

SENATE No. 937

The Commonwealth of Massachusetts

PRESENTED BY:

Cindy F. Friedman

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>Cindy F. Friedman</i>	<i>Fourth Middlesex</i>	
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/23/2019</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>	<i>1/25/2019</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>	<i>1/28/2019</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>1/28/2019</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>	<i>1/29/2019</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/29/2019</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>1/29/2019</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>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>1/30/2019</i>
<i>Edward J. Kennedy</i>	<i>First Middlesex</i>	<i>1/30/2019</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>1/31/2019</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>	<i>1/31/2019</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	<i>1/31/2019</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>	<i>1/31/2019</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>1/31/2019</i>
<i>Richard M. Haggerty</i>	<i>30th Middlesex</i>	<i>1/31/2019</i>

<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>	<i>2/1/2019</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>2/1/2019</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>2/1/2019</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>2/1/2019</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>2/1/2019</i>
<i>Liz Miranda</i>	<i>5th Suffolk</i>	<i>2/1/2019</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>2/1/2019</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>2/1/2019</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>2/4/2019</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>2/6/2019</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/8/2019</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>	<i>2/15/2019</i>
<i>Christopher Hendricks</i>	<i>11th Bristol</i>	<i>3/7/2019</i>
<i>Peter Capano</i>	<i>11th Essex</i>	<i>10/29/2019</i>

SENATE No. 937

By Ms. Friedman, a petition (accompanied by bill, Senate, No. 937) of Cindy F. Friedman, Jack Patrick Lewis, William N. Brownsberger, Maria Duaine Robinson and other members of the General Court for legislation relative to treatment, not imprisonment. 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 no longer
27 engaged in treatment, the court may find that the person is in violation of a condition of release.

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

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

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

47 If a person is engaged in treatment, the person shall not be required to submit to any drug
48 or alcohol testing that is not required by such treatment program, and any positive test result or
49 any other indicator of relapse shall not be considered a violation of the person's conditions of
50 release. For the purposes of this section, a person shall be considered engaged in treatment if the
51 person: (i) is attending a treatment program or regimen; (ii) switches treatment programs
52 voluntarily or at the direction of a health care provider; (iii) is discharged from a treatment
53 program and transitions into a new treatment program or regimen within a reasonable period of
54 time; or (iv) is on a waiting list for a treatment program or regimen. If a person is no longer
55 engaged in treatment, the court may find that the person is in violation of a condition of release.

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

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

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

75 If a person is engaged in treatment, the person shall not be required to submit to any drug
76 or alcohol testing that is not required by such treatment program, and any positive test result or
77 any other indicator of relapse shall not be considered a violation of the person’s conditions of

78 release. For the purposes of this section, a person shall be considered engaged in treatment if the
79 person: (i) is attending a treatment program or regimen; (ii) switches treatment programs
80 voluntarily or at the direction of a health care provider; (iii) is discharged from a treatment
81 program and transitions into a new treatment program or regimen within a reasonable period of
82 time or (iv) is on a waiting list for a treatment program or regimen. If a person is no longer
83 engaged in treatment, the court may find that the person is in violation of a condition of release.

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

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

93 If a person is ordered to refrain from the use of alcohol or a narcotic drug or other
94 controlled substance as a condition of probation or if drug or alcohol testing is ordered as a
95 condition of probation, the court shall not order drug or alcohol testing to occur more than 4
96 times per month. Upon motion of the person, the court shall consider whether the person has a
97 substance use disorder in need of treatment. If the court determines that the person has a
98 substance use disorder in need of treatment, the person shall be ordered to engage in such

99 treatment with any health care provider licensed by the department of public health, as defined in
100 section 1 of chapter 111.

101 If a person is engaged in treatment, the person shall not be required to submit to any drug
102 or alcohol testing that is not required by such treatment program, and any positive test result or
103 any other indicator of relapse shall not be considered a violation of the person's conditions of
104 probation. For the purposes of this section, a person shall be considered engaged in treatment if
105 the person: (i) is attending a treatment program or regimen; (ii) switches treatment programs
106 voluntarily or at the direction of a health care provider; (iii) is discharged from a treatment
107 program and transitions into a new treatment program or regimen within a reasonable period of
108 time; or (iv) is on a waiting list for a treatment program or regimen. If a person is no longer
109 engaged in treatment, the court may find that the person is in violation of a condition of
110 probation.

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