

GLOSSARY OF MASSACHUSETTS SENTENCING TERMS

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Incorporates 2018 Criminal Justice Reform Legislation

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A GLOSSARY OF SENTENCING TERMS

Absorbed- When a concurrent sentence begins and ends within the term of another sentence and thus, makes no difference in the aggregate length of the prisoner's term of incarceration, it is said to be "absorbed" in the other sentence. *Carlino v. Commissioner of Correction*, 355 Mass. 159 (1969).

Addiction Specialist- For the purpose of a pre-disposition determination that a person may be drug dependent and potentially eligible for treatment pursuant to the provisions of M.G.L. c. 111E, the Criminal Justice Reform Bill of 2018 expanded the definition of who may perform an examination and report to include:

a licensed physician who specializes in the practice of psychiatry or addiction medicine, licensed psychologist, a licensed independent social worker, licensed mental health counselor, licensed psychiatric clinical nurse specialist, licensed alcohol and drug counselor I, as defined in section 1 of chapter 111J, or any other professional considered qualified by the department to evaluate whether an individual is a drug dependent person. M.G.L. c. 111 E §1.

Admission To Sufficient Facts- Where a defendant admits that the Commonwealth has sufficient evidence to obtain a conviction should the criminal case go to trial. By making an admission, the defendant consequently accepts a sanction from the court. *Ludwig v. Commonwealth of Massachusetts*, 427 U.S. 618 (1976), *Commonwealth v. Mahadeo*, 397 Mass. 314 (1986). While the defendant is not admitting guilt, the admission generally has the same practical effect as a conviction including for example, immigration consequences. *Commonwealth v. Villalobos*, 437 Mass. 797, (2002). As in a guilty plea, the court must conduct a colloquy to determine whether the defendant's admission and consequent waiver of certain rights was done knowingly and willingly. *Commonwealth v. Correa*, 43 Mass. App. Ct. 714 (1997), *Commonwealth v. Duquette*, 386 Mass. 834, 838 (1982), *Commonwealth v. Lewis*, 399 Mass. 761, 763 (1987), Rule 12, Massachusetts Rules of Criminal Procedure.

Aggravating Circumstances- The current version of sentencing guidelines list the following as aggravating circumstances for the purpose of imposing a criminal sanction:

1. The victim was especially vulnerable due to age or physical or mental disability,
2. The victim was treated with particular cruelty,
3. The defendant used position or status to facilitate commission of the offense, such as a position of trust, confidence or fiduciary relationship,
4. The defendant was a leader in the commission of an offense involving two or more criminal actors,
5. The defendant committed the offense while on probation, on parole, or during escape,
6. The defendant has committed repeated offenses against the same victim, and
7. The defendant's criminal history category understates the seriousness of the defendant's prior record. New Guidelines at p. 34.

The New Guidelines can be found at:

<https://www.mass.gov/files/documents/2018/07/10/Final%20Advisory%20Sentencing%2>

0Guidelines%2020180621.pdf .

Aggregation- When a person has a sentence to be served either concurrently or consecutively with a prior sentence, aggregation means determining the total length of the combined sentences. *Carlino v. Commissioner of Correction*, 355 Mass. 159, 161 (1969), *Diafario v. Commissioner of Correction*, 371 Mass. 545 (1976). The aggregate sentence is the basis for calculating parole eligibility in most cases. (see *Henschel*.) Additionally, aggregated sentences may be subject to good time earned during a different concurrent or consecutive sentence, which is one of the aggregated sentences.

Anchor Sentence- The earliest effective sentence in a series of aggregated sentences where other sentences are imposed either concurrently or consecutively with that sentence. *Commonwealth v. Walters*, 497 Mass. 277 (2018), *In re: Walcott*, 32 Mass. App. Ct. 473 (1992), *Gardner v. Commissioner of Correction*, 56 Mass. App. Ct. 31 (2002), *Commonwealth v. Bocchino*, 82 Mass. App. Ct. 1112 (2012).

“*And a day*”- See “*X to X and day*,” *Sentence*, and *State Prison sentence*.

Armed Career Criminal- An enhancement to sentencing for persons convicted of firearms offenses with prior convictions for violent or “serious drug” offenses. The “Armed Career Criminal” statute, M.G.L. c. 269 §10G, provides for longer mandatory sentences depending on the number of prior offenses. As an enhancement, it affects the sentence imposed for the accompanying offense but does not give rise to a separate sentence. *Commonwealth v. Sylvia*, 89 Mass. App. Ct. 279 (2016). Note a finding of delinquency under the *Youthful Offender Law* (see below) is not a “conviction” for the purposes of this statute and cannot serve as a predicate offense for applying this sentencing enhancement, *Commonwealth v. Anderson*, 461 Mass. 616 (2012), unless the weapon used is inherently deadly, *Commonwealth v. Rezendes*, 88 Mass. App. Ct. 369 (2015), **however, a delinquency adjudication for a violent offense may serve as a predicate offense for this sentencing enhancement. *Commonwealth v. Baez*, 480 Mass. 328 (2018).**

B.O.P.- “Board of Probation Report.” See *C.A.R.I.*

Banking- Where a defendant seeks to have time spent awaiting disposition in custody for a charge for which he or she did not receive committed time applied toward a sentence for a subsequently committed offense. These credits would otherwise be “dead time.” This practice is prohibited because it could possibly make a defendant immune from a future sentence if these “banked” credits were applied. *Commonwealth v. Milton*, 427 Mass. 18 (1998). See also *Commonwealth v. Holmes*, 469 Mass. 1010 (2014).

Best Practices- In 2014, Supreme Judicial Court Chief Justice Ralph Gants asked the administration of the trial court departments that have jurisdiction over criminal cases to convene working groups to develop Best Practices Guides for each court. These can be found at <https://www.mass.gov/service-details/sentencing-best-practices>. The website

says the intent is to “incorporate best practices to ensure individualized, evidence-based sentences.”

Boost Time- See *Earned Work Credits*.

Bracelet- Colloquial term for electronic monitoring. Also, the device that the person on electronic monitoring typically must wear. See also *GPS Bracelet*.

C.A.R.I. – The abbreviation for “Court Activity Record Information.” CARI, also known as the B.O.P. (“*Board of Probation Report*”) is a printout of the history of a person’s court appearances and dispositions in criminal cases. It is often incorrectly called the person’s C.O.R.I. (see below) or “criminal record.” Because it is a log of all criminal court appearances, it includes listings of cases that were dismissed or otherwise did not result in convictions. Therefore it differs from a person’s actual criminal record.

C.O.R.I. – 1. The body of laws that govern the access to Criminal Offender Record Information to persons who have a history of involvement in the criminal justice process, law enforcement and other agencies, victims, witnesses, members of the general public and others. 2. “[R]ecords and data in any communicable form compiled by a criminal justice agency which concern an identifiable individual and relate to the nature or disposition of a criminal charge, an arrest, a pre-trial proceeding, other judicial proceedings, sentencing, incarceration, rehabilitation, or release.” M.G.L. c. 6 §167. 3. The document detailing a person’s criminal history. 4. When a person who is incarcerated or on parole or probation is subject to a notification request from a certified victim or witness.

Capias- A type of warrant or writ, which upon service, requires the official making service to take the named person into custody to be brought immediately, or at the first opportunity, before the issuing court. *Roseman v. Korb*, 311 Mass. 75 (1942).

Cedar Junction Sentence- see *State Prison sentence*.

Colloquy- A formal dialog, often between a judge and a party. In criminal practice, when a defendant pleads guilty or admits to sufficient facts, a colloquy is an on-the-record discussion between the judge and the defendant where the judge asks a series of questions to determine and ensure that the defendant’s acceptance of a sanction and consequent waiver of rights is made knowingly and voluntarily. *Ciummei v. Commonwealth*, 378 Mass. 504 (1979). “[A] colloquy is to be conducted ‘contemporaneously with and before accepting any waiver’ of the right to trial by jury” *Commonwealth v. Hardy*, 427 Mass. 379, 381, (1998), quoting from *Commonwealth v. Abreu*, 391 Mass. 777, 778, (1984).” *Commonwealth v. Mendonca*, 50 Mass. App. Ct. 684, 690 n.14, (2001). An inadequate colloquy can result in a guilty finding being vacated. *Commonwealth v. Abreu*, supra.

Combination Sentence- A sentence that includes commitment of a *youthful offender* (see below) to the Department Of Youth Services until age twenty-one with a suspended sentence to an adult correctional facility with concurrent probation supervision. Should

the youthful offender violate the terms of probation, the adult sentence may be imposed. Note that even though the probation supervision is concurrent, upon a probation violation, a judge has discretion to impose both a DYS commitment until age 21 and an adult sentence which is concurrent or consecutive to the DYS commitment. *Commonwealth v. Lucret*, 58 Mass. App. Ct. 624 (2003). If the youthful offender is committed to an adult facility and has not yet attained the age of eighteen, he or she must be housed in a separate Youthful Offender Unit. See M.G.L. c. 119 §58. As a practical matter, this generally means commitment to the juvenile unit at the Plymouth County Correctional Facility.

Community-Based Restorative Justice Program- “A voluntary program established on restorative justice principles that engages parties to a crime or members of the community in order to develop a plan of repair that addresses the needs of the parties and the community. Programs may include the parties to a case, their supporters and community members or 1-on-1 dialogues between a victim and an offender.” M.G.L. c. 278B §1.

Community Corrections- An office within the office of the Commissioner of Probation, which is funded to operate community corrections centers jointly with the Department of Correction and the county sheriffs. These centers operate in most counties. They provide supervision, drug testing, treatment and employment services to their clients. Clients come from mandates by courts as conditions of probation, by the Parole Board as a condition of parole, or through the classification process in correctional facilities. See M.G.L. c. 211F §1, *et al.*, *Commonwealth v. Donohue*, 452 Mass. 256 (2008).

Community Parole Supervision For Life- See *Lifetime Community Parole*.

Community Work Program- A program at county correctional facilities established pursuant to M.G.L. c. 127 §49C where prisoners participate in programs to provide services to municipalities in the county. This includes such activities as roadside trash collection and painting and rehabilitating municipal buildings. Participants in the program receive earned work credit deductions from sentence pursuant to M.G.L. c. 127 §129D.

Compassionate Release- See *Medical Parole*.

Completion Credits- Effective January 13, 2019, the *Council Of State Governments Bill of 2018* establishes a system where the Commissioner of Correction ‘may...grant up to 80 days of completion credits to a prisoner serving a sentence to the state prison for successful completion of a program or activity, as designated by the commissioner, to be granted in the month during which successful completion of the designated program or activity is achieved...’ M.G.L. c. 127 §129D(c). These credits, along with traditional earned work credits, reduce the discharge date for a prisoner who successfully finishes their sentence while on parole. For those who continue to serve their sentence in custody, these credits are added to traditional earned work credits to calculate a “*Release To Supervision Date*.” On this date, if a person has an approved Parole Plan and has earned

at least 30 days of Completion Credits, they are to be released to Mandatory Parole Supervision until their Wrap-Up date.

Compliance Credits (Parole)- Effective January 13, 2019, the *Council Of State Governments Bill of 2018* establishes a system where the Parole Board can award up to 15 days per month of deductions from time owed on parole for successful performance by a parolee while under supervision. M.G.L. c. 127 §130(a). These credits can be rescinded upon a violation “of the terms and conditions of parole.” The Parole Board is required to promulgate regulations governing this process. M.G.L. c. 127 §130(b). The award or rescission of these credits is not subject to judicial review, M.G.L. c. 127 §130(c), does not apply to people serving life sentences, M.G.L. c. 127 §130(d), and does not apply to a prisoner who receives a mandatory parole on or after their “*Release to Supervision Date*” pursuant to M.G.L. c. §130B, M.G.L. c. 127 §130(e).

