rightly and truly prepared for final passage and containing an emergency preamble,— was laid before the Senate; and, a separate vote being taken in accordance with the requirements of Article LXVII of the Amendments to the Constitution, the preamble was adopted in concurrence, by a vote of 2 to 0.

The bill was signed by the Acting President (Mr. Rosenberg) and sent to the House for enactment.

An engrossed Bill extending simulcasting (see House, No. 4323, amended), having been certified by the Senate Clerk to be rightly and truly prepared for final passage and containing an emergency preamble,— was laid before the Senate; and, a separate vote being taken in accordance with the requirements of Article LXVII of the Amendments to the Constitution, the preamble was adopted in concurrence, by a vote of 2 to 0.

The bill was signed by the Acting President (Mr. Rosenberg) and sent to the House for enactment.

A Bill authorizing the Division of Capital Asset Management and Maintenance to transfer an easement in certain land in the town of Natick to Michael Audette (House, No. 4349,— on House, No. 3504),— was read.

There being no objection, the rules were suspended, on motion of Ms. Chandler, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.

Recess.

There being no objection, at nine minutes before ten o'clock P.M., the Chair (Mr. Rosenberg) declared a

recess subject to the call of the Chair; and, at twenty-eight minutes before eleven o'clock P.M., the Senate reassembled, Mr. Rosenberg in the Chair.

#### PAPER FROM THE HOUSE.

##### Engrossed Bill.

An engrossed Bill extending simulcasting (see House, No. 4323, amended) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, was passed to be enacted and signed by the Acting President (Mr. Rosenberg) and laid before the Governor for his approbation.

##### Recess.

There being no objection, at twenty-five minutes before eleven o'clock P.M., the Chair (Mr. Rosenberg) declared a recess subject to the call of the Chair; and, at fourteen minutes before eleven o'clock P.M., the Senate reassembled, Mr. Richard T. Moore in the Chair (having been appointed by the President, under authority conferred by Senate Rule 4, to perform the duties in the Chair).

##### Emergency Preambles Adopted.

An engrossed Bill authorizing the Rose Fitzgerald Kennedy Greenway Conservancy, Inc. to lease certain property to the National Park Service (see House, No. 4347, amended), having been certified by the Senate Clerk to be rightly and truly prepared for final passage and containing an emergency preamble,— was laid before the Senate; and, a separate vote being taken in accordance with the requirements of Article LXVII of the Amendments to the Constitution, the preamble was adopted in concurrence, by a vote of 3 to 0.

The bill was signed by the Acting President (Mr. Richard T. Moore) and sent to the House for enactment.

An engrossed Bill relative to the leasing of the Horseneck Point Lifesaving Station in the town of Westport to the Westport Fishermen's Association (see House, No. 4351), having been certified by the Senate Clerk to be rightly and truly prepared for final passage and containing an emergency preamble,— was laid before the Senate; and, a separate vote being taken in accordance with the requirements of Article LXVII of the Amendments to the Constitution, the preamble was adopted in concurrence, by a vote of 2 to 0.

The bill was signed by the Acting President (Mr. Richard T. Moore) and sent to the House for enactment.

An engrossed Bill authorizing the conveyance of certain parcels of land in the town of Sharon (see House, No. 4357), having been certified by the Senate Clerk to be rightly and truly prepared for final passage and containing an emergency preamble,— was laid before the Senate; and, a separate vote being taken in accordance with the requirements of Article LXVII of the Amendments to the Constitution, the preamble was adopted in concurrence, by a vote of 3 to 0.

The bill was signed by the Acting President (Mr. Richard T. Moore) and sent to the House for enactment.

A Bill providing for the transfer of certain state real property to the town of Hopkinton (see House, No. 4350,— on House, No. 3882),— was read.

There being no objection, the rules were suspended, on motion of Mr. Baddour, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.

##### Engrossed Bills—Land Takings for Conservation Etc.

An engrossed Bill authorizing the Division of Capital Asset Management and Maintenance to convey, lease and grant easements with respect to certain land in the town of Uxbridge (see House, No. 4300,

amended) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage,— was put upon its final passage; and, this being a bill providing for the taking of land or other easements used for conservation purposes, etc., as defined by Article XCVII of the Amendments to the Constitution, the question on passing it to be enacted was determined by a call of the yeas and nays, at twenty-one minutes past eleven o'clock P.M., as follows, to wit (yeas 37 — nays 0) [Yeas and Nays No. 178]:

