

HOUSE No. 1343

The Commonwealth of Massachusetts

PRESENTED BY:

Ruth B. Balsler

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 treatment, not imprisonment.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Dylan A. Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>
<i>Adrian C. Madaro</i>	<i>1st Suffolk</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>
<i>Paul J. Donato</i>	<i>35th Middlesex</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Maria Duaiame Robinson</i>	<i>6th Middlesex</i>

<i>Joseph A. Boncore</i>	<i>First Suffolk and Middlesex</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Edward F. Coppinger</i>	<i>10th Suffolk</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Bud L. Williams</i>	<i>11th Hampden</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Stephan Hay</i>	<i>3rd Worcester</i>
<i>Carlos González</i>	<i>10th Hampden</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>
<i>Liz Miranda</i>	<i>5th Suffolk</i>
<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Daniel R. Cullinane</i>	<i>12th Suffolk</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>
<i>Jon Santiago</i>	<i>9th Suffolk</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>

HOUSE No. 1343

By Ms. Balsler of Newton, a petition (accompanied by bill, House, No. 1343) of Ruth B. Balsler and others relative to the testing for the use of alcohol or narcotic drugs or other controlled substances as a condition of release. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to treatment, not imprisonment.

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 57 of chapter 276 of the General Laws, as amended by sections 166
2 through 169 of chapter 69 of the acts of 2018, is hereby amended by inserting after the first
3 paragraph the following paragraphs:-

4 If a person is ordered to refrain from the use of alcohol or a narcotic drug or other
5 controlled substance as a condition of release or if drug or alcohol testing is ordered as a
6 condition of release, the justice of the supreme judicial or superior court, a clerk of courts or the
7 clerk of the superior court for criminal business in the county of Suffolk, a standing or special
8 commissioner appointed by either of said courts or, in the county of Suffolk, by the sheriff of
9 said county with the approval of the superior court, a justice or clerk of a district court, a master
10 in chancery, shall not order drug or alcohol testing to occur more than 4 times per month. Upon
11 motion of the person, the justice of the supreme judicial or superior court, a clerk of courts or the
12 clerk of the superior court for criminal business in the county of Suffolk, a standing or special

13 commissioner appointed by either of said courts or, in the county of Suffolk, by the sheriff of
14 said county with the approval of the superior court, a justice or clerk of a district court, a master
15 in chancery, shall consider whether the person has a substance use disorder in need of treatment.
16 If he or she determines that the person has a substance use disorder in need of treatment, the
17 person shall be ordered to engage in such treatment with any health care provider licensed by the
18 department of public health, as defined in section 1 of chapter 111.

19 If a person is engaged in treatment, the person shall not be required to submit to any drug
20 or alcohol testing that is not required by such treatment program, and any positive test result or
21 any other indicator of relapse shall not be considered a violation of the person's conditions of
22 release. For the purposes of this section, a person shall be considered engaged in treatment if the
23 person: (i) is attending a treatment program or regimen; (ii) switches treatment programs
24 voluntarily or at the direction of a health care provider; (iii) is discharged from a treatment
25 program and transitions into a new treatment program or regimen within a reasonable period of
26 time; or (iv) is on a waiting list for a treatment program or regimen. If a person is not engaged in
27 treatment, absent extenuating circumstances and a showing that the person is earnestly
28 attempting to comply with the court's condition of release, the court may find that the person is
29 in violation of a condition of release.

30 If a person has completed treatment and remains subject to pretrial conditions of release,
31 and tests positive for drugs or alcohol, upon motion of the person, the court shall again consider
32 the person's treatment needs. If the court determines that the person has a substance use disorder
33 in need of treatment, the person shall be ordered to resume treatment with any health care
34 providers licensed by the department of public health, as defined in section 1 of chapter 111, and
35 the positive drug or alcohol test shall not be considered a violation of conditions of release.

36 SECTION 2. Section 58 of chapter 276 of the General Laws, as amended by sections 170
37 and 171 of chapter 69 of the acts of 2018, is hereby amended by inserting after the first
38 paragraph the following paragraphs:-

39 If a person is ordered to refrain from the use of alcohol or a narcotic drug or other
40 controlled substance as a condition of release or if drug or alcohol testing is ordered as a
41 condition of release, the justice or clerk or assistant clerk of the district court, the bail
42 commissioner or master in chancery, shall not order drug or alcohol testing to occur more than 4
43 times per month. Upon motion of the person, the justice or clerk or assistant clerk of the district
44 court, the bail commissioner or master in chancery, shall consider whether the person has a
45 substance use disorder in need of treatment. If he or she determines that the person has a
46 substance use disorder in need of treatment, the person shall be ordered to engage in such
47 treatment with any health care provider licensed by the department of public health, as defined in
48 section 1 of chapter 111.