Compliance Credits (Probation)- Effective January 13, 2019, the *Council Of State Governments Bill of 2018* establishes a system where those who are on probation supervision following a period of incarceration can receive *Compliance Credits*. These are defined as “credits that an eligible offender earns through compliance with court-ordered terms of post-disposition probation supervision; provided, however, that such credits shall operate to reduce the length of post-disposition probation supervision.” M.G.L. c. 276 §87B(a). Eligible offenders include those

whose sentence includes incarceration followed by a term of probation supervision upon conviction of one or more criminal offenses who has been released to probation after serving the incarcerated sentence or incarcerated portion of the sentence, except any such person who is under post-disposition supervision for a sex offense as defined in section 178C of chapter 6. *Id.*

A person can start earning these credits on the first day of the first calendar month following one year of probation supervision. For the period between the first and second year of supervision, the probationer may earn five days per month and from the second year onward, ten days per month. M.G.L. c. 276 §87B(b). The credits are subject to revocation if the probationer is unsuccessful on probation. The credits are deducted from the date of termination of probation supervision.

Concord Sentence- A sentence to the state reformatory at M.C.I.-Concord. This sentence was eliminated by the *Truth-In-Sentencing Law*. The theory of Concord sentences was that the offender would be sentenced to a long sentence with early parole eligibility. This would result in a long period of accountability on the street while on parole. Advocates of Truth-In-Sentencing believed that this sentence was deceptive because it sounded tough, with its long maximum term, but was actually lenient because of the relatively short parole eligibility date. See *Commonwealth v. Brown*, 47 Mass. App. Ct. 616, 620 (1999), *Commonwealth v. Boyer*, 58 Mass. App. Ct. 662 n. 1 (2003).

Concurrent Sentence- A sentence which runs while an existing sentence or a sentence imposed simultaneously is running. *Commonwealth v. Barber*, 37 Mass.App.Ct. 599, 602 (1994). Concurrent sentences start the day they are imposed unless otherwise specified

(see *Nunc Pro Tunc*) or jail credits are awarded. If there are several concurrent sentences imposed to different correctional facilities, the prisoner is housed in the institution specified on the mittimus for the sentence imposed on the earliest date. M.G.L. c. 279 §8. There is nothing that prevents the imposition of a house of correction sentence concurrent with a state prison sentence. See *Commonwealth v. Parzyck*, 41 Mass. App. Ct. 195 (1996). A court may also impose a Massachusetts sentence concurrent with a federal sentence. *Abrahams v. Commissioner of Correction*, 57 Mass. App. Ct. 861 (2003).

Consecutive Sentence- Most commonly called a “from and after” or “on and after” sentence. A consecutive sentence is specified to start upon termination of a prior sentence or sentences. M.G.L. c. 279 §8A. If a defendant has one or more consecutive sentences, the burden is on the court to specify that a new consecutive sentence is intended to be consecutive to all of the existing sentences. Otherwise there is a presumption that the sentence is only consecutive to the sentence the defendant is currently serving. *Henschel v. Commissioner Of Correction*, 368 Mass. 130 (1975), *Baranow v. Commissioner Of Correction*, 1 Mass. App. Ct. 831 (1975).

Continued Without A Finding- M.G.L. c. 278 § 18 allows a defendant to make “...a dispositional request that a guilty finding not be entered, but rather the case be continued without a finding to a specific date thereupon to be dismissed, such continuance conditioned upon compliance with specific terms and conditions.” This disposition cannot be imposed over the Commonwealth’s objection after a trial. *Commonwealth v. Norrell*, 423 Mass.725 (1996). It can be imposed by the Superior Court along with the Juvenile, District and Boston Municipal Courts after a guilty finding is entered as a result of a guilty plea or admission to sufficient facts, even over the objection of the Commonwealth. *Commonwealth v. Powell*, 453 Mass. 320 (2009).

Conviction- “ ...[A] conviction occurs when there has been a finding of guilty by a jury or a judge at a jury-waived trial, the entry of a formal guilty plea, or an admission to sufficient facts.” *Commonwealth v. Jackson*, 45 Mass. App. Ct. 666, 670 (1998). In the case of a juvenile, a conviction is an adjudication as a “delinquent child” or a “youthful offender.” M.G.L. c. 119 §58. Note a finding of delinquency under the *Youthful Offender Law* (see below) is not a “conviction” and cannot serve as a predicate offense for applying the *Armed Career Criminal* sentencing enhancement, *Commonwealth v. Anderson*, 461 Mass. 616 (2012), unless the weapon used is inherently deadly, *Commonwealth v. Rezendes*, 88 Mass. App. Ct. 369 (2015). For the purpose of a court being able to report a case, a conviction is “...the judgment of the court following a verdict of guilty or confession of guilt, or...a verdict of guilty against the defendant or his confession in open court, without judgment or sentence.” *Commonwealth v. Baldi*, 250 Mass. 528, 536-7 (1925). For use of convictions for impeachment purposes, see M.G.L. c. 233 §21.

Council of State Governments Bill of 2018- Legislation that was passed as a companion to the *Criminal Justice Reform Bill of 2018*. This legislation was formulated based on a study that the *Council of State Governments* conducted at the request of Massachusetts officials in the Executive, Judicial and Legislative branches of Government aimed at

reducing recidivism and costs. For further information see the CSG summary at <https://csgjusticecenter.org/jr/ma/>.

This legislation includes provisions that allow for the awarding of earned work credit deductions off the minimum term of certain minimum mandatory drug offenses to allow for parole eligibility, increase possible earned work credits for those serving state prison sentences, allows for “*Compliance Credits*” for success on parole and probation, establishes the concept of “*Release To Supervision*” for those who don’t complete their state prison sentences successfully on parole status, and establishes a *Pretrial Service Program* to allow for a more extensive system of supervision of defendants awaiting trial in the community.

CORI Reform Bill of 2010- c. 256 of the Acts of 2010. This legislation, aside from making significant reforms regarding the dissemination of access to information regarding a person’s criminal history, mitigated some minimum mandatory drug provisions by allowing increased access to classification and programming, and by giving some offenders serving minimum mandatory house of correction sentences for drug offenses, eligibility for parole.

Crime Bill Of 2012- See “Three Strikes Law.”

Criminal Justice Reform Bill Of 2018- c. 69 of the Acts of 2018. This legislation makes significant changes in many areas of sentencing and in the criminal justice process. The law facilitates an expanded system diversion for juvenile and adult defendants, encourages District Attorneys to establish diversion programs, it allows for expansion of restorative justice programs, expands, it introduces the concept of using an *Addiction Specialist* for the purpose of a pre-disposition determination that a person may be drug dependent and potentially eligible for treatment pursuant to the provisions of M.G.L. c. 111E, to perform evaluations, it requires a court to make written findings before sentencing the *Primary Caretaker* of a child to a term of incarceration, codifies *Brangan v. Commonwealth*, 477 Mass. 691 (2017), requiring courts to consider a Defendant’s financial circumstances when setting bail, eliminates some minimum mandatory sentences for non-opiate drug offenses, substantially reduces the scope of the *School Zone* statute, enhances penalties for offenses involving fentanyl and carfentanil, adds additional offense and sanctions for operating under the influence, expands the list of intoxicating substances, expands the scope of pretrial services including increased resources to provide, supervision, treatment, and compliance tools for defendants, creates stringent requirements and greater oversight of *Restrictive Housing Units* in correctional facilities, sets up a compassionate release process for terminally ill and permanently incapacitated prisoners, discourages imposition of fines and fees on indigent defendants, expands the ability to seal and in some cases expunge criminal records, raises the monetary threshold for certain property-related felonies to \$1200 from \$250, limits situations where the defendant automatically loses their license, regulates conditions of confinement of juveniles, sets up a disqualification where parents and children cannot testify against each other in court unless the matter involves a domestic crime, requires

collection of data and sets up reporting requirements, and requires greater oversight of forensic laboratories.

Criminal Offender Record Information- See *C.O.R.I.*

Crooker- Named for the case, *Crooker v. Massachusetts Parole Board*, 38 Mass. App. Ct. 915 (1995), it is the method that time served on parole is calculated when a defendant is sentenced to one or more sentences imposed consecutively to a prior sentence. Most simply stated, if a person is paroled while serving a sentence that is to be served prior to one or more consecutive sentences, for the time the person is on parole, all subsequent consecutive sentences run *concurrently* with the prior sentence. If the person is returned for having violated parole, the balance of all the sentences reverts to being served consecutively.

CWOF- See *Continued Without A Finding*.

Day- For sentencing purposes, 24 hours, except a full day is credited for part of the first or last day of a period of confinement. See *Commonwealth v. Keniston*, 5 Pick. 420 (1827).

Dead Time- Time served awaiting disposition or interstate rendition which ultimately is not applied to a sentence. *Williams v. Superintendent, Massachusetts Treatment Center* 463 Mass. 627, 630 n. 6 (2012), *Commonwealth v. Milton*, 427 Mass. 18, 21 n. 4 (1998). In the case of pretrial confinement, sentencing judges are advised to avoid the occurrence of “dead time,” *Commonwealth v. Foley*, 17 Mass. App. Ct. 238, 244 (1983), unless the defendant would be “banking” the time (see above) toward a future sentence. *Commonwealth v. Milton, supra*. In the case of interstate rendition, if the defendant causes an undue delay in the rendition process by filing frivolous motions, the time awaiting rendition would not be awarded toward a future sentence in that case and would effectively be “dead time” that is permissible because the defendant caused the delay in the rendition process. *Beauchamp v. Murphy*, 37 F.3d 700, 705 (1st Cir.1994), *Commonwealth v. Barriere*, 46 Mass. App. Ct. 286 (1999), *Gardner v. Commissioner of Correction*, 56 Mass.App.Ct. 31 (2001).

Detainer-

A warrant filed against a person already in custody with the purpose of insuring that he will be available to the authority which has placed the detainer... Such detainers may be placed by various authorities under varying conditions, for example, when an escaped prisoner or a parolee commits a new crime and is imprisoned in another state; or where a man not previously imprisoned commits a series of crimes in different jurisdictions. *Council of State Governments, Suggested State Legislation Program for 1957*, p.74 (1956).

See also *Commonwealth v. Petrozziello*, 22 Mass. App. Ct. 71 (1986), M.G.L. c. 127 §§149, 149A (*Parole Detainers*), M.G.L. c. 276 §§19, 20-20P (*Interstate Rendition*),

M.G.L. c. 276 App. §1-1 (*Interstate Agreement on Detainers*), *District/Municipal Courts Rules for Probation Violation Proceedings Rule 5: Probation Detention Hearings* (2015). For a detainer to issue, a competent authority (typically a judge or magistrate) must make a determination that there is probable cause to believe that a person has committed an act which would require lawful detention of the person. *Gerstein v. Pugh*, 420 U.S. 103, 114, (1975), *Ierardi v. Gunter*, 528 F.2d 929, 930 (1st Cir. 1976). Note that the Supreme Judicial Court has held that state law does not grant court officers authority to arrest and hold someone on a civil federal immigration detainer. *Lunn v. Commonwealth*, 477 Mass. 517 (2017).