## YEAS.

Baddour, Steven A. McGee, Thomas M.  
 Berry, Frederick E. Menard, Joan M.  
 Brewer, Stephen M. Montigny, Mark C.  
 Brown, Scott P. Moore, Michael O.  
 Candaras, Gale D. Moore, Richard T.  
 Chandler, Harriette L. Morrissey, Michael W.  
 Chang-Diaz, Sonia O'Leary, Robert A.  
 Creem, Cynthia Stone Pacheco, Marc R.  
 Donnelly, Kenneth J. Panagiotakos, Steven C.  
 Downing, Benjamin B. Petrucci, Anthony  
 Eldridge, James B. Rosenberg, Stanley C.  
 Flanagan, Jennifer L. Spilka, Karen E.  
 Galluccio, Anthony D. Tarr, Bruce E.  
 Hart, John A., Jr. Timilty, James E.  
 Hedlund, Robert L. Tisei, Richard R.  
 Jehlen, Patricia D. Tolman, Steven A.  
 Joyce, Brian A. Tucker, Susan C.  
 Kennedy, Thomas P. Walsh, Marian — 37.  
 Knapik, Michael R.

NAYS — 0.

ABSENT OR NOT VOTING.

Buoniconti, Stephen J. Fargo, Susan C. — 2.

The yeas and nays having been completed at twenty-seven minutes past eleven o'clock P.M., the bill was passed to be enacted, two thirds of the members present having agreed to pass the same, and it was signed by the Acting President (Mr. Richard T. Moore) and laid before the Governor for his approbation.

An engrossed Bill authorizing the Division of Capital Asset Management and Maintenance to transfer an easement in certain land in the town of Natick to Michael Audette (see House, No. 4349) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage,— was put upon its final passage; and, this being a bill providing for the taking of land or other easements used for conservation purposes, etc., as defined by Article XCVII of the Amendments to the Constitution, the question on passing it to be enacted was determined by a call of the yeas and nays, at twenty-eight minutes past eleven o'clock P.M., as follows, to wit (yeas 38 — nays 0) [Yeas and Nays No. 179]:

## YEAS.

Baddour, Steven A. Knapik, Michael R.  
 Berry, Frederick E. McGee, Thomas M.  
 Brewer, Stephen M. Menard, Joan M.  
 Brown, Scott P. Montigny, Mark C.

Buoniconti, Stephen J. Moore, Michael O.  
 Candaras, Gale D. Moore, Richard T.  
 Chandler, Harriette L. Morrissey, Michael W.  
 Chang-Diaz, Sonia O'Leary, Robert A.  
 Creem, Cynthia Stone Pacheco, Marc R.  
 Donnelly, Kenneth J. Panagiotakos, Steven C.  
 Downing, Benjamin B. Petruccelli, Anthony  
 Eldridge, James B. Rosenberg, Stanley C.  
 Flanagan, Jennifer L. Spilka, Karen E.  
 Galluccio, Anthony D. Tarr, Bruce E.  
 Hart, John A., Jr. Timilty, James E.  
 Hedlund, Robert L. Tisei, Richard R.  
 Jehlen, Patricia D. Tolman, Steven A.  
 Joyce, Brian A. Tucker, Susan C.  
 Kennedy, Thomas P. Walsh, Marian — 38.

NAYS — 0.

ABSENT OR NOT VOTING.

Fargo, Susan C. — 1.

The yeas and nays having been completed at a half past eleven o'clock P.M., the bill was passed to be enacted, two-thirds of the members present having agreed to pass the same, and it was signed by the Acting President (Mr. Richard T. Moore) and laid before the Governor for his approbation.

An engrossed Bill relative to the leasing of certain parcels of land in the city of Boston (see House, No. 4356) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage,— was put upon its final passage; and, this being a bill providing for the taking of land or other easements used for conservation purposes, etc., as defined by Article XCVII of the Amendments to the Constitution, the question on passing it to be enacted was determined by a call of the yeas and nays, at twenty-nine minutes before twelve o'clock midnight., as follows, to wit (yeas 38 — nays 0) [Yeas and Nays No. 180]:

YEAS.

Baddour, Steven A. Knapik, Michael R.  
 Berry, Frederick E. McGee, Thomas M.  
 Brewer, Stephen M. Menard, Joan M.  
 Brown, Scott P. Montigny, Mark C.  
 Buoniconti, Stephen J. Moore, Michael O.  
 Candaras, Gale D. Moore, Richard T.  
 Chandler, Harriette L. Morrissey, Michael W.  
 Chang-Diaz, Sonia O'Leary, Robert A.  
 Creem, Cynthia Stone Pacheco, Marc R.  
 Donnelly, Kenneth J. Panagiotakos, Steven C.  
 Downing, Benjamin B. Petruccelli, Anthony  
 Eldridge, James B. Rosenberg, Stanley C.  
 Flanagan, Jennifer L. Spilka, Karen E.  
 Galluccio, Anthony D. Tarr, Bruce E.  
 Hart, John A., Jr. Timilty, James E.  
 Hedlund, Robert L. Tisei, Richard R.  
 Jehlen, Patricia D. Tolman, Steven A.  
 Joyce, Brian A. Tucker, Susan C.



