

**SENATE . . . . . No. 761**

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**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 judicial relief for substance abuse through diversion.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Joseph A. Boncore</i>	<i>First Suffolk and Middlesex</i>	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>2/3/2017</i>
<i>RoseLee Vincent</i>	<i>16th Suffolk</i>	<i>2/3/2017</i>

**SENATE . . . . . No. 761**

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By Mr. Boncore, a petition (accompanied by bill, Senate, No. 761) of Joseph A. Boncore, Jason M. Lewis and RoseLee Vincent for legislation relative to judicial relief for substance abuse through diversion. The Judiciary.

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**The Commonwealth of Massachusetts**

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

An Act relative to judicial relief for substance abuse through diversion.

*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 here by amended by inserting at the end thereof the following four new sections:-

3 Section 12. A probation officer or the officer's official designee, when gathering  
4 information relative to a person charged with a violation of chapter 94C and who is eligible to  
5 appear in a drug court of the trial court, shall, prior to arraignment of such person, use best  
6 efforts to confirm that the person is eligible for drug court.

7 The court shall have jurisdiction to divert to a program any person who is a found eligible  
8 for drug court and who does not have any outstanding warrants, continuances, appeals or  
9 criminal cases pending before any courts of the commonwealth or any other state or of the  
10 United States.

11 Section 13. The probation officer shall, after the appointment of counsel and upon the  
12 request of counsel, and prior to arraignment, complete an assessment of each person charged

13 with an offense for the purpose of enabling the judge to consider the suitability of such person  
14 for diversion from any further court processing, for diversion to the community or to a program  
15 prior to arraignment. The Department of Probation shall, in consultation with the advisory board  
16 established pursuant to section 98A of chapter 276, implement a validated tool to conduct such  
17 assessment that is research-based and aligned with best practices in the field.

18           Section 14. After the completion of the assessment, or upon the expiration of a  
19 continuance granted, the probation officer or, where applicable, the director of a program to  
20 which the person has been referred, shall submit to the court a recommendation as to whether  
21 such person would benefit from diversion to the community or a program.

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

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

33           In no event shall a stay of proceedings be granted pursuant to this section unless the  
34 person consents in writing to the terms and conditions of the stay of proceedings and knowingly

35 executes a waiver of his right to a speedy trial on a form approved by the chief justice of the trial  
36 court. Such consent shall be with the advice of the person's counsel. Any request for assessment,  
37 or a decision by the person not to enter a program, or a determination by probation or by a  
38 program that the person would not benefit from diversion, or any statement made by the person  
39 during the course of assessment, shall not be admissible against the person in any proceedings;  
40 nor shall any consent by the person to the stay of proceedings or any act done or statement made  
41 in fulfillment of the terms and conditions of such stay of proceedings be admissible as an  
42 admission, implied or otherwise, against the person, should the stay of proceedings be terminated  
43 and proceedings resumed on the original complaint or indictment. No statement or other  
44 disclosure or records thereof made by a person during the course of assessment or during the stay  
45 of proceedings shall be disclosed at any time to a prosecutor or other law enforcement officer in  
46 connection with the investigation, or prosecution of any charge or charges against said person or  
47 any codefendant.

48         If a person has been found eligible for diversion, the person shall not be arraigned and no  
49 entry will be made into the CORI systems until such time as a justice so orders for the purposes  
50 of resuming the ordinary processing of a criminal proceeding. If a person is found eligible under  
51 this section, this eligibility is not considered an issuance of a criminal complaint for the purposes  
52 of may be afforded a 14 day continuance by the court if appropriate. If the defendant has  
53 demonstrated symptomatology suggestive of a mental illness, a qualified psychiatrist, clinical  
54 psychologist or physician shall, in consultation with the United States Department of Veterans  
55 Affairs, the department of veterans' services or another federal or state agency, provide a written  
56 report to the court to assist in sentencing or diversion. The court may consider the  
57 recommendations of any diagnosing or treating licensed mental health professional for the

58 defendant for pre-trial diversion or the imposition of a sentence. Prior to offering a continuance,  
59 the court shall inquire into the circumstances of the charge.

60 If the court offers a 14 day continuance to seek an assessment and a defendant chooses to  
61 accept the offer of a continuance, the defendant shall notify the court at arraignment. Upon  
62 receipt of such notification, the judge may grant a 14 day continuance. The court, through the  
63 probation office or the officer's official designee, shall direct the defendant to an assessment  
64 program shall inform the program of the action and shall require that the program provide the  
65 probation department and court with its findings. A court may grant a defendant who is  
66 preliminarily determined not to be eligible for pre-trial diversion a 14 day continuance for  
67 assessment. The court shall consider the opinion of the commonwealth on the merits of granting  
68 or denying the continuance. A court may grant a continuance sua sponte or upon motion by the  
69 defendant.

70 Section 15. Upon the expiration of the initial ninety-day stay of proceedings the probation  
71 officer shall indicate to the court the successful completion of diversion by the person or  
72 recommending an extension of the stay of proceedings for not more than an additional ninety  
73 days, so that the person may complete the diversion program successfully.

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

80           If the conditions of diversion have not been met, the person’s attorney shall be notified  
81 prior to the termination of the person from diversion and the judge may grant an extension to the  
82 stay of proceedings if the person reasonably satisfies the court that he does not have the means to  
83 comply with the conditions of diversion.

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

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

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