Double Dipping- When jail credits are inappropriately applied twice. For examples where the defendant was seeking to have this occur, see *Commonwealth v. Carter*, 10 Mass. App. Ct. 618 (1980), *Commonwealth v. Blaikie*, 21 Mass. App. Ct. 956 (1986), *Commonwealth v. Harvey*, 66 Mass. App. Ct. 297 (2006), *Commonwealth v. Ridge*, 470 Mass. 1024 (2015).

Drug Court- A special session established in a District court to divert criminal defendants with drug addiction issues to intensive substance abuse treatment and strict supervision as conditions of probation. The supervision often includes reporting directly to the judge in the Drug Court session at a given interval for direct monitoring of compliance with conditions of probation. See *Deputy Chief Counsel for the Public Defender Division of the Committee for Public Counsel Services v. Acting First Justice of the Lowell Division of the District Court Department*, 477 Mass. 178, 179-182 (2017).

Early Parole Consideration- Early parole consideration is available to prisoners serving house of correction sentences but only up to 60 days earlier than their normal parole eligibility date. 120 CMR §200.10(1). Prisoners serving state prison sentences post-Truth-In-Sentencing are not normally eligible for early parole consideration. 120 CMR §200.10(2). Recent amendments to Parole Board regulations leave the door open for an inmate to petition to advance their parole eligibility or for the Parole Board to do so on its own. 120 CMR §200.10(3). The standard for advancement of parole eligibility is a "compelling reason." 120 CMR §200.10(1) and §200.10(4). For sentences imposed for offenses which occurred prior to July 1, 1994, see 120 CMR §200.10(2).

Earned Work Credits- Deductions from sentence for participation in education, work, or treatment programs. By statute they are limited to 10 days per month and 5 days per category, M.G.L. c. 127 § 129D. An additional 10 days may be awarded for continuous satisfactory participation in a program. The Department Of Correction calls these additional 10 days, "Boost Time." **Based on the Council Of State Governments Bill of 2018, as of January, 2019, the limitation on Earned Work Credits is increased to 15 days per month and 7 ½ days per category for those serving state prison sentences. See also Completion Credits and Compliance Credits which are additional forms of earned work credits which will be available under the Council Of State Governments Bill. As of January 13, 2019, if "Boost Time" is awarded on a house of correction sentence, the length of continuous participation must be at least six months. That restriction will no longer apply to state prison sentences.**

Effective Date Of Sentence- The date a sentence is deemed to begin. It can be the date of sentencing if no jail credits are awarded or if no other factor exists (such as the sentence being *from and after another sentence*, *nunc pro tunc* to a specified prior date, or the issuance of a *stay of execution of sentence*) which causes the effective date to differ from the date of imposition.

Electronic Monitoring- A system where a defendant or prisoner is required to wear a bracelet and required to stay at their residence during specified times. Should they depart from the immediate area of their residence, an alarm goes off that notifies appropriate officials and causes the person to be appropriately sanctioned upon apprehension. Electronic monitoring is used for probation, pretrial confinement on “house arrest,” or as a classification status as part of a sentence of incarceration. *Commonwealth v. Donohue*, 452 Mass. 256 (2008). See also *Bracelet and GPS*. Note that a person committed to pretrial probation and subject to home confinement on electronic monitoring for a period of time, is not entitled to have that time counted as credit for time served toward any sentence subsequently imposed in that case. *Commonwealth v. Morasse*, 446 Mass. 113 (2006), *Commonwealth v. Cowan*, 422 Mass. 546 (1996). A pretrial detainee classified by the Department Of Correction or a Sheriff to a pretrial electronic monitoring diversion program may receive credit for time served toward a committed sentence imposed for the case they were detained on. M.G.L. c. 127 §20B.

Eligible Offender- A person who is eligible to earn *Probation Completion Credits* as of January 13, 2019. The *Council Of State Governments Bill Of 2018* defines this person as:

an offender whose sentence includes incarceration followed by a term of probation supervision upon conviction of one or more criminal offenses who has been released to probation after serving the incarcerated sentence or incarcerated portion of the sentence, except any such person who is under post-disposition supervision for a sex offense as defined in section 178C of chapter 6. M.G.L. c. 276 § 87B.

End Of Sentence Date- See *Wrap-Up Date*.

Escape- When a prisoner leaves a correctional facility or other appropriately defined custody status without authorization. Statutory provisions which define and punish the crime of escape include: M.G.L. c. 268 §16 (escape from a correctional facility), c. 127 §86F (escape from a work release program), c. 127 §83C (escape from a prison camp), c. 127 §49 (escape from a program outside a correctional facility), and c. 127 §37 (escape from a prison farm). Note that failure to report to a correctional facility at the time set by the court to commence a specified weekly period of confinement for a *Weekend or Special Sentence*, constitutes an escape. *Commonwealth v. Porter*, 87 Mass. App. Ct. 676 (2015).

Evidence-Based Sentencing- The use of a combination of scientific data and individual factors about each offender and offense to formulate a specific, evidence-based sanction and supervision plan for each offender. The proponents of this method of sentencing believe that it most effectively ensures protection of public safety, effective and efficient

use of resources, and reduction of recidivism. See for example, Warren, Roger K., *Evidence-Based Sentencing: The Application of Principles of Evidence-Based Practice to State Sentencing Practice and Policy*, 43 Univ. Of San Francisco Law Review, 585 (2009). See also *Best Practices*.

Extradition- See *Interstate Rendition*.

Felony- An offense that has the possibility of a sentence to the state prison. M.G.L. c. 274 §1.

52A- A criminal defendant transferred to the custody of the Department of Correction who, pursuant M.G.L. c. 276 §52A is eligible for such transfer. The statute allows pretrial detention of criminal defendants in a state correctional facility if they have previously served a state prison sentence. The statute normally requires the consent of the District attorney but courts have ordered eligible detainees to be transferred to alleviate overcrowding in county jails. See *Attorney General v. Sheriff of Suffolk County*, 394 Mass. 624, 626-7 (1985), *Richardson v. Sheriff of Middlesex County*, 407 Mass. 455, 469 (1990), *MacDougall v. Commonwealth*, 447 Mass. 505, 508 (2006).

Filed- See *Guilty, Filed*.

Fine, Sentence For Non-Payment Of- A defendant can be committed for non-payment of a fine. **If so, the fine is “worked off” at the rate of ninety dollars per day. M.G.L. c. 127 §144. For example, a fine of nine hundred dollars could be “worked off” in ten days. The *Criminal Justice Reform Bill of 2018* prohibits such commitment if its payment would cause “substantial financial hardship to the person or their immediate family or dependents.” M.G.L. c. 127 §145(a). Prior to commitment, the court shall conduct a commitment hearing where the defendant has the right to be represented by counsel which shall be appointed without assessment of a fee. M.G.L. c. 127 §145(b). In determining the extent of financial hardship, the court “shall consider the person’s employment status, income, financial resources, living expenses, number of dependents and any special circumstances that may affect a person’s ability to pay.” M.G.L. c. 145 §145(a).**

Forthwith Sentence- Pursuant to M.G.L. c. 279 §27, a person currently serving a house of correction sentence may be sentenced on a felony to the state prison, said sentence to take effect “forthwith, notwithstanding the former sentence.” When Concord sentences still existed prior to enactment of the “Truth-In-Sentencing Law, a court could also sentence forthwith from a Concord sentence. The provision regarding forthwith sentences from Concord sentences was repealed with Truth-In-Sentencing. Forthwith sentences do not “wipe out” parole or probation warrants. The person must be serving a sentence at the time of the imposition of the “forthwith” sentence. *Dale v. Commissioner Of Correction*. 17 Mass. App. Ct. 247 (1983), *App. Denied*, 391 Mass. 1102 (1984).

From And After Sentence- See *Consecutive Sentence*.

From And After Sentence Now Serving- A consecutive sentence which begins at the

termination of the sentence or sentences the defendant is currently serving. If there is no specificity on a mittimus as to how a consecutive sentence is to be served, then it is presumed to be this type of consecutive sentence. *Henschel v. Commissioner Of Correction*, 368 Mass. 130 (1975), *Baranow v. Commissioner Of Correction*, 1 Mass. App. Ct. 831 (1975).

From And After Sentence Now Serving Or To Be Served- A consecutive sentence which begins at the termination of any sentences currently in existence. A judge is obligated to specify that this is the intended sentence or it is presumed to be *From And After Sentence Now Serving*. *Henschel v. Commissioner Of Correction*, 368 Mass. 130 (1975), *Baranow v. Commissioner Of Correction*, 1 Mass. App. Ct. 831 (1975).

Furlough- Temporary release from a correctional facility. As stated in M.G.L. c. 127 §90A, such release is available for the following purposes: “(a) to attend the funeral of a relative; (b) to visit a critically ill relative; (c) to obtain medical, psychiatric, psychological or other social services when adequate services are not available at the facility and cannot be obtained by temporary placement in a hospital under sections one hundred and seventeen, one hundred and seventeen A, and one hundred and eighteen; (d) to contact prospective employers; (e) to secure a suitable residence for use upon release on parole or discharge; (f) for any other reason consistent with the reintegration of a committed offender into the community.” A person who fails to return from a furlough can be charged with escape pursuant to M.G.L. c. 268 §16. *Commonwealth v. Hughes*, 364 Mass. 426, 429-430 (1974).

Gap and Decay- The Massachusetts Sentencing Commission in one of its preparatory documents defines these terms, for the purpose of determination of a person’s criminal history on its Sentencing Guidelines grid as follows: “A gap provision provides that a conviction will not be considered for purposes of determining the criminal history group after a conviction-free period of a defined number of years. A decay provision provides that a conviction of a defined age will not be considered.” See the first paragraph of the document at <http://www.mass.gov/courts/docs/sentencing-commission/gap-and-decay-provisions.pdf> . For the incorporation of *Gap and Decay* concepts into the current Guidelines, see the *New Guidelines* at p. 20. The *New Guidelines* can be found at: <https://www.mass.gov/files/documents/2018/07/10/Final%20Advisory%20Sentencing%20Guidelines%2020180621.pdf> .

Good Conduct Credits- 1. Any deductions available in M.G.L. c. 127 §129, 129A, C, D. This includes “Statutory Good Time,” “Blood Donation Credits,” (no longer available), Prison Camp Credits, *Earned Work Credits* and as of January 13, 2019, based on the *Council Of State Governments Bill of 2018, Completion Credits and Compliance Credits*. See *Lydon v. Sheriff of Plymouth County*, 393 Mass. 1002 (1984). Also known as “*Good Time*.” 2. See *Statutory Good Time*.

Good Conduct Discharge Date- See *Wrap-Up Date*.

Good Time- See *Good Conduct Credits*.

Governing Sentence- When a prisoner has a series of concurrent and/or consecutive sentences, the “Governing Sentence” is the one which ends the latest and has the prisoner’s ultimate *Wrap-Up Date*.

