

Accompanying the twentieth recommendation of the Department of Correction (House, No. 93). The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-One.

AN ACT RELATIVE TO ALCOHOLICS AND SUBSTANCE ABUSERS.

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 35 of chapter 123 of the General Laws
2 as appearing in the 1988 Official Edition is hereby revised by
3 striking out the section in its entirety and inserting in place thereof
4 the following: —

5 Section 35. For the purposes of this section, “alcoholic” shall
6 mean a person who chronically or habitually consumes alcoholic
7 beverages to the extent that (1) such use substantially injures his
8 health or substantially interferes with his social or economic
9 functioning, or (2) he has lost the power of self-control over the
10 use of such beverages.

11 For the purposes of this section, “substance abuser” shall mean
12 a person who chronically or habitually consumes or ingests
13 controlled substances to the extent that (1) such use substantially
14 injures his health or substantially interferes with his social or
15 economic functioning, or (2) he has lost the power of self-control
16 over the use of such substances.

17 Any police officer, physician, spouse, blood relative, guardian
18 or court official may petition in writing any district court for an
19 order of commitment of a person whom he has reason to believe
20 is an alcoholic or substance abuser. After considering the written
21 petition and hearing such evidence as he may consider sufficient,
22 a district court justice may schedule a hearing on the petition. If
23 such a hearing is scheduled, the court shall cause a summons and
24 copy of the application to be served upon the person in the manner
25 provided by section twenty-five of chapter two hundred and

26 seventy-six. In the event of the person's failure to appear at the
27 time summoned, the court may issue a warrant for the person's
28 arrest.

29 Upon presentation of such a petition, if there are reasonable
30 grounds to believe that such person will not appear and that any
31 further delay in the proceedings would present an immediate
32 danger to the physical well-being of the respondent, said court
33 may issue a warrant for the apprehension and appearance of such
34 person before it. No arrest shall be made on such warrant unless
35 the person may be presented immediately before a judge of the
36 district court. The person shall have the right to be represented
37 by legal counsel and may present independent expert or other
38 testimony. If the court finds the person indigent, it shall
39 immediately appoint counsel. The court shall order examination
40 by a qualified physician or a qualified psychologist.

41 If, after a hearing the court finds that said person is an alcoholic
42 or substance abuser and that there is a likelihood of serious harm
43 as a result of his alcoholism or substance abuse, it may order such
44 person to be committed for a period not to exceed thirty days.
45 Such commitment shall be for the purpose of inpatient care in
46 public or private facilities approved by the department of public
47 health under the provisions of chapter one hundred and eleven
48 B for the care and treatment of alcoholism or substance abuse.

49 The person may be committed to the Massachusetts
50 correctional institution at Bridgewater, if a male, provided that
51 the person has pending criminal charges or has been found by the
52 court to have violated conditions of probation or by the Parole
53 Board to have violated conditions of parole; and provided,
54 further, that the person so committed shall be housed and treated
55 separately from convicted criminals. Prior to committing said
56 person to the Massachusetts correctional institution at
57 Bridgewater, the court must ascertain with the superintendent of
58 that institution that adequate bedspace and appropriate treatment
59 are available. Under no circumstances shall the Department of
60 Public Health designate an institution of the Department of
61 Correction as an approved facility for the inpatient care of a
62 person who neither has pending criminal charges nor has been
63 found to have violated conditions of probation or parole.

64 A person committed under the provisions of this section may
65 be released prior to the expiration of the period of commitment
66 upon determination by the superintendent that release of said
67 person will not result in a likelihood of serious harm. Said person
68 shall be encouraged to consent to further treatment and shall be
69 allowed voluntarily to remain in the facility for such purposes,
70 provided he neither has pending criminal charges nor has been
71 found to have violated conditions of probation or parole. If the
72 person has pending criminal charges or has been found to have
73 violated conditions of probation or parole, upon his discharge he
74 shall be returned forthwith to the court that issued the order of
75 commitment.

