

**HOUSE . . . . . No. 1962**

By Mr. Walsh of Boston, a petition (accompanied by bill, House, No. 1962) of Martin J. Walsh and others relative to allowing the diversion of low-level offenders under court supervision from the drug treatment program of the Commonwealth. Mental Health and Substance Abuse.

**The Commonwealth of Massachusetts**

PRESENTED BY:

**Martin J. Walsh**

*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 passage of the accompanying bill:

**AN ACT TO AMEND THE COMMONWEALTH'S DRUG TREATMENT PROGRAM TO ALLOW FOR THE DIVERSION OF LOW LEVEL OFFENDERS UNDER COURT SUPERVISION .**

PETITION OF:

| NAME:               | DISTRICT/ADDRESS:           |
|---------------------|-----------------------------|
| Martin J. Walsh     | 13th Suffolk                |
| Anthony W. Petrucci | First Suffolk and Middlesex |
| Richard T. Moore    | Worcester and Norfolk       |
| Brian P. Wallace    | 4th Suffolk                 |
| Elizabeth A. Malia  | 11th Suffolk                |
| Carlo P. Basile     | 1st Suffolk                 |
| Ruth B. Balser      | 12th Middlesex              |
| Mayor Thomas Menino |                             |
| Gale D. Candaras    | First Hampden and Hampshire |

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

An Act to amend the commonwealth's drug treatment program to allow for the diversion of low level offenders under court supervision .

*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. Chapter 111E of the General Laws is hereby amended by inserting the  
2 definition of "addiction specialist" to SECTION 1 as appearing in the 1998 Official Edition,  
3 as follows:—

4 "Addiction specialist", a person with an MD, PhD, RN, LICSW or other professional training  
5 who is licensed or certified by the department's bureau of substance abuse services as a provider  
6 of substance abuse treatment.

7 SECTION 2. Said chapter 111E of the General Laws is hereby amended by inserting the  
8 definition of "Bureau" in SECTION as follows:—

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

10 SECTION 3. Said chapter 111E of the General Laws is hereby amended by striking out the  
11 definition of "Director" in SECTION 1, and inserting in place thereof the following:—

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

14 SECTION 4. Said chapter 111E of the General Laws is hereby amended by striking out the  
15 definition of "Drug dependent person" in SECTION 1, and inserting in place thereof the  
16 following:—

17 "Drug dependent person", a person, regardless of age, who is unable to function effectively and  
18 whose inability to do so causes, or results from, the use of a drug other than alcohol, tobacco or  
19 lawful beverages containing caffeine, and other than from a medically prescribed drug when  
20 such drug is medically indicated and the intake is proportioned to the medical need, or a person  
21 who is at risk of becoming drug dependent, as defined herein.

22 SECTION 5. Said chapter 111E of the General Laws is hereby amended by inserting the  
23 definition of "Second drug offense" to SECTION 1 as follows:—

24 "Second drug offense", an illegal act which stands pending for trial wherein the defendant has  
25 been assigned to treatment under Chapter 111E one time previously.

26 SECTION 6. Said chapter 111E of the General Laws is hereby amended by inserting the  
27 definition of "Successful completion of treatment" to SECTION 1 as follows:—

28 "Successful completion of treatment", when the administrator of the facility has determined that  
29 the drug dependant person, as defined by this Act, has completed the requirements set forth by  
30 the individual patient treatment plan to the best of his current ability.

31 SECTION 7. Said chapter 111E of the General Laws is hereby amended by inserting the  
32 following to the end of SECTION 5 as follows:—

33 If the Division is unable to comply with the provisions of this section, the bureau shall prepare  
34 and publish annually a list of facilities operating in accordance with this chapter and shall make  
35 such list available to all District and Superior Courts, interested attorney's and their statewide  
36 organizations, the offices of the District Attorneys for each county and their statewide  
37 organizations, and probation departments and their statewide organizations within the  
38 commonwealth on an annual basis and to members of the public upon request. Such list shall  
39 include, but not be limited to, the following:

40 (a) eligibility of treatment;

41 (b) scope of treatment offered;

42 (c) applicable facility fees;

43 (d) last known patient capacity; and

44 (e) facilities available for emergency treatment.

