

HOUSE No. 1806

The Commonwealth of Massachusetts

PRESENTED BY:

Elizabeth A. Malia

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 adoption of the accompanying bill:

An Act relative to diversion to substance abuse treatment for non-violent drug offenders.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Martin J. Walsh</i>	<i>Boston City Hall, 9th Floor Boston, MA</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>
<i>Daniel Cullinane</i>	<i>12th Suffolk</i>
<i>Evandro C. Carvalho</i>	<i>5th Suffolk</i>
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>Ruth B. Balse</i>	<i>12th Middlesex</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Angelo M. Scaccia</i>	<i>14th Suffolk</i>

<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>
<i>Barbara L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Gloria L. Fox</i>	<i>7th Suffolk</i>
<i>Leah Cole</i>	<i>12th Essex</i>
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>
<i>Linda Dean Campbell</i>	<i>15th Essex</i>
<i>Michael S. Day</i>	<i>31st Middlesex</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>

HOUSE No. 1806

By Ms. Malia of Boston, a petition (accompanied by bill, House, No. 1806) of Elizabeth A. Malia and others for legislation to expand substance abuse treatment options for non-violent drug offenders. Mental Health and Substance Abuse.

The Commonwealth of Massachusetts

—————
**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**
—————

An Act relative to diversion to substance abuse treatment for non-violent drug offenders.

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. Section 1 of chapter 111E of the General Laws, as appearing in the 2012
2 Official Edition, is hereby amended by adding the following paragraphs:-

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

6 "Bureau", the bureau of substance abuse services within the department of public health.

7 "Second drug offense", an illegal act which stands pending for trial wherein the defendant
8 has been assigned to treatment under chapter 111E, one time previously.

9 "Successful completion of treatment", when the administrator of the facility has
10 determined that the drug dependent person, as defined by this Act, has completed the
11 requirements set forth by the individual patient treatment plan to the best of his current ability.

12

13 SECTION 2. Said section 1 is hereby further amended by striking out the sixth sentence
14 and inserting in place thereof the following sentence:--

15 "Director", the director of the division of rehabilitation, his designee, the assistant
16 commissioner in charge of the bureau or his designee.

17 SECTION 3. Said section 1 is hereby further amended by striking out the ninth sentence
18 and inserting in place thereof the following sentence:--

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

24

25 SECTION 4. Section 5 of said chapter 111E is hereby amended by adding the following
26 paragraph:--

27 If the Division is unable to comply with the provisions of this section, the bureau shall
28 prepare and publish annually a list of facilities operating in accordance with this chapter and
29 shall make such list available to all District and Superior Courts, interested attorneys and their
30 statewide organizations, the offices of the District Attorneys for each county and their statewide
31 organizations, and probation departments and their statewide organizations within the

32 commonwealth on an annual basis and to members of the public upon request. Such list shall
33 include, but not be limited to, the following:

- 34 (a) eligibility of treatment;
- 35 (b) scope of treatment offered;
- 36 (c) applicable facility fees;
- 37 (d) last known patient capacity; and
- 38 (e) facilities available for emergency treatment.

39 SECTION 5. Section 8 of said chapter 111E is hereby amended by striking the second
40 paragraph and inserting in place thereof the following paragraph:--

41 Upon receipt by the director of an application for admission, the director shall designate
42 an addiction specialist to conduct an examination of the person to determine whether that person
43 is a drug dependent person who would benefit from treatment. The addiction specialist shall
44 report his findings in writing to the director after the completion of the examination, stating the
45 facts upon which the findings are based and the reasons therefore.

46 SECTION 6. Said section 8 is hereby further amended by striking the fourth paragraph.

47 SECTION 7. Section 10 of said chapter 111E is hereby amended by striking the first
48 paragraph and inserting in place thereof the following paragraph:--

49 Section 10. Any defendant who is charged with a first or second drug offense shall be
50 informed, upon being brought before the court on such charge, that he is entitled to request an
51 examination to determine whether or not he is a drug dependent person who would benefit from

52 treatment. A court may in its discretion request an examination of any person charged with a
53 drug offense to determine whether a defendant is drug dependent and would benefit from
54 treatment in accordance with this chapter.