Kennedy, Thomas P. Walsh, Marian — 38.

NAYS — 0.

ABSENT OR NOT VOTING.

Fargo, Susan C. — 1.

The yeas and nays having been completed at twenty-six minutes before twelve o'clock midnight, the bill was passed to be enacted, two-thirds of the members present having agreed to pass the same, and it was signed by the Acting President (Mr. Richard T. Moore) and laid before the Governor for his approbation.

An engrossed Bill authorizing the conveyance of certain parcels of land in the town of Sharon (see House, No. 4357) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage,— was put upon its final passage; and, this being a bill providing for the taking of land or other easements used for conservation purposes, etc., as defined by Article XCVII of the Amendments to the Constitution, the question on passing it to be enacted was determined by a call of the yeas and nays, at twenty-five minutes before twelve o'clock midnight, as follows, to wit (yeas 38 — nays 0) [Yeas and Nays No. 181]:

YEAS.

Baddour, Steven A. Donnelly, Kenneth J.  
 Berry, Frederick E. Downing, Benjamin B.  
 Brewer, Stephen M. Eldridge, James B.  
 Brown, Scott P. Flanagan, Jennifer L.  
 Buoniconti, Stephen J. Galluccio, Anthony D.  
 Candaras, Gale D. Hart, John A., Jr.  
 Chandler, Harriette L. Hedlund, Robert L.  
 Chang-Diaz, Sonia Jehlen, Patricia D.  
 Creem, Cynthia Stone Joyce, Brian A.  
 Kennedy, Thomas P. Panagiotakos, Steven C.  
 Knapik, Michael R. Petrucci, Anthony  
 McGee, Thomas M. Rosenberg, Stanley C.  
 Menard, Joan M. Spilka, Karen E.  
 Montigny, Mark C. Tarr, Bruce E.  
 Moore, Michael O. Timilty, James E.  
 Moore, Richard T. Tisei, Richard R.  
 Morrissey, Michael W. Tolman, Steven A.  
 O'Leary, Robert A. Tucker, Susan C.  
 Pacheco, Marc R. Walsh, Marian — 38.

NAYS — 0.

ABSENT OR NOT VOTING.

Fargo, Susan C. — 1.

The yeas and nays having been completed at twenty-three minutes before twelve o'clock midnight, the bill was passed to be enacted, two-thirds of the members present having agreed to pass the same, and it was signed by the Acting President (Mr. Richard T. Moore) and laid before the Governor for his approbation.

An engrossed Bill relative to a conveyance of land in the town of East Longmeadow (see House, No. 610) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly

prepared for final passage,— was put upon its final passage; and, this being a bill providing for the taking of land or other easements used for conservation purposes, etc., as defined by Article XCVII of the Amendments to the Constitution, the question on passing it to be enacted was determined by a call of the yeas and nays, at twenty-two minutes before twelve o'clock midnight, as follows, to wit (yeas 38 — nays 0) [Yeas and Nays No. 182]:

## YEAS.

Baddour, Steven A. Knapik, Michael R.  
 Berry, Frederick E. McGee, Thomas M.  
 Brewer, Stephen M. Menard, Joan M.  
 Brown, Scott P. Montigny, Mark C.  
 Buoniconti, Stephen J. Moore, Michael O.  
 Candaras, Gale D. Moore, Richard T.  
 Chandler, Harriette L. Morrissey, Michael W.  
 Chang-Diaz, Sonia O'Leary, Robert A.  
 Creem, Cynthia Stone Pacheco, Marc R.  
 Donnelly, Kenneth J. Panagiotakos, Steven C.  
 Downing, Benjamin B. Petruccelli, Anthony  
 Eldridge, James B. Rosenberg, Stanley C.  
 Flanagan, Jennifer L. Spilka, Karen E.  
 Galluccio, Anthony D. Tarr, Bruce E.  
 Hart, John A., Jr. Timilty, James E.  
 Hedlund, Robert L. Tisei, Richard R.  
 Jehlen, Patricia D. Tolman, Steven A.  
 Joyce, Brian A. Tucker, Susan C.  
 Kennedy, Thomas P. Walsh, Marian — 38.

