

**HOUSE . . . . . No.**

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**The Commonwealth of Massachusetts**

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PRESENTED BY:

**Martin J. Walsh**

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*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 TO AMEND THE COMMONWEALTH'S DRUG TREATMENT PROGRAM TO ALLOW FOR THE DIVERSION OF LOW LEVEL OFFENDERS UNDER COURT SUPERVISION .**

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PETITION OF:

NAME:	DISTRICT/ADDRESS:
Martin J. Walsh	13th Suffolk

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT TO AMEND THE COMMONWEALTH'S DRUG TREATMENT PROGRAM TO ALLOW FOR THE DIVERSION OF LOW LEVEL OFFENDERS UNDER COURT SUPERVISION .

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

1 SECTION 1. Chapter 111E of the General Laws is hereby amended by inserting the definition of “addiction  
2 specialist” to section 1 as appearing in the 1998 Official Edition, as follows:—

3 “Addiction specialist”, a person with an MD, PhD, RN, LICSW or other professional training who is licensed or  
4 certified by the department’s bureau of substance abuse services as a provider of substance abuse treatment.

5

6 SECTION 2. Said chapter 111E of the General Laws is hereby amended by inserting the definition of “Bureau” in  
7 section as follows:—

8 “Bureau”, the bureau of substance abuse services within the department of public health.

9

10 SECTION 3. Said chapter 111E of the General Laws is hereby amended by striking out the definition of “Director”  
11 in section 1, and inserting in place thereof the following:—

12 “Director”, the director of the division of rehabilitation, his designee, the assistant commissioner in charge of the  
13 bureau or his designee.

14

15 SECTION 4. Said chapter 111E of the General Laws is hereby amended by striking out the definition of “Drug  
16 dependent person” in section 1, and inserting in place thereof the following:—

17 “Drug dependent person”, a person, regardless of age, who is unable to function effectively and whose inability to  
18 do so causes, or results from, the use of a drug other than alcohol, tobacco or lawful beverages containing caffeine,  
19 and other than from a medically prescribed drug when such drug is medically indicated and the intake is  
20 proportioned to the medical need, or a person who is at risk of becoming drug dependent, as defined herein.

21

22 SECTION 5. Said chapter 111E of the General Laws is hereby amended by inserting the definition of “Second drug  
23 offense” to section 1 as follows:—

24 “Second drug offense”, an illegal act which stands pending for trial wherein the defendant has been assigned to  
25 treatment under Chapter 111E one time previously.

26

27 SECTION 6. Said chapter 111E of the General Laws is hereby amended by inserting the definition of “Successful  
28 completion of treatment” to section 1 as follows:—

29 “Successful completion of treatment”, when the administrator of the facility has determined that the drug dependant  
30 person, as defined by this Act, has completed the requirements set forth by the individual patient treatment plan to  
31 the best of his current ability.

32

33 SECTION 7. Said chapter 111E of the General Laws is hereby amended by inserting the following to the end of  
34 section 5 as follows:—

35 If the Division is unable to comply with the provisions of this section, the bureau shall prepare and publish  
36 annually a list of facilities operating in accordance with this chapter and shall make such list available to all District  
37 and Superior Courts, interested attorney’s and their statewide organizations, the offices of the District Attorneys for  
38 each county and their statewide organizations, and probation departments and their statewide organizations within  
39 the commonwealth on an annual basis and to members of the public upon request. Such list shall include, but not be  
40 limited to, the following:

41 (a) eligibility of treatment;

42 (b) scope of treatment offered;

43 (c) applicable facility fees;

44 (d) last known patient capacity; and

45 (e) facilities available for emergency treatment.

46

47 SECTION 8. Said chapter 111E of the General Laws is hereby amended by striking from section 8 the second  
48 paragraph and inserting in place thereof the following:—

49 Upon receipt by the director of an application for admission, the director shall designate an addiction specialist to  
50 conduct an examination of the person to determine whether that person is a drug dependent person who would

51 benefit from treatment. The addiction specialist shall report his findings in writing to the director after the  
52 completion of the examination, stating the facts upon which the findings are based and the reasons therefore.