GPS Bracelet- GPS stands for “Global Positioning System.” It is a means of using satellite technology to track the exact location of a person at a given time. Bracelets with this technology are being used to track some sex offenders including those on probation, defendants awaiting trial, and persons who are classified to pre-release or “day reporting” programs. *Commonwealth v. Donohue*, 452 Mass. 256 (2008). **Note that the SJC held that a statutory mandate of electronic monitoring as a condition of probation is unconstitutional and that a determination of the propriety of that condition must be based on an individual assessment of the case. *Commonwealth v. Feliz*, 481 Mass. 689 (2019).**

Guilty, Filed- A case can be placed on file without a sentence being imposed. *Commonwealth v. Dowdican’s Bail*, 115 Mass. 133, 136 (1874). The defendant’s consent is required. *Commonwealth v. Delgado*, 367 Mass. 432, 438 (1975). The case can be brought forward for sentencing in the future at the discretion of the court, *Marks v. Wentworth*, 199 Mass. 44, 45 (1908), *Commonwealth v. Simmons*, 448 Mass. 687 (2007).

To further clarify the procedures for filing and imposing a sentence on a formerly filed case, the Supreme Judicial Court promulgated Rule 28(e) of the Massachusetts Rules of Criminal Procedure. The rule requires consent from both the Commonwealth and in writing from the Defendant for a case to be filed. Additionally, with the consent of the parties, the court may set a time limit beyond which the case cannot be removed from the file and may specify events which would trigger such removal (also requiring written consent from the Defendant).

Additional provisions of the rule allow the Defendant to request to be sentenced on the case at any time, allow that consistent with *Simmons, supra*, if a conviction or sentence in one of the cases disposed of together with the filed case is overturned, the Defendant can be sentenced on the filed case, and allow the Commonwealth to bring the case forward for sentencing upon proving by a preponderance of the evidence that the Defendant was convicted of a new offense or an event occurred which would allow the filed case to be brought forward consistent with conditions previously set by the court for doing so.

If the court imposes a sentence after a filed case is brought forward, the court should take into consideration any previous sentences imposed in companion cases that were disposed of together with the case that was placed on file.

Gun Court- A special session established in a District court for the purpose of trying cases involving the use of firearms. The intent of these sessions is to more efficiently try these types of cases through priority scheduling and more efficient use of expert witnesses and scientific resources.

Habe- Slang for *Writ Of Habeas Corpus*. Most commonly, the term applies to two types

of writs, the *Writ Of Habeas Corpus Ad Prosequendum* (a “habe” issued to have a criminal defendant transported to court for the purpose of prosecution), and the *Writ Of Habeas Corpus Ad Subjiciendum* (a “habe” is granted when a defendant successfully challenges the legality of incarceration). The first type of habe has “spawned” the verb, “to habe someone in” (meaning that the court issues the *Writ Of Habeas Corpus Ad Prosequendum*). Note that if a defendant is claiming that he or she should be released due to an error committed by the trial court, the proper procedure is to file a *Motion For Release From Unlawful Restraint* pursuant to Rule 30(a) of the Massachusetts Rules Of Criminal Procedure rather than a *Writ Of Habeas Corpus*. *In re Averett*, 404 Mass. 28 (1989).

Habeas Corpus- See *Habe*.

Habitual Criminal- A “habitual criminal” is defined by M.G.L. c. 279 §25(a) as someone who “has been twice convicted of crime and sentenced and committed to prison in this or another state, or once in this and once or more in another state,” previously served two sentences of not less than three years each, and is convicted of a felony in the current case. The penalty upon conviction and a finding that the person is a habitual criminal, is “imprisonment in the state prison for the maximum term provided by law as a penalty for the felony for which he is then to be sentenced.” M.G.L. c. 279 §25(a). A defendant is entitled to a separate jury trial on a separate indictment alleging that he or she is a habitual criminal. M.G.L. c. 278 §11A., though the same jury that sat on the criminal case can sit on the habitual criminal trial. *Commonwealth v. Thompson*, 427 Mass. 729, (1998), cert. denied 119 S.Ct. 524 (1998). The statute requires that the predicate prior convictions “arise from separate incidents or episodes of criminal behavior.” *Commonwealth v. Garvey*, 477 Mass. 59 (2017). Parole eligibility for habitual criminals is two thirds of the maximum term of sentence. M.G.L. c. 127 §133B.

Habitual Offender- A “habitual offender” (also called a “Three Strikes Offender”) is defined by M.G.L. c. 279 §25(b) as someone who “has been twice convicted of crime and sentenced and committed to prison in this or another state, or once in this and once or more in another state,” previously served two sentences of not less than three years each, and is convicted of a predicate felony (listed in §25(b)) in the current case. A defendant is entitled to a separate jury trial on a separate indictment alleging that he or she is a habitual offender, M.G.L. c. 278 §11A, though the same jury that sat on the criminal case can sit on the habitual offender trial. *Commonwealth v. Thompson*, 427 Mass. 729, (1998), cert. denied 119 S.Ct. 524 (1998). Habitual Offenders are also not eligible for parole, work release, furloughs, or good conduct deductions. See also “*Three Strikes Law*.”

Henschel- Refers to the case *Henschel v. Commissioner Of Correction*, 368 Mass. 130 (1975). In this case, the court held that the formula for calculating parole eligibility when a prisoner has two sentences of different types (such as a state sentence with a consecutive house of correction sentence) is to calculate the parole eligibility periods of the two sentences separately and add them together. This results in one aggregate parole

eligibility. This formula applies to most, but not every situation. Parole Board regulations at 120 CMR § 200.10 list the exceptions. *Henschel* has become a verb and is used as follows: “Do they ‘Henschel’ those two sentences?”

HOPE/MORR – An innovative program involving a particular philosophy of probation supervision for high risk probationers centered on sanctions viewed as swift, sure and fair responses to violations. Hearings for alleged violations are scheduled expeditiously. Sanctions for violations may include immediate imposition of a short period of incarceration. Those involved in the program attribute its success in part, to the judicious use of these sanctions, pointing out that this often obviates the need for more severe punishment down the road. The term “HOPE” stands for “Hawaii’s Opportunity Probation with Enforcement,” giving credit to the state where the program was originated by Hawaii Circuit Court Judge Steve Alm. “MORR” stands for “Massachusetts Offender Recidivism Reduction,” the Massachusetts project which implements the program locally through the trial courts and the Office of the Commissioner of Probation. For a 2009 National Institute of Justice funded evaluation of the Hawaii HOPE program, see <https://www.ncjrs.gov/pdffiles1/nij/grants/229023.pdf> .

House Of Correction- The correctional facility in most counties run by the Sheriff. Most commonly, these facilities house male prisoners serving house of correction sentences, and in many cases, have within them, the county jail where pretrial detainees are held. Suffolk County has its jail in a separate facility (Nashua Street). Female prisoners serving house of correction sentences are either at M.C.I.-Framingham or in some counties, at the house of correction. Hampden County has a facility in Chicopee specifically for female offenders from Western Massachusetts serving House of Correction sentences.

House Of Correction Sentence- A sentence to a county correctional facility. No house of correction sentence can be greater than 2½ years, M.G.L. c. 279 §23, but a prisoner can serve more than 2½ years in the house of correction if the aggregate length of several concurrent or consecutive sentences exceeds 2½ years. Except for a sentence with a mandatory minimum greater than half-time or a sentence with a term of less than sixty days, parole eligibility on a house of correction sentence is half of the maximum. 120 CMR §200.05, 120 CMR 200.04. If there is more than one house of correction sentence and the aggregate maximum term exceeds four years, parole eligibility is capped at 2 years (assuming there are no sentences with mandatory minimums). 120 CMR §200.07(2)(a).

Howard Street- See *Western Massachusetts Recovery and Wellness Center*.

Intermediate Sanctions- A disposition in a criminal case that involves a non-incarceration sanction. This can include any type of probation supervision, day reporting, electronic monitoring, community service, in-patient treatment, outpatient treatment, counseling, education, and vocational training. The prior version of the Sentencing Guidelines included four levels of Intermediate Sanctions: Financial Accountability (paying probation fees, fines, restitution, etc.), Standard Supervision (weekly accounting of whereabouts), Daily Accountability (daily accountability of whereabouts), and 24 Hour Restriction (24 hour accountability). The current guidelines eliminate these gradations.

Ineligible Offender- As of January 13, 2019, the *Council Of State Government Bill of 2018* creates the following category of offenders who are not eligible for deductions from minimum mandatory state prison sentences for the purpose of reducing the minimum sentence to make them eligible for parole:

any person sentenced to a mandatory minimum term of imprisonment in the state prison upon conviction for: (1) violating sections 32, 32F or 32K, or subsection (c) of section 32E; (2) violating section 32A by knowingly or intentionally manufacturing, distributing, dispensing or possessing with intent to manufacture, distribute or dispense a controlled substance defined in clauses (1), (2) or (3) of paragraph (a), or in clause (6) of paragraph (b) of Class B of section 31 or any other offense under this chapter involving the illegal manufacturing, distribution, dispensing or possession with intent to manufacture, distribute or dispense a naturally occurring, synthetic or semi-synthetic opioid; or (3) violating this chapter, upon a finding of any 1 of the following aggravating circumstances: (i) the person used violence or threats of violence or possessed a firearm, rifle, shotgun, machine gun or a weapon described in paragraph (b) of section 10 of chapter 269, or induced another participant to do so, during the commission of the offense; (ii) the person engaged in a course of conduct whereby he directed the activities of another who committed any felony in violation of chapter 94C; or (iii) the offense was committed during the commission or attempted commission of a violation of section 32F or section 32K of chapter 94C. M.G.L. c. 94C §32H½.

Interstate Agreement On Detainers- See “Interstate Rendition.”

Interstate Rendition- A process where a prisoner held in the “sending state” is turned over to the custody of the “receiving state.” The process can be initiated by a sentenced prisoner serving time in the sending state through the Interstate Agreement On Detainers, by the receiving state via the I.A.D. or for a prisoner not being detained pursuant to a sentence, through the Uniform Criminal Rendition Act. Appellate issues have arisen regarding the awarding of jail credit for time served in the sending state awaiting rendition when a sentence is imposed by a court in the receiving state.

Interstate Identification Index – See “Triple-I.”

Intervening Sentence- When a person is on parole and they are arrested and convicted for a new charge, the Parole Board issues a warrant for violation of parole. If the warrant is not served pursuant to M.G.L. c. 127 §149 and the defendant remains continuously in custody awaiting trial in jail or committed after a conviction on the new charge, the sentence imposed on the new charge is called the *intervening sentence* because it interrupts the resumption of service of the sentence from which the defendant was originally paroled. The new sentence is normally served first unless there was a break in custody on the new charge and the defendant is returned to serve the sentence from which the defendant was originally paroled.

It should be noted that pursuant to §149, the sentence on the new offense cannot be imposed concurrently or consecutively to the parole sentence, unless there is a break in custody from either the bail while awaiting trial or the sentence via a stay of execution and the person is therefore remanded to resume serving the sentence they were paroled from. See also *Goetzendanner v. Superintendent, MCI-Norfolk*, 71 Mass. App. Ct. 533 (2008).

Jail- A pretrial detention facility. The term is often used interchangeably with “house of correction” which is a county correctional facility for sentenced persons. Both facilities are operated by county sheriffs and are often physically in the same building (though not in Suffolk County). Persons are committed to jail when they are held awaiting trial either because they could not raise bail or because they are held without bail. Persons held for contempt of court are also committed to a jail. M.G.L. c. 220 §14.