NAYS — 0.

ABSENT OR NOT VOTING.

Fargo, Susan C. — 1.

The yeas and nays having been completed at twenty minutes before twelve o'clock midnight, the bill was passed to be enacted, two-thirds of the members present having agreed to pass the same, and it was signed by the Acting President (Mr. Richard T. Moore) and laid before the Governor for his approbation.

An engrossed Bill authorizing the Rose Fitzgerald Kennedy Greenway Conservancy, Inc. to lease certain property to the National Park Service (see House, No. 4347, amended) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage,— was put upon its final passage; and, this being a bill providing for the taking of land or other easements used for conservation purposes, etc., as defined by Article XCVII of the Amendments to the Constitution, the question on passing it to be enacted was determined by a call of the yeas and nays, at nineteen minutes before twelve o'clock midnight, as follows, to wit (yeas 38 — nays 0) [Yeas and Nays No. 183]:

## YEAS.

Baddour, Steven A. Knapik, Michael R.  
 Berry, Frederick E. McGee, Thomas M.  
 Brewer, Stephen M. Menard, Joan M.  
 Brown, Scott P. Montigny, Mark C.  
 Buoniconti, Stephen J. Moore, Michael O.

Candaras, Gale D. Moore, Richard T.  
 Chandler, Harriette L. Morrissey, Michael W.  
 Chang-Diaz, Sonia O'Leary, Robert A.  
 Creem, Cynthia Stone Pacheco, Marc R.  
 Donnelly, Kenneth J. Panagiotakos, Steven C.  
 Downing, Benjamin B. Petruccelli, Anthony  
 Eldridge, James B. Rosenberg, Stanley C.  
 Flanagan, Jennifer L. Spilka, Karen E.  
 Galluccio, Anthony D. Tarr, Bruce E.  
 Hart, John A., Jr. Timilty, James E.  
 Hedlund, Robert L. Tisei, Richard R.  
 Jehlen, Patricia D. Tolman, Steven A.  
 Joyce, Brian A. Tucker, Susan C.  
 Kennedy, Thomas P. Walsh, Marian — 38.

NAYS — 0.

ABSENT OR NOT VOTING.

Fargo, Susan C. — 1.

The yeas and nays having been completed at eighteen minutes before twelve o'clock midnight, the bill was passed to be enacted, two-thirds of the members present having agreed to pass the same, and it was signed by the Acting President (Mr. Richard T. Moore) and laid before the Governor for his approbation.

An engrossed Bill relative to the leasing of the Horseneck Point Lifesaving Station in the town of Westport to the Westport Fishermen's Association (see House, No. 4351) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage,— was put upon its final passage; and, this being a bill providing for the taking of land or other easements used for conservation purposes, etc., as defined by Article XCVII of the Amendments to the Constitution, the question on passing it to be enacted was determined by a call of the yeas and nays, at seventeen minutes before twelve o'clock midnight, as follows, to wit (yeas 38 — nays 0) [Yeas and Nays No. 184]:

YEAS.

Baddour, Steven A. Knapik, Michael R.  
 Berry, Frederick E. McGee, Thomas M.  
 Brewer, Stephen M. Menard, Joan M.  
 Brown, Scott P. Montigny, Mark C.  
 Buoniconti, Stephen J. Moore, Michael O.  
 Candaras, Gale D. Moore, Richard T.  
 Chandler, Harriette L. Morrissey, Michael W.  
 Chang-Diaz, Sonia O'Leary, Robert A.  
 Creem, Cynthia Stone Pacheco, Marc R.  
 Donnelly, Kenneth J. Panagiotakos, Steven C.  
 Downing, Benjamin B. Petruccelli, Anthony  
 Eldridge, James B. Rosenberg, Stanley C.  
 Flanagan, Jennifer L. Spilka, Karen E.  
 Galluccio, Anthony D. Tarr, Bruce E.  
 Hart, John A., Jr. Timilty, James E.  
 Hedlund, Robert L. Tisei, Richard R.  
 Jehlen, Patricia D. Tolman, Steven A.  
 Joyce, Brian A. Tucker, Susan C.

Kennedy, Thomas P. Walsh, Marian — 38.

NAYS — 0.

ABSENT OR NOT VOTING.

Fargo, Susan C. — 1.

The yeas and nays having been completed at fourteen minutes before twelve o'clock midnight, the bill was passed to be enacted, two-thirds of the members present having agreed to pass the same, and it was signed by the Acting President (Mr. Richard T. Moore) and laid before the Governor for his approbation.

