

# HOUSE . . . . . No. 1613

By Mr. Naughton of Clinton, petition of Harold P. Naughton, Jr., relative to the establishment of a drug court. The Judiciary.

## The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO THE ESTABLISHMENT OF A DRUG COURT.

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

1 Massachusetts General Laws Chapter 212, is hereby amended in  
2 Section 6 by inserting at the end thereof the following:—

3 (a) The District Court Department for each county of the Com-  
4 monwealth is hereby authorized to establish and administer a depart-  
5 ment to be known as “the Drug Court” whose purpose it shall be to  
6 administer and supervise pretrial substance abuse intervention pro-  
7 grams for persons charged with a crime, before or after any informa-  
8 tion has been filed or an indictment has been returned in the District  
9 Court. Such programs shall provide appropriate substance abuse  
10 counseling, education, supervision, and medical and psychological  
11 treatment as available and when appropriate for the persons released  
12 to such programs.

13 (b) Any person who (1) has no prior felony conviction and (2) is  
14 currently before the court to answer charges dealing with a nonvio-  
15 lent felony or misdemeanor and (3) has not previously participated  
16 in the aforementioned pretrial intervention program to be established  
17 by this act and (4) is not currently being charged with crimes per-  
18 taining to the manufacture, sale, delivery or trafficking of controlled  
19 substances of any classification as defined under the applicable,  
20 established laws of the Commonwealth is eligible for admission into  
21 the pretrial substance abuse intervention program upon approval by  
22 the chief justice of the District Court in the presiding county for a  
23 period of not less than one year in duration. Admission into such  
24 program can be requested on the motion of either party or on the  
25 court’s own motion. However, if the prosecuting district attorney has

26 reason to believe that the facts and circumstances of the case suggest  
27 the defendant's involvement in the manufacture, sale, delivery or  
28 trafficking of any controlled substance, the court shall hold a pread-  
29 mission hearing. If the prosecuting district attorney establishes, by a  
30 preponderance of the evidence at such hearing, that the defendant  
31 was involved in the manufacture, sale, delivery or trafficking of any  
32 controlled substance, the court shall deny the defendant's admission  
33 into a pretrial intervention program.

34 As used in this subsection, "nonviolent felony or misdemeanor"  
35 excludes arson; sexual battery of any manner; robbery; kidnapping;  
36 aggravated child abuse; aggravated assault; murder; manslaughter;  
37 aggravated battery; and armed burglary. In no case, however, shall  
38 any individual be released to the pretrial intervention program  
39 unless, after consultation with his attorney or one made available to  
40 him if he or she is indigent, he or she has voluntarily agreed to such  
41 program and has knowingly and intelligently waived his right to a  
42 speedy trial for the period of his diversion to the Drug Court.

43 (c) The criminal charges against an individual admitted to the pro-  
44 gram shall be continued without a final disposition for a period of  
45 ninety days from the date the defendant was released to the pretrial  
46 intervention program, if the defendant's participation in the program  
47 is deemed to be satisfactory by the judge presiding over the case in  
48 Drug Court. The criminal charges may be continued without final  
49 disposition for an additional ninety days upon the approval of the  
50 court following request by the program administrator provided that  
51 said request be accompanied with the consent of the prosecuting dis-  
52 trict attorney and provided that the defendant's participation in the  
53 program has been deemed to be satisfactory by the court following  
54 recommendations by the program administrator and district attorney.

55 (d) Resumption of pending criminal charges may be requested by  
56 the district attorney at any time if the intervention program adminis-  
57 trator or the prosecuting district attorney has reason to believe that  
58 such defendant is not in strict compliance with the obligations  
59 imposed upon the defendant as a condition to his/her participation in  
60 the program or if the public interest so requires.

61 If the district attorney has reason to believe that the defendant is  
62 not in strict compliance with program's guidelines, then he/she shall  
63 make a motion to the judge presiding over the Drug Court to initiate  
64 normal prosecutorial procedures. Following the filing of such a

65 motion, a hearing shall be scheduled before the presiding “Drug  
66 Court” judge who shall then issue an order regarding the proposed  
67 resumption of criminal procedure.

68 (e) At the end of the intervention program period, the program  
69 administrator shall recommend one of the following courses of  
70 action with regard to the defendant’s situation:

71 (1) that the criminal case revert to the established prosecutorial  
72 procedures for the particular crime in question in instances where the  
73 defendant’s participation in the program has been deemed to be  
74 unsatisfactory;

75 (2) that the defendant is in need of further supervision under the  
76 guidelines set forth with the Drug Court; or

77 (3) that dismissal of charges without prejudice shall be entered in  
78 instances in which prosecution is not deemed necessary.

79 The court shall then consider the recommendation of the program  
80 administrator and the recommendation of the prosecuting district  
81 attorney as to the disposition of the pending criminal charges. The  
82 court shall then determine, by written finding, whether the defendant  
83 has successfully completed the pretrial program. If the court finds  
84 that the defendant has not successfully completed the pretrial inter-  
85 vention program, the court may order the defendant to continue in  
86 education and treatment for a determined length or may order that  
87 the criminal charges revert to the established prosecutorial proce-  
88 dures for the particular crime(s) in question. The court shall dismiss  
89 the criminal charges upon a finding that the defendant has success-  
90 fully completed the pretrial intervention program.

91 (f) The Chief Justice in each District Court may appoint an advi-  
92 sory committee for the pretrial intervention program composed of  
93 the Chief Justice or his/her designee, who shall serve as chairman;  
94 the district attorney, the public defender, and the program adminis-  
95 trator, or their designees; and such other persons as the chairman  
96 deems appropriate. The committee may also include persons repre-  
97 senting any other agencies to which defendants released to the pre-  
98 trial intervention program may be referred.

99 (g) The District Court department may contract for the services  
100 and facilities necessary to operate pretrial intervention programs. 2