49 If a person is engaged in treatment, the person shall not be required to submit to any drug
50 or alcohol testing that is not required by such treatment program, and any positive test result or
51 any other indicator of relapse shall not be considered a violation of the person's conditions of
52 release. For the purposes of this section, a person shall be considered engaged in treatment if the
53 person: (i) is attending a treatment program or regimen; (ii) switches treatment programs
54 voluntarily or at the direction of a health care provider; (iii) is discharged from a treatment
55 program and transitions into a new treatment program or regimen within a reasonable period of
56 time; or (iv) is on a waiting list for a treatment program or regimen. If a person is not engaged in
57 treatment, absent extenuating circumstances and a showing that the person is earnestly

58 attempting to comply with the court's condition of release, the court may find that the person is
59 in violation of a condition of release.

60 If a person has completed treatment and remains subject to pretrial conditions of release,
61 and tests positive for drugs or alcohol, upon motion of the person, the court shall again consider
62 the person's treatment needs. If the court determines that the person has a substance use disorder
63 in need of treatment, the person shall be ordered to resume treatment with any health care
64 providers licensed by the department of public health, as defined in section 1 of chapter 111, and
65 the positive drug or alcohol test shall not be considered a violation of conditions of release.

66 SECTION 3. Section 58A of said chapter 276, as amended by sections 174 through 176
67 of chapter 69 of the acts of 2018, is hereby further amended by adding after subsection (8) the
68 following subsection:-

69 (9) If after a hearing under subsection (4) pretrial release subject to conditions under
70 subsection (2) is ordered, and if the person is ordered to refrain from the excessive use of alcohol
71 or use of a narcotic drug or other controlled substance as a condition of release or if drug or
72 alcohol testing is ordered as a condition of release, the judicial officer shall not order drug or
73 alcohol testing to occur more than 4 times per month. Upon motion of the person, the judicial
74 officer shall consider whether the person has a substance use disorder in need of treatment. If he
75 or she determines that the person has a substance use disorder in need of treatment, the person
76 shall be ordered to engage in such treatment in accordance with clause (x) of paragraph (B) of
77 subsection (2) with any health care provider licensed by the department of public health, as
78 defined in section 1 of chapter 111.

79 If a person is engaged in treatment, the person shall not be required to submit to any drug
80 or alcohol testing that is not required by such treatment program, and any positive test result or
81 any other indicator of relapse shall not be considered a violation of the person's conditions of
82 release. For the purposes of this section, a person shall be considered engaged in treatment if the
83 person: (i) is attending a treatment program or regimen; (ii) switches treatment programs
84 voluntarily or at the direction of a health care provider; (iii) is discharged from a treatment
85 program and transitions into a new treatment program or regimen within a reasonable period of
86 time or (iv) is on a waiting list for a treatment program or regimen. If a person is not engaged in
87 treatment, absent extenuating circumstances and a showing that the person is earnestly
88 attempting to comply with the court's condition of release, the court may find that the person is
89 in violation of a condition of release.

90 If a person has completed treatment and remains subject to pretrial conditions of release,
91 and tests positive for drugs or alcohol, upon motion of the person, the court shall again consider
92 the person's treatment needs. If the court determines that the person has a substance use disorder
93 in need of treatment, the person shall be ordered to resume treatment with any health care
94 providers licensed by the department of public health, as defined in section 1 of chapter 111, and
95 the positive drug or alcohol test shall not be considered a violation of conditions of release.

96 SECTION 4. Section 87A of said chapter 276, as amended by sections 180 through 182
97 of chapter 69 of the acts of 2018, is hereby further amended by inserting after the first paragraph
98 the following paragraphs:-

99 If a person is ordered to refrain from the use of alcohol or a narcotic drug or other
100 controlled substance as a condition of probation or if drug or alcohol testing is ordered as a

101 condition of probation, the court shall not order drug or alcohol testing to occur more than 4
102 times per month. Upon motion of the person, the court shall consider whether the person has a
103 substance use disorder in need of treatment. If the court determines that the person has a
104 substance use disorder in need of treatment, the person shall be ordered to engage in such
105 treatment with any health care provider licensed by the department of public health, as defined in
106 section 1 of chapter 111.

107 If a person is engaged in treatment, the person shall not be required to submit to any drug
108 or alcohol testing that is not required by such treatment program, and any positive test result or
109 any other indicator of relapse shall not be considered a violation of the person's conditions of
110 probation. For the purposes of this section, a person shall be considered engaged in treatment if
111 the person: (i) is attending a treatment program or regimen; (ii) switches treatment programs
112 voluntarily or at the direction of a health care provider; (iii) is discharged from a treatment
113 program and transitions into a new treatment program or regimen within a reasonable period of
114 time; or (iv) is on a waiting list for a treatment program or regimen. If a person is not engaged in
115 treatment, absent extenuating circumstances and a showing that the person is earnestly
116 attempting to comply with the court's condition of probation, the court may find that the person
117 is in violation of a condition of probation.

118 If a person has completed treatment and remains subject to conditions of probation, and
119 tests positive for drugs or alcohol, upon motion of the person, the court shall again consider the
120 person's treatment needs. If the court determines that the person has a substance use disorder in
121 need of treatment, the person shall be ordered to resume treatment with any health care providers
122 licensed by the department of public health, as defined in section 1 of chapter 111, and the
123 positive drug or alcohol test shall not be considered a violation of conditions of probation.