

By Mr. White of Boston, petition of W. Paul White, William R. Keating, John F. Cox, Susan F. Rourke, Richard J. Rouse and Salvatore F. DiMasi that provision be made for alternative sanctions for certain felony and misdemeanor offenses. Criminal Justice.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Five.

AN ACT PROVIDING AN ALTERNATIVE SANCTION FOR CERTAIN FELONY AND MISDEMEANOR OFFENSES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 279 of the General Laws is hereby amended by inserting
2 after section 6A, the following new section: —

3 *Section 6B.* Any person charged with or convicted of an
4 offense or offenses against the Commonwealth for which a term of
5 imprisonment may be imposed and over which the district courts
6 may exercise jurisdiction and who does not have any outstanding
7 warrants, continuances, appeals or criminal cases pending before
8 any courts of the Commonwealth or any other state or of the
9 United States may if he consents, be placed on probation for not
10 more than two years and shall, as a condition of probation, be
11 assigned to a restitution center program as provided herein.

12 In order to qualify for consideration for assignment to a restitu-
13 tion center program, the defendant must not have a history of
14 violent or sex-related offenses, nor a history of alcohol or drug
15 abuse nor shall the defendant have emotional, mental, or psycho-
16 logical problems so serious as to render the defendant unlikely to
17 be able to meet the obligations of the program.

18 Said defendant shall cooperate in an investigation conducted by
19 the probation staff in consultation with the staff of the program to
20 assess the defendant's eligibility to participate in the program and

21 the defendant's capacity to benefit from participation in the pro-
22 gram. Said investigation shall include, but need not be limited to,
23 an evaluation of the needs and strengths of the defendant in the
24 areas of education, vocational skills, job training, employment
25 history, and job placement.

26 At the time of trial or prior to disposition, a report shall be made
27 to the judge of the findings of the investigation and shall include an
28 assessment of the defendant's employability and willingness to
29 participate in the program. The report may also include recom-
30 mendations from the program staff.

31 After receiving the report and having provided an opportunity
32 for the prosecution to make its recommendation, the judge shall
33 make a final determination as to the eligibility of the defendant for
34 assignment to the program. The duties of all defendants assigned
35 to a restitution center program shall include:

- 36 1 — compliance with all rules and regulations of the program;
- 37 2 — performance without compensation services in the communi-
38 ty for charitable or governmental agencies;
- 39 3 — participation in a course of study or vocational training;
- 40 4 — acquisition of approved employment;
- 41 5 — participation in the routine cleaning and maintenance of the
42 program facility;
- 43 6 — payment of any restitution, fines, court costs, dependent
44 support as may be ordered by the court;
- 45 7 — reside within the program facility and remain with the facility
46 unless given written permission by the program staff to leave the
47 facility to work or to attend classes or training programs;
- 48 8 — payment of the fee for the cost of services at the program
49 facility as required.

50 In addition to the above listed, the judge may impose such other
51 conditions and duties as the judge considers appropriate and
52 necessary. If the defendant violates a condition of participation in
53 the restitution center program or is charged with an offense, the
54 program director shall report that fact forthwith to the court and
55 the defendant shall be proceeded against in accordance with the
56 provisions of section three of chapter two hundred and seventy-nine.

57 Upon completion of one hundred and eighty-days participation
58 in the restitution center program and every ninety days thereafter

59 until the defendant is released from the program, the probation
60 officer shall submit to the sentencing judge a report of the defend-
61 ant's participation in the program and compliance with the condi-
62 tions of probation. Said report shall include a statement from the
63 program director of the defendant's efforts in obtaining and main-
64 taining employment and in attending employment-related educa-
65 tional or training courses. The director may also make recommen-
66 dations relative to the modification of the conditions and duties
67 imposed upon the defendant or relative to the release of the
68 defendant from the program and transfer to probation super-
69 vision.

70 The restitution center programs utilized under the provisions of
71 this section shall be established and administered by the commis-
72 sioner of corrections and may include any public or private spon-
73 sored program that the commissioner has accepted as appropriate
74 for the purposes of this section. The commissioner shall prepare
75 and publish annually a list of all such accepted restitution center
76 programs, shall make this list available upon request to members
77 of the public, and shall from time to time furnish each court in the
78 commonwealth with a current copy of said list.

79 Each defendant placed in a restitution center program shall pay
80 to such program a fee in an amount to be determined by the
81 commissioner of correction. The commissioner shall establish and
82 may time to time revise a schedule of uniform fees to be charged by
83 such programs. No defendant may be excluded from said program
84 for inability to pay the fee, provided that said defendant files an
85 affidavit of indigency or inability to pay with the court within ten
86 days of the date of disposition, that investigation by the probation
87 officer confirms such indigency or establishes that the payment of
88 such fee would cause a grave and serious hardship to said defend-
89 ant and that the court enters a written finding thereof. The court
90 may waive payment of said fee when appropriate.

91 Subject to appropriation, the commissioner shall reimburse each
92 program for the cost of services provided to defendants for whom
93 payment of a fee has been waived on the grounds of indigency.

