HOUSE DOCKET, NO. 3621 FILED ON: 1/18/2019

HOUSE . . . . . No. 3376

The Commonwealth of Massachusetts

PRESENTED BY:

Elizabeth A. Malia

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 to substance use disorder treatment for non-violent drug offenders.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Elizabeth A. Malia	*11th Suffolk*	*1/18/2019*
Martin J. Walsh, Mayor of the City of Boston	*1 City Hall Square Suite 500, Boston MA 02201*	*1/18/2019*
Louis L. Kafka	*8th Norfolk*	*1/22/2019*
Michael O. Moore	*Second Worcester*	*1/24/2019*
Brian M. Ashe	*2nd Hampden*	*1/31/2019*
Joseph A. Boncore	*First Suffolk and Middlesex*	*2/1/2019*
Daniel R. Carey	*2nd Hampshire*	*1/31/2019*
Daniel R. Cullinane	*12th Suffolk*	*2/1/2019*
Marjorie C. Decker	*25th Middlesex*	*2/1/2019*
James B. Eldridge	*Middlesex and Worcester*	*1/31/2019*
Nika C. Elugardo	*15th Suffolk*	*2/3/2019*
Carlos González	*10th Hampden*	*2/1/2019*
James K. Hawkins	*2nd Bristol*	*2/2/2019*
Daniel J. Hunt	*13th Suffolk*	*1/29/2019*
David Henry Argosky LeBoeuf	*17th Worcester*	*2/1/2019*
Adrian C. Madaro	*1st Suffolk*	*2/1/2019*
Paul McMurtry	*11th Norfolk*	*1/30/2019*

Liz Miranda	*5th Suffolk*	*1/31/2019*
Tram T. Nguyen	*18th Essex*	*1/29/2019*
David Allen Robertson	*19th Middlesex*	*1/24/2019*
Daniel J. Ryan	*2nd Suffolk*	*1/31/2019*
Jon Santiago	*9th Suffolk*	*1/31/2019*
José F. Tosado	*9th Hampden*	*1/31/2019*
Andres X. Vargas	*3rd Essex*	*1/31/2019*
Susannah M. Whipps	*2nd Franklin*	*1/24/2019*

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HOUSE . . . . . No. 3376

By Ms. Malia of Boston, a petition (accompanied by bill, House, No. 3376) of Elizabeth A. Malia and others relative to diversion to substance use disorder treatment for non-violent drug offenders. The Judiciary.

The Commonwealth of Massachusetts

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

An Act relative to diversion to substance use disorder treatment for non-violent drug offenders.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 1 of chapter 111E of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by adding the following paragraphs:-

"Bureau", the bureau of substance abuse services within the department of public health.

"Second drug offense", a drug offense, as defined by this section, which stands pending for trial wherein the defendant has been assigned to treatment under chapter 111E 1 time previously.

"Successful completion of treatment", when the administrator of the facility has determined that the drug dependent 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 2. Said section 1 is hereby further amended by striking out the fourteenth sentence and inserting in place thereof the following sentence:-

"Director", the director of the division of rehabilitation, his designee, the assistant commissioner in charge of the bureau or his designee.

SECTION 3. Said section 1 is hereby further amended by striking out the nineteenth sentence and inserting in place thereof the following sentence:-

"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, 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 4. Section 5 of said chapter 111E is hereby amended by striking the sixth paragraph and inserting in place thereof the following paragraph:--

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 attorneys 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 5. Section 8 of said chapter 111E is hereby amended by striking the second paragraph and inserting in place thereof the following paragraph:-

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 6. Said section 8 is hereby further amended by striking the fourth paragraph.

SECTION 7. Section 10 of said chapter 111E is hereby amended by striking the first paragraph, as amended by chapter 69 of the acts of 2018, and inserting in place thereof the following paragraph:-

Section 10. Any defendant who is charged with a first or second drug 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 dependent 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 8. Said section 10 is hereby further amended by striking the third through sixth paragraphs inclusive and inserting in place thereof the following paragraphs:-

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 3 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. The appointed addiction specialist shall report his findings in writing to the court within 3 days after the completion of the examination, stating the facts upon which the findings are based and the reasons therefore.

If the defendant requests assignment to treatment and the evaluation of the addiction specialists deems the defendant would benefit from treatment the court must stay the court proceedings and assign the defendant to a drug treatment facility.

