HOUSE DOCKET, NO. 1725 FILED ON: 1/20/2011

HOUSE . . . . . No. 1357

The Commonwealth of Massachusetts

PRESENTED BY:

George N. Peterson, Jr.

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act relative to the pretrial detention of violent offenders.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
George N. Peterson, Jr.	*9th Worcester*

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HOUSE . . . . . No. 1357

By Mr. Peterson of Grafton, a petition (accompanied by bill, House, No. 1357) of George N. Peterson, Jr., relative to the pretrial detention of violent offenders. The Judiciary.

The Commonwealth of Massachusetts

An Act relative to the pretrial detention of violent offenders.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 276 of the General Laws, as appearing in the 2008 Official Edition, shall be amended by inserting after Section 58B the following section:

"Chapter 276: Section 58C. Conditions for pretrial detention of persons accused of certain felony firearm offenses and violent crimes; hearing; order; review

Section 58C.

(1) The commonwealth may move, based on dangerousness, for an order of pretrial detention for a person who has been charged with a second or subsequent offense of felony possession of a weapon or machine gun as defined in section 121 of chapter 140 and has been previously convicted of a violent crime as defined in section 121 of chapter 140 having served a committed term of imprisonment after sentencing had been carried out for said violent crime.

(2) Upon the appearance before a superior court or district court judge of an individual charged with an offense listed in subsection (1) and upon the motion of the commonwealth, the judicial officer shall hold a hearing pursuant to subsection (3) issue an order that, pending trial, the individual shall be detained under subsection (4).

(3) When a person is held under arrest for an offense as outlined in subsection (1) and upon a motion by the commonwealth, the judge shall hold a hearing to determine if the conditions of subsection (1) exist to order a pretrial detention under subsection (4).

The hearing shall be held immediately upon the person's first appearance before the court unless that person, or the attorney for the commonwealth, seeks a continuance. Except for good cause, a continuance on motion of the person may not exceed seven days, and a continuance on motion of the attorney for the commonwealth may not exceed three business days. During a continuance, the individual shall be detained upon a showing that there existed probable cause to

23 arrest the person and that the person meets the criteria set forth in subsection (1). At the hearing,
24 such person shall have the right to be represented by counsel, and, if financially unable to retain
25 adequate representation, to have counsel appointed. The person shall be afforded an opportunity
26 to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to
27 present information. The rules concerning admissibility of evidence in criminal trials shall not
28 apply to the presentation and consideration of information at the hearing. In a detention order
29 issued pursuant to the provisions of said subsection (4) the judge shall (a) include written
30 findings of fact and a written statement of the reasons for the detention; (b) direct that the person
31 be committed to custody or confinement in a corrections facility separate, to the extent
32 practicable, from persons awaiting or serving sentence or being held in custody pending appeal;
33 and (c) direct that the person be afforded reasonable opportunity for private consultation with his
34 counsel. The person may be detained pending completion of the hearing.

35 (4) If, after a hearing pursuant to the provisions of subsection (3), the district or superior
36 court justice finds by clear and convincing evidence that the defendant meets the criteria of
37 subsection (1), said justice shall order the detention of the person prior to trial. A person detained
38 under this subsection shall be brought to a trial as soon as reasonably possible, but in absence of
39 good cause, the person so held shall not be detained for a period exceeding ninety days excluding
40 any period of delay as defined in Massachusetts Rules of Criminal Procedure Rule 36(b)(2). A
41 justice may not impose a financial condition under this section that results in the pretrial
42 detention of the person. Nothing in this section shall be interpreted as limiting the imposition of a
43 financial condition upon the person to reasonably assure his appearance before the courts.

44 (5) Nothing in this section shall be construed as modifying or limiting the presumption of
45 innocence. " .