45 SECTION 8. Said chapter 111E of the General Laws is hereby amended by striking from  
46 SECTION 8 the second paragraph and inserting in place thereof the following:—

47 Upon receipt by the director of an application for admission, the director shall designate an  
48 addiction specialist to conduct an examination of the person to determine whether that person is  
49 a drug dependent person who would benefit from treatment. The addiction specialist shall report  
50 his findings in writing to the director after the completion of the examination, stating the facts  
51 upon which the findings are based and the reasons therefore.

52 SECTION 9. Said chapter 111E of the General Laws is hereby amended by striking from  
53 SECTION 8 the fourth paragraph.

52 SECTION 10. Said chapter 111E of the General Laws is hereby amended by striking from  
53 SECTION 10 the first paragraph and inserting in place thereof the following:—

56 Section 11. Any defendant who is charged with a first- or second- offense shall be informed,  
57 upon being brought before the court on such charge, that he is entitled to request an examination  
58 to determine whether or not he is a drug dependant person who would benefit from treatment. A  
59 court may in its discretion request an examination of any person charged with a drug offense to  
60 determine whether a defendant is drug dependent and would benefit from treatment in  
61 accordance with this chapter.

62 SECTION 11. Said chapter 111E of the General Laws is hereby amended by striking from  
63 SECTION 10 the third paragraph and inserting in place thereof the following:—

64 Court proceedings shall be stayed from the time a request for examination is made under this  
65 SECTION and while that request is considered by the court. Upon such a request, , the court  
66 shall appoint an Addiction Specialist to conduct the examination at an appropriate location  
67 within three days of the granting of the request. In no event shall the request for such an  
68 examination or any statement by the defendant during the course of the examination, or any  
69 finding by the Addiction Specialist be admissible against the defendant in any court proceedings.

70 SECTION 12. Said chapter 111E of the General Laws is hereby amended by striking from  
71 SECTION 10 the fourth paragraph and inserting in place thereof the following:—

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

75 SECTION 13. Said chapter 111E of the General Laws is hereby amended by striking from  
76 SECTION 10 the fifth paragraph and inserting in place thereof the following:—

77 If the defendant is also charged with the violation of any law other than a drug offense, the stay  
78 of the court proceedings may be vacated by the court upon the report of the addiction specialist,  
79 whereupon the report shall be considered upon disposition of the charges in accordance with  
80 sections eleven and twelve, and the remaining provisions of this chapter shall not apply. If the  
81 defendant is charged with a drug offense only and the addiction specialist reports that the  
82 defendant is a drug dependant person who would benefit from treatment, the court shall inform  
83 the defendant that he may request assignment to a drug treatment facility and advise him of the  
84 consequences of the assignment, and that if he is so assigned the court proceedings shall be  
85 stayed for the term of such assignment.

86 SECTION 14. Said chapter 111E of the General Laws is hereby amended by striking from  
87 SECTION 10 the sixth paragraph and inserting in place thereof the following:—

88 If the defendant requests assignment to treatment and the evaluation of the Addiction Specialists  
89 deems the defendant would benefit from treatment the court must stay the court proceedings and  
90 assign the defendant to a drug treatment facility.

91 SECTION 15. Said chapter 111E of the General Laws is hereby amended by striking from  
92 SECTION 10 the eighth paragraph and inserting in place thereof the following:—

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

101 SECTION 16. Said chapter 111E of the General Laws is hereby amended by striking from  
102 SECTION 10 the ninth paragraph and inserting in place thereof the following:—

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

109 SECTION 17. Said chapter 111E of the General Laws is hereby amended by striking from  
110 SECTION 10 the eleventh paragraph and inserting in place thereof the following:—

111 If the defendant requests assignment to treatment and is determined by an addictions specialist to  
112 be a drug dependent person that would benefit from treatment, and the defendant is charged with  
113 a first or second drug offense not involving the sale or manufacture of dependency related drugs,  
114 or is assigned by the court, and there are no continuances outstanding with respect to the  
115 defendant pursuant to this section, and adequate and appropriate treatment at a facility is not  
116 available, the stay of court proceedings shall remain in effect until such time as adequate and  
117 appropriate treatment is available.