SECTION 9. Said section 10 is hereby further amended by striking the eighth and ninth paragraphs and inserting in place thereof the following paragraphs:-

In determining whether a defendant is eligible for assignment under this section, the court shall consider the report of the addiction specialist, the defendant's criminal record , the availability of adequate and appropriate treatment, the nature of the offense with which the defendant is currently charged, including but not limited to whether the offense charged is that of sale or sale to a minor, and any other evidence the court deems relevant, provided, however, that where the offense charged is that of a sale or sale to a minor, no defendant may be assigned under this section unless that defendant is determined to be currently drug dependent, not merely at risk of becoming drug dependent.

If the defendant is determined to be a drug dependent person under sections 15 or 22 of this Act, requests assignment to treatment, and if the defendant is charged with a first or second drug offense not involving the sale or manufacture of dependency related drugs, or is assigned by the court, and there are no continuances outstanding with respect to the defendant pursuant to this section, the court shall order that the defendant be assigned to a drug treatment facility without consideration of any other factors notwithstanding sections 15 and 22 of this Act.

SECTION 10. Said section 10 is hereby further amended by striking the eleventh paragraph and inserting in place thereof the following paragraph:-

If the defendant requests assignment to treatment and is determined by an addiction specialist to be a drug dependent person that would benefit from treatment, and the defendant is charged with a first or second drug offense not involving the sale or manufacture of dependency 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 11. Said section 10 is hereby further amended by striking 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 dependent person who would benefit from treatment, the defendant shall be entitled to request a hearing to determine whether or not he is a drug dependent person who would benefit from treatment. The court may on its own motion, or shall, upon request of the defendant or his counsel, appoint an independent addiction specialist to examine the defendant and testify at the hearing. If the court determines

that the defendant is a drug dependent person who would benefit by treatment, the procedures and standards applicable to a defendant who is determined by the court, following the report of the first examining addiction specialist to be a drug dependent person who would benefit by treatment, shall apply to the defendant.

SECTION 12. Said section 10 is hereby further amended by striking the nineteenth paragraph and inserting in place thereof the following paragraph:-

Within 10 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. If the court determines that the patient would no longer so benefit, the patient's application for discharge shall be granted. If the court does not so determine, said application shall be denied.

SECTION 13. Said section 10 is hereby further amended by striking the twentieth paragraph and inserting in place thereof the following paragraph:-

Within 10 days of the receipt of the court of an application of transfer, the administrator and an independent addictions specialist shall report to the court as to whether the defendant is a proper subject for the transfer for which he has made application. If the court determines that the patient is a proper subject for the transfer, the patient's application for transfer shall be granted and the assigning court shall be so notified. If the court does not so determine, said application shall be denied.

SECTION 14. Said section 10 is hereby further amended by striking the twenty fifth paragraph and inserting in place thereof the following paragraph:-

The provisions of this section shall not apply to a person charged with violating sections 32 to 32G, inclusive, of chapter 94C; provided, however, notwithstanding the provisions of said chapter 94C or any other law to the contrary, the provisions of this section shall apply to a person charged with first or second offense of subsection (a) of section 32 of chapter 94C or a first offense of subsection (b) of said section 32, first or second offense of subsection (a) of section 32A of chapter 94C or a first offense of subsection (b) of said section 32A, first or second offense of subsection (c) of section 32A of chapter 94C or a first offense of subsection (d) of said section 32A, first or second offense of subsection (a) of section 32B of chapter 94C or a first offense of subsection (b) of said section 32B, first or second offense of subsection (a) of section 32C of chapter 94C or a first offense of subsection (b) of said a section 32C, and first or second offense of subsection (a) of section 32D of chapter 94C or a first offense of subsection (b) of said section 32D.

SECTION 15. Section 11 of said chapter 111E is hereby amended by striking the first paragraph, as amended by chapter 69 of the acts of 2018, and inserting in place thereof the following paragraph:-

Any person found guilty of a violation of law other than a drug offense, who prior to disposition of the charge, states that he is a drug dependent person, and requests an examination, shall be assessed by an addictions specialist to determine whether or not he is a drug dependent person who would benefit from treatment. The court may use the determination that the defendant is a drug dependent person to place him into treatment services under this chapter.

SECTION 16. Section 12 of said chapter 111E is hereby amended by inserting after the fifth sentence the following sentence:--

A positive drug test alone shall not be considered a breach of the terms of probation. The court shall not prohibit the use of medication-assisted treatment as a condition of probation.

SECTION 17. This act shall not apply to any convictions entered or sentences imposed prior to the effective date of this act.