53

54 SECTION 9. Said chapter 111E of the General Laws is hereby amended by striking from section 8 the fourth  
55 paragraph.

56

57 SECTION 10. Said chapter 111E of the General Laws is hereby amended by striking from section 10 the first  
58 paragraph and inserting in place thereof the following:—

59 Section 11. Any defendant who is charged with a first- or second- offense shall be informed, upon being brought  
60 before the court on such charge, that he is entitled to request an examination to determine whether or not he is a drug  
61 dependant person who would benefit from treatment. A court may in its discretion request an examination of any  
62 person charged with a drug offense to determine whether a defendant is drug dependent and would benefit from  
63 treatment in accordance with this chapter.

64

65 SECTION 11. Said chapter 111E of the General Laws is hereby amended by striking from section 10 the third  
66 paragraph and inserting in place thereof the following:—

67 Court proceedings shall be stayed from the time a request for examination is made under this section and while that  
68 request is considered by the court. Upon such a request, , the court shall appoint an Addiction Specialist to conduct  
69 the examination at an appropriate location within three days of the granting of the request. In no event shall the  
70 request for such an examination or any statement by the defendant during the course of the examination, or any  
71 finding by the Addiction Specialist be admissible against the defendant in any court proceedings.

72

73 SECTION 12. Said chapter 111E of the General Laws is hereby amended by striking from section 10 the fourth  
74 paragraph and inserting in place thereof the following:—

75 The appointed addiction specialist shall report his findings in writing to the court within three days after the  
76 completion of the examination, stating the facts upon which the findings are based and the reasons therefore.

77

78 SECTION 13. Said chapter 111E of the General Laws is hereby amended by striking from section 10 the fifth  
79 paragraph and inserting in place thereof the following:—

80 If the defendant is also charged with the violation of any law other than a drug offense, the stay of the court  
81 proceedings may be vacated by the court upon the report of the addiction specialist, whereupon the report shall be  
82 considered upon disposition of the charges in accordance with sections eleven and twelve, and the remaining  
83 provisions of this chapter shall not apply. If the defendant is charged with a drug offense only and the addiction  
84 specialist reports that the defendant is a drug dependant person who would benefit from treatment, the court shall  
85 inform the defendant that he may request assignment to a drug treatment facility and advise him of the consequences  
86 of the assignment, and that if he is so assigned the court proceedings shall be stayed for the term of such assignment.

87

88 SECTION 14. Said chapter 111E of the General Laws is hereby amended by striking from section 10 the sixth  
89 paragraph and inserting in place thereof the following:—

90 If the defendant requests assignment to treatment and the evaluation of the Addiction Specialists deems the  
91 defendant would benefit from treatment the court must stay the court proceedings and assign the defendant to a drug  
92 treatment facility.

93

94 SECTION 15. Said chapter 111E of the General Laws is hereby amended by striking from section 10 the eighth  
95 paragraph and inserting in place thereof the following:—

96 In determining whether a defendant is eligible for assignment under this section, the court shall consider the report  
97 of the addiction specialist, the defendant's criminal record , the availability of adequate and appropriate treatment,  
98 the nature of the offense with which the defendant is currently charged, including but not limited to whether the  
99 offense charged is that of sale or sale to a minor, and any other evidence the court deems relevant, provided,  
100 however, that where the offense charged is that of a sale or sale to a minor, no defendant may be assigned under this  
101 section unless that defendant is determined to be currently drug dependent, not merely at risk of becoming drug  
102 dependent.

103

104 SECTION 16. Said chapter 111E of the General Laws is hereby amended by striking from section 10 the ninth  
105 paragraph and inserting in place thereof the following:—

106 If the defendant is determined to be a drug dependent person under sections 15 or 22 of this Act, requests  
107 assignment to treatment, and if the defendant is charged with a first or second drug offense not involving the sale or  
108 manufacture of dependency related drugs, or is assigned by the court, and there are no continuances outstanding  
109 with respect to the defendant pursuant to this section, the court shall order that the defendant be assigned to a drug  
110 treatment facility without consideration of any other factors notwithstanding sections 15 and 22 of this Act.

