HOUSE DOCKET, NO. 311 FILED ON: 1/13/2011

HOUSE . . . . . No. 434

The Commonwealth of Massachusetts

PRESENTED BY:

Bradford Hill

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 punishment of habitual offenders.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Bradford Hill	*4th Essex*
Bradley H. Jones, Jr.	*20th Middlesex*
James J. Dwyer	*30th Middlesex*
George N. Peterson, Jr.	*9th Worcester*
Elizabeth A. Poirier	*14th Bristol*
Viriato Manuel deMacedo	*1st Plymouth*
David T. Vieira	*3rd Barnstable*
Richard Bastien	*2nd Worcester*
Peter J. Koutoujian	*10th Middlesex*
Bruce E. Tarr	*[District]*
James E. Timilty	*[District]*
Donald F. Humason, Jr.	*4th Hampden*
Marc T. Lombardo	*22nd Middlesex*
Theodore C. Speliotis	*13th Essex*

Donald H. Wong	*9th Essex*
Richard J. Ross	*Norfolk, Bristol, and Middlesex*
Lori A. Ehrlich	*8th Essex*
Jennifer E. Benson	*37th Middlesex*
Daniel K. Webster	*6th Plymouth*
George T. Ross	*2nd Bristol*
Bruce J. Ayers	*1st Norfolk*
Nicholas A. Boldyga	*3rd Hampden*
John D. Keenan	*7th Essex*
Geoff Diehl	*7th Plymouth*
Ryan C. Fattman	*18th Worcester*
Kevin J. Kuros	*8th Worcester*
Todd M. Smola	*1st Hampden*
Matthew A. Beaton	*11th Worcester*
Angelo L. D'Emilia	*8th Plymouth*
Sheila C. Harrington	*1st Middlesex*
Steven S. Howitt	*4th Bristol*
Steven L. Levy	*4th Middlesex*
James J. Lyons, Jr.	*18th Essex*
Shaunna O'Connell	*3rd Bristol*
Stephen L. DiNatale	*3rd Worcester*
Dennis A. Rosa	*4th Worcester*
Angelo J. Puppolo, Jr.	*12th Hampden*
Michael F. Rush	*Suffolk and Norfolk*
Thomas M. Stanley	*9th Middlesex*
Kimberly N. Ferguson	*1st Worcester*
Daniel B. Winslow	*9th Norfolk*
Edward F. Coppinger	*10th Suffolk*
Susan Williams Gifford	*2nd Plymouth*
Geraldo Alicea	*6th Worcester*
F. Jay Barrows	*1st Bristol*
Linda Campbell	*15th Essex*
Colleen M. Garry	*36th Middlesex*
Michael O. Moore	☐ *[District]* ☐
Cleon H. Turner	*1st Barnstable*
Christine E. Canavan	*10th Plymouth*
Christopher G. Fallon	*33rd Middlesex*

Randy Hunt	*5th Barnstable*
Walter F. Timilty	*7th Norfolk*
Geraldine M. Creedon	*11th Plymouth*
James Arciero	*2nd Middlesex*
Paul Adams	*17th Essex*
Kate Hogan	*3rd Middlesex*
James J. O'Day	*14th Worcester*
Paul K. Frost	*7th Worcester*
Nick Collins	*4th Suffolk*
David M. Torrisi	*14th Essex*
John F. Keenan	☐ *[District]* ☐
Gerard Leone	*District Attorney, Middlesex County*

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HOUSE . . . . . No. 434

By Mr. Hill of Ipswich, a petition (accompanied by bill, House, No. 434) of Bradford Hill and others relative to the punishment of habitual offenders convicted in the courts of the Commonwealth. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *1423* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act relative to the punishment of habitual 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. Section 133A of chapter 127 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after the word "Bridgewater" in line 4, the following:-

except prisoners serving a life sentence imposed pursuant to section twenty-five of chapter two hundred and seventy-nine,

SECTION 2. Section 133B of chapter 127 of the General Laws is hereby repealed.

