

**HOUSE . . . . . No. 1343**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Ruth B. Balser***

*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:	DATE ADDED:
<i>Ruth B. Balser</i>	<i>12th Middlesex</i>	<i>1/17/2019</i>
<i>Dylan A. Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>	<i>1/23/2019</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>1/25/2019</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>1/25/2019</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>	<i>1/25/2019</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>	<i>1/25/2019</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>1/28/2019</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>1/28/2019</i>
<i>Adrian C. Madaro</i>	<i>1st Suffolk</i>	<i>1/28/2019</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>	<i>1/29/2019</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/23/2019</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>1/29/2019</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>1/29/2019</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>	<i>1/30/2019</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>	<i>1/30/2019</i>
<i>Paul J. Donato</i>	<i>35th Middlesex</i>	<i>1/30/2019</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>1/30/2019</i>
<i>Maria Duaiame Robinson</i>	<i>6th Middlesex</i>	<i>1/25/2019</i>

<i>Joseph A. Boncore</i>	<i>First Suffolk and Middlesex</i>	<i>1/30/2019</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/30/2019</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>1/30/2019</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>1/30/2019</i>
<i>Edward F. Coppinger</i>	<i>10th Suffolk</i>	<i>1/30/2019</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/30/2019</i>
<i>Bud L. Williams</i>	<i>11th Hampden</i>	<i>1/30/2019</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>1/30/2019</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>1/30/2019</i>
<i>Stephan Hay</i>	<i>3rd Worcester</i>	<i>1/30/2019</i>
<i>Carlos González</i>	<i>10th Hampden</i>	<i>1/30/2019</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>1/30/2019</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>1/30/2019</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>	<i>1/31/2019</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>	<i>1/31/2019</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	<i>1/31/2019</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>	<i>1/31/2019</i>
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>	<i>1/31/2019</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>	<i>1/31/2019</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>	<i>1/31/2019</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>	<i>1/31/2019</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>1/31/2019</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>1/31/2019</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	<i>1/31/2019</i>
<i>Liz Miranda</i>	<i>5th Suffolk</i>	<i>2/1/2019</i>
<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>	<i>2/1/2019</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>2/1/2019</i>
<i>Daniel R. Cullinane</i>	<i>12th Suffolk</i>	<i>2/1/2019</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>2/1/2019</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>	<i>2/1/2019</i>
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>	<i>2/1/2019</i>
<i>Jon Santiago</i>	<i>9th Suffolk</i>	<i>2/1/2019</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/1/2019</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>2/1/2019</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>	<i>2/1/2019</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>	<i>2/1/2019</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>2/1/2019</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>2/1/2019</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.