

SENATE No. 760

The Commonwealth of Massachusetts

PRESENTED BY:

Joseph A. Boncore

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 programs.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | |
|--------------------------|------------------------------------|-----------------|
| <i>Joseph A. Boncore</i> | <i>First Suffolk and Middlesex</i> | |
| <i>Jack Lewis</i> | <i>7th Middlesex</i> | <i>2/3/2017</i> |

SENATE No. 760

By Mr. Boncore, a petition (accompanied by bill, Senate, No. 760) of Joseph A. Boncore and Jack Lewis for legislation relative to diversion programs. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act relative to diversion programs.

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 276A of the General Laws, as appearing in the 2014 Official
2 Edition, is hereby amended by striking out sections 1 to 8, inclusive, and inserting in place
3 thereof the following new sections:-

4 Section 1. The following words, as used in this chapter, unless the context otherwise
5 requires, shall have the following meanings:—

6 “Assessment”, a thorough and complete measurement of the needs of a person in, but not
7 limited to, the following areas: education, vocational training, job readiness, housing, behavioral
8 and physical health, family and social services, and an analysis of a person’s willingness to
9 participate in a diversion program.

10 "Commissioner", the commissioner of probation.

11 "Director", the person in charge of the operation of a program of community supervision
12 and services.

13 “Official designee”, a representative of a community program who has been approved by
14 the chief justice of the trial court to work in conjunction with that court’s probation office to
15 screen persons who may be eligible for diversion.

16 “Program”, any program of community supervision and services certified or approved by
17 the commissioner under the provisions of section x, including, but not limited to, medical,
18 educational, vocational, social and psychological services, corrective and preventive guidance,
19 training, performance of community service work, counseling, and other rehabilitative services
20 designed to protect the public and benefit the individual.

21 Section 2. The court shall have jurisdiction to divert from further court processing any
22 person who, as the result of a complaint or indictment, has received a recommendation from the
23 Department of Probation or a program that diversion to the community or a program is
24 appropriate.

25 Section 3. The probation officer shall, after the appointment of counsel and upon the
26 request of counsel, and prior to arraignment, complete an assessment of each person charged
27 with an offense for the purpose of enabling the judge to consider the suitability of such person
28 for diversion from any further court processing, for diversion to the community or to a program
29 prior to arraignment. The Department of Probation shall, in consultation with the advisory board
30 established pursuant to section 98A of chapter 276, implement a validated tool to conduct such
31 assessment that is research-based and aligned with best practices in the field.

32 If the person or the probation officer requests, the court may offer a continuance of up to
33 fourteen-days to allow for additional time for the assessment by the department or, where the
34 judge determines it is appropriate, the personnel of a program to determine if the person would

35 benefit from such program. If such a continuance is granted, the judge shall direct the person to
36 the probation officer for further assessment or, where applicable, to a program for such
37 assessment, and shall inform said probation officer or program of such action.

38 If a case is continued under this section, the person shall not be arraigned and no entry
39 will be made into the CORI systems until such time as a justice of the court so orders for the
40 purposes of resuming the ordinary processing of a criminal proceeding.

41 Section 4. After the completion of the assessment, or upon the expiration of a
42 continuance granted pursuant to section 3, the probation officer or, where applicable, the director
43 of a program to which the person has been referred, shall submit to the court a recommendation
44 as to whether such person would benefit from diversion to the community or a program.

45 The judge, upon receipt of the recommendation, shall provide an opportunity for a
46 recommendation by the prosecution regarding the diversion of the person. After receiving the
47 report and having provided an opportunity for the prosecution to make its recommendation, the
48 judge shall make a final determination as to the eligibility of the person for diversion. There shall
49 be a rebuttable presumption that a person who is charged with a misdemeanor for which the
50 punishment is a fine, imprisonment in a jail or house of correction for not more than six months,
51 or both such fine and imprisonment, and who does not have any outstanding warrants,
52 continuances, appeals or juvenile court cases pending, shall be found eligible for diversion.

53 The proceedings of a person who is found eligible for diversion shall be stayed for a
54 period of ninety days, unless the judge in his discretion considers that the interest of justice
55 would best be served by a lesser period of time.

56 In no event shall a stay of proceedings be granted pursuant to this section unless the
57 person consents in writing to the terms and conditions of the stay of proceedings and knowingly
58 executes a waiver of his right to a speedy trial on a form approved by the chief justice of the trial
59 court. Such consent shall be with the advice of the person's counsel. Any request for assessment,
60 or a decision by the person not to enter a program, or a determination by probation or by a
61 program that the person would not benefit from diversion, or any statement made by the person
62 during the course of assessment, shall not be admissible against the person in any proceedings;
63 nor shall any consent by the person to the stay of proceedings or any act done or statement made
64 in fulfillment of the terms and conditions of such stay of proceedings be admissible as an
65 admission, implied or otherwise, against the person, should the stay of proceedings be terminated
66 and proceedings resumed on the original complaint or indictment. No statement or other
67 disclosure or records thereof made by a person during the course of assessment or during the stay
68 of proceedings shall be disclosed at any time to a prosecutor or other law enforcement officer in
69 connection with the investigation, or prosecution of any charge or charges against said person or
70 any codefendant.