118 SECTION 18. Said chapter 111E of the General Laws is hereby amended by striking from  
119 SECTION 10 the first sentence of the fifteenth paragraph and inserting in place thereof the  
120 following:—

121 If the Addiction Specialist reports that the defendant is not a Drug Dependant Person who would  
122 benefit from treatment, the defendant shall be entitled to request a hearing to determine whether  
123 or not he is a drug dependant person who would benefit from treatment.

124 SECTION 19. Said chapter 111E of the General Laws is hereby amended by striking from  
125 SECTION 10 the first sentence of the nineteenth paragraph and inserting in place thereof the  
126 following:—

127 Within ten days of the receipt by the court of an application for discharge, the administrator and  
128 an independent addictions specialist designated by the court to make an examination of the  
129 defendant shall report to the court as to whether or not the patient would benefit from further  
130 treatment at a facility.

131 SECTION 20. Said chapter 111E of the General Laws is hereby amended by striking from  
132 SECTION 10 the first sentence of the twentieth paragraph and inserting in place thereof the  
133 following:—

134 Within ten days of the receipt of the court of an application of transfer, the administrator and an  
135 independent addictions specialist shall report to the court as to whether the defendant is a proper  
136 subject for the transfer for which he has made application.

137 SECTION 21. Said chapter 111E of the General Laws is hereby further amended by striking  
138 from SECTION 10 the last sentence and inserting in place thereof the following:—

139 The provisions of this SECTION shall not apply to a person charged with violating sections  
140 thirty-two to thirty-two G, inclusive, of chapter ninety-four C of the General Laws; provided,  
141 however, notwithstanding the provisions of this section, SECTION of said chapter 94C or any  
142 other law to the contrary, the provisions of this SECTION shall apply to a person charged with

143 a first or second offense of paragraph (a) of SECTION 32 of chapter 94C or a first offense of  
144 paragraph (b) of said SECTION 32,

145 a first or second offense of paragraph (a) of SECTION 32A of chapter 94C or a first offense of  
146 paragraph (b) of said SECTION 32A,

147 a first or second offense of paragraph (c) of SECTION 32A of chapter 94C or a first offense of  
148 paragraph (d) of said SECTION 32A,

149 a first or second offense of paragraph (a) of SECTION 32B of chapter 94C or a first offense of  
150 paragraph (b) of said SECTION 32B,

151 a first or second offense of paragraph (a) of SECTION 32C of chapter 94C or a first offense of  
152 paragraph (b) of said SECTION 32C, and

153 a first or second offense of paragraph (a) of SECTION 32D of chapter 94C or a first offense of  
154 paragraph (b) of said SECTION 32D.

155 SECTION 22. Said chapter 111E of the General Laws is hereby amended by striking from  
156 SECTION 11 the first paragraph and inserting in place thereof the following:—

157 Section 11. Any person found guilty of a violation of law other than a drug offense, who prior to  
158 disposition of the charge, states that he is a drug dependant person, and requests an examination,  
159 shall be examined by an addictions specialist to determine whether or not he is a drug dependant

160 person who would benefit from treatment. The court may use the determination that the  
161 defendant is a drug dependant person to place him into treatment services under this chapter.

162 SECTION 23. Said chapter 111E of the General Laws is hereby amended by inserting the  
163 following to the end of the first paragraph of SECTION 12 as follows:—

164 A positive drug test alone shall not be considered a breach of the terms of probation.

165 SECTION 24. This act shall not apply to any convictions entered or sentences imposed prior to  
166 the effective date of this act.