

**HOUSE . . . . . No. 163**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Michael J. Finn***

*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 establishing a pilot diversion program for individuals with developmental and intellectual disabilities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Michael J. Finn</i>	<i>6th Hampden</i>	<i>1/20/2023</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>1/24/2023</i>
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>	<i>4/24/2023</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>	<i>4/25/2023</i>
<i>Donald R. Berthiaume, Jr.</i>	<i>5th Worcester</i>	<i>4/25/2023</i>
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>	<i>4/25/2023</i>

**HOUSE . . . . . No. 163**

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By Representative Finn of West Springfield, a petition (accompanied by bill, House, No. 163) of Michael J. Finn and Lindsay N. Sabadosa relative to establishing a pilot diversion program for individuals with developmental and intellectual disabilities. Children, Families and Persons with Disabilities.

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**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-Third General Court  
(2023-2024)**

An Act establishing a pilot diversion program for individuals with developmental and intellectual disabilities.

*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. Part IV of the General Laws, as appearing in the 2020 Official Edition, is  
2 hereby amended by inserting after Chapter 276B the following:

3 Chapter 276C. Diversion Program for Individuals with Developmental and Intellectual  
4 Disabilities.

5 Section 1. The following words, as used in this chapter, shall have the following  
6 meanings:

7 “Court”, the Boston municipal court.

8 “Department”, the Department of Developmental Services.

9 “Development disability”, a group of conditions due to an impairment in physical,  
10 learning, language, or behavior areas. These conditions begin during the developmental period,

11 may impact day-to-day functioning, and usually last throughout a person’s lifetime, including  
12 Fetal Alcohol Spectrum Disorders.

13 “Individual”, an adult age 18 years or older with an intellectual disability or  
14 developmental disability who is diverted from prosecution under the provisions of this chapter.

15 "Intellectual disability", a term used when there are limits to a person’s ability to learn at  
16 an expected level and function in daily life.

17 "Psychiatrist", a physician licensed pursuant to section two of chapter one hundred and  
18 twelve of the general laws who specializes in the practice of psychiatry.

19 Section 2. There shall be established a Pilot Program to address the unique needs of  
20 persons with intellectual and developmental disabilities in the criminal justice system. The  
21 Boston municipal courts shall have jurisdiction to divert to the department any person with a  
22 developmental disability or an intellectual disability who is charged with an offense or offenses  
23 against the commonwealth for which a term of imprisonment may be imposed, over which  
24 Boston municipal courts may exercise final jurisdiction, and meets the requirement set forth in  
25 Section 5(C) of this chapter. This pilot program shall last for 5 years, from the effective date of  
26 this legislation. Upon the effective date of this chapter, the Committee for Public Counsel  
27 Services shall be notified of the pilot program by the Massachusetts Probation Service and by the  
28 department.

29 Section 3. The Massachusetts Probation Service and the department shall oversee and  
30 develop the pilot program. Annually, both agencies shall jointly provide a report analyzing the  
31 number of persons who have been diverted through the pilot program, and the costs of the pilot  
32 program, together with recommendations for the pilot program’s future and any other relevant

33 data. This data shall include the collection of demographic data, including but not limited to age,  
34 gender, race, and ethnicity. This data shall include direct interviews with program participants on  
35 the effectiveness of the diversion and quantitative data about the success of individuals diverted  
36 through the program. This report must be filed with the Speaker of the House, the Senate  
37 President, the Chairs of the Joint Committee on Children, Families and Persons with Disabilities,  
38 and the Chairs of the Joint Committee on the Judiciary. This report shall also be made publicly  
39 available on the department's website.

40           The Massachusetts Probation Service in partnership with the department shall collaborate  
41 with all appropriate state agencies, departments, and secretariats of the commonwealth as  
42 necessary to develop the pilot program and provide services to individuals who are diverted  
43 through the program.

44           Section 4. No individual eligible under this statute shall be charged a fee for participation  
45 in the pilot program, including fees related to treatment, assessments, or other aspects of their  
46 care plan and services.

47           Section 5. Boston municipal court may approve pretrial diversion at any time after the  
48 filing of a criminal complaint, including prior to arraignment. An individual shall qualify for the  
49 pilot program and receive services and supports in lieu of prosecution and incarceration if all the  
50 following criteria are met:

51           (a) Diversion is requested by the individual, the individual's attorney, or the prosecutor,  
52 or the court on its own motion, determines that the individual may benefit from participation in  
53 the pilot program;

54 (b) The individual has medical records diagnosing the individual with a developmental or  
55 intellectual disability;

56 (c) The alleged or charged offense is not a violent or dangerous crime and the individual  
57 does not have criminal charges pending for a violent or dangerous crime;

58 (d) The court, in reviewing the individual's arrest or application for a complaint, and  
59 medical or psychological records and any other relevant documents, is satisfied that the  
60 individual's developmental or intellectual disability was a factor in the commission of the  
61 alleged or charged offense;

62 (e) The individual consents to diversion and services from the department; and

63 (f) The court, considering the medical records of the individual and any evidence  
64 presented by the individual's attorney and the prosecutor, is satisfied that if ordered to the pilot  
65 program the individual would not pose an unreasonable risk of danger to any other person or the  
66 community.

67 Section 6. When an individual is diverted through this program, an interdisciplinary team,  
68 including the individual and his or her guardian if any, shall be convened by the department and  
69 shall draft an individual care plan (ICP) including supports and services for the participant within  
70 14 days. Once the individual consents to the individual care plan, the department shall cause  
71 them to be enrolled in proposed services and notify the court in writing of this development.

72 Section 7. Once the court receives notification that the individual has been registered for  
73 services with the department under their new ICP, the court shall dismiss the participant's

- 74 criminal charges that were the subject of the criminal proceedings at the time of the initial
- 75 diversion. If the court dismisses the charges, the court may order the record of the arrest sealed.