SECTION 3. Section 25 of chapter 279 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking section 25 in its entirety and inserting in place there of the following section:-

Section 25. (a) Whoever has been twice convicted of crime and sentenced and committed to prison in this or another state or by the Federal government, or once in this and once or more in another state or by the Federal government, for terms of not less than three years each, and does not show that he has been pardoned for either crime on the ground that he was innocent, shall, upon conviction of a felony, be considered an habitual criminal and be punished by 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.

17 (b) Whoever has been twice convicted in the Superior Court of a felony, and does not
18 show that he has been pardoned for either crime on the ground that he was innocent, shall, upon
19 conviction in the Superior Court of a felony, be considered an habitual criminal and be punished
20 by imprisonment in the state prison for the maximum term provided by law as a penalty for the
21 felony for which he is then to be sentenced.

22 (c) Whoever has been twice convicted of a felony punishable by more than ten years in
23 the state prison, and does not show that he has been pardoned for either crime on the ground that
24 he was innocent, shall, upon conviction of any felony, either in the Boston Municipal Court,
25 District Court, or Superior Court be considered an habitual criminal and be punished by
26 imprisonment for the maximum term provided by law as a penalty for the felony for which he is
27 then to be sentenced.

28 (d) A prosecution commenced under this section shall not be continued without a finding
29 or placed on file and all offenders sentenced under this section shall be ineligible for probation,
30 parole, work release or furlough or receive any deduction from his sentence for good conduct.

31 (e) In any prosecution commenced pursuant to this section, introduction into evidence of
32 a prior conviction by either certified attested copies of original court papers, or certified attested
33 copies of the defendant's biographical and informational data from records of the department of
34 probation, any jail or house of correction or the department of correction showing that defendant
35 served a sentence or probationary term for the offense in question, shall be prima facie evidence
36 that the defendant before the court has been convicted previously by a court of the
37 commonwealth or any other jurisdiction. Such documentation shall be self-authenticating and
38 admissible, after the commonwealth has established the defendant's guilt on the primary offense,
39 as evidence in any court of the commonwealth to prove the defendant's commission of any prior
40 conviction described therein. The commonwealth shall not be required to introduce any
41 additional corroborating evidence or live witness testimony to establish the validity of such prior
42 conviction.

43 SECTION 4. Section 1 of chapter 279 of the General Laws, as appearing in the 2006
44 Official Edition, is hereby amended by inserting in the second paragraph after the first sentence
45 the following new sentence:-

46 A probationer whose sentence has been suspended shall be revoked and committed on the
47 suspended sentence where it is established by a preponderance of the evidence that the
48 probationer committed a felony while on probation.

49 SECTION 5. Section 1A of chapter 279 of the General Laws, as appearing in the 2006
50 Official Edition, is hereby amended by inserting, after the first paragraph, the following new
51 paragraph:-

52 A probationer whose sentence has been suspended shall be revoked and committed on the
53 suspended sentence where it is established by a preponderance of the evidence that the
54 probationer committed a felony while on probation.

55 SECTION 6. Section 3 of chapter 279 of the General Laws, as appearing in the 2006
56 Official Edition, is hereby amended in the first paragraph by striking the words "If such
57 suspension is revoked, the sentence shall be in full force and effect." and inserting in place
58 thereof the following:- If such suspension is revoked, the sentence shall be in full force and
59 effect, and such suspension must be revoked where it is established by a preponderance of the
60 evidence that the probationer committed a felony while on probation. The pendency of a
61 criminal action on a charge which also constitutes an alleged violation of probation shall not be
62 grounds for a continuance of the probation violation hearing and such probation violation
63 hearing shall be conducted promptly.

64 SECTION 7. Chapter 279 of the General Laws, as appearing in the 2006 Official
65 Edition, is hereby amended by striking out section 8B in its entirety and inserting in place thereof
66 the following section:-

67 Section 8B. If a defendant on release subject to the provisions of sections 42A, 58, 58A,
68 or 87 of chapter 276 or any other statute that allows the court to set conditions of release during
69 the pendency of a criminal case, commits a crime, the sentences ultimately imposed on the
70 pending crime and the new crime shall run consecutively to each other, without regard to the
71 order or sequence in which those cases are adjudicated.