55 SECTION 8. Said section 10 is hereby further amended by striking the third through
56 sixth paragraphs inclusive and inserting in place thereof the following paragraphs:--

57 Court proceedings shall be stayed from the time a request for examination is made under
58 this section and while that request is considered by the court. Upon such a request, the court shall
59 appoint an Addiction Specialist to conduct the examination at an appropriate location within 3
60 days of the granting of the request. In no event shall the request for such an examination or any
61 statement by the defendant during the course of the examination, or any finding by the Addiction
62 Specialist be admissible against the defendant in any court proceedings. The appointed addiction
63 specialist shall report his findings in writing to the court within 3 days after the completion of the
64 examination, stating the facts upon which the findings are based and the reasons therefore.

65 If the defendant is also charged with the violation of any law other than a drug offense,
66 the stay of the court proceedings may be vacated by the court upon the report of the addiction
67 specialist, whereupon the report shall be considered upon disposition of the charges in
68 accordance with sections 11 and 12, and the remaining provisions of this chapter shall not apply.
69 If the defendant is charged with a drug offense only and the addiction specialist reports that the
70 defendant is a drug dependent person who would benefit from treatment, the court shall inform
71 the defendant that he may request assignment to a drug treatment facility and advise him of the
72 consequences of the assignment, and that if he is so assigned the court proceedings shall be
73 stayed for the term of such assignment.

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

77 SECTION 9. Said section 10 is hereby further amended by striking the eighth and ninth
78 paragraphs and inserting in place thereof the following paragraphs:--

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

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

93 SECTION 10. Said section 10 is hereby further amended by striking the eleventh
94 paragraph and inserting in place thereof the following paragraph:--

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

102 SECTION 11. Said section 10 is hereby further amended by striking the first sentence of
103 the fifteenth paragraph and inserting in place thereof the following:--

104 If the Addiction Specialist reports that the defendant is not a Drug Dependent Person who
105 would benefit from treatment, the defendant shall be entitled to request a hearing to determine
106 whether or not he is a drug dependent person who would benefit from treatment.

107 SECTION 12. Said section 10 is hereby further amended by striking the twenty sixth
108 sentence and inserting in place thereof the following sentence:--

109 Within 10 days of the receipt by the court of an application for discharge, the
110 administrator and an independent addictions specialist designated by the court to make an
111 examination of the defendant shall report to the court as to whether or not the patient would
112 benefit from further treatment at a facility.

113 SECTION 13. Said section 10 is hereby further amended by striking the twenty ninth
114 sentence and inserting in place thereof the following sentence:--

115 Within 10 days of the receipt of the court of an application of transfer, the administrator
116 and an independent addictions specialist shall report to the court as to whether the defendant is a
117 proper subject for the transfer for which he has made application.

118 SECTION 14. Said section 10 is hereby further amended by striking the forty third
119 sentence and inserting in place thereof the following sentence:--

120 The provisions of this section shall not apply to a person charged with violating sections
121 32 to 32G, inclusive, of chapter 94 C; provided, however, notwithstanding the provisions of this
122 section, section of said chapter 94C or any other law to the contrary, the provisions of this
123 section shall apply to a person charged with first or second offense of subsection (a) of section
124 32 of chapter 94C or a first offense of subsection (b) of said section 32, first or second offense of
125 subsection (a) of section 32A of chapter 94C or a first offense of subsection (b) of said section
126 32A, first or second offense of subsection (c) of section 32A of chapter 94C or a first offense of
127 subsection (d) of said section 32A, first or second offense of subsection (a) of section 32B of
128 chapter 94C or a first offense of subsection (b) of said section 32B, first or second offense of
129 subsection (a) of section 32C of chapter 94C or a first offense of subsection (b) of said a section
130 32C, and first or second offense of subsection (a) of section 32D of chapter 94C or a first offense
131 of subsection (b) of said section 32D.

132 SECTION 15. Section 11 of said chapter 111E is hereby amended by striking the first
133 paragraph and inserting in place thereof the following paragraph:--

134 Any person found guilty of a violation of law other than a drug offense, who prior to
135 disposition of the charge, states that he is a drug dependent person, and requests an examination,
136 shall be examined by an addictions specialist to determine whether or not he is a drug dependent

137 person who would benefit from treatment. The court may use the determination that the
138 defendant is a drug dependent person to place him into treatment services under this chapter.

139 SECTION 16. Section 12 of said chapter 111E is hereby amended by inserting after the
140 fifth sentence the following sentence:--

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

142 SECTION 17. This act shall not apply to any convictions entered or sentences imposed
143 prior to the effective date of this act.