71 If a person has been found eligible for diversion under this section, the person shall not
72 be arraigned and no entry will be made into the CORI systems until such time as a justice so
73 orders for the purposes of resuming the ordinary processing of a criminal proceeding. If a person
74 is found eligible under this section, this eligibility is not considered an issuance of a criminal
75 complaint for the purposes of Section 37H ½ of Chapter 70.

76 Section 5. A district attorney may, in his discretion, divert any person to the community
77 or a program either before or after the assessment procedure set forth in section c, with or
78 without the permission of the court. A district attorney who diverts a case pursuant to this

79 section may request a report from a program regarding the person's status in and completion of
80 such program.

81 If the person during the stay of proceedings is charged with a subsequent offense, a judge
82 in the court that entered the stay of proceedings may issue such process as is necessary to bring
83 the person before the court. When the person is brought before the court, the judge shall afford
84 him an opportunity to be heard. If the judge finds probable cause to believe that the person has
85 committed a subsequent offense, the judge may order, when appropriate, that the stay of
86 proceedings be terminated and that the commonwealth be permitted to proceed on the original
87 complaint or indictment as provided by law.

88 Section 6. Upon the expiration of the initial ninety-day stay of proceedings the probation
89 officer shall indicate to the court the successful completion of diversion by the person or
90 recommending an extension of the stay of proceedings for not more than an additional ninety
91 days, so that the person may complete the diversion program successfully.

92 If the probation officer indicates the successful completion of diversion by a person, the
93 judge shall dismiss the original complaint or indictment pending against the person. If the report
94 recommends an extension of the stay of proceedings, the judge may, on the basis of the report
95 and any other relevant evidence, take such action as he deems appropriate, including the
96 dismissal of the complaint or indictment, the granting of an extension of the stay of proceedings
97 or the resumption of proceedings.

98 If the conditions of diversion have not been met, the person's attorney shall be notified
99 prior to the termination of the person from diversion and the judge may grant an extension to the

100 stay of proceedings if the person reasonably satisfies the court that he does not have the means to
101 comply with the conditions of diversion.

102 If the judge dismisses a complaint or indictment under this section, the court shall enter
103 an order directing expungement of any records of the complaint or indictment and related
104 proceedings maintained by the clerk, the court, the department of criminal justice information
105 services, the court activity record index and the probation department that directly pertain to the
106 complaint or indictment.

107 Section 7. The office of the commissioner of Probation shall, in its discretion, certify,
108 monitor and aid all programs to which children may be diverted pursuant to this chapter. The
109 office of the commissioner of Probation shall, in its discretion, (a) issue for a term of two years,
110 and may renew for like terms, a certification, subject to revocation for cause, to any person,
111 partnership, corporation, society, association or other agency or entity of any kind, other than a
112 licensed general hospital or a department, agency or institution of the federal government, the
113 commonwealth or any political subdivision thereof, deemed to be responsible and suitable to
114 establish and maintain such a program and to meet applicable certification standards and
115 requirements; and in the case of a department, agency or institution of the commonwealth or any
116 political subdivision thereof, grant approval to establish and maintain a program for a term of
117 two years, and may renew such approval for like terms, subject to revocation for cause; (b)
118 promulgate, in consultation with the aforementioned advisory board, rules and regulations
119 establishing certification and approval standards and requirements; (c) establish limits for
120 caseloads and enrollment so that programs are able to provide high quality intensive
121 individualized service to those persons participating in such programs; (d) procure, where
122 appropriate, by contract, the personnel, facilities, services, and materials necessary to carry out

123 the purposes of this act, subject to all applicable laws and regulations; (e) prepare reports for said
124 advisory board showing the progress of all programs in fulfilling the purposes set forth; (f) notify
125 the appropriate justice of the individual court that adequate facilities and personnel are available
126 to fulfill an appropriate array of programs and services for that court; (g) provide technical
127 assistance to such program as may be certified hereunder; (h) provide for the audit of any funds
128 expended by the office for the support of programs certified hereunder; (i) promote the
129 cooperation of all agencies which provide education, training, counseling, legal, employment, or
130 other services to assure that eligible individuals diverted to programs may benefit to the
131 maximum extent practicable; (j) prepare and submit an annual report to the advisory board, to the
132 office of the Commissioner of Probation, the chief justices of the supreme judicial, appeals,
133 superior and district trial courts, and to all justices in the court system evaluating the
134 performance of all programs.

135 SECTION 2. The fourth paragraph of section 98A of chapter 276 of the General Laws, as
136 appearing in the 2014 Official Edition, is hereby amended by adding at the end thereof the
137 following:-

138 The advisory board shall assist the commissioner in coordinating the efforts of all public
139 agencies and private organizations and individuals within the commonwealth concerned with the
140 providing of services to defendants by said programs.