Jail Credits- Time credited toward a sentence for pretrial confinement. Courts are required to award them, M.G.L. c. 279 §33A, and if they have not, they may be credited by correctional facilities. M.G.L. c. 127 §129B . It was previously assumed that that the defendant had to be held on the exact case for which he or she was awaiting trial. The case law now requires that judges not be overly technical in the awarding of jail credits and base the determination on fairness. *Commonwealth v. Carter*, 10 Mass. App. Ct. 618 (1980), *Commonwealth v. Foley*, 17 Mass. App. Ct. 238 (1983). Note that a person committed to pretrial probation and subject to home confinement on electronic monitoring for a period of time, is not entitled to have that time counted as credit for time served toward any sentence subsequently imposed in that case. *Commonwealth v. Morasse*, 446 Mass. 113 (2006), *Commonwealth v. Cowan*, 422 Mass. 546 (1996). A defendant who sought jail credits on a subsequently imposed concurrent sentence, where the credits were already awarded on the previously imposed sentence, was not entitled to credit on the second sentence. *Commonwealth v. Ridge*, 470 Mass. 1024 (2015), but see *Commonwealth v. Lydon*, 477 Mass. 1013 (2017), holding that a court has discretion to impose a sentence *nunc pro tunc* to a previous date which may have the same effect as if jail credits were awarded. See also *Commonwealth v. Barton*, 74 Mass. App. Ct. 912 (2009).

Life Sentence- A sentence that has a maximum term of life. A conviction for first degree murder carries a life sentence with no parole eligibility. M.G.L. c. 265 §2. The sentence of a person convicted of first degree murder for an offense committed after their fourteenth birthday but before their eighteenth birthday shall have maximum term of life and a minimum term with eligibility for parole in accordance with the provisions of M.G.L. c. 279 §24. Sentences for second degree murder shall have a maximum term of life and a minimum term with a parole eligibility fixed by the court of between fifteen and twenty five years. M.G.L. c. 265 §2, M.G.L. c. 279 §24. The same is true for other convictions that have a life sentence imposed as the maximum term. M.G.L. c. 279 §24. In *Diatchenko v. DA*, 466 Mass. 655 (2013), the Supreme Judicial Court held that imposing a sentence of life without parole for someone convicted of first degree murder who was under eighteen years of age at the time the crime was committed, violated the Eight Amendment of the U.S. Constitution and Article 26 of the Massachusetts

Declaration of Rights. The Court ordered that such defendants are retroactively entitled to a parole eligibility date and a parole hearing. Subsequently, in *Diatchenko v. District Attorney for the Suffolk District*, 471 Mass. 12 (2015), the court held that such defendants were entitled to counsel at their parole hearing and to the assistance of an expert to explain the developmental differences between juveniles and adults that could mitigate the juvenile's level of culpability and affect a determination of the juvenile's risk of reoffending compared to that of an adult offender.

Lifetime Community Parole- Also called "community parole supervision for life." See M.G.L. c. 127 § 133D. This was a status where persons convicted of the offenses enumerated in M.G.L. c. 265 §45 (mainly sex offenses) were subject to lifetime parole supervision. See also M.G.L. c. 6 §178H. If parolees violated the terms of this parole and it was a non-criminal matter, they were subject to incarceration for 30 days for the first violation, 180 days for the second, and one year for the third. M.G.L. c. 127 § 133D(c). The Supreme Judicial Court ruled in *Commonwealth v. Coles*, 468 Mass. 294 (2014), that the statutory scheme creating lifetime community parole was unconstitutional because the Parole Board, by imposing the sentences enumerated above, was performing a judicial function which violated the separation of powers provisions found in *Article 30* of the *Massachusetts Declaration of Rights* in the State Constitution. The court invalidated the whole statutory scheme holding that the provisions empowering the Parole Board to sanction were so intertwined with those empowering it to supervise that both provisions had to be declared unconstitutional. *Id.* at 310-312.

Lobby Conference- A meeting between the judge and the parties to discuss an important matter that arises in the course of disposition of a case. In criminal cases, most commonly, it involves the possible imposition of an agreed-upon disposition after a defendant pleads guilty. The use of the word "lobby" implies that the discussion takes place in the judge's lobby.

The propriety of lobby conferences occurring at all was called into question as a result of a now-famous SJC footnote where Justice Abrams stated, "We take this opportunity to remind judges that they are not to participate as active negotiators in plea bargaining discussions." *Commonwealth v. Gordon*, 410 Mass. 498, 501 n. 3 (1991). Anecdotally, this caused some judges to discontinue the practice of facilitating lobby conferences in any case. Reportedly, lobby conferences are virtually non-existent in the Superior Court in the western counties of Massachusetts.

While subsequent case law doesn't seem to impose a complete prohibition on the practice, it clearly discourages active judicial participation in the negotiation part of the plea discussion, *Commonwealth v. Mahar*, 442 Mass. 11, 28 (2004), *Commonwealth v. Hogan*, 426 Mass. 424, 430 (1998), *Commonwealth v. Kelleher*, 28 Mass.App.Ct. 915, 915-916, (1989), *Commonwealth v. Johnson*, 27 Mass.App.Ct. 746, 750 (1989), *Commonwealth v. Damiano*, 14 Mass.App.Ct. 615, 619 n. 7 (1982).

Recent revisions in Rule 12 of the Massachusetts Rules of Criminal Procedure more specifically delineate the accepted role for judges in plea negotiations. Judges may participate in plea discussions if one or more of the parties so request as long as the

discussions are recorded and made part of the record. This is consistent with case law which strongly discouraged the allowance of unrecorded lobby conferences which are not part of the record. *Murphy v. Boston Herald, Inc.*, 449 Mass. 42, 57 n. 15 (2007), *Commonwealth v. Serino*, 436 Mass. 408, 412 n. 2 (2002), *Commonwealth v. Fanelli*, 412 Mass. 497, 501, (1992). A notable provision in Rule 12 provides that if the prosecution and defense present an agreed-upon recommendation for a sentence and there is a charge concession from the Commonwealth, if the judge accepts the plea, he or she is required to impose the sentence that was agreed-upon.

Mandatory Minimum Sentence- See *Minimum Mandatory Sentence*.

Mandatory Sentence- See *Minimum Mandatory Sentence*.

Maximum Date- The date a prisoner serving a sentence would be released if there were no good time deductions awarded. This date is the basis for calculation of the *Wrap-Up Date* (when good time is deducted), *Release To Supervision Date (when Completion Credits are deducted)*, as of January 13, 2019 for *State Prison Sentences*, and the *Parole Eligibility Date* for *House of Correction* and *Habitual Criminal* sentences.

Maximum Term- The length of a sentence as imposed by the court, without any good time deductions. For state prison sentences, it is the greater of the two numbers (the lesser being the minimum term).

Medical Parole- *The Criminal Justice Reform Bill Of 2018* established a process where a prisoner who is terminally ill or permanently incapacitated can be considered for release on Medical Parole. The petition can be filed by “the prisoner, the prisoner’s attorney, the prisoner’s next of kin, a medical provider...or a member of the...staff.” M.G.L. c. 127 § 119A(c)(1) (state prisoner), (c)(2) (county prisoner). In the case of a state prisoner, the petition is submitted to the Superintendent who shall transmit the petition and a recommendation within 21 days to the Commissioner of Correction. In the case of a county prisoner, the petition is submitted to the Sheriff who shall transmit the petition and a recommendation within 21 days to the Commissioner of Correction. The petition shall be accompanied by medical parole plan, a diagnosis by a licensed physician, and a risk assessment for violence. The District Attorney and the victim or victim’s family is also to receive notice. The Commissioner of Correction shall issue a decision no later than 45 days after receiving the petition with a statement of reasons for the decision. The standard for release is that the “prisoner is terminally ill or permanently incapacitated such that if the prisoner is released the prisoner will live and remain at liberty without violating the law and that the release will not be incompatible with the welfare of society.” M.G.L. c. 127 §119A(e). The person shall be supervised by the Parole Board and can be returned to custody “if the board determines that the prisoner violated a condition of the prisoner’s medical parole or that the terminal illness or permanent incapacitation has improved to the extent that the prisoner would no longer be eligible for medical parole.” M.G.L. c.127 §119A(f). A decision granting or denying medical parole can be reviewed by a court via an Action in the Nature of Certiorari pursuant to M.G.L. c. 249 §4.

Mental Health Court- A special session established in a District court to divert criminal defendants with mental health issues to specialized supervision as a condition of probation. Using the Drug Court model, the supervision often includes reporting directly to the judge in the Mental Health Court session at a given interval for direct monitoring of compliance with conditions of probation. See *Theorizing Mental Health Courts*, 89 Wash. U. L. Rev. 519 (2012).

Minimum Mandatory Sentence- Also called a *Mandatory Minimum Sentence*, or *Mandatory Sentence*, is a sentence which has a required minimum length. This type of sentence often has additional restrictions including limits on parole, probation, furlough, good time deductions, sentence reductions, and classification to certain programs. The types of restrictions are varied and it is advised that mandatory sentencing statutes be read carefully.

Minimum Term- The lower number of the two required components of a Cedar Junction Sentence. The other is the *Maximum Term*. The minimum date reduced by earned work credits **and as of January 13, 2019, Completion Credits**, pursuant to M.G.L. c. 129 §129D, is the basis for parole eligibility. M.G.L. c. 127 §133.

Misdemeanor- An offense that has no possibility of a sentence to the state prison. M.G.L. c. 274 §1.

Mitigating Circumstances- The current version of sentencing guidelines list the following as mitigating circumstances for the purpose of imposing a criminal sanction:

1. The defendant was a minor participant in the criminal conduct.
2. The defendant was suffering from a mental or physical condition. that significantly reduced his culpability for the offense.
3. The victim was an initiator, aggressor, or provoker of the offense.
4. The sentence was imposed in accordance with a jointly agreed recommendation.
5. The age of the defendant at the time of the offense.
6. The defendant verifies current involvement in, or successful completion of, a substance abuse or other treatment program that began after the date of the offense.
7. The defendant's criminal history category overstates the seriousness of the defendant's prior record.
8. The defendant's residence in a poor or minority area with deep police penetration causes overstatement of the seriousness of the criminal record.
- 9. The defendant is determined to be the primary caretaker of a dependent child pursuant to G.L. c. 279, § 6B. New Guidelines at p. 57.**

The New Guidelines can be found at:

<https://www.mass.gov/files/documents/2018/07/10/Final%20Advisory%20Sentencing%20Guidelines%2020180621.pdf> .

Note that in the *Criminal Justice Reform Bill of 2018*, in most cases, upon a motion supported by an affidavit filed by the defendant not more than 10 days after entry of a judgment, the court, upon finding that the defendant is the *Primary Caretaker of a*

Dependent Child, is required to take that into consideration is determining a criminal sanction and to make written findings if a sentence of incarceration is to be imposed. M.G.L. c. 297 §6B(b).

Mittimus- The criminal process document that legally obligates a correctional authority to hold a person in custody. It may require a pretrial detainee to be held unless he or she posts bail, or it may require a convicted person to be held by the Department of Correction or a county sheriff to serve a sentence. M.G.L. c. 279 §34, *Commonwealth v. Barriere*, 46 Mass. App. Ct. 286, 289 (1999). The answer to the crucial question, “What is the plural of mittimus?” is “mittimuses.” See M.G.L. c. 279 §8, *Commonwealth v. Locke*, 338 Mass. 682, 690 (1959).

Month- For sentencing purposes, a month is 30 days. M.G.L. c. 4 §7. Thus, a six month sentence has a maximum term of 180 days.