111

112 SECTION 17. Said chapter 111E of the General Laws is hereby amended by striking from section 10 the eleventh  
113 paragraph and inserting in place thereof the following:—

114 If the defendant requests assignment to treatment and is determined by an addictions specialist to be a drug  
115 dependent person that would benefit from treatment, and the defendant is charged with a first or second drug offense  
116 not involving the sale or manufacture of dependency related drugs, or is assigned by the court, and there are no  
117 continuances outstanding with respect to the defendant pursuant to this section, and adequate and appropriate  
118 treatment at a facility is not available, the stay of court proceedings shall remain in effect until such time as adequate  
119 and appropriate treatment is available.

120

121 SECTION 18. Said chapter 111E of the General Laws is hereby amended by striking from section 10 the first  
122 sentence of the fifteenth paragraph and inserting in place thereof the following:—

123 If the Addiction Specialist reports that the defendant is not a Drug Dependand Person who would benefit from  
124 treatment, the defendant shall be entitled to request a hearing to determine whether or not he is a drug dependant  
125 person who would benefit from treatment.

126

127 SECTION 19. Said chapter 111E of the General Laws is hereby amended by striking from section 10 the first  
128 sentence of the nineteenth paragraph and inserting in place thereof the following:—

129 Within ten days of the receipt by the court of an application for discharge, the administrator and an independent  
130 addictions specialist designated by the court to make an examination of the defendant shall report to the court as to  
131 whether or not the patient would benefit from further treatment at a facility.

132

133 SECTION 20. Said chapter 111E of the General Laws is hereby amended by striking from section 10 the first  
134 sentence of the twentieth paragraph and inserting in place thereof the following:—

135 Within ten days of the receipt of the court of an application of transfer, the administrator and an independent  
136 addictions specialist shall report to the court as to whether the defendant is a proper subject for the transfer for which  
137 he has made application.

138

139 SECTION 21. Said chapter 111E of the General Laws is hereby further amended by striking from section 10 the last  
140 sentence and inserting in place thereof the following:—

141 The provisions of this section shall not apply to a person charged with violating sections thirty-two to thirty-two G,  
142 inclusive, of chapter ninety-four C of the General Laws; provided, however, notwithstanding the provisions of this  
143 section, section of said chapter 94C or any other law to the contrary, the provisions of this section shall apply to a  
144 person charged with

145 a first or second offense of paragraph (a) of section 32 of chapter 94C or a first offense of paragraph (b) of said  
146 section 32,

147 a first or second offense of paragraph (a) of section 32A of chapter 94C or a first offense of paragraph (b) of said  
148 section 32A,

149 a first or second offense of paragraph (c) of section 32A of chapter 94C or a first offense of paragraph (d) of said  
150 section 32A,

151 a first or second offense of paragraph (a) of section 32B of chapter 94C or a first offense of paragraph (b) of said  
152 section 32B,

153 a first or second offense of paragraph (a) of section 32C of chapter 94C or a first offense of paragraph (b) of said  
154 section 32C, and

155 a first or second offense of paragraph (a) of section 32D of chapter 94C or a first offense of paragraph (b) of said  
156 section 32D.

157 SECTION 22. Said chapter 111E of the General Laws is hereby amended by striking from section 11 the first  
158 paragraph and inserting in place thereof the following:—

159 Section 11. Any person found guilty of a violation of law other than a drug offense, who prior to disposition of the  
160 charge, states that he is a drug dependant person, and requests an examination, shall be examined by an addictions  
161 specialist to determine whether or not he is a drug dependant person who would benefit from treatment. The court  
162 may use the determination that the defendant is a drug dependant person to place him into treatment services under  
163 this chapter.

164 SECTION 23. Said chapter 111E of the General Laws is hereby amended by inserting the following to the end of  
165 the first paragraph of section 12 as follows:—

166 A positive drug test alone shall not be considered a breach of the terms of probation.

167

168 SECTION 24. This act shall not apply to any convictions entered or sentences imposed prior to the effective date of  
169 this act.

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