

HOUSE No. 1462

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:	DATE ADDED:
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>	<i>2/10/2021</i>
<i>Christopher Hendricks</i>	<i>11th Bristol</i>	<i>2/16/2021</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>2/23/2021</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>2/23/2021</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>2/23/2021</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/23/2021</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>	<i>2/23/2021</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>	<i>2/23/2021</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/23/2021</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>2/23/2021</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>2/24/2021</i>
<i>Steven C. Owens</i>	<i>29th Middlesex</i>	<i>2/24/2021</i>
<i>Dylan A. Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>	<i>2/24/2021</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>2/25/2021</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>2/25/2021</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>2/25/2021</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>2/26/2021</i>
<i>Kate Lipper-Garabedian</i>	<i>32nd Middlesex</i>	<i>2/26/2021</i>

<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>	<i>2/26/2021</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>2/26/2021</i>
<i>Christina A. Minicucci</i>	<i>14th Essex</i>	<i>2/26/2021</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>	<i>2/26/2021</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>2/26/2021</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>2/26/2021</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>	<i>2/26/2021</i>
<i>Erika Uyterhoeven</i>	<i>27th Middlesex</i>	<i>2/26/2021</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>2/26/2021</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>2/26/2021</i>
<i>Jon Santiago</i>	<i>9th Suffolk</i>	<i>2/26/2021</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>	<i>2/26/2021</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>	<i>3/2/2021</i>
<i>Michael P. Kushmerek</i>	<i>3rd Worcester</i>	<i>3/3/2021</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	<i>3/5/2021</i>
<i>Danillo A. Sena</i>	<i>37th Middlesex</i>	<i>3/8/2021</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>	<i>3/19/2021</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>3/23/2021</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>3/23/2021</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>	<i>3/24/2021</i>
<i>Liz Miranda</i>	<i>5th Suffolk</i>	<i>3/26/2021</i>
<i>Daniel Cahill</i>	<i>10th Essex</i>	<i>4/30/2021</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>9/8/2021</i>

HOUSE No. 1462

By Ms. Balser of Newton, a petition (accompanied by bill, House, No. 1462) of Ruth B. Balser and others relative to pretrial release and probation. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

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 58A of chapter 276 of the General Laws, as appearing in the 2018
2 Official Edition, is hereby amended by adding after subsection (8) the following subsection:-

3 (9) If, after a hearing under subsection (4), pretrial release subject to conditions under
4 subsection (2) is ordered, and if the person is ordered to refrain from the excessive use of alcohol
5 or use of a narcotic drug or other controlled substance as a condition of release or if drug or
6 alcohol testing is ordered as a condition of release, the judicial officer shall not order drug or
7 alcohol testing to occur more than 4 times per month. Upon motion of the person, the judicial
8 officer shall consider whether the person has an alcohol or substance use disorder in need of
9 treatment. If the person has an alcohol or substance use disorder in need of treatment, the person
10 shall be ordered to engage in such treatment in accordance with clause (x) of paragraph (B) of
11 subsection (2) with a mental health clinic or alcohol or substance use disorder program licensed
12 by the department of public health under chapters 17, 111, 111B, or 111E or a behavioral,

13 alcohol use disorder, substance use disorder, or mental health professional who is licensed under
14 chapters 111J and 112 and accredited or certified to provide services consistent with law.

15 If a person is engaged in treatment, the person shall not be required to submit to any drug
16 or alcohol testing that is not required by such treatment program, and any positive test result or
17 any other indicator of relapse shall not be considered a violation of the person's conditions of
18 release. For the purposes of this section, a person shall be considered engaged in treatment if the
19 person: (i) is attending a treatment program or regimen; (ii) switches treatment programs
20 voluntarily or at the direction of a health care provider; (iii) is discharged from a treatment
21 program and transitions into a new treatment program or regimen within a reasonable period of
22 time; or (iv) is on a waiting list for a treatment program or regimen.

23 If a person is not engaged in treatment, any positive test result or any other indicator of
24 relapse shall only be considered a violation of the person's conditions of release if accompanied
25 by a separate criminal offense. Otherwise, the person shall be ordered to initiate or resume
26 treatment.

27 If a person has completed treatment and remains subject to pretrial conditions of release,
28 and tests positive for drugs or alcohol, upon motion of the person, the court shall again consider
29 the person's treatment needs. If the person has an alcohol or substance use disorder in need of
30 treatment, the person shall be ordered to resume treatment with a mental health clinic or alcohol
31 or substance use disorder program licensed by the department of public health under chapters 17,
32 111, 111B, or 111E or a behavioral, alcohol use disorder, substance use disorder, or mental
33 health professional who is licensed under chapters 111J and 112 and accredited or certified to

34 provide services consistent with law, and the positive drug or alcohol test shall not be considered
35 a violation of conditions of release.

36 SECTION 2. Section 87A of said chapter 276, as so appearing, is hereby amended by
37 inserting after the first paragraph the following paragraphs:-

38 If a person is ordered to refrain from the use of alcohol or a narcotic drug or other
39 controlled substance as a condition of probation or if drug or alcohol testing is ordered as a
40 condition of probation, the court shall not order drug or alcohol testing to occur more than 4
41 times per month. Upon motion of the person, the court shall consider whether the person has an
42 alcohol or substance use disorder in need of treatment. If the person has an alcohol or substance
43 use disorder in need of treatment, the person shall be ordered to engage in such treatment with a
44 mental health clinic or alcohol or substance use disorder program licensed by the department of
45 public health under chapters 17, 111, 111B, or 111E or a behavioral, alcohol use disorder,
46 substance use disorder, or mental health professional who is licensed under chapters 111J and
47 112 and accredited or certified to provide services consistent with law.

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

56 If a person is not engaged in treatment, any positive test result or any other indicator of
57 relapse shall only be considered a violation of the person's conditions of release if accompanied
58 by a separate criminal offense. Otherwise, the person shall be ordered to initiate or resume
59 treatment.

60 If a person has completed treatment and remains subject to conditions of probation, and
61 tests positive for drugs or alcohol, upon motion of the person, the court shall again consider the
62 person's treatment needs. If the person has an alcohol or substance use disorder in need of
63 treatment, the person shall be ordered to resume treatment with a mental health clinic or alcohol
64 or substance use disorder program licensed by the department of public health under chapters 17,
65 111, 111B, or 111E or a behavioral, alcohol use disorder, substance use disorder, or mental
66 health professional who is licensed under chapters 111J and 112 and accredited or certified to
67 provide services consistent with law, and the positive drug or alcohol test shall not be considered
68 a violation of conditions of probation.