Motion To Revise And Revoke Sentence- A motion filed either by a defendant or a judge pursuant to Rule 29 of the *Massachusetts Rules of Criminal Procedure*. This can result in a modification of a sentence if “the interests of justice were not served by the original sentence.” The motion must be filed within sixty days of a final judgment in the case. It is permissible for a judge to increase as well as decrease a sentence. *Aldoupolis v. Commonwealth*, 386 Mass. 260 (1982). Note that a 2016 amendment permits the Commonwealth to appeal an illegal sentence under this rule. See Rule 29(a)(1) of the *Massachusetts Rules Of Criminal Procedure* (2016). **Note that a judge can revise a sentence post-conviction, if the sentence of a co-defendant was less severe.** *Commonwealth v. Tejada*, 481 Mass. 794 (2019)

NCIC- It stands for the “National Crime Information Center.” This center, under the auspices of the Federal Bureau of Investigation, maintains a database from federal, state, local, and international law enforcement agencies regarding outstanding warrants, records of felonies and serious misdemeanors, and other criminal justice information. Authorized law enforcement personnel can receive an “NCIC” report with this data. For more information, go to the following website maintained by the FBI: <https://fas.org/irp/agency/doj/fbi/is/ncic.htm>. See 28 CFR 20.3(n).

Nunc Pro Tunc-The term “nunc pro tunc” literally means “now for then,” *Black’s Law Dictionary*, (7th Edition 1999). In criminal practice, *nunc pro tunc* refers to making a sentence effective retroactive to a specified date. This is most commonly done when a court is imposing a sentence concurrently with an existing sentence and is ordering the effective date of the concurrent sentence to be prior to the date of imposition (for example, to have the effective date of the concurrent sentence be the same as that of the first sentence). It is also an alternate method of awarding jail credits, *Commonwealth v. Barton*, 74 Mass. App. Ct. 912 (2009), and is the proper method of awarding credit as a matter of discretion, on a concurrent or forthwith sentence for time served on the sentence that was previously in effect when the concurrent or forthwith sentence was

imposed. *Commonwealth v. Lydon*, 477 Mass. 1013 (2017).

Offense Based Tracking Number- “a unique number assigned by a criminal justice agency, as defined in section 167 of chapter 6, for an arrest or charge; provided, however, that any such designation shall conform to the policies of the department of state police and the department of criminal justice information services.” M.G.L. c.4 §7, Sixty-First.

On And After Sentence- See *Consecutive Sentence*.

Order of Custody- See *Probation Detainer*.

Overlap- When a defendant is sentenced to institution “A” on sentence “A” and then he or she receives a concurrent sentence “B” to institution “B” and that sentence has a wrap-up date later than the wrap-up of sentence “A,” the period of time where the defendant is only serving sentence “B” is the overlap. Calculating this date is useful because institution “A” needs to determine when the defendant has finished serving that sentence and needs to be transferred to institution “B.”

Parole- Early release from a correctional facility to continue service of a sentence in the community under the supervision of the Parole Board. If a person makes parole, they must comply with certain conditions. Failure to do so may result in their being returned to the institution to serve the balance of their sentence (see *Parole Revocation*). It is said that while on parole, a person is “serving their sentence on the street” because they are working off the remainder of their sentence “day for day.” The maximum length of sentence minus earned work credits determines the *Parole Discharge Date*.

Parole, Lifetime- See “*Lifetime Community Parole*.”

Parole Board- A seven member board appointed by the Governor and approved by the Governor’s Council that oversees the parole process. This includes conducting parole hearings, formulating policies and procedures, hiring and supervising parole staff, determining parole eligibility for house of correction sentences, and acting on applications for pardons and commutations. Board members serve five-year terms. See M.G.L. c. 27 §§4-5 and c. 127 §130 et al.

Parole Detainer- “A warrant for temporary or permanent custody which authorizes the detention of a parolee pending a preliminary revocation hearing or pending the return of a parole violator to penal custody.” 120 CMR §100, M.G.L. c. 127, §§ 149, 149A. A parolee can be detained for up to fifteen days “if a parole officer has reasonable belief that a parolee has lapsed or is about to lapse into criminal ways; or has associated or is about to associate with criminal company; or that the parolee has violated the conditions of his parole.” 120 CMR §303.04. Generally, a person held on a parole detainer is given a preliminary parole revocation hearing within fifteen days. 120 CMR §303.06. Parolees who are being supervised by Massachusetts for other states who are facing a possible revocation of parole can be held on a detainer for up to sixty days awaiting a hearing (conducted by Massachusetts on behalf of the other state). 120 CMR §303.05.

Parole Discharge Date- The date that supervision of a parolee is terminated. It is the maximum date of sentence minus any good conduct or earned work credit deductions and as of January 13, 2019 for state Prison Sentences, Completion Credits, based on the Council Of State Governments Bill of 2018. See 120 CMR §100(f).

Parole Eligibility Date- The earliest date a person is normally eligible for parole. For house of correction sentences, parole eligibility is usually half of the maximum term of the sentence. 120 CMR §200.05, 120 CMR §200.04. Parole eligibility for state prison sentences is the minimum term minus earned work credits and as of January 13, 2019, Completion Credits, based on the Council Of State Governments Bill of 2018, awarded pursuant to M.G.L. c. 127 §129D. See M.G.L. c. 127 §133.

Parole Rescission- An action taken by the Parole Board subsequent to granting parole, but prior to the person being released on parole, when an adverse event is alleged to have occurred, which causes the Parole Board to reconsider the prior grant of parole. 120 CMR §302.00, et seq. It differs from a *Parole Revocation* which occurs subsequent to the person being released on parole.

Parole Revocation- An action taken by the Parole Board to remove a person from parole status after a finding that there is a reasonable basis to believe that the person has violated a condition of parole. 120 CMR §100.

Pretrial Probation- Pursuant to M.G.L. c. 276 §87, a court may place a defendant under the supervision of the Probation Department with the defendant's consent, before trial or before a guilty plea. In some cases, courts have rewarded success on pretrial probation with a disposition that doesn't involve commitment on a sentence. Note that a court cannot impose pretrial probation as a disposition after an *admission to sufficient facts* (see above). Instead, to achieve virtually the same purpose, the court should *continue the case without a finding* (see above). *Commonwealth v. Sebastian S., et al*, 444 Mass. 306 (2005).

Pretrial Services Program- The Council Of State Governments Bill of 2018 defines it as

any program that is operated by a state, local or private service agency that the office of community corrections has deemed appropriate for a person awaiting trial; provided, however, that pretrial service programs shall be a separate track of programming from community correction programs offered under section 3 of this chapter; provided further, that sanctions under said section 3 shall not be applicable to the pretrial service program track. M.G.L. c. 211F §1.

The legislation allows for this kind of program to be established to allow for the provision of supervision and services for people released on personal recognizance, bail, pretrial probation, or through recommendations provided by Sheriffs and authorized by courts.

Primary caretaker of a dependent child,- "A parent with whom a child has a primary residence." M.G.L. c. 279 §6B(a). In most cases, upon a motion supported by an affidavit

filed by the defendant not more than 10 days after entry of a judgment, the court, upon finding that the defendant is the primary caretaker of a dependent child, is required to take that into consideration in determining a criminal sanction and to make written findings if a sentence of incarceration is to be imposed. M.G.L. c. 297 §6B(b).

Probation- 1. Supervision by a court for a defined period of time. The probationer is required to comply with certain conditions and can be surrendered for non-compliance and committed to serve a formerly suspended sentence. 2. The division of the court that provides such supervision.

Probation Detainer- A criminal process document issued by a court which requires a person to be held in custody awaiting a *probation surrender* hearing. See *District/Municipal Courts Rules for Probation Violation Proceedings Rule 5: Probation Detention Hearings* (2015). It is sometimes referred to as an *Order of Custody*.

Probation Revocation- When a person is found to have violated their probation and a court changes their status, often by imposing a formerly suspended sentence.

Probation Surrender- When a probationer is brought before a court to determine whether or not he or she has violated conditions of probation.

Q5 or "Q5 Inquiry"- "...[A]n inquiry, via computer, to determine if any police department system recorded suicidal attempts or ideation." *McCarthy v. Waltham*, 76 Mass. App. 554, 557 n. 9 (2010). This data is part of the Massachusetts Criminal Justice Information Service database and is compiled from entries made by law enforcement agencies throughout the Commonwealth to alert these agencies to past events that would require sensitivity to the possibility of a future suicide attempt.

Re-entry- The process of transitioning a prisoner from serving time in a correctional facility to living in the community. This may include gradual classification to a lower security status including work release or a day reporting program, release on parole, electronic monitoring, probation and other types of programming. Re-entry usually includes a level of accountability and supervision with rewards for success and penalties for failure. See also *Intermediate Sanctions*.

Reintegration- See *Re-entry*.

Release To Supervision Date- As of January 13, 2019, based on the Council Of State Governments Bill of 2018, for state prison sentences, this is the *Wrap-Up date* minus *Completion Credits*. On this date, if a person has an approved Parole Plan and has earned at least 30 days of *Completion Credits*, they are to be released to Mandatory Parole Supervision until their *Wrap-Up Date*.

Remit- When a court relieves a defendant of the obligation to pay a fine, court costs, victim/witness fees or other financial sanctions. See for example, *Commonwealth v. M'Neill*, 36 Mass. 127 (1837).

Re-probate- When a court at a *Probation Surrender* hearing, orders that a probationer be returned to probation supervision rather than having the probation revoked.

Restitution- Compensation to a crime victim for economic loss, *Commonwealth v. McIntyre*, 436 Mass. 829, 833 (2002), *Commonwealth v. Rotonda*, 434 Mass. 211, 221 (2001). The two purposes of restitution are to make the victim whole and “to make the defendant pay for the damage (which) he or she caused as a punitive and rehabilitative sanction.” *Commonwealth v. Williams*, 57 Mass. App Ct. 917, 918 (2003). “In appropriate cases, then, a restitutional order may have the capacity to teach the perpetrator the cost of his offense, to inhibit recidivist conduct, to impose the character-building benefits of honest work, and to provide the victim and society with some degree of retributive satisfaction.” *Commonwealth v. Malick*, 86 Mass. App. Ct. 174, 182 (2014).

“The judge's power to order restitution in a criminal case...derives from the judge's power to order conditions of probation under M.G.L. c. 276, §§ 87, 87A, and c. 279, § 1.” *McIntyre, supra* at 833. The amount of restitution should bear a relationship to the crime involved “and is limited to economic losses caused by the defendant’s conduct and documented by the victim.” *Id.* at 833-4, *Commonwealth v. Casanova*, 65 Mass. App. Ct. 750 (2006). The court must also take into consideration the Defendant’s ability to pay and the court cannot lengthen the period of supervision for the purpose of payment of restitution based on the defendant’s financial situation. *Commonwealth v. Henry*, 475 Mass. 117 (2016). A court should conduct a hearing on the question of restitution where the victim and the defendant have an opportunity to be heard. *Commonwealth v. Nawn*, 394 Mass. 1, 7 (1985). The Commonwealth must prove the level of loss suffered by the victim by a preponderance of the evidence. *Id.* at 7-8. If the victim testifies, cross-examination by the defendant is limited to the issue of restitution.

Restrictive Housing- “a housing placement where a prisoner is confined to a cell for more than 22 hours per day; provided, however, that observation for mental health evaluation shall not be considered restrictive housing.” M.G.L. c. 127 §1.

Restorative Justice-

A voluntary process whereby offenders, victims and members of the community collectively identify and address harms, needs and obligations resulting from an offense, in order to understand the impact of that offense; provided, however, that an offender shall accept responsibility for their actions and the process shall support the offender as the offender makes reparation to the victim or to the community in which the harm occurred. M.G.L. c. 276B §1.

