HOUSE DOCKET, NO. 1009 FILED ON: 1/19/2011

HOUSE . . . . . No. 1435

The Commonwealth of Massachusetts

PRESENTED BY:

Martin J. Walsh

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 to amend the Commonwealth's drug treatment program to allow for the diversion of low level offenders under court supervision.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Martin J. Walsh	*13th Suffolk*
Sean Garballey	*23rd Middlesex*
Denise Provost	*27th Middlesex*
Nick Collins	*4th Suffolk*
Linda Dorcena Forry	*12th Suffolk*
Ruth B. Balser	*12th Middlesex*
Gale D. Candaras	☐ *[District]* ☐
Elizabeth A. Malia	*11th Suffolk*

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HOUSE . . . . . No. 1435

By Mr. Walsh of Boston, a petition (accompanied by bill, House, No. 1435) of Martin J. Walsh and others relative to allowing the diversion of low-level offenders under court supervision from the drug treatment program of the Commonwealth. Mental Health and Substance Abuse.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *1962* OF 2009-2010.]

The Commonwealth of Massachusetts

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:

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

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

SECTION 2. Said chapter 111E of the General Laws is hereby amended by inserting the definition of "Bureau" in SECTION as follows:—

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

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

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

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

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

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

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

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

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

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

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

40 (a) eligibility of treatment;

41 (b) scope of treatment offered;

42 (c) applicable facility fees;

43 (d) last known patient capacity; and

44 (e) facilities available for emergency treatment.

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

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

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

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

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

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

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

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

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

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

77 If the defendant is also charged with the violation of any law other than a drug offense,
78 the stay of the court proceedings may be vacated by the court upon the report of the addiction

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

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

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

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

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

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

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

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

111 If the defendant requests assignment to treatment and is determined by an addictions
112 specialist to be a drug dependent person that would benefit from treatment, and the defendant is
113 charged with a first or second drug offense not involving the sale or manufacture of dependency

114 related drugs, or is assigned by the court, and there are no continuances outstanding with respect
115 to the defendant pursuant to this section, and adequate and appropriate treatment at a facility is
116 not available, the stay of court proceedings shall remain in effect until such time as adequate and
117 appropriate treatment is available.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

164 SECTION 23. Said chapter 111E of the General Laws is hereby amended by inserting the
165 following to the end of 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 SECTION 24. This act shall not apply to any convictions entered or sentences imposed
168 prior to the effective date of this act.