An engrossed Bill providing for the transfer of certain state real property to the town of Hopkinton (see House, No. 4350) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage,— was put upon its final passage; and, this being a bill providing for the taking of land or other easements used for conservation purposes, etc., as defined by Article XCVII of the Amendments to the Constitution, the question on passing it to be enacted was determined by a call of the yeas and nays, at thirteen minutes before twelve o'clock midnight, as follows, to wit (yeas 38 — nays 0) [Yeas and Nays No. 185]:

YEAS.

Baddour, Steven A. Knapik, Michael R.  
 Berry, Frederick E. McGee, Thomas M.  
 Brewer, Stephen M. Menard, Joan M.  
 Brown, Scott P. Montigny, Mark C.  
 Buoniconti, Stephen J. Moore, Michael O.  
 Candaras, Gale D. Moore, Richard T.  
 Chandler, Harriette L. Morrissey, Michael W.  
 Chang-Diaz, Sonia O'Leary, Robert A.  
 Creem, Cynthia Stone Pacheco, Marc R.  
 Donnelly, Kenneth J. Panagiotakos, Steven C.  
 Downing, Benjamin B. Petruccelli, Anthony  
 Eldridge, James B. Rosenberg, Stanley C.  
 Flanagan, Jennifer L. Spilka, Karen E.  
 Galluccio, Anthony D. Tarr, Bruce E.  
 Hart, John A., Jr. Timilty, James E.  
 Hedlund, Robert L. Tisei, Richard R.  
 Jehlen, Patricia D. Tolman, Steven A.  
 Joyce, Brian A. Tucker, Susan C.  
 Kennedy, Thomas P. Walsh, Marian — 38.

NAYS — 0.

ABSENT OR NOT VOTING.

Fargo, Susan C. — 1.

The yeas and nays having been completed at eleven minutes before twelve o'clock midnight, the bill was passed to be enacted, two-thirds of the members present having agreed to pass the same, and it was signed by the Acting President (Mr. Richard T. Moore) and laid before the Governor for his approbation.

Moment of Silence.

The President in the Chair, at the request of the President, the members, guests and employees stood in a

moment of silence and reflection to the memory of Army Specialist Benjamin Sherman.

Order Adopted.

On motion of Mr. Panagiotakos,—

Ordered, That when the Senate adjourns today, it adjourn to meet again tomorrow at a half past one o'clock P.M., and that the Clerk be directed to dispense with the printing of a calendar.

Adjournment in Memory of United States Army Specialist Benjamin Sherman.

The Senator from Plymouth and Barnstable, Ms. Murray, requested that when the Senate adjourns today, it adjourn in memory of United States Army Specialist Benjamin Sherman.

Army Specialist Benjamin William Sherman, a 21 year old from Plymouth, died November 4th, 2009. He was a member of the 4th Brigade Combat Team, 82nd Airborne Division that was carrying out a routine resupply mission in the Bala Barghab area of Badghis in western Afghanistan. He and a fellow soldier attempted to retrieve airdropped supplies from a river when they were swept away. Benjamin was missing until his body was found on November 10, 2009.

Army Specialist Sherman's family believes that he jumped in the water to try and save his fellow soldier. As his sister explained, "I know the day that he jumped into the river to try and save his comrade is not because he saw another soldier in the water, but because he saw his brother." Benjamin was known for doing whatever he could for someone in need.

He lived his life striving to help all those around him. Benjamin graduated from Plymouth South High School in Plymouth in 2006, and returned to his high school in his Army paratrooper uniform to speak with students about the importance of school. School officials described him as always trying to give back to those around him.

He is the second graduate of Plymouth South High School to have died tragically in the Middle East.

Marine Lance Corporal Jeffrey Burgess, a 2001 graduate, was killed five years ago in Iraq.

Benjamin showed a strong devotion to his country and family, calling his family members regularly from Afghanistan. He was an avid sports fan, and followed baseball, football and basketball. He loved taking time on the weekend to play golf.

Army Specialist Sherman is survived by his wife, his parents and sister, and countless family and friends. Benjamin's wife Patricia is expecting a baby in March. Benjamin was an honorable young man who gave all of himself to others. As his wife described him, "he gave the world his all."

Our hearts and prayers are with Benjamin's family, and all the mothers, fathers and spouses in the Commonwealth who have had to bear such grief over the duration of this war.

Accordingly, as a mark of respect to the memory of U.S. Army Specialist Benjamin Sherman, at nine minutes before twelve o'clock midnight, on motion of Mr. Brewer, the Senate adjourned to meet again tomorrow at a half past one o'clock P.M.