Revise And Revoke- See *Motion To Revise And Revoke Sentence*.

Safety Valve- A statutory provision that would allow a court in certain circumstances to impose a sentence lower than a minimum mandatory sentence. Massachusetts currently has no such provision which permits this. There is language in M.G.L. c. 211E §3(e) (enacted as part of the *Truth-In-Sentencing-Law*) that would allow a judge to do so but

the SJC held that this provision was intended to only take effect upon legislative enactment of sentencing guidelines which to date, has not occurred. *Commonwealth v. Laltaprasad*, 475 Mass. 692 (2016).

School Zone- The area within three hundred feet of “a public or private accredited preschool, accredited head start facility, elementary, vocational, or secondary school..., or within one hundred feet of a public park or playground.” M.G.L. c. 94C §32J. (For a discussion of the term “accredited,” see *Commonwealth v. Cooper*, 91 Mass. App. Ct. 595, 599-602 (2017)). If certain enumerated drug offenses occur within that defined area (and in the case of a school, if the violation occurs between 5:00 a.m. and midnight), **and one of the following aggravating factors is present:**

- (i) the defendant used violence or threats of violence or possessed a firearm, rifle, shotgun, machine gun or a weapon described in paragraph (b) of section 10 of chapter 269, or induced another participant to do so, during the commission of the offense;
- (ii) the defendant engaged in a course of conduct whereby he directed the activities of another who committed any felony in violation of chapter 94C; [or]
- (iii) the offense was committed during the commission or attempted commission of the a violation of section 32F or section 32K of chapter 94C,

the sanction imposed can be enhanced by a minimum mandatory sentence of not less than two and a half years in the state prison or not less than two years in the house of correction, *from and after* the sentence for the underlying offense.

Note that the *Three Strikes Law*, passed in 2012, reduced the size of the *School Zone* from one thousand feet to three hundred feet. See *Commonwealth v. Bradley*, 466 Mass. 551, (2013) holding that the reduction could be applied retroactively to offenses that occurred prior to the effective date of that law (August 2, 2012) but where disposition did not occur until on or after that date. **Also note that the *Criminal Justice Reform Bill of 2018* added the requirement that one of the aggravating factors mentioned above must be present.**

Section 35- A commitment not to exceed ninety days, to a health care facility pursuant to M.G.L. c. 123 §35, if a court finds that a "person is an alcoholic or substance abuser and there is a likelihood of serious harm as a result of his alcoholism or substance abuse." Notwithstanding the ninety day term of commitment, the necessity of further commitment shall be reviewed by the Superintendent at intervals of thirty, forty five, sixty, and seventy five days if the person continues to be deemed appropriate for further commitment. The person may be released if “release of that person will not result in a likelihood of serious harm.” If the person is released, they will be encouraged to consent to additional treatment and shall be accepted should they voluntarily seek further

treatment.

Possible facilities where patients are housed include the unit at the Massachusetts Correctional Facility at Plymouth (males), the Men's Addiction Treatment Center in Brockton, the Women's Recovery from Addictions Program at Taunton State Hospital and the Women's Addiction Treatment Center in New Bedford. In 2016, the state transitioned away from housing women committed under §35 to the Massachusetts Correctional Facility at Framingham. In July, 2017, the Department of Correction agreed to stop housing males at the Bridgewater Treatment Center where they were in close proximity to sex offenders.

The process is commenced via a petition filed by a concerned party in the District or Boston Municipal Court and may occur at a pretrial proceeding in a criminal case.

Sentence Appeal- Pursuant to M.G.L. c. 278 §28A, a defendant may appeal a sentence to the state prison to the Appellate Division of the Superior Court. A three judge panel of the Superior Court sits "from time to time" as designated by the Chief Justice of the Superior Court.

Sentencing Commission- A Commission established pursuant to the *Truth-In-Sentencing Law* to propose *Sentencing Guidelines*, compile data regarding sentencing practices, issue reports, and make proposals regarding the management of the criminal justice system in Massachusetts. The voting members of the Commission include three judges, three prosecutors, and three defense lawyers. There are additional non-voting members representing criminal justice agencies and victims. The Commission is statutorily required to make a report of sentencing practices in the Commonwealth.

Sentencing Enhancement- A statutory provision which provides for increased punishment for certain offenses based on the new conviction and prior convictions for predicate offenses. See for example, M.G.L. c. 269 §10(d) and §10G which separately increase the penalty for certain firearms offenses and M.G.L. c. 94C §32J, adding a consecutive minimum mandatory sentence for certain drug offenses committed in a *School Zone*. While the legislature has broad discretion in defining criminal sanctions, *Commonwealth v. Alvarez*, 413 Mass. 224, 231, (1992), it has not expressly authorized the use of multiple enhancements for the same conviction, *Commonwealth v. Richardson*, 469 Mass. 248 (2014). Note that the *Armed Career Criminal* sentencing enhancement increases the sentence imposed for the accompanying offense but does not give rise to a separate sentence, *Commonwealth v. Sylvia*, 89 Mass. App. Ct. 279 (2016).

Sentencing Guidelines- A system of presumptive sentencing ranges on a grid which is based on a rating of offenses by seriousness and severity of the defendant's criminal record. The current guidelines, updated in the fall of 2017, are advisory, having not been approved by the legislature. They have been used by many Superior Court judges as a factor in formulating appropriate sanctions. They also incorporate non-incarceration options as potential dispositions. The current guidelines can be found at <https://www.mass.gov/files/documents/2018/07/10/Final%20Advisory%20Sentencing%2>

0Guidelines%2020180621.pdf . Among the features of the new guidelines are “*Gap and Decay*” provisions, where in some situations, older components of a defendant’s criminal history will be deemed to not increase the severity of an individual’s criminal history (see the *New Guidelines* at p. 20), a new Level “0” for very minor offenses (described as a “new offense level which carries no incarceration, no probation, no supervision and no fees or fines”, *New Guidelines* at p. 16) and a presumptive period of probation supervision based on sentencing grid placement (*New Guidelines* at p. 25).

Sexually Dangerous Person-

Any person who has been (i) convicted of or adjudicated as a delinquent juvenile or youthful offender by reason of a sexual offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in sexual offenses if not confined to a secure facility; (ii) charged with a sexual offense and was determined to be incompetent to stand trial and who suffers from a mental abnormality or personality disorder which makes such person likely to engage in sexual offenses if not confined to a secure facility; or (iii) previously adjudicated as such by a court of the commonwealth and whose misconduct in sexual matters indicates a general lack of power to control his sexual impulses, as evidenced by repetitive or compulsive sexual misconduct by either violence against any victim, or aggression against any victim under the age of 16 years, and who, as a result, is likely to attack or otherwise inflict injury on such victims because of his uncontrolled or uncontrollable desires. M.G.L. c. 123A §1.

If a person is found to be sexually dangerous beyond a reasonable doubt after trial on that issue, they can be committed from one day to life to the Treatment Center at the Bridgewater State Hospital. For more details about this process see M.G.L. c. 123A. Additionally, the Committee For Public Counsel Services has a comprehensive summary of the process at: <https://www.publiccounsel.net/pc/overview-of-sdp-process/>.

Special Sentence- See *Weekend Sentence*.

Specialty Courts- Court sessions established by District Courts to address either specific types of offenses (*Gun Courts* to address firearms cases) or to give specific attention to specialized needs of offenders (*Drug Courts, Mental Health Courts, Veterans Courts, Homeless Courts*).

Split Sentence- Sentences that include both a committed and suspended term with probation. M.G.L. c. 279 §1. Upon release from the committed term, the defendant is subject to commitment on the suspended portion of the sentence, should he or she violate the terms of probation. M.G.L. c. 279 §3. See also *Commonwealth v. Holmgren*, 421 Mass. 224, 228 (1995).

State Prison Sentence- A sentence to the state prison at Cedar Junction. The term, “Cedar Junction” defines the type of sentence rather than literally mandating that the defendant be physically housed at the Massachusetts Correctional Facility at Cedar Junction. It has also been referred to as a “Walpole” sentence (see below). Except for life sentences and sentences for being a “*habitual offender*” or “*habitual criminal*” (see above), this

sentence has two numbers, a minimum term and a maximum term. The minimum term, reduced by earned work credits **and completion credits, as of January 13, 2019**, pursuant to M.G.L. c. 127 §129D, is the parole eligibility. M.G.L. c. 127 §133. By statute, the shortest minimum term that can be imposed to the State Prison is one year. M.G.L. c. 279 §24. The date of discharge is calculated based on the maximum term, reduced by earned work credits, if any, assuming there is not a *minimum mandatory* (see above) provision within the statute for the offense. **As of January 13, 2019, based on the *Council Of State Governments Bill of 2018*, for state prison sentences, a *Release to Supervision Date* is additionally calculated. This is the *Wrap-Up* date minus *Completion Credits*. On this date, if a person has an approved Parole Plan and has earned at least 30 days of *Completion Credits*, they are to be released to Mandatory Parole Supervision until their *Wrap-Up* date.**

State prison sentences are sometimes imposed where there is a one day difference between the minimum and the maximum term. This is commonly called an “X to X and a day” sentence where “X” is a number delineating the minimum term and where the maximum term is a day longer than the minimum term. These sentences have engendered much discussion because they did not have a parole eligibility date and therefore preclude a person from being supervised by the Parole Board as part of re-entry into the community. **As of January 13, 2019, based on the *Council Of State Governments Bill of 2018*, for certain minimum mandatory state prison sentences that do not involve opioids and do not have the aggravating factors enumerated in M.G.L. c. 94C Sec. 32H½, the minimum sentence can be reduced by earned work credits which would result in the person having a parole eligibility sooner than one day before their maximum date in the case of an “X to X and a day sentence.**

For a discussion of this type of sentence see the *Massachusetts Sentencing Commission Survey of Sentencing Practices, 2011*, at pp. 13-14, which can be found at: <http://www.mass.gov/courts/docs/admin/sentcomm/fy2011survey.pdf> .

As of January 13, 2019, based on the *Council Of State Governments Bill of 2018*, a person serving a state prison sentence can earn up to 15 days per month of *Earned Work Credits* and up to 80 days of *Completion Credits*.

Statutory Good Time- Credits for “good conduct” that were awarded virtually automatically pursuant to M.G.L. c. 127 §129 (which was repealed with the passage of the Truth-In-Sentencing Law). These credits ranged from 2 1/2 days per month to 12 1/2 days per month depending on the length of sentence. If one or more sentences were aggregated, the amount of good time increased as the aggregate length of the sentences increased. These credits could be taken away if a prisoner was found to have committed disciplinary infractions in prison. This was more commonly done by the Department of Correction for those serving state prison sentences.

