

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Harold P. Naughton, 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 bill:

An Act relative to the establishment of a drug court.

PETITION OF:

NAME:

Harold P. Naughton, Jr.

DISTRICT/ADDRESS:

12th Worcester

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1613 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO THE ESTABLISHMENT OF A DRUG COURT.

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

- 1 Massachusetts General Laws Chapter 212, is hereby amended in Section 6 by inserting at the end
2 thereof the following:—
- 3 (a) The District Court Department for each county of the Commonwealth is hereby authorized to
4 establish and administer a department to be known as “the Drug Court” whose purpose it shall be to
5 administer and supervise pretrial substance abuse intervention programs for persons charged with a
6 crime, before or after any information has been filed or an indictment has been returned in the District
7 Court. Such programs shall provide appropriate substance abuse counseling, education, supervision, and
8 medical and psychological treatment as available and when appropriate for the persons released to such
9 programs.
- 10 (b) Any person who (1) has no prior felony conviction and (2) is currently before the court to answer
11 charges dealing with a nonviolent felony or misdemeanor and (3) has not previously participated in the
12 aforementioned pretrial intervention program to be established by this act and (4) is not currently being
13 charged with crimes pertaining to the manufacture, sale, delivery or trafficking of controlled substances
14 of any classification as defined under the applicable, established laws of the Commonwealth is eligible
15 for admission into the pretrial substance abuse intervention program upon approval by the chief justice
16 of the District Court in the presiding county for a period of not less than one year in duration. Admission
17 into such program can be requested on the motion of either party or on the court’s own motion.
18 However, if the prosecuting district attorney has reason to believe that the facts and circumstances of
19 the case suggest the defendant’s involvement in the manufacture, sale, delivery or trafficking of any
20 controlled substance, the court shall hold a preadmission hearing. If the prosecuting district attorney
21 establishes, by a preponderance of the evidence at such hearing, that the defendant was involved in the

22 manufacture, sale, delivery or trafficking of any controlled substance, the court shall deny the
23 defendant's admission into a pretrial intervention program.

24 As used in this subsection, "nonviolent felony or misdemeanor" excludes arson; sexual battery of any
25 manner; robbery; kidnapping; aggravated child abuse; aggravated assault; murder; manslaughter;
26 aggravated battery; and armed burglary. In no case, however, shall any individual be released to the
27 pretrial intervention program unless, after consultation with his attorney or one made available to him if
28 he or she is indigent, he or she has voluntarily agreed to such program and has knowingly and
29 intelligently waived his right to a speedy trial for the period of his diversion to the Drug Court.

30 (c) The criminal charges against an individual admitted to the program shall be continued without a final
31 disposition for a period of ninety days from the date the defendant was released to the pretrial
32 intervention program, if the defendant's participation in the program is deemed to be satisfactory by
33 the judge presiding over the case in Drug Court. The criminal charges may be continued without final
34 disposition for an additional ninety days upon the approval of the court following request by the
35 program administrator provided that said request be accompanied with the consent of the prosecuting
36 district attorney and provided that the defendant's participation in the program has been deemed to be
37 satisfactory by the court following recommendations by the program administrator and district
38 attorney.

39 (d) Resumption of pending criminal charges may be requested by the district attorney at any time if the
40 intervention program administrator or the prosecuting district attorney has reason to believe that such
41 defendant is not in strict compliance with the obligations imposed upon the defendant as a condition to
42 his/her participation in the program or if the public interest so requires.

43 If the district attorney has reason to believe that the defendant is not in strict compliance with
44 program's guidelines, then he/she shall make a motion to the judge presiding over the Drug Court to
45 initiate normal prosecutorial procedures. Following the filing of such a motion, a hearing shall be
46 scheduled before the presiding "Drug Court" judge who shall then issue an order regarding the
47 proposed resumption of criminal procedure.

48 (e) At the end of the intervention program period, the program administrator shall recommend one of
49 the following courses of action with regard to the defendant's situation:

50 (1) that the criminal case revert to the established prosecutorial procedures for the particular crime in
51 question in instances where the defendant's participation in the program has been deemed to be
52 unsatisfactory;

53 (2) that the defendant is in need of further supervision under the guidelines set forth with the Drug
54 Court; or

55 (3) that dismissal of charges without prejudice shall be entered in instances in which prosecution is not
56 deemed necessary.

57 The court shall then consider the recommendation of the program administrator and the
58 recommendation of the prosecuting district attorney as to the disposition of the pending criminal
59 charges. The court shall then determine, by written finding, whether the defendant has successfully
60 completed the pretrial program. If the court finds that the defendant has not successfully completed the
61 pretrial intervention program, the court may order the defendant to continue in education and
62 treatment for a determined length or may order that the criminal charges revert to the established
63 prosecutorial procedures for the particular crime(s) in question. The court shall dismiss the criminal

64 charges upon a finding that the defendant has successfully completed the pretrial intervention program.

65 (f) The Chief Justice in each District Court may appoint an advisory committee for the pretrial
66 intervention program composed of the Chief Justice or his/her designee, who shall serve as chairman;
67 the district attorney, the public defender, and the program administrator, or their designees; and such
68 other persons as the chairman deems appropriate. The committee may also include persons
69 representing any other agencies to which defendants released to the pretrial intervention program may
70 be referred.

71 (g) The District Court department may contract for the services and facilities necessary to operate
72 pretrial intervention programs.

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