

# HOUSE . . . . . No. 1435

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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 adoption 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:	DATE ADDED:
<i>Martin J. Walsh</i>	<i>13th Suffolk</i>	<i>1/19/2011</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>2/1/2011</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>2/4/2011</i>
<i>Nick Collins</i>	<i>4th Suffolk</i>	<i>2/4/2011</i>
<i>Linda Dorcena Forry</i>	<i>12th Suffolk</i>	<i>2/4/2011</i>
<i>Ruth B. Balser</i>	<i>12th Middlesex</i>	<i>2/3/2011</i>
<i>Gale D. Candaras</i>		<i>2/4/2011</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>2/3/2011</i>

# HOUSE . . . . . No. 1435

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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.

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

## The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven  
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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  
2     definition of “addiction specialist” to SECTION 1 as appearing in the 1998 Official Edition, as  
3     follows:—

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

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

9           “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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 12. Said chapter 111E of the General Laws is hereby amended by striking 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

to the defendant pursuant to this section, and adequate and appropriate treatment at a facility is not available, the stay of court proceedings shall remain in effect until such time as adequate and appropriate treatment is available.

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

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

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

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

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