Stay of Execution of Sentence- Delaying the effective date of an imposed but not executed sentence. The Supreme Judicial Court has noted that the inherent power of courts to issue stays of execution is limited. *Commonwealth v. Charles*, 466 Mass. 63, 72 (2013),

Commonwealth v. McLaughlin, 431 Mass. 506, 518 (2000). In *McLaughlin*, the court ruled that a court did not have the power to stay a sentence while a convicted person was committed to Bridgewater prior to the imposition of sentence. The most clearly stated basis for a stay of execution is a stay pending appeal. *Rule 31 of the Massachusetts Rules of Criminal Procedure*, 454 Mass. 1501 (2009). A Superior Court judge has the inherent power to stay a sentence pending a motion for a new trial, *Charles, supra* (also holding that a special master appointed to help resolve cases involving the reported irregularities at the State Drug Lab in Jamaica Plain does not). A sentence can be stayed upon conviction for a crime punishable by death, M.G.L. c. 279 §4. In *McLaughlin, supra*, the court noted that the Appeals Court permitted a stay to allow a defendant to arrange his affairs, *Commonwealth v. Glines*, 40 Mass. App. Ct. 95, 97 n. 2 (1996), and that the Supreme Judicial Court made note of a stay issued by a trial judge to allow a defendant to see his parents. *Commonwealth v. DeMarco*, 387 Mass. 481, 482 (1982). A stay cannot be granted because of the defendant's poor health, *Commonwealth v. Hayes*, 170 Mass. 16 (1897).

An appeal from the denial of a *Motion For A Stay Of Execution Pending Appeal* by a trial judge is first heard by a single justice of the court where the appeal is pending. *Rule 31 of the Massachusetts Rules of Criminal Procedure*, 454 Mass. 1501 (2009), *Rule 6, Massachusetts Rules of Appellate Procedure*, 454 Mass. 1601 (2009). Thus if the Supreme Judicial Court grants direct appellate review, the appellant is entitled to be heard first by a single justice of the Supreme Judicial Court. This is true even if the motion was denied by a single justice of the Appeals Court prior to the granting of direct appellate review. *Polk v. Commonwealth*, 461 Mass. 251 (2012). The standard for granting a stay is whether the appellant presents an issue "which offers some reasonable probability of successful decision," *Commonwealth v. Hodge (No. 1)*, 380 Mass. 850, 851 (1980), and upon an assessment of "the possibility of flight, the potential danger to any person or to the community and the likelihood the defendant will commit criminal acts during the pendency of the appeal." *Polk, supra* at 461 Mass. 253, *Hodge, supra* at 380 Mass. 851, *Commonwealth v. Mattier*, 474 Mass. 227, 228-231 (2016).

Step Down- A classification status where a prisoner is classified by the Department of Correction to pre-release, often in a county correctional facility that is closer to home. The purpose is to facilitate successful re-entry into the prisoner's local community.

Straight Probation- Probation which is imposed subsequent to a conviction but where the defendant has not yet been sentenced. *Commonwealth v. Bruzzese*, 437 Mass. 606, 617-618 (2002), *Commonwealth v. Rodriguez*, 52 Mass. App. Ct. 572 (2001). If probation is revoked, the defendant is subject to any sentence permitted by the statute that governs the underlying offense. If the defendant pleads guilty and receives straight probation, at the plea hearing, he or she must be informed on the record of the potential penalty upon a violation of that probation. *Id.* at 576-9.

Suspended Sentence- A sentence with a specified term of incarceration, the execution of which is suspended for a specified time during a period of probation supervision. If probation is revoked due to a violation, and the defendant is to be committed, the court

must impose the full suspended sentence. *Commonwealth v. Holmgren*, 421 Mass. 224, 228 (1995), M.G.L. c. 279 §3.

“Three Strikes And You’re Out”- A colloquial term that applies to a criminal statute that requires a mandatory punishment for a third or subsequent major felony conviction.

Three Strikes Law- The Massachusetts “Three Strikes Law,” also known as “The Crime Bill of 2012,” which went into effect on August 2, 2012 (c. 92 of the Acts of 2012), mandates that a person convicted of one of the felonies listed in M.G.L. c. 279 §25(b), who had two previous felony convictions for one of the listed offenses, and who previously received two state prison sentences of three years or more for those offenses, shall, after being indicted and convicted as a “*Habitual Offender*,” be sentenced to the maximum term under the statute governing the “third strike” offense. These offenders are also being called “*Three Strikes Offenders*.” The new law makes a distinction between, “Habitual Offenders,” subject to stricter sanctions pursuant to M.G.L. c. 279 §25(b), and “Habitual Criminals” subject to sanctions pursuant to M.G.L. c. 279 §25(a).

Habitual offenders are not eligible for parole, work release, furloughs, or good conduct deductions. Habitual criminals are eligible for parole after two thirds of the maximum term of their sentence.

The law also provides for mitigation of mandatory sentencing provisions for certain drug offenses by in some cases, retroactively lowering mandatory minimum sentences, and allowing earlier parole eligibility, good conduct credits, and classification to work release. The provision regarding retroactive application of these changes, Section 48 of c. 92 of the Acts of 2012, is the basis for much discussion due to questions of interpretation. In *Commonwealth v. Galvin*, 466 Mass. 286 (2013), the Court answered one of these questions, holding that persons who committed an offense prior to the effective date of the law (August 2, 2012) but whose case was not disposed of until after that date, were entitled to retroactive application of the provisions reducing minimum mandatory sentences. See also *Commonwealth v. Bradley*, 466 Mass. 551, (2013) holding that the reduction in the size of the school zone from 1,000 to 300 feet as the basis for a minimum mandatory sentence pursuant to M.G.L. c. 94C § 32J, could be applied retroactively to offenses that occurred prior to the effective date of the law but where disposition did not occur until on or after that date, but see *Commonwealth v. Didas*, 471 Mass. 1 (2015) where the Court held that the legislature did not intend the modification of the elements of drug trafficking offenses, where minimum weights were increased for certain levels of trafficking, to be retroactive.

Additional provisions include stricter regulation, training, and accountability for the *Parole Board*, higher limits on the awarding of *Earned Work Credits*, and immunity for “Good Samaritans” who report a drug overdose.

Triple-I (Interstate Identification Index)- A database maintained by the Federal Bureau of Investigation regarding the criminal history of those who have been arrested or indicted by federal, state, or local law enforcement agencies. A “Triple-I” search would

yield information about an individual's past criminal involvement in jurisdictions throughout the country. See 28 CFR 20.3(m).

Truth-In-Sentencing Law- The 1993 law which changed the way sentences are served in Massachusetts. Its significant provisions include the elimination of *statutory good time*, the elimination of the so-called "*Concord Sentence*," the toughening of parole eligibility for state prison sentences, and the establishment of a sentencing commission to formulate *sentencing guidelines*. This law applies to offenses committed on or after July 1, 1994.

Uncharged Conduct- This type of conduct cannot be used to punish a defendant by serving as a basis on its own to enhance a sentence, *Commonwealth v. Stuckich*, 450 Mass. 449, 461-2 (2008), *Commonwealth v. Goodwin*, 414 Mass. 88, 93 (1993), due to the fact that it has not been "tested by the indictment and trial process." *Commonwealth v. Henriquez*, 56 Mass. App. Ct. 775, 779 (2002). It can however, be considered at sentencing as having a bearing on "the defendant's character and his amenability to rehabilitation." *Commonwealth v. Stuckich, supra* at 461-2, quoting *Commonwealth v. Goodwin, supra* at 93, as long as it "is relevant and the report of it is 'sufficiently reliable'" *Stuckich, supra* at 461, *Goodwin, supra* at 94, for the purpose of determining the type of punishment imposed. *Stuckich, supra* at 462 n. 12.

Walpole Sentence- The old name for *State Prison* or *Cedar Junction Sentences*. "Old timers" in the system can't seem to stop using this term.

Weekend Sentence- Courts have the authority, in some situations, to impose "Special" or "Weekend" sentences. M.G.L. c. 279 §6A. These sentences are typically served from Friday to Monday, though a court can specify any beginning and ending time for each weekly period of confinement. The defendant is required to report on his or her own to the correctional facility each week at a time directed by the court. This sentence allows a defendant to maintain employment during the week while serving a sentence on weekends. Note that failure to report to a correctional facility at the time set by the court to commence the specified weekly period of confinement under this type of sentence constitutes the crime of escape from a correctional facility. *Commonwealth v. Porter*, 87 Mass. App. Ct. 676 (2015).

WMCAC- See *Western Massachusetts Recovery and Wellness Center*.

Western Massachusetts Recovery and Wellness Center (WMRWC)-

The Western Massachusetts Recovery and Wellness Center [is] a component of the Hampden County Sheriff's Department, is a minimum security, community based, residential treatment facility. This co-ed regional facility, located at 155 Mill Street in Springfield, Massachusetts, is designed to provide for the custody, care and treatment of substance users from Hampden, Franklin, Berkshire, Hampshire and Worcester counties. The philosophy of the Center staff incorporates an integrated model of education, treatment and recovery to address addiction. [They] subscribe to the disease concept, with abstinence as an avenue to recovery.

This is a direct quote from their website: <http://hcsdma.org/wmrwc/> . It was formerly known as *Howard Street* and *WMCAC*. Its prior locations were on Howard Street in downtown Springfield and more recently, in Holyoke.

Work Release- A program at county correctional facilities established pursuant to M.G.L. c. 127 §86F (§86G for Suffolk County) where prisoners are permitted to obtain employment offsite and remain outside the institution during work hours. They return to the institution after work hours and stay there overnight. Deductions from wages are taken to contribute to the cost of administering the program and to pay court obligations including victim/witness fees and child support. The 2012 *Three Strikes Law* allows prisoners who are serving mandatory minimum sentences for certain drug offenses enumerated in c. 94C of the General Laws, to be classified to work release.

Wrap-Up Date- The colloquial term for when a prisoner is discharged from prison. It is synonymous with *end of sentence date* or *good conduct discharge date*.

Writ Of Habeas Corpus- See *Habe*.

“X to X and a Day” Sentence- This is a sentence where “X” is a number delineating the minimum term and where the maximum term is a day longer than the minimum term. These sentences have engendered much discussion because they do not as a practical matter, have a parole eligibility date and therefore preclude a person from being supervised by the Parole Board as part of re-entry into the community. **As of January 13, 2019, based on the Council Of State Governments Bill of 2018, for certain minimum mandatory state prison sentences that do not involve opioids and do not have the aggravating factors enumerated in M.G.L. c. 94C Sec. 32H½, the minimum sentence can be reduced by earned work credits which would result in the person having a parole eligibility sooner than one day before their maximum date in the case of an “X to X and a day sentence.”** For a discussion of this type of sentence see the Massachusetts Sentencing Commission Survey of Sentencing Practices, 2011, at pp. 13-14, which can be found at <http://www.mass.gov/courts/docs/admin/sentcomm/fy2011survey.pdf> .

Year- For sentencing purposes, a calendar year. M.G.L. c. 4 §7. It is 366 days in the case of leap year for a sentence that is expressed as a term of years that includes February 29th. *Commonwealth v. Melo*, 65 Mass. App. Ct. 674. (2006).

Youthful Offender- An adjudication which gives the Juvenile Court discretion to sentence a juvenile to an adult sentence, a combination sentence (see above), or a commitment to the Department Of Youth Services until age 21. See M.G.L. c. 119 §58. Note a finding of delinquency under the Youthful Offender Law is not a “conviction” for the purposes of the *Armed Career Criminal* statute, M.G.L. c. 269 §10G (see above) and cannot serve as a predicate offense for applying this sentencing enhancement, *Commonwealth v. Anderson*, 461 Mass. 616 (2012), unless the weapon used is inherently deadly, *Commonwealth v. Rezendes*, 88 Mass. App. Ct. 369 (2015). Also note that a juvenile who is indicted as a youthful offender is not entitled, as a matter of right, to an interlocutory

appeal of the denial of a motion to dismiss that indictment, pursuant to M.G.L. c. 211 § 3.
N.M., a Juvenile vs. Commonwealth, 478 Mass. 89 (2017).

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