76 The department of public health shall maintain a roster of
77 public and private facilities available for the care and treatment
78 of alcoholism or substance abuse and shall make it available to
79 the district courts of the Commonwealth on a regular basis.

80 A person examined under the provisions of this section may
81 be committed to a department of mental health facility under the
82 provisions of section twelve, paragraph (e) of chapter one hundred
83 and twenty-three if the court determines that the person is
84 mentally ill and that failure to hospitalize him would create a
85 likelihood of harm by reason of mental illness.

1 SECTION 2. Section 3 of Chapter 111B of the General Laws
2 as appearing in the 1988 Official Edition is hereby amended by
3 striking out in lines 15 through 17 the words ““Facility,” and
4 public or private place, or portion thereof, providing services
5 especially designed for the detoxification of intoxicated persons
6 of alcoholics” and inserting in place thereof the words: —
7 “Facility,” any public or private place, or portion thereof, which
8 is not part of or located at a penal institution, providing services
9 especially designated for the detoxification of intoxicated person
10 or alcoholics.

1 SECTION 3. Section 7 of chapter 111B of the General Laws
2 as appearing in the 1988 Official Edition is hereby amended by
3 striking out the section in its entirety and inserting in place thereof
4 the following new section: —

5 Section 7: Any person who is intoxicated and voluntarily
6 applies for treatment at a detoxification facility or is brought to
7 said facility in accordance with section eight shall be afforded
8 treatment there or at another facility.

9 Prior to the admission of any person, the administrator of the
10 facility shall cause him to be evaluated by physician-supervised
11 personnel, experienced in alcoholism and drug dependency
12 diagnosis. If there is any concern about the health or the
13 immediate treatment needs of such person, he shall be examined
14 by a physician. If upon said evaluation or examination, a
15 determination is made that the person is intoxicated or is an
16 alcoholic or is drug dependent and adequate and appropriate
17 treatment is available, he shall be admitted. If any person is not
18 admitted for the reason that adequate and appropriate treatment
19 is not available at the facility, the administrator of the facility,
20 acting whenever possible with the assistance of the director, or
21 his designee, shall refer the person to a facility at which adequate
22 and appropriate treatment is available. In the event that a person
23 is not admitted to a facility, and has no funds, the administrator
24 shall arrange for the person to be assisted to his residence, or if
25 he has no residence to a place where shelter will be provided him.

26 Any person admitted to a facility shall receive treatment at the
27 center or facility for as long as he wishes to remain or until the
28 administrator determines that treatment will no longer benefit
29 him; provided, however, that any person who at the time of
30 admission is intoxicated and is incapacitated, shall remain at the
31 facility until he is no longer incapacitated, but in no event shall
32 he be required to remain for a period greater than forty-eight
33 hours.

34 When a person is admitted to a facility, his family shall be
35 notified as soon thereafter as possible. If a patient who is not
36 incapacitated requests that notification not be given, his request
37 shall be respected. Any person, unless transported by the police,
38 who is transported to a facility or from one facility to another
39 or from a facility to his residence shall be transported by the
40 department, or other person authorized by the department. Said
41 department shall promulgate rules and regulations regarding such
42 transportation, and where necessary shall bear the expense
43 thereof.

44 Upon discharge from or upon leaving a facility, the patient shall
45 be encouraged to consent to appropriate outpatient or residential
46 aftercare treatment.

1 SECTION 4. Section 16 of chapter 125 of the General Laws
2 as appearing in the 1988 Official Edition is hereby amended by
3 striking out the second paragraph and inserting in place thereof
4 the following paragraph: — No person shall be committed to the
5 Massachusetts correctional institution, Framingham for the
6 treatment of alcoholism, except in accordance with the provisions
7 of section thirty-five of chapter one hundred and twenty-three.

1 SECTION 5. Section 19 of chapter 125 of the General Laws
2 as appearing in the 1988 Official Edition is hereby amended by
3 striking out in lines 3 and 4 the words, “chapter one hundred